APPENDIX A

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NO. AP-77,055

RANDALL WAYNE MAYS, Appellant

v.

THE STATE OF TEXAS

ON REVIEW OF AN ARTICLE 46.05 COMPETENCY TO BE EXECUTED HEARING FROM CAUSE NO. B-15,717 IN THE 392ND DISTRICT COURT HENDERSON COUNTY

KEASLER, J., delivered the unanimous opinion of the Court.

O P I N I O N

In 2008, Mays was convicted of capital murder and sentenced to death. His execution was set for March 18, 2015. In February 2015, Mays filed a motion in the trial court challenging his competency to be executed.[1] The trial judge denied Mays's motion, finding

[1] *See* TEX. CODE CRIM. PROC. art. 46.05(a) ("A person who is incompetent to be executed may not be executed."). Unless otherwise indicated, all future references to Articles refer to the Code of Criminal Procedure.

that Mays had failed to make a threshold showing raising a substantial doubt of his competency to be executed.[2] Mays appealed the trial judge's ruling to this Court. We determined that further review was necessary, and we stayed Mays's execution. In December 2015, we held that Mays "did make a substantial showing that he is incompetent to be executed."[3] We set aside the trial judge's order denying relief, and we remanded this cause to the trial court for further competency proceedings, including the appointment of mental health experts.[4]

After an evidentiary hearing was held in August 2017, the trial judge found that Mays is competent to be executed. Again, Mays has appealed the trial judge's decision to this Court. We affirm the trial judge's decision finding Mays competent to be executed, and therefore lift the stay of execution.

I. BACKGROUND

Mays committed the capital murder of Henderson County Deputy Sheriff Tony Ogburn during a stand-off with police at Mays's residence. On the afternoon of May 17, 2007, Mays's neighbor called 911 to report that Mays was shooting a handgun at his wife. When officers responded to the dispatch call, Mays initially displayed a calm demeanor. He

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[2] *See* Art. 46.05(d) ("On receipt of a motion filed under [Article 46.05], the trial court shall determine whether the defendant has raised a substantial doubt of the defendant's competency to be executed[.]").

[3] *Mays v. State,* 476 S.W.3d 454, 456 (Tex. Crim. App. 2015).

[4] *Id.* at 462.

explained that he had been "target practicing" and that his gun was inside his house. However, when Mays realized he was going to be arrested, he pulled out a knife and ran in the front door of his house. He emerged with a rifle, warned the officers to "back off," then went back inside his house. Deputy Billy Jack Valentine tried to persuade Mays to put down the rifle and come outside. Other officers, including Deputy Ogburn, took turns talking to Mays. During the stand-off, Mays remarked that he feared the officers would kill him. He expressed confusion about why he was "the bad guy." And he commented that he was "sick" and "about to die" because he "was poisoned."

Mays eventually climbed out of a window without his rifle. As another deputy talked to Mays in an effort to keep him calm, Valentine tried to position himself between Mays and the window. When Mays saw what Valentine was doing, he re-entered his house by diving head-first through the window. Mays then fired his rifle from inside his house, striking Deputy Ogburn in the head and killing him. Mays yelled, "Where's the other one? I'll take him out, where is he?" He then killed Inspector Paul Habelt by shooting him in the head. The surviving officers returned gunfire, and Mays shot Deputy Kevin Harris in the leg. Mays was eventually wounded, and he surrendered. He later told news reporters that he killed the officers because he "felt [he] was being mistreated."

Although Mays did not raise an insanity defense at trial, he presented evidence of his mental condition. Dr. Theresa Vail, who was Mays's treating psychiatrist at the Smith County Jail, testified that Mays had depression and "a psychotic disorder not otherwise

specified." Psychologist Gilda Kessner and psychiatrist David Self did not examine Mays but gave their opinions of his mental condition. Kessner opined that Mays suffered from a "thought disorder with paranoid ideation." Self opined that Mays had a "chronic and severe psychiatric illness" and agreed that his past methamphetamine use might have contributed to his psychosis. Mays's friends and family members acknowledged his prior drug use, but generally described him as gentle and even-tempered. However, Mays's sister testified that he sometimes acted suspicious and distrustful, and his mother testified that she had occasionally seen Mays with a "weird look" in his eyes.

On direct appeal to this Court, Mays raised a number of issues related to his mental health. He asserted that it is unconstitutional to execute the mentally ill. He complained that the trial judge erroneously instructed the jury that it could not consider mental-illness evidence that he "lacked the capacity to act intentionally or knowingly" during the commission of the offense. He also argued that, due to his psychotic paranoia at the time of the crime, he was entitled to jury instructions on mistake of fact, justification defenses, and the lesser-included offenses of manslaughter and criminally negligent homicide. This Court rejected those claims and affirmed Mays's capital murder conviction and death sentence on direct appeal.[5]

Mays next filed an Article 11.071 application for a writ of habeas corpus in the trial court. Mays asserted on habeas that it is unconstitutional to execute the mentally ill. He

[5] *Mays v. State,* 318 S.W.3d 368 (Tex. Crim. App. 2010).

argued that trial counsel were ineffective because they failed to pursue a neuropsychological evaluation for organic brain damage. He further alleged that trial counsel were ineffective because they failed to request a hearing on whether he was competent to stand trial and failed to raise an insanity defense. Trial counsel testified at the habeas hearing that they did not think that an insanity or incompetency argument would have been successful. Counsel believed that Mays understood the proceedings against him. With regard to their preparation of Mays's case, counsel explained that Mays was helpful at times, but suspicious and disagreeable at other times. Counsel did not pursue a competency evaluation because they were concerned that the State would conduct their own evaluation and use the results to the detriment of the defense. When trial counsel attempted to have a psychologist evaluate Mays for organic brain damage, Mays refused to cooperate.

Mays, however, agreed to cooperate when state habeas counsel hired Dr. Joan Mayfield to conduct a neuropsychological evaluation on October 9, 2009. Although Mayfield testified at the habeas hearing that Mays was "cooperative," she added that his attention was "variable" and he was "[p]retty withdrawn." She reported that Mays was "sometimes hesitant to talk about his history." Mayfield gave Mays a battery of tests, which indicated some deficits in his cognitive functioning. Mayfield diagnosed him with "dementia not otherwise specified" caused by chronic drug abuse. Mayfield testified that it was not "like an Alzheimer's dementia." She explained that, "[o]nce the drug is stopped, there is still damage; but it would not be progressive."

Following the habeas hearing, the trial judge recommended that relief be denied. This Court adopted the trial judge's findings and conclusions and denied habeas relief.[6]

Mays again raised these claims when he filed a petition for a writ of habeas corpus in federal court. The United States District Court for the Eastern District of Texas denied relief.[7] The Fifth Circuit denied Mays's request for a certificate of appealability.[8] The United States Supreme Court denied Mays's petition for writ of certiorari.[9]

Mays's execution was initially set for March 18, 2015. In February 2015, the Office of Capital and Forensic Writs (OCFW) filed in the trial court an Article 46.05 motion challenging Mays's competency to be executed. On February 27, 2015, the trial judge issued an order in which he found that Mays had failed to make a threshold showing raising a substantial doubt of his competency to be executed, and he declined to appoint experts to evaluate Mays. Mays then asked this Court to review the trial judge's denial of his Article 46.05 motion. We first determined that further review was necessary and stayed Mays's execution. On December 16, 2015, we concluded that Mays had made a substantial showing

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[6] *Ex parte Mays*, No. WR-75,105-01, 2011 WL 1196799, at *1 (Tex. Crim. App. Mar. 16, 2011) (*per curiam*, not designated for publication).

[7] *Mays v. Director, TDCJ-CID*, No. 6:11-CV-135, 2013 WL 6677373 (E.D. Tex. Dec. 18, 2013) (mem. op., not designated for publication).

[8] *Mays v. Stephens*, 757 F.3d 211 (5th Cir. 2014).

[9] *Mays v. Stephens*, 135 S. Ct. 951 (2015).

that he is currently incompetent to be executed.[10] We held that Mays was entitled to further proceedings in accordance with Article 46.05, including the appointment of at least two mental health experts and a determination on the merits of his claim of incompetency.[11]

The trial judge thereafter appointed three experts to evaluate Mays for execution competency. An evidentiary hearing to determine execution competency was held in August 2017. On October 2, 2017, the trial judge issued an order concluding that Mays had failed to prove by a preponderance of the evidence that he is incompetent to be executed. Mays now appeals the trial judge's decision to this Court.

II. ARTICLE 46.05 PROCEDURE

Article 46.05 prohibits the execution of a person who is incompetent.[12] A prisoner is incompetent to be executed if he does not understand: (1) that he is to be executed and that the execution is imminent; and (2) the reason he is being executed.[13]

Article 46.05 provides a two-stage procedure by which a prisoner can prove that he is incompetent to be executed. First, the prisoner has a threshold burden to make a substantial showing of execution incompetency.[14] Once this threshold burden has been

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[10] *Mays*, 476 S.W.3d at 462.

[11] *Id.*

[12] *See* Art. 46.05(a); *see also Ford v. Wainwright*, 477 U.S. 399, 409–10 (1986).

[13] Art. 46.05(h).

[14] *Mays*, 476 S.W.3d at 457; *see also* Art. 46.05(f).

satisfied, the prisoner is entitled to further proceedings under Article 46.05.[15] The second stage is a final, adversarial hearing at which the prisoner has to prove by a preponderance of the evidence that he is incompetent to be executed.[16] At the hearing, the fact finder must consider competing credible evidence of competency and resolve the ultimate issue of whether or not the prisoner is competent to be executed.[17]

In order to meet his threshold burden in this case, Mays relied upon Mayfield's 2009 evaluation and the trial testimony of Vail, Kessner, and Self. He also produced medical records showing his past and present delusional and paranoid behavior. His evidence showed that he had been placed in the Terrell State Hospital twice in the 1980s due to psychotic behavior. His second stay at Terrell occurred after police officers found him "spaced out on crystal [methamphetamine]" and experiencing auditory hallucinations.

When Mays was hospitalized in 2007 to receive treatment for the gunshot wound he sustained in the instant offense, he again experienced paranoia and hallucinations. After he was transported from the hospital to the Smith County Jail, he expressed paranoid thoughts that: he was being poisoned; prisoners and guards were plotting to harm him; he was allergic to ozone; and gases in the air were affecting his ability to breathe. His medical records from the Smith County Jail in 2007 noted "organic brain syndrome" and prescriptions for Zoloft,

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[15] *Mays*, 476 S.W.3d at 457.

[16] *Id.* at 458; *see also* Art. 46.05(k).

[17] *Mays,* 476 S.W.3d at 458.

an anti-depressant, and Risperdal, an anti-psychotic medication. While incarcerated, he wrote letters to his sister about investing in a renewable energy program and building a windmill tower.

When Mays met with attorney Katherine Black in February 2015, he told her that he heard the voices of "evil spirits" and complained about ozone and carbon monoxide in his cell. Psychologists James Underhill and Cecil Reynolds, who reviewed Mays's records, signed affidavits in which they expressed doubts about his competency to be executed.

We determined based on this evidence that Mays met his threshold burden to make a substantial showing of execution incompetency.[18] We therefore concluded that Mays was entitled to further proceedings under Article 46.05, including the appointment of mental health experts and a determination on the merits of his competency to be executed.[19]

III. THE EVIDENTIARY HEARING TO DETERMINE COMPETENCY

The trial judge held a four-day competency hearing in August 2017. Prior to the hearing, the trial judge appointed three mental health experts to evaluate Mays for execution competency: Bhushan S. Agharkar (who was selected from Mays's list of proposed experts); J. Randall Price (who was selected from the State's list of proposed experts); and George Woods (who was jointly proposed by Agharkar and Price). The trial judge also signed an "Agreed Order on Preliminary Article 46.05 Proceedings" instructing the experts to answer

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[18] *Mays*, 476 S.W.3d at 462.

[19] *Id.*; *see also* Art. 46.05(k).

the following "Referral Questions":

1. Does Mr. Mays suffer from a mental illness or mental impairment?

2. If so, does Mr. Mays's mental illness or mental impairment deprive him of a rational understanding of the connection between his crime and his punishment, i.e., "if [Mr. Mays's] mental state is so distorted by a mental illness that his awareness of the crime and punishment has little or no relation to the understanding of those concepts shared by the community as a whole?" *Panetti v. Quarterman,* 551 U.S. 930, 958-59 (2007).

The order further instructed the experts to consider whether Mays's mental illness or impairment deprives him of: (1) a rational understanding that he is to be executed and that the execution is imminent or (2) a rational understanding of the reason he is being executed.[20]

An exhibit was attached to the order which contained professional guidelines and an evaluation checklist that were published in the *Behavioral Sciences & the Law* journal in 2003.[21] Mays acknowledges in his brief that the guidelines and checklist were provided to the experts "at the suggestion of Mays's counsel." The trial judge ordered the experts to use Sections I, II, and III of the checklist "to assist [them] in conducting their evaluations and as the basis for framing the conclusions that shall be set forth in their written reports." Sections I and II contained factors to consider when evaluating an inmate's understanding of his punishment and the reasons for it. Section III contained factors to consider when evaluating

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[20] *See* Art. 46.05(h).

[21] Patricia A. Zapf, Ph.D., Marcus T. Boccaccini, M. A. & Stanley L. Brodsky, Ph.D., *Assessment of Competency for Execution: Professional Guidelines and an Evaluation Checklist*, BEHAV. SCI. LAW 21:103–120 (2003).

an inmate's ability to "appreciate and reason in addition to simple factual understanding." All of the experts testified at the hearing and submitted reports that were admitted into evidence.

A. Mental Health Experts

Agharkar, a psychiatrist in private practice, was the first of the three experts to evaluate Mays. He reviewed Mays's records and conducted a face-to-face clinical interview with him at the Polunsky Unit. Agharkar testified that, although he utilized the checklist provided by the trial judge, he did not ask Mays every question contained within it. He did not think it was "a good idea clinically" or "useful forensically" to ask closed-ended questions. He believed that it was "a more effective interviewing style and technique" for the interviewer to ask "open-ended questions" and then follow up for clarification purposes. Agharkar also expressed that it is difficult to build rapport when "you hit somebody with a barrage of questions or you just go down a list." He further noted that the "guidelines" provided by the trial judge had been peer-reviewed but not validated.

Agharkar met with Mays for two hours on June 16, 2016, and again for one and a half hours on August 18, 2016. Agharkar described Mays's demeanor as guarded and paranoid. Agharkar reported that Mays expressed "a great deal of fear regarding being poisoned both by the environment but also by the guards." Mays believed that his food was being poisoned, that "pepper gas" was being pumped through the vents in his cell, and that "ozone in the atmosphere" was making him tired and unable to think clearly. Mays complained of arm

pain, headaches, and stomachaches. He reported that he had been hearing the voice of God speaking directly to him since he was an infant. He said that he did not take medication given to him in prison because it made him hallucinate. When Mays noticed during the interview that some numbers were printed on Agharkar's shirt, he thought they represented "some hidden message or code that [Agharkar] was not sharing with him."

Mays told Agharkar that he had been awarded a patent on his design for an invention, which he described as a "renewable energy source" that would be delivered "directly to consumers" and "would essentially put the big gas or electric companies out of business." Mays stated that the prison warden was being pressured by the power companies to execute him because they would lose "billions of dollars" if his idea came to fruition. He also believed that the State wanted to execute him to save money on his medical expenses.

Agharkar acknowledged that when Mays had been in Terrell State Hospital in the 1980s, the doctors thought that his hallucinations and paranoia were related to his methamphetamine abuse. But he noted that Mays continued to have psychotic symptoms years after he stopped taking drugs. He testified that methamphetamine abuse typically does not cause "persisting" psychotic symptoms. He testified that the fact that Mays had consistent delusions over time "without any substance being involved" indicated that Mays's condition was "not related to substance illness and it's most likely to be a primary psychotic condition like schizophrenia[.]"

Agharkar testified that he conducted "screenings" of Mays "to detect for the presence

of brain damage." He acknowledged that he did not perform a "neuropsychological battery" and that he "would never diagnose someone based on [his] screenings." However, Agharkar noted that his basic screening results were consistent with Mayfield's diagnosis of dementia in Mays in 2009. Agharkar acknowledged that people with dementia eventually lose the ability to do "activities of daily living," also called "ADLs." When asked if there was any evidence of Mays "losing his ADLs," Agharkar replied, "Not that I'm aware." But Agharkar explained that ADLs are "hard to assess" in a prison setting.

Agharkar explained that Mays's thoughts were "tangential" and not linear or logical, which is "a sign of brain damage and brain impairment." He described Mays as "perseverative" because he repeated the same responses and could not easily move from one topic to the next. Agharkar testified that this was indicative of both brain damage and mental illness. Agharkar further noted that when he returned to Polunsky for their second meeting, Mays remembered Agharkar's name and occupation, but he could not remember why Agharkar was there. Agharkar testified that this was consistent "with a memory impairment such as dementia."

Agharkar stated in his report that Mays evaded some questions about his symptoms and legal circumstances because he wanted to avoid dwelling on "negative things." When Agharkar asked Mays directly about his psychotic symptoms, Mays minimized the symptoms and tried to act as if "it wasn't a big deal." Mays became more agitated and paranoid during their second meeting when Agharkar "challenged him on a number of things" and "really

tried to explore his thinking." Agharkar testified that their second meeting did not end well because Mays became suspicious of Agharkar's motives and accused him of trying to "put words into his mouth" or "psych him out somehow."

Agharkar opined that Mays has both schizophrenia and neurocognitive disorder (also called dementia). Agharkar acknowledged that, at the time of his evaluation, Mays was not being treated for either of these conditions. He further acknowledged that neither Vail nor Mayfield found Mays to have schizophrenia. He stated in his report that "[t]he combination of a psychotic condition in addition to a dementing cognitive process is worse than either alone for Mr. Mays." He did not think that Mays was malingering.

Agharkar concluded that Mays is not competent to be executed. Although Mays understands that he is to be executed and that his execution is imminent, Agharkar concluded that he does not have a rational understanding of the reason he is being executed. Agharkar stated in his report that Mays's "beliefs about why he is to be executed are rooted in delusional thinking, the product of a severe psychotic mental illness and a damaged brain." He added that Mays's significant brain damage "makes it extremely unlikely that [he] will ever rationally understand why he is to be executed as this condition exacerbates his paranoia and severely hampers his ability to rationally consider his present situation."

The next expert to evaluate Mays was Price, a forensic psychologist and neuropsychologist. In addition to reviewing his legal and medical records, Price conducted a two-hour face-to-face clinical interview with Mays at the Polunsky Unit on September 13,

2016. Unlike Agharkar, Price believed that it was the "best practice" to use checklists in evaluations. Price utilized the checklist provided by the trial judge, but he did not mechanically follow it, and he felt he had discretion to skip some of the questions. Although not mandated by the trial judge, he also utilized Section IV of the trial judge's checklist, which pertained to Mays's "ability to assist [his] attorney," because he thought it might be important. In addition, Price used his own checklist of 104 questions, which he called "The Structured Competency for Execution Interview." He described this in his report as "a focused inquiry consist[ing] of a series of questions to guide the evaluator in the evaluation of his competency for execution as set forth in *Panetti* . . . and in Article 46.05 of the Texas Code of Criminal Procedure."

Prior to interviewing Mays, Price explained the purpose of the evaluation and the procedures involved. Mays said he understood the information and agreed to the evaluation. However, Mays refused to sign an informed consent form, reportedly on the advice of his attorney. Price described Mays as "very friendly and polite," but noted that "his cooperativeness deteriorated over the evaluation especially when testing was attempted."

Mays told Price that he had completed ninth grade and his work history included work as a "roughneck and mechanic in . . . oil fields" and a "handyman." He acknowledged that he had been sent to Terrell in the 1980s due to methamphetamine use. He described that time period as a "crazy part of [his] life." He also stated that he had been dishonorably discharged from the Army when he "[w]ent AWOL after a Sergeant hit him with a stick because he did

not keep his head down on the firing line."

Price stated in his report that "[n]o psychotic thinking was evident" during his evaluation of Mays. However, "[d]elusions were evident, including paranoid ideation concerning air quality, food contaminants, somatic processes, and the legal system." Mays complained of elbow, shoulder, and back pain. He stated that his liver hurt when he ate sugar, salt, and vanilla. He also reported difficulty breathing in a confined area "due to ozone coming in through the ventilation" in the prison. With regard to his mental state, Mays said, "I'm pretty messed up at times."

According to Price, Mays enjoyed talking about "the environment and energy alternatives." He told Price that he studied ecology and fossil fuels because he "was interested in it" and he "thought everybody should be interested in it." However, he did not tell Price that he had a patent or an invention or that he wanted to run a business from death row. Nor did he tell Price that he was going to be executed for such reasons. Price testified: "[Mays] said that he wanted to help people, his friends and family, to build things that were environmentally friendly, and he thought he could help them from prison by correspondence[.]" Price thought that Mays "sounded rational about these issues during this evaluation."

Price stated in his report that Mays was extremely reluctant to give detailed answers to questions about his offense or legal situation. He told Price that his attorney told him not to answer any questions about the offense. Mays said he was in prison because "[t]hey say

I murdered two police officers." He knew he had been convicted of capital murder, which he defined as "similar to murder but like when more than one person's life is taken." He said that one victim's name was "Harris," but he "would rather not" name the other victims. Mays "readily expressed his anger and frustration over his offense and conviction." He said that his conviction was "totally unfair," and the offense would not have happened if the police had "not come on [his] property and point[ed] their guns at [him]." He expressed a belief that he could get out of prison someday because "the Lord works miracles." He also thought that he could get out of prison based on "appeals and getting his case overturned." Price testified that it was reasonable and rational for an inmate in Mays's circumstances to have such beliefs.

Price observed that Mays "seemed extremely anxious about his current legal situation and the possibility that he will be executed." Mays "appeared worried and distressed when asked to discuss his punishment," and he "evidenced somatic symptoms including shaking, difficulty breathing, and dryness of mouth." He "refused to answer any questions about the death penalty because it was unpleasant for him," and he avoided saying the words "death," "death penalty," and "death sentence." When Price asked Mays if his sentence was death or life without parole, he responded that "the Bible says the devil is trying to kill me." When Price asked Mays to clarify that answer, he said, "It's the word of God." When Price asked him what it meant to receive a death sentence, he responded "only the Lord knows." Mays avoided or resisted answering more questions about his death sentence and execution,

repeatedly stating that he did not want to "dwell on the past" or "dwell on negative things."

Price administered the Montreal Cognitive Assessment (MoCA) to Mays, which he described as a standardized mental status examination of cognitive functioning. Price reported that Mays's score on the MoCA placed him in the "mild cognitive impairment range." Mays's results "did not reveal deficits in visuospatial, executive, language, attention, abstraction, or orientation." Price stated that "[t]he only deficit revealed was in memory, specifically in delayed recall for unrelated words." Price also administered the Rey Fifteen Item Test (RFIT) to Mays, which he described as a screening test for malingering of impaired cognitive abilities. Mays's performance on this test was not indicative of malingering.

Price testified that he wanted to administer additional tests to Mays during the evaluation, but Mays refused to participate. Although Mays "reluctantly completed" the MoCA and RFIT, he refused to take other cognitive tests because "he did not see the point." Mays told Price that he could "see nothing good coming out of this evaluation" and he did "not want to dwell on the past." Eventually, Mays "politely said he was terminating the evaluation."

Price acknowledged that Mays has "cognitive impairment," but he did not diagnose Mays with dementia. He testified that he saw "no evidence of a decline" from 2009 to 2016. He also saw no evidence of impairment in Mays's "activities of daily living." And he further testified that Mays's mild level of cognitive impairment did not make him incompetent to be executed.

Price diagnosed Mays with the following mental disorders: (1) "Stimulant Use Disorder, Amphetamines, In Remission Secondary to Controlled Environment"; (2) "Paranoid Personality Disorder"; (3) "Substance-Induced Mild Neurocognitive Disorder, Secondary to Stimulant Use Disorder"; (4) "Major Depressive Disorder, Mild"; and (5) "Generalized Anxiety Disorder, Mild." However, Price testified that these disorders did not deprive Mays "of a rational understanding of the connection between his crime and his punishment." Price stated in his report that Mays "has a rational understanding that he is to be executed and that it is imminent even though he is holding on to the idea that a miracle might happened [sic] which would result in his release from prison." Price further opined that Mays "understands that he will be executed because he was convicted of capital murder even though he believes his conviction was totally unfair." Therefore, Price concluded that Mays "is competent for execution."

The final evaluation of Mays was conducted on April 27, 2017, by Woods, a neuropsychiatrist. Woods also reviewed Mays's records and interviewed him in person. Woods testified that he utilized the trial judge's checklist "to the degree that [he] could," but he noted that "anything that derives from that checklist may be problematic" because it had been peer-reviewed but not researched or validated.

In his report, Woods described Mays as "easily distractible despite attempts to focus." He noted that Mays "often had his left eye closed and would tilt his head in a quizzical look." Woods gave Mays a variety of screening tests which indicated that Mays had mixed

visuospatial skills, limited "constructional ability," significantly impaired executive functioning, and severely impaired abstraction ability. Mays also exhibited impaired memory. Mays was "generally cooperative," but he declined to answer many questions due to his "paranoid ideation," particularly questions "about his personal life and the instant offense." Woods further reported that Mays "had difficulty with test instructions" and expressed "repetition of theme" that was consistent with "perseveration."

Woods reported that Mays's thought processes were "connected, but delusional." His thought content was "paranoid, delusional, suspicious, [and] grandiose." He "denie[d] hallucinations on a consistent basis," but he described "a period of time . . . when he believed a small man sat on his shoulder, waving a knife at him." Mays believed that particular hallucination was caused by taking medication. Mays also complained of severe breathing problems due to "different air in the cells."

Mays told Woods that he was "developing a sustainable product to be used in the energy sector." Mays believed that he was "being conspired against" because "this device would hurt the oil industry tremendously." When Woods asked Mays "if he would trade the secrets of his device in return for his life," Mays replied that he would not do so. When Woods asked him "what the chances were of him being able to leave prison to complete and sell his sustainable device," he said, "50-50." Woods reported that Mays believes the State of Texas is "trying to kill him to prevent him from developing and selling his wind device and technology, which he believes is worth 'billions of dollars.'" When Woods asked Mays

how the State found out about his device, he said "they scanned his mail to his sister." Mays explained that he had unsuccessfully attempted to interest his sister in his business idea, but he hoped to enlist her when he was released. Woods reported that when Mays's delusions were questioned, "he would retreat by saying, 'I would rather not talk about that, Mr. Woods.'"

Woods reviewed the letters Mays wrote in prison, in which he expressed a delusional belief that he was being poisoned by the air, the ozone, and his food. Woods testified that Mays's letters also showed his "preoccupation and pervasiveness" in thinking about renewable energy and building an electric wind generator. Woods testified that Mays's delusion "is not the green energy [idea]," but instead is his belief that the State "is trying to kill him and keep him from marketing and developing [it]."

Woods concluded that Mays suffers from a Major Neurocognitive Disorder, which he testified is "dementia-form in nature." He testified that methamphetamine use typically does not cause "the types of ongoing cognitive impairments that [Mays] has." Woods also opined that Mays has "a psychotic disorder," but he was "on the fence about whether it's schizophrenia or not." Woods disagreed with Price's diagnosis of Paranoid Personality Disorder. Woods testified that Mays "falls much closer on the spectrum towards schizophrenia than he does on paranoid personality." Woods explained in his report that Mays "manifests symptoms that are consistent with the diagnostic criteria for schizophrenia; therefore, a diagnosis of schizophrenia must also be ruled out." However, he noted that there

was "no evidence of delirium," and there was a lack of evidence to indicate the "social deterioration [that] occurs in Schizophrenia[.]" Because Mays stopped using drugs decades ago, Woods opined that "drug induced psychosis has been effectively ruled out."

Woods did not believe that Mays was malingering. When asked if Mays had experienced a decline since Mayfield evaluated him in 2009, Woods responded: "He's gotten worse in terms of his delusions and his paranoia and psychosis. It's not clear that he's gotten worse in terms of his cognition."

Woods concluded that Mays is incompetent to be executed because "[h]e does not have a rational understanding of the connection between his crime and punishment." Woods testified that, although Mays has a factual understanding that the State is attempting to execute him, he does not have a rational understanding of the reason why he is to be executed. Instead, Mays's "overwhelming belief is that the Texas state government is trying to kill him to keep him from promoting this wind machine that he believes he has developed." Woods explained in his report that Mays has "awareness without insight," in that "[h]e is aware of a proceeding occurring," but "[h]is understanding of the basis for the motivation of the current proceeding is delusional[.]"

After the parties questioned Woods, the trial judge expressed that he had read the numerous letters that Mays wrote in prison and found only "eight that mention wind power." The trial judge added, "And in all of these, he's attempting to get a family member or friend to do it so they can save themselves money." The trial judge said that he did not see anything

in the letters that indicated "an obsession with the government being interested in [Mays's] wind farm ideas." The trial judge explained: "So I'm having a hard time connecting this, which is his everyday life for the last few years, with an obsession that the government is after him, because there's nothing in here that would indicate that." Woods responded: "Nobody in his family asked him why did he get these ideas. Nobody - - I mean, this did not come up until this particular situation came up." The trial judge continued:

> THE COURT: I would think if he was obsessed with it, he would have said something to somebody in some of these letters he was writing and say, the government is trying to kill me to get this wind farm information. I would think that would come from him, not from somebody's family member asking him. You know, they wouldn't know to ask a question like that.
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> [WOODS]: But that is exactly what you see in paranoid persons and people that are paranoid. They don't provide that information. These conversations were enlightening, but they were basically pretty light. It wasn't until this legal issue came up that, in my opinion, this occurred.
>
> THE COURT: So it's your opinion, as you sit here today, that the gentleman sitting here, Mr. Mays, doesn't know why the State is trying to execute him?
>
> [WOODS]: No. It's my opinion his greatest belief is that the State is trying to execute him in order to keep this green [energy] thing and to keep him away. That's his greatest belief.
>
> * * *
>
> THE COURT: All right. Are you telling me that, as he sits here today, he doesn't have a rational understanding why the State is attempting to execute him for killing two people?
>
> [WOODS]: That's correct. I am saying that he knows that he's been convicted and he knows that ostensibly the reason is because of his conviction. But his real - - his real belief is what I've described.

B. Other Evidence

In addition to the testimony and reports of the appointed mental health experts, the parties presented additional evidence described below.

Mays's trial counsel, Bobby Mims, testified that he thought Mays was mentally ill during his trial. Prior to trial, the defense's mitigation specialist noticed in Mays's medical records that a jail physician had opined that Mays had organic brain injury. Mays refused to cooperate when Mims scheduled testing to investigate this possibility. Mims acknowledged that none of the defense trial experts said that competency might be an issue. He also acknowledged that Mays cooperated enough with the defense experts that they could proceed to trial.

Mims further testified about other instances in which Mays was uncooperative and paranoid before and during his trial. Despite the fact that Mims advised him not to talk about his case, Mays made incriminating statements to the press when he was moved from the hospital to the county jail. Mays also resisted releasing his medical records to trial counsel because "he felt like we were trying to get his Social Security." At one point during the trial, Mays wept and collapsed on the floor "like a rag," and Mims "couldn't get him up." Mays also had what Mims described as a disturbing "psychotic episode" in a holding cell when counsel discussed calling Mays's wife to testify. Mays stood up, and "his eyes went from being normal to little beady eyes, little pupils." Mays said, "Okay. I know what you guys are. I know this game." He went from being meek and courteous towards counsel to acting

"like somebody else." And he behaved in a similar way when he got into a confrontation with a deputy who transported him to and from the jail and the courtroom.

Mims testified that when he briefly spoke to Mays at the time of his writ hearing, Mays "seemed to be even more delusional" than he was at trial. Mays talked to Mims about ozone, bitcoins, and his belief that he was being poisoned in prison. Mays also wrote letters to Mims in 2017, which were admitted as exhibits in the competency hearing. Mims testified that Mays complained in these letters that prison guards were threatening him, and he offered to pay Mims ten thousand dollars to get him "out of Polunsky and back to work in Hopkins County." It appeared to Mims that Mays was "out of touch with reality" and "doesn't understand what [he is] facing" with regard to his pending execution.

Baldemar Quintanilla, an investigator from the District Attorney's Office, testified that he visited and photographed Mays's prison cell in 2015. The photographs were admitted as exhibits in the competency hearing. Quintanilla testified that Mays had a calendar in his cell on which he was counting the days until his scheduled execution. Mays also had a list of other death row inmates who had been executed or had received a stay of execution.

Nina Foster, a mental health manager at the Polunsky Unit, testified that her supervisor, Dr. Joseph Penn, referred Mays to her approximately two and a half weeks prior to the instant competency hearing. When asked if Mays had "been on anybody's radar" prior to that time, Foster replied: "No." Foster testified that, at the time she received the referral, Penn "was involved in a deposition" regarding Mays. Foster explained that Penn "[j]ust

wanted to make sure if [Mays] needed mental health treatment that he was receiving it."

Foster testified that she thereafter "did a mental health evaluation on [Mays]." Foster testified that she had good rapport with Mays, who appeared to be open and honest during the evaluation. Mays told Foster that he was "[h]aving some problems with depression." He said he had hallucinations in the past when he was "on drugs" in his twenties, "right before he went to the state hospital." With regard to whether Mays was presently experiencing hallucinations, Foster testified that Mays "briefly mentioned that he thought he had heard things, but he didn't want to talk about it." Foster added that Mays did not show signs of paranoia or psychotic symptoms.

Foster acknowledged that Mays mentioned "renewable energy sources" towards the end of their conversation. Mays asked, "Did I tell you about my idea?" Foster replied, "No. What do you mean?" Mays then responded that "he had an idea for renewable energy that could keep power for . . . 24 hours or so." Mays did not provide much detail on this topic. He did not say that anyone was trying to steal his idea. Foster did not think that Mays's comment was irrational, and it did not alarm her with regard to his mental health.

Following her evaluation of Mays, Foster "sent a referral to the psychiatrist to see him" about his reported depression. Foster testified that Mays thereafter had a teleconference session with a jail psychiatrist, and she believed that Mays "was started on medication" afterwards. Foster replied in the affirmative when she was asked if Mays was "on the mental health caseload now."

Dr. Joseph Penn, the director of mental health services and Foster's supervisor, gave a deposition on July 28, 2017, which was introduced into evidence at the competency hearing. Penn testified in the deposition about the psychiatric and mental health care services that are provided to death row inmates. He explained that every inmate is screened for mental health issues as part of the intake process when they enter prison. Inmates may also access mental health care by asking for it themselves or being referred by someone else. The correctional staff members are instructed to inform the mental health staff members if they notice bizarre behavior in inmates. An inmate "with any identified or diagnosable mental health disorder" can be placed on the mental health caseload. If an inmate is on the mental health caseload, the mental health staff checks on him weekly. Even if an inmate is not on the mental health caseload, he is seen by the mental health staff "every 90 days." In addition, members of the nursing staff make daily rounds to check on every death row inmate. If a death row inmate needs inpatient psychiatric treatment and his clinical needs cannot be met at the Polunsky Unit, he may be transferred to the Jester IV Unit. Penn acknowledged that "telepsychiatry," similar to video conferencing, is sometimes used to provide mental health care in prison. He opined that because Polunsky is a "high profile unit," the death row inmates are "probably getting more services and in a more timely manner" than other inmates.

Cathleen Cooper, a correctional officer, testified about her regular interactions with Mays on death row. Cooper described Mays as "very polite except when I've made him

angry." For example, Mays told Cooper she was "hateful" when she denied his request for a "front handcuff pass." Cooper acknowledged that she was included on a list Mays compiled which contained names of people he described as "hateful."

Cooper testified that she delivered encyclopedias to Mays's cell, and Mays liked to tell her "fun facts that he learned from the books that he's read." However, Mays never mentioned to Cooper that he thought the air was bad or that he was being poisoned. And he never said anything to her about a green energy invention or a State conspiracy against him. Cooper acknowledged that Mays never did anything that would cause her to refer him to mental health services. She further acknowledged that she never saw anything "out of the norm" regarding Mays.

In addition to the witness testimony and exhibits described above, other evidence admitted at the competency hearing included: Mays's legal, medical, jail, prison, and educational records; transcripts of witness testimony from his trial and writ hearing; a summary of prison phone calls between him and his wife; police reports, interviews, and evidence pertaining to the instant offense; footage of his media interview following his arrest; letters that he wrote in prison; and grievances and sick call requests that he made in prison.

In the majority of his sick call requests, Mays complained about dental problems and requested a "front cuff pass" due to arm and shoulder pain. He mentioned a few times in his prison grievances and sick call requests that he got sick from eating tainted food and had

breathing problems due to bad ventilation in his cell. He also complained in some of his sick call requests in 2014 that his "Teva" medication was causing him to hallucinate.

In the numerous letters that Mays wrote to friends and family members while he was in prison, he often mentioned tainted food making him feel sick and the ozone affecting his breathing. He also consistently talked about his ideas for a "renewable energy design" while trying to convince them it would be good for the environment and enable them to save or earn money. However, Mays did not say in the letters that the State was trying to execute him because of his renewable energy design.

IV. THE TRIAL JUDGE'S FINDINGS AND CONCLUSIONS REGARDING COMPETENCY TO BE EXECUTED

A. The Trial Judge's Order

The trial judge signed an "Order on TCCP Article 46.05 Hearing," which contained his findings and conclusions regarding Mays's competency to be executed. The trial judge determined that Mays had failed to prove by a preponderance of the evidence that he is incompetent to be executed. In making this determination, the trial judge "considered all of the sworn testimony of witnesses, exhibits, depositions, expert reports, briefs from both parties, and oral arguments of counsel." With regard to the credibility of the witnesses, the trial judge "considered their observed attitudes, their interest in the outcome, their relationships with the parties, if any, and the probability or improbability of their testimony."

The trial judge stated that he "read and considered over 130 pages of writings by [Mays] while on death row," most of which were letters "to his mother and other family

members and friends." The trial judge explained: "Nowhere in the correspondence did I see any sign of [Mays's] obsession with wind energy that Dr. Woods and Dr. Agharkar referred to." He added: "The few times this subject was ever mentioned was as a suggestion for ways to save on household electric bills."

The trial judge pointed out that Mays wrote a letter to his wife in which he "describe[d] the crime scene and provide[d] specific details of officers' actions." The trial judge also noted that Mays wrote a letter to his sister one month prior to his original March 2015 execution date in which he discussed "the cost of necessary materials needed to build 'the wood box,' and gave information on where to obtain the supplies." In that same letter, Mays informed his sister of "burial plots" that had been purchased for the Mays family in "Dunbar cemetary."

The trial judge expressed concern about the "objectivity" of expert witness Woods because "[Woods] was observed passing written notes to counsel for the Defendant during her examination of Dr. Randall Price." The trial judge explained: "It appeared to the Court that Dr. Woods had become an advocate by such action rather than fulfilling his charge by the Court to provide the Court the benefit of an objective assessment."

The trial judge noted that expert witness Price "was the only expert who included the guidelines specified by the Court in the Order of Appointment." The trial judge also found that when Mays was examined by Price, Mays "did not even mention his so-called 'obsession' over his clean energy design, much less indicate [that] it was the reason he was

to be executed."

The trial judge pointed out that Mays did not "mention anything about green energy theories, poison in food, or air pollution" to correctional officer Cooper in the sixteen months in which Cooper had "significant contact" with him on death row. Cooper "never observed any conduct necessitating referral to a mental health professional." Cooper testified that Mays read numerous books and periodicals in prison. Based on Cooper's testimony and Mays's written correspondence, the trial judge found that Mays gained knowledge about "tree farms, tax advantages, low-interest loans for wind-generated electricity, and various medications" from his "prolific reading and research" on these subjects.

The trial judge further found that "[s]ince Mr. Mays has been sitting on death row, he has not been diagnosed, treated, or received prescribed medications for any mental illness or obsession that has any bearing on this inquiry." The trial judge also observed during the competency hearing that Mays and his counsel "had a steady stream of written notes passed between them," and Mays "appeared to be fully participating in the hearing as much as he physically could."

The trial judge ultimately concluded that Mays: (1) is competent to be executed pursuant to Article 46.05 and the guidelines set forth in *Panetti*[22] and *Battaglia*;[23] (2) has a rational understanding that he is to be executed and that his execution is imminent; (3) has

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[22] *See Panetti v. Quarterman*, 551 U.S. 930, 127 S. Ct. 2842 (2007).

[23] *See Battaglia v. State*, 537 S.W.3d 57 (Tex. Crim. App. 2017), *cert. denied*, 138 S. Ct. 943 (2018).

a rational understanding of the reason for which he will be executed; and, (4) has "some form of mental illness" which "does not deprive him of the rational understanding of the connection between his crime and the punishment received."

B. The Standard of Review

Under Article 46.05(k), Mays has the burden to establish by a preponderance of the evidence that he is incompetent to be executed.[24] Preponderance of the evidence is defined as "the greater weight of credible evidence that would create a reasonable belief in the truth of the claim."[25]

In *Battaglia*, we recognized that "[a] prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it."[26] We held:

> [A] prisoner is competent to be executed under Article 46.05 if he knows he is to be executed by the State, he knows the reason he is to be executed, he knows that the execution is imminent, and, despite any delusional beliefs or other mental illness he may have, and despite the fact that he may deny having committed the capital offense, he comprehends that there is a "causal link" between his capital offense and his imminent execution, beyond merely identifying the State's articulated rationale for the execution.[27]

The trial judge determined that Mays failed to meet his burden to establish by a preponderance of the evidence that he is incompetent to be executed. Citing Article 46.05,

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[24] *Id.* at 90; *see also* Art. 46.05(k).

[25] *Id.* (citing *Druery v. State*, 412 S.W.3d 523, 540 (Tex. Crim. App. 2013)).

[26] *Id.* at 81 (citing *Panetti*, 127 S. Ct. at 2862).

[27] *Id.*

Panetti, and *Battaglia*, the trial judge concluded that Mays knows he is going to be executed and his execution is imminent, and he has a rational understanding of the reason he is going to be executed. The trial judge further concluded that Mays (despite having "some form of mental illness") understands there is a connection between his crime and his imminent execution. Our task is to determine whether the trial judge abused his discretion in the way he applied Article 46.05 to the facts presented in this case.[28]

When reviewing a trial judge's determination of execution competency, we apply a "highly deferential" standard of review.[29] We will reverse the trial judge's determination only if it is outside the zone of reasonable disagreement.[30] We will sustain the trial judge's ruling if it is supported by the record and is correct on any theory of the law applicable to the case.[31]

C. Analysis of the Trial Judge's Competency Determination

The experts agreed that Mays understands he is to be executed and his execution is imminent. However, they disagreed about whether Mays has a rational understanding of the reason he is to be executed. Two of the experts, Agharkar and Woods, concluded that Mays is incompetent to be executed because he does not have a rational understanding of the

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[28] *See id.* at 89.

[29] *Id.* at 90 (citations omitted).

[30] *Green v. State*, 374 S.W.3d 434, 441 (Tex. Crim. App. 2012) (citations omitted).

[31] *Id.* at 441–42 (citations omitted).

reason he is to be executed. Price, however, arrived at the opposite conclusion. The trial judge agreed with Price.

Mays argues on appeal that the trial judge abused his discretion by crediting the opinion of Price over Agharkar and Woods. He complains that the trial judge ignored Agharkar's opinion in making the competency determination. However, the trial judge expressly stated in his order that he considered all of the witness testimony and expert reports. A trial judge is generally within his authority to accept the evidence that he believes is most credible and convincing and reject that which he finds not credible.[32]

All three experts reviewed Mays's records and conducted face-to-face interviews with him. Agharkar met with Mays twice, while Price and Woods met with Mays only once because at some point Mays refused to participate. Agharkar, who is a medical doctor, acknowledged that "[m]edical doctors are not trained to give psychological tests." Therefore, Agharkar only "conducted screenings," and he admitted that he "would never diagnose someone based on [his] screenings." Price and Woods, on the other hand, conducted more comprehensive testing than Agharkar did.

The trial judge noted concerns about Woods's "objectivity" because he observed Woods passing notes to Mays's counsel during the competency hearing. The trial judge had the discretion to assess the credibility of the witnesses, and he explained that he did so based upon a variety of factors, including "their observed attitudes, their interest in the outcome,

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[32] *Battaglia*, 537 S.W.3d at 91.

their relationship with the parties, if any, and the probability or improbability of their testimony."

Mays attacks Price's credibility because Price's partner in his psychology practice, Dr. Timothy Proctor, had been on the State's list of potential witnesses at Mays's 2008 capital murder trial. Mays contends that "[t]his fact alone should have caused the court to discount Dr. Price's objectivity in this matter." Price acknowledged at the hearing that he became aware of this fact at some point, but he denied discussing Mays's case with Proctor. And it appears from Defense Exhibit 48, an excerpt from the transcript of Mays's punishment trial, that the State did not actually call Proctor to testify. In this excerpt, the trial prosecutor stated that Proctor was one of "a number of experts that [he was] going to call in possible rebuttal" if the defense called a mental health expert to testify. The trial prosecutor then explained that he "declined to call any experts in rebuttal on that [issue]." Under these circumstances, we fail to see how Price was laboring under a *per se* conflict of interest. Accordingly, it was within the trial judge's discretion to find Price's opinion credible and persuasive.

Mays also asserts that Price "lacked the requisite clinical experience to conduct the assessment" in this case. The evidence shows otherwise. Price testified that he had prior experience in "competency-for-execution evaluations" at the request of both the State and the defense. He estimated that "at least 80 percent" of his work involved evaluating inmates in correctional facilities. Mays additionally complains that Price failed to build rapport and made a hasty conclusion about his competence without conducting a follow-up interview.

But the record establishes that all of the experts had some difficulty establishing rapport with Mays, not just Price. Both Agharkar and Woods acknowledged that Mays avoided answering some of their questions. In addition, Mays accused Agharkar of trying to "put words into his mouth" and "psych him out."

Mays further argues that Price made errors when calculating his score on the MoCA test. Price reported that Mays scored 26 points out of 30, which placed him in the "mild cognitive impairment range but only one point short of the normal range." Mays contends that Price's calculation errors artificially inflated his score. Price admitted at the competency hearing that he had made calculation errors when scoring the MoCA test. However, it appears from his testimony that it would have only made a one or two point difference in Mays's score. Price testified that MoCA scores ranging "[f]rom 18 to 26" indicate "mild cognitive impairment." If that is the case, then Mays would still fall within the "mild cognitive impairment" range even if his score was one or two points lower.

Mays also takes issue with the trial judge's finding that Price "was the only expert who included the guidelines specified by the Court in the Order of Appointment." Although Agharkar and Woods testified that they used the guidelines and checklist to some extent, they expressed criticism of these items. Price, on the other hand, believed that it was the "best practice" to use checklists in evaluations. Although Mays acknowledges in his brief that the guidelines and checklist were provided to the experts "at the suggestion of Mays's counsel," he now argues that they "are ultimately ancillary to the trial court's referral questions"

because they pre-date *Panetti*. Price, however, utilized his own checklist in addition to the one provided by the trial judge. And Price testified that his own checklist was developed in accordance with *Panetti* and Article 46.05.

Further, Mays attacks the trial judge's finding that, "[s]ince Mr. Mays has been sitting on death row, he has not been diagnosed, treated, or received prescribed medications for any mental illness or obsession." That is how Mays quotes the trial judge's finding in his opening brief, but that is not what the trial judge's finding actually says. The trial judge actually found that, since he has been on death row, Mays has not been diagnosed, treated, etc., for any mental illness or obsession "that has any bearing on this inquiry." In light of this qualification, this finding is better understood as a statement that, whatever mental impairments Mays suffers from, they have not rendered him incapable of understanding (1) that he is to be executed and (2) the reason he is to be executed. This finding is supported by the record because it was Dr. Price's stated opinion, as reflected both in his written report and in his testimony. And, as we have already discussed, the trial judge was generally at liberty to credit Price's opinion over the other experts' opinions.

But let us assume *arguendo* that what the trial judge really meant was that, while on death row, Mays was never diagnosed, treated, or medicated for any mental illness or obsession at all. Mays argues that such a finding would be incorrect because all three experts agreed that Mays has a mental illness (although they disagreed about the precise diagnosis).

It is true that Agharkar, Price, and Woods all found Mays to have some form of mental

illness when they examined him in 2016 and 2017, prior to the competency hearing. And Mays's records indicate that he was taking prescribed anti-depressant and anti-psychotic medications when he was in Smith County Jail prior to his 2008 trial. However, Foster testified that Mays had not been on the death row "mental health caseload" until 2017. Foster acknowledged that, prior to 2017, Mays had not "been on anybody's radar" regarding potential mental health problems on death row. Thus, it appears from the record that Mays was not being regularly medicated for a diagnosed mental illness while incarcerated on death row between 2008 and 2017.

Mays argues that he was not being treated for mental illness because of the "poor mental health treatment" provided to death row inmates. For example, he points out that no one followed up on a 2014 prison "correctional managed care" report that stated: "Offender kept talking about gases in the air. Please schedule to be evaluated by mental health." Foster and Penn, however, both testified that death row inmates who are not on the mental health caseload are still seen by the mental health staff every 90 days. They also testified that nurses with mental health training make daily rounds to check on death row inmates. Penn testified that the "custody staff" are trained to alert the mental health staff when they notice bizarre inmate behavior. Correctional officer Cooper, who had regular contact with Mays in the sixteen months prior to the competency hearing, testified that she never observed Mays do anything "out of the norm" that would cause her to refer him to mental health services. And when Foster evaluated Mays a few weeks prior to the competency hearing, Mays said he had

been experiencing depression but showed no signs of paranoia or psychotic symptoms.

Mays next complains about the trial judge's finding that Mays did not mention to Price "his so-called 'obsession' over his clean energy design, much less indicate [that] it was the reason he was to be executed." Mays argues that he did "bring up his plans for renewable wind energy" with Price, but Price failed to "dig into [his] delusional thought processes," and instead changed the subject.

Price acknowledged that Mays talked to him about the topic of "the environment and energy alternatives" during their evaluation. Mays told Price that he studied the topic because he was interested in it, and he corresponded with friends and family about it because "he wanted to help people . . . build things that were environmentally friendly[.]" Price thought Mays sounded rational when discussing the topic. In his letters to friends and family members, Mays consistently mentioned his idea for a "renewable energy design" while trying to convince them it would be good for the environment and would enable them to save or earn money. But Mays did not state in these letters or during his evaluation with Price that the State was going to execute him because of his renewable energy design. Nor did he mention anything in this regard to Cooper, the correctional officer who had regular contact with him in prison for sixteen months prior to the instant competency hearing. Although Mays liked to tell Cooper "fun facts that he learned from the books that he's read," he never told her anything about bad air, poisoned food, his green energy invention, or a State conspiracy against him.

Furthermore, Price's interview with Mays did not simply fail to uncover a delusional understanding on Mays's part of the reason for his execution; it actually produced some affirmative evidence that Mays had an accurate and rational understanding of the reason for his execution. Mays told Price that he understood he was on death row because he had been convicted of capital murder for killing a police officer. While Mays also told Price that he believed the conviction was unjust, Price testified that it is very common for inmates to deny that they were at fault in committing an offense. And even Woods acknowledged that whether a person believes they were justly convicted is "not really an issue for you when it comes to competency." Price also clarified that it is common, and certainly not irrational, for an inmate to hold the belief that, against all odds, his conviction might one day be overturned.

Mays also spoke of the capital murder in terms of "they say" ("they say I murdered two police officers"), which might suggest that he was simply reciting or parroting back the State's proffered reason for seeking his execution.[33] But Price explained that this phrasing was consistent with Mays's general pattern of not wanting to "give a statement of guilt"—again, "not an uncommon thing" for an inmate in Mays's position. Price further noted that Mays generally avoided discussing the facts of the underlying offense on the advice of his attorneys. Phrasing the capital-murder offense in terms of "they say" could also be construed as an attempt to comply with this advice. It need not necessarily indicate a

[33] *See Battaglia*, 537 S.W.3d at 65 (discussing *Panetti*, 551 U.S. at 959).

delusion, and Price certainly did not take it as such. We cannot say that the trial judge abused his discretion in crediting Price's opinions in these regards.

Finally, Mays argues that *Battaglia* is distinguishable from his case because it "hinges" on the fact that Battaglia was malingering. He argues that if this case is affirmed, then the standard articulated in *Battaglia* means that "trial courts are free to decide that an offender's delusions are largely irrelevant so long as there is evidence that he knows the State plans to execute him and there is evidence that he can read and write at a sixth-grade level."

The State responds that, when comparing *Battaglia* to the instant case, "[t]he similarities are far more compelling than their differences." We note that there was conflicting evidence regarding competence to be executed in both cases. Further, both Battaglia and Mays expressed conspiracy-based delusions, lacked a record of mental health referrals while on death row, and appeared to function adequately without anti-psychotic medications in prison. Although the absence of malingering is a factor we may consider in this case, it is not necessarily dispositive of the issue at hand.

The standard articulated in *Battaglia* takes an inmate's delusions and mental state into account. But even if an inmate has delusions, he may still be executed if he can rationally understand the reason for his execution. Delusions "come in many shapes and sizes, and not all will interfere with the understanding that the Eighth Amendment requires."[34] The critical question is whether a prisoner's mental state or concept of reality is so impaired that he

[34] *Madison v. Alabama*, 139 S. Ct. 718, 729 (2019) (citing *Panetti*, 551 U.S. at 962).

cannot grasp the execution's "meaning and purpose" or the "link between [his] crime and punishment."[35] As shown in his letters, Mays told his friends and family members about his renewable energy design over the years. He also expressed his interest in the topic of renewable energy to Price and Foster. But there is no evidence that he told anyone besides Agharkar and Woods that he believed that the State planned to execute him in order to stifle his renewable energy invention. As Woods testified, the relevant delusion "is not the green energy [idea]," but instead is Mays's belief that the State "is trying to kill him and keep him from marketing and developing [it]." And Woods acknowledged at the competency hearing that Mays did not articulate that particular belief to anyone "until this legal issue came up."

V. CONCLUSION

The record supports the trial judge's determination that Mays is competent to be executed. Mays knows he is to be executed by the State, he knows he was convicted and sentenced for killing a police officer, and he knows his execution is imminent. The experts gave conflicting opinions on whether Mays has a rational understanding of the reason he is to be executed. It was within the trial judge's discretion to evaluate the weight and credibility of the conflicting evidence. There is evidence in the record supporting the conclusion that Mays comprehends that there is a "causal link" between the capital offense and his imminent execution beyond merely identifying the State's articulated rationale for the execution.

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[35] *Id.* at 723 (citing *Panetti*, 551 U.S. at 958, 960).

Therefore, the trial judge's decision that Mays failed to establish by a preponderance of the evidence that he is incompetent to be executed is within the zone of reasonable disagreement and not an abuse of the trial judge's discretion. We affirm the trial judge's decision finding Mays competent to be executed and lift the stay of execution.

DELIVERED: June 5, 2019
DO NOT PUBLISH

APPENDIX B

FILED FOR RECORD
At 1:05 O'clock P M.

CAUSE NO. B-15,717

OCT 02 2017

District Clerk
Henderson County, Texas
By _____ Deputy

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	HENDERSON COUNTY, TEXAS
	§	
RANDALL MAYS	§	392ND JUDICIAL DISTRICT SITTING FOR THE 173RD JUDICIAL DISTRICT

ORDER ON TCCP ARTICLE 46.05 HEARING

Randall Mays was convicted by a jury in Henderson County, Texas, in Cause No. B-15,717 of the capital murder of two Henderson County Sheriff's Deputies and was sentenced to death on May 13, 2008.

Prior to the imminent execution scheduled for March 18, 2015, Defendant filed a Motion Regarding Competency to be Executed Pursuant to Texas Code of Criminal Procedure (TCCP) Article 46.05.

Judge Tarrance appointed three experts to examine the Defendant and directed them to provide the Court with an objective assessment of Mr. Mays' competency to be executed.

The Court heard the Defendant Randall Mays' TCCP 46.05 on September 9-12, 2017. At the hearing and thereafter, the Court considered all of the sworn testimony of witnesses, exhibits, depositions, expert reports, briefs from both parties, and oral arguments of counsel.

In determining the credibility of all witnesses, the Court considered their observed attitudes, their interest in the outcome, their relationship with the parties, if any, and the probability or improbability of their testimony.

The Court has read and considered over 130 pages of writings by the Defendant while on death row. Most of the letters were to his mother and other family members and friends. Nowhere in the correspondence did I see any sign of Defendant's obsession with wind energy that Dr. Woods and Dr. Agharkar referred to. The few times this subject was ever mentioned was as a suggestion for ways to save on household electric bills.

In Mays' letter dated January 6, 2013 to his wife, he describes the crime scene and provides specific details of officers' actions.

Also, less than one month prior to the original execution date of March 18, 2015, Defendant wrote a detailed letter to his sister regarding the cost of necessary materials needed to build "the wood box," and gave information on where to obtain the supplies. In the same letter, Defendant informed her of the burial plots purchased for the Mays Family in Dunbar cemetery.

Dr. George Woods, Jr., was one of the three experts appointed by Judge Tarrance to provide the Court with an objective report. Dr. Woods' objectivity became a concern of the Court when he was observed passing written notes to counsel for the Defendant during her examination of Dr. Randall Price. It appeared to the Court that Dr. Woods had become an advocate by such action rather than fulfilling his charge by the Court to provide the Court the benefit of an objective assessment.

During the Defendant's examination by Dr. Price, he did not even mention his so-called "obsession" over his clean energy design, much less indicate it was the reason he was to be executed. The Court also observed that Dr. Price was the only expert who included the guidelines specified by the Court in the Order of Appointment.

Texas Department of Criminal Justice employee Cathleen Cooper testified that she had had significant contact with the Defendant in the past 16 months while he was on death row and that he was always polite. However, Defendant frequently complained when he was cuffed in the back rather than the front. He never mentioned to her anything about green energy theories, poison in food, or air pollution. She never observed any conduct necessitating referral to a mental health professional. In addition to the limit of two library books at a time, he frequently read periodicals. It is indicative from the testimony of Ms. Cooper as well as numerous written correspondence, he gained knowledge from his prolific reading and research about tree farms, tax advantages, low-interest loans for wind-generated electricity, and various medications.

Since Mr. Mays has been sitting on death row, he has not been diagnosed, treated, or received prescribed medications for any mental illness or obsession that has any bearing on this inquiry.

During the course of three days of hearings and one-half day of argument, the Court was able to observe the Defendant's interaction with his counsel throughout the time. The Defendant and his counsel had a steady stream of written notes passed between them. The Defendant appeared to be fully participating in the hearing as much as he physically could.

After consideration of all the credible evidence, the Court has concluded that Randall Mays has failed to meet his burden by a preponderance of the evidence, and the Court rules as follows:

1. Randall Mays is competent to be executed pursuant to TCCP Article 46.05 and the guidelines set forth in Panetti and Battaglia.

2. Randall Mays has a rational understanding that he is to be executed and that his execution is imminent.

3. Randall Mays has a rational understanding of the reason for which he will be executed.

4. While Randall Mays does have some form of mental illness, it does not deprive him of the rational understanding of the connection between his crime and the punishment received.

Joe D. Clayton
Senior State District Judge
Sitting by Assignment

APPENDIX C

No. B-15,717

THE STATE OF TEXAS	§	**IN THE 392nd DISTRICT**
	§	**COURT OF HENDERSON**
	§	**COUNTY, TEXAS**
	§	
vs.	§	
	§	
RANDALL MAYS	§	

AGREED ORDER ON PRELIMINARY ARTICLE 46.05 PROCEEDINGS

On January 22, 2016, the parties appeared before this Court for a status conference. At that time, the Court granted Defendant Randall Mays's Motion to Compel Expedited Discovery to Facilitate Article 46.05 Proceedings ("Discovery Motion") and signed an Order to that effect. The Court also made additional rulings memorialized herein:

Court-Appointed Mental Health Experts

On or before February 15, 2016, the parties shall each submit to the Court, and serve on each other, a list designating at least three mental health experts, qualified to conduct evaluations of Randall Mays's competency to be executed, pursuant to Article 46.05 of the Texas Code of Criminal Procedure. The list shall be accompanied by the curriculum vitae of each proffered expert. The designation of these experts shall not preclude either party from seeking to obtain its own consulting expert or preclude the parties from electing to present their own expert(s) at the evidentiary hearing as testifying experts.

The Court shall select one qualified expert from each of the two lists for court appointment. These two appointed experts shall be instructed to confer and jointly designate a third qualified expert for court appointment.

Each of the three court-appointed mental health experts, as well as any expert retained by either party, shall be provided a copy of this Order as well as a copy of the Assessment of Competency for Execution: Professional Guidelines and an Evaluation Checklist, attached here as Exhibit 1 (hereafter, "Guidelines"). The mental health experts shall use Sections one, two, and three of the checklist found in the Guidelines to assist in conducting their evaluations and as the basis for framing the conclusions that shall be set forth in their written reports.

Were the Court to select an expert from either list whom the other party believes is not qualified under *Daubert*[1]/*Robinson*,[2] that party shall file a motion to strike that expert. Any such motion to strike shall be filed, heard, and resolved before the competency evaluations commence.

After providing the Court with the names of possible experts, all communications with those experts will be handled by this Court or its staff. The State and defense will be prohibited from contacting those experts regarding Mr. Mays's case until their evaluation is complete. Upon completion of the evaluations, the parties may seek an order from this Court allowing them to contact the experts, after notifying the other party of its intent to do so and providing adequate opportunity for a response.

Competency-Related Discovery

Pursuant to this Court's January 22nd Order granting the Discovery Motion, the District Attorney for Henderson County, on behalf of the State, shall produce all relevant materials

[1] *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).
[2] *E.I. DuPont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995)

described in the Discovery Motion to the Office of Capital and Forensic Writs, attorneys for Randall Mays, on or before May 2, 2016.

Thereafter, counsel for the parties shall confer and prepare a joint submission of relevant discovery materials to be provided to the Court and to all court-appointed and retained mental health experts. As further discovery is produced, the parties will work together to supplement these materials as necessary and to promptly provide any additional joint submissions to the Court and to each of the mental health experts.

Referral Questions

Each mental health expert, using the Guidelines to assist in conducting his or her evaluation, is directed to reach a conclusion regarding the following:

1. Does Mr. Mays suffer from a mental illness or mental impairment?
2. If so, does Mr. Mays's mental illness or mental impairment deprive him of a rational understanding of the connection between his crime and his punishment, i.e., "if [Mr. Mays's] mental state is so distorted by a mental illness that his awareness of the crime and punishment has little or no relation to the understanding of those concepts shared by the community as a whole?" *Panetti v. Quarterman*, 551 U.S. 930, 958–59 (2007).

In making the foregoing determination, the expert shall consider whether Mr. May's mental illness or mental impairment deprive him of: (1) a rational understanding that he is to be executed and that the execution is imminent or (2) a rational understanding of the reason he is being executed. TEX. CODE CRIM. PRO. art 46.05(h).

These conclusions shall be contained in a written report. Each mental health expert who examines Randall Mays pursuant to this Order shall provide, within a time to be ordered by the

Court, copies of his or her report to the attorney representing the State, the attorney representing Randall Mays, and the Court.

Thereafter, the Court shall set a date for the final competency hearing where both parties shall be permitted to present and cross-examine witnesses relevant to ascertaining whether Randall Mays is, by a preponderance of the evidence, presently incompetent to be executed under Article 46.05(k) and *Panetti v. Quarterman.*

SIGNED on this 18th day of February 2016.

Judge Carter Tarrance, presiding
392nd Judicial District Court

R. Scott McKee
District Attorney

Gretchen Sween
Office of Capital and Forensic Writs

EXHIBIT A

Behavioral Sciences and the Law
Behav. Sci. Law 21: 103–120 (2003)
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Assessment of Competency for Execution: Professional Guidelines and an Evaluation Checklist

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Marcus T. Boccaccini, M. A.†,
and Stanley L. Brodsky, Ph.D.‡

The issue of whether mental health professionals should be involved in conducting evaluations of competency for execution is a topic that has elicited controversy and heated debate. This article picks up at a point beyond the controversy and addresses issues of professionalism and the objective assessment of competency for execution. Specifically, this article identifies professional standards for conducting competence for execution (CFE) evaluations, describes current practices in this area, and provides an interview checklist that can be used as an evaluation guide by involved professionals. Copyright © 2002 John Wiley & Sons, Ltd.

There has been much debate about whether mental health professionals should be involved in the assessment (and treatment) of competency for execution (CFE) (see Appelbaum, 1986; Bonnie, 1990; Brodsky, 1990 for early discussions of these issues; see Brodsky, Zapf, & Boccaccini, 2001 for an overview of the legal, ethical, and professional issues). Although some mental health practitioners refuse to participate in CFE cases, other mental health professionals choose to become involved. It is important, therefore, to look beyond the debate about whether mental health professionals should be involved in CFE cases and to develop professional guidelines for those who choose to become involved.

Brodsky (1990), in discussing ethical considerations in the evaluation of CFE, noted that 'the vaguer the goals and criteria are for any given task, the more likely the clinician is to utilize his or her own values: similarly, the more unstructured and vague the assessment methods are, the more likely it is that values will impose' (p. 92). An accepted protocol for performing CFE evaluations is needed to help prevent evaluators' personal values from having an undue influence on the results of their CFE assessments. As a first step toward meeting this need, we interviewed seven mental health experts who had conducted at least one CFE evaluation and

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used their reports and opinions about conducting CFE assessments as a foundation for proposing a CFE evaluation checklist. This article outlines professional issues relevant to CFE evaluations, describes current practices in this area via a summary of our interviews, and provides a checklist of items that can be used by evaluators to guide their CFE assessments.

DEFINITION AND CONCEPTUALIZATION OF COMPETENCY FOR EXECUTION

In *Ford v. Wainwright* (1986), the United States Supreme Court ruled that the Constitution's Eighth Amendment 'cruel and unusual punishment' clause prohibited the execution of an 'insane' person. Justice Marshall, delivering the opinion of the Court, concluded that the Eight Amendment 'prohibits the State from inflicting the death penalty upon a prisoner who is insane' (p. 419). The Court offered the following rationales for their decision: (i) execution of the insane would offend humanity, (ii) executing the insane would not set an example and would not reaffirm the deterrence value believed to exist with capital punishment, (iii) any individual who is believed to be insane is also believed unable to prepare 'spiritually' for death, (iv) madness itself is punishment and, therefore, negates the punishment value of execution, and (v) no retributive value is believed to be served by executing the mentally incompetent.

The Court in *Ford* did not specify a proper legal test of incompetence in the execution context. Melton, Petrila, Poythress, and Slobogin (1997) noted that the Supreme Court failed to provide a single legal standard and specific guidelines for evaluating this type of competency because the very issue was never raised. Only Justice Powell, in his concurring opinion, addressed the issue of the legal test for competency for execution. Justice Powell stated that the Eighth Amendment 'forbids the execution only of those who are unaware of the punishment they are about to suffer and why they are to suffer it' (*Ford v. Wainwright*, 1986, p. 2608). Further, he concluded that the proper test of competency should be whether the individual can comprehend the nature, pendency, and purpose of his or her execution. Justice Powell argued that only when defendants are aware of the connection between their crime and the punishment is the retributive goal of the criminal law satisfied, and that defendants can only prepare for death if they are aware that it is pending shortly. Justice Powell also asserted that the states were free to adopt 'a more expansive view of sanity' that included the 'requirement that the defendant be able to assist in his own defense' (*Ford v. Wainwright*, 1986, p. 2608). Subsequent federal decisions have kept the *Ford* criteria intact and have not expanded upon the definition or criteria to be used in considering competency for execution (Brodsky et al., 2001).

Every state prohibits the execution of 'insane' or 'incompetent' offenders since *Ford*. The definition of insanity or incompetence for execution, however, varies among jurisdictions. Acker and Lanier (1997) reviewed statutes and case law in every state that allows capital punishment and concluded that legal tests in all US jurisdictions incorporate the examination of two basic cognitive criteria (with the essential precursor of these cognitive criteria being that the individual being evaluated has a severe mental disease or defect): (i) the ability to understand the

nature of the punishment being imposed and (ii) the ability to understand the reasons why the punishment is being imposed (see also Harding, 1994). In addition, these authors noted that a third criterion is included in some jurisdictions, either as an alternative basis for a finding of incompetence or as an additional criterion to be satisfied. This third criterion takes into consideration the offender's capacity to comprehend the reasons that might make the capital sentence unjust and to communicate these reasons effectively.

It is important to note that some authors have commented on the relatively *low* standard of competence for execution as set out by the *Ford* decision and the necessity for evaluators to perform comprehensive assessments of all relevant aspects of competency—including those that go above and beyond the standard set out in *Ford* (see e.g., Zapf, 2002). The argument is that competence-related abilities such as rational understanding and appreciation (in addition to factual understanding) need to be addressed in the evaluation and discussed in the report to the court so as not to interpret the *Ford* criteria for the court, but rather to describe all relevant aspects of competency so the court can make an informed decision in each case.

ASSESSMENT OF COMPETENCY FOR EXECUTION

Although almost every state has a legal test for competency for execution, it is not clear exactly how the *Ford* or other CFE criteria should be assessed. That is, because CFE evaluations are such a low base rate phenomenon, there has been little case law that elaborates on how the criteria are to be applied and assessed. In addition to the lack of legal guidelines and precedent, there are no assessment tools to aid evaluators called upon to perform this type of evaluation. Therefore, professionals who conduct these evaluations are left to their own devices in terms of how to perform the evaluation and how to interpret the legal criteria.

Brodsky, Zapf, and Boccaccini (1999) proposed a series of steps for the development of responsible, professional, and objective evaluations of CFE. These steps include (i) the development of minimum standards for adequate competence for execution evaluations, (ii) the collection of baseline data on current practices (e.g. interviewing a sample of psychologists and psychiatrists who conduct CFE assessments to identify the state of practice, problems, and concerns), (iii) the collection of data on issues that are of importance to other professionals involved in CFE cases (e.g. attorneys who represent death sentenced offenders and attorneys who represent the state in CFE hearings should be systematically sought out and interviewed), (iv) an analysis of how CFE assessments relate to the emerging psychometric understanding of competency assessments in general (e.g. areas of overlap and non-overlap of scholarly and professional frames of reference need to be studied and identified), and (v) the development of a checklist that can be used to standardize assessments and criteria.

This article seeks to address three of these steps. First, we have proposed a series of minimum standards for the adequate evaluation of competence for execution. Second, we have interviewed a number of mental health experts who have experience conducting competency for execution evaluations. The professionals surveyed were not randomly selected, but rather were a sample of professionals who

had agreed to be interviewed after being identified by the authors or others as having conducted an evaluation of this type. We believe the results of this survey can be used to help further develop standards and procedures for CFE evaluations. Finally, in the last section of this article, we propose a checklist of interview topic areas to be addressed by evaluators conducting assessments of competence for execution.

MINIMUM STANDARDS FOR ADEQUATE COMPETENCY FOR EXECUTION EVALUATIONS

Minimum standards for CFE evaluations should parallel standards that apply to other types of forensic assessment. That is, standardized procedures that are used during the evaluation should be described to the subject of the evaluation as well as in the examiner's report, assessment measures should be specific to the referral issue(s), and the examiner should have a sound and sophisticated conceptualization of the criteria for being not competent for execution. In addition, the knowledge base of examiners should cover three domains: general legal competencies, forensic assessment methodologies, and execution-related substantive content. Finally, collateral information should be gathered. This might include (but would not be limited to) information regarding life history, psychological history and disorders, deterioration-related data, previous and current written reports, and interviews with persons who have had extensive opportunities to observe the subject.

Although *minimum* standards for competency for execution evaluations can be identified, these should not be equated with *professional* standards or guidelines for these evaluations. Professional standards or guidelines, as we see them, are more encompassing than minimum standards and form the basis for sound forensic practice. Whereas an evaluation that meets only the minimum standards might address the relevant issue in a perfunctory manner, an evaluation that also meets professional standards or guidelines would go above and beyond simply addressing the issue in an obligatory manner. An evaluation that meets minimum standards might be a brief, narrowly focused, concrete, and surface inquiry into the psycho-legal issue;[1] however, evaluations that meet professional standards should include informative and useful statements about the individual being evaluated and supply a detailed analysis of the issue to be addressed in the form of observations and statements that provide justification for the findings and opinions. An evaluation that meets professional standards should not only be useful to the court, it should ultimately be defensible in court. What follows is a discussion of assessment issues and professional guidelines for evaluations of competency to be executed.

ASSESSMENT ISSUES RELATED TO COMPETENCY FOR EXECUTION

There has been a dearth of empirical research conducted on competency to be executed. Part of the explanation may be the fact that only a handful of individuals

[1]For instance, an examiner could conceivably conduct the interview portion of a CFE evaluation by asking only two questions: (i) Are you going to die? and (ii) Do you know why you are going to die?

have made successful claims of incompetency to be executed.[2] In addition, this particular type of competency tends to evoke strong emotion in individuals, which, in turn, may impact upon the motivation of involved professionals to conduct research in this area. The limited amount of research that has been conducted has been confined to surveys, usually of legal professionals (see e.g., Miller, 1988). No studies have examined CFE-related criteria in death row inmates or forensic patients.

There has been more commentary on the assessment of competency to be executed than there has been research. Heilbrun (1987) discussed the implications of the *Ford* decision for the assessment of competency to be executed and made five practical suggestions. First, with regard to the mental health professionals who are selected to evaluate an inmate's competency to be executed, Heilbrun argues that these evaluators need to have demonstrated skill in general clinical as well as clinical–legal areas. In addition, he makes the case that these professionals need to be chosen in a manner that eliminates the possibility of any systematic bias operating in the evaluation. For example, systematically eliminating (or including) only those evaluators that favor the death penalty from the potential pool of professionals who will conduct these evaluations may serve to introduce bias into the process that may not have otherwise existed. Second, Heilbrun contends that evaluators must (and, in fact, are ethically obliged to) inform any individual of the nature and purpose of a forensic evaluation before beginning. This is especially true in the case of competency to be executed. Evaluators should attempt to ensure that the inmate understands this notification of purpose (e.g. present the information using easily understood language; ask questions to attempt to determine the inmate's understanding of the information). Third, Heilbrun emphasizes the importance of a comprehensive evaluation, that is, including an assessment of intellectual functioning, personality characteristics, and motivation in addition to symptoms of psychopathology; having more than one contact with the inmate whose competence is being evaluated; an assessment of the possibility of malingering; and the use of collateral or third-party information. Fourth, the circumstances of the evaluation, which include the people who are present in the daily life of the inmate as well as the physical environment, need to be taken into consideration by the evaluator. Finally, Heilbrun underscores the importance of comprehensive documentation, usually in the form of a written report, to assist the decision maker and to allow others access to the procedures and reasoning processes used by the evaluator.

Heilbrun and McClaren (1988) discuss the assessment of competency for execution in terms of both preadjudication (before a formal legal judgment about an inmate's competency for execution has been made) as well as postadjudication (after an inmate has been legally deemed incompetent for execution). Given that only a handful of individuals have ever been found to be incompetent for execution (and would therefore require postadjudicative assessment of this type of competency), preadjudicative assessment of competency for execution is certainly the more prevalent type of assessment. Of course, the reader must keep in mind that assessments of competency for execution are much less common than assessments of almost any other type of competency.

With regard to the preadjudicative assessment of competency for execution, Heilbrun and McClaren (1988) outline a number of 'minimum requirements for

[2]At the time of writing, we have been able to find only six post-*Ford* cases of individuals found incompetent.

performing an excellent evaluation' and suggested that evaluators make their participation contingent upon having these minimum requirements met (p. 208). In addition, Heilbrun and McClaren argue strongly for the formal assessment of intellectual functioning, motivation, and psychopathology using well validated and standardized assessment instruments.

With respect to the legal criteria that need to be assessed, evaluators should be aware of the particular legal criteria that define the standard for competency within the relevant jurisdiction. If the criteria for competency for execution within a particular jurisdiction are not specified, Heilbrun and his colleagues (Heilbrun, 1987; Heilbrun & McClaren, 1988) advise that evaluators should consider the standard in its broadest form and then leave it up to the court to determine what is applicable and what is not. As previously mentioned, Zapf (2002) argues that, regardless of the specific criteria set out in a particular jurisdiction, a comprehensive evaluation of all relevant aspects of competency for execution be conducted and delineated in the report to court.

With regard to the postadjudicative assessment of competency to be executed, Heilbrun and MacClaren (1988) maintain that evaluators who are involved in the assessment of competency for execution at this stage should be independent of those who are responsible for treating the inmate for the purposes of restoring competence.

Mathias (1988) also observed the importance of taking the physical and social environment of the inmate into account when evaluating an individual's mental state on death row. He indicated that there are many variables that operate in the environment of death row that may affect an inmate's psychological functioning and presentation and may impact upon a mental health evaluation in a variety of different ways. The nature of a maximum-security setting can have a great impact upon an inmate's mental health and may affect competency status. Mathias argued that evaluators of an individual's competency need to consider these variables when conducting evaluations of competency to be executed.

Small and Otto (1991) explored the legal context and the clinical aspects of evaluations of competency to be executed. These authors encouraged the use of evaluation techniques that focus on the functional capacity of the inmate. Differing slightly from Heilbrun and his colleagues (Heilbrun, 1987; Heilbrun & McClaren, 1988) with respect to the use of traditional psychological testing, Small and Otto stated 'evaluations that emphasize traditional psychological testing and assessment are unlikely to assist the decision maker in assessing functional abilities' (p. 152; see also Melton et al., 1997). Consistent with this argument is the fact that the education level and/or mental state of many offenders on death row may render many traditional psychological tests invalid. Small and Otto do, however, concede that psychological testing may assist in identifying the core mental disorder, making treatment recommendations, or detecting malingering.

PROFESSIONAL STANDARDS FOR COMPETENCY FOR EXECUTION EVALUATIONS

In the introduction of this article, we argued that the more unstructured and vague the criteria and goals are for any given task, the more likely it is that a clinician's own values and biases will impose on the task. We believe that the existence of accepted

professional standards for CFE evaluations will reduce the likelihood that clinicians' biases and values will undermine the integrity of their CFE evaluations. As we consider appropriate professional standards for the assessment of competence for execution (see also Brodsky et al., 2001; Heilbrun, 1987; Heilbrun & McClaren, 1988; Melton et al., 1997; Miller, 1988; Small & Otto, 1991) it is prudent to extrapolate from the work on the assessment of other types of competency (such as competence to stand trial and competence to consent to treatment) and to apply these professional principles to the assessment of competence to be executed. In this section, we propose professional guidelines for CFE evaluations.

Knowledge Base

Before conducting a CFE evaluation, evaluators should be familiar with the relevant statutes, definitions, and criteria for competency for execution in their jurisdiction. In addition, CFE evaluators should be familiar with the procedural aspects of competence for execution cases within their jurisdiction (i.e. how, when, and by whom the issue of competence for execution may be raised; who determines that an evaluation is to occur; and what procedures are specific to the evaluation process). A competent evaluator should be knowledgeable about these legal requirements and procedures before beginning an evaluation of CFE. The evaluator should consult with whoever has ordered the evaluation to clarify the referral question and to ensure that all parties involved understand what is to be evaluated.

General Evaluation Procedures and Considerations

We now discuss what it means to have a clear understanding of the referral question and how to decide when to consult with the individual requesting the evaluation. For example, an evaluator may be the only expert retained or may be one of several and assigned to evaluate one aspect of functioning (e.g. mental retardation). In this instance, it would be necessary for the evaluator to be clear about the boundaries of the specific case. CFE evaluations should be conducted in a place with adequate space and privacy that is free from distraction. In addition, CFE evaluators should seek to meet with the offender on more than one occasion as part of an assessment of consistency, deterioration, improvement, and other changes. Finally, CFE evaluations should include a clinical–forensic interview in which the offender's psychiatric history, symptom validity, and understanding of the relevant legal criteria for CFE in the particular jurisdiction are assessed. The relevant psycholegal criteria should be assessed in a structured and replicable manner. The information gained from the interview should be considered in light of collateral information that has been collected.

Clinical–Forensic Interview

At the beginning of the forensic interview, CFE evaluators should inform the offender of the nature and purpose of the evaluation, the possible outcomes of the evaluation, for whom the evaluation is being performed, who will have access to

the results of the evaluation, and the consequences of not participating in the evaluation. Any indication of a lack of understanding on the part of the offender should be noted and appropriate measures taken to determine whether or not to continue with the evaluation. During the interview, evaluators should assess the offender's understanding of the relevant information in this the jurisdiction, the offender's appreciation of his or her situation, and his or her reasoning about these issues. In addition, the evaluator should inquire about the offender's previous and current psychological functioning and psychiatric history as well as any medication that the offender may be prescribed and its effect on the offender.

Assessment Measures

CFE evaluators should be aware of the psycholegal abilities required of a competent offender. In the absence of a standardized assessment instrument specifically developed to assess the psycholegal criteria for a given jurisdiction, the evaluator should operationalize the applicable psycholegal criteria. Evaluators should focus on the functional abilities of the offender, in addition to the mental state of the offender and the appropriate diagnosis of a mental disorder, and should document how any functional deficits may be causally related to mental, emotional, or intellectual deficits. If it is a requirement of the jurisdiction that the offender be able to assist his or her attorney, then a true functional assessment would include observing the interaction of the offender with his or her attorney and attempting to determine whether or not the offender is able to assist the attorney (e.g. disclose relevant information to the attorney, understand what it is that the attorney is attempting to accomplish).

Finally, CFE evaluators should examine the possibility of response sets such as defensiveness, uncooperativeness, or malingering. Every effort should be made to use instruments that have established reliability and validity; after all, the motivation to malinger in this situation may be high. It may be necessary to use an instrument specifically designed to evaluate the potential for malingering or the authenticity of reported symptoms. The evaluator should use other psychological tests in the evaluation of CFE as indicated in a particular case (e.g. neuropsychological tests if there is some question of cognitive or neuropsychological impairment).

Collateral Information

CFE evaluators should collect collateral information about the offender's previous and current functioning, as well as his or her functioning while on death row (including any specific behaviors that the offender has engaged in that might be relevant to psycholegal understanding[3]). Friends and family of the offender who can comment on previous and current functioning and characteristics should be interviewed. Correctional officers, prison physicians and psychologists, and other prisoners should be asked to comment on the behavior of the offender while in the

[3]These might include, but not be limited to, discussions of execution content with correctional personnel or chaplains, writing letters of goodbye or issue resolution, writing a will, giving away possessions, selecting witnesses, or making preferences for a last meal.

institution. Medical records and psychiatric history both within and outside the correctional institution should be gathered and evaluated.

Presentation of the Results of the Evaluation

CFE evaluators should carefully document the evaluation procedures as well as all other relevant information. Record keeping, note taking, and recording[4] the interview are important considerations and should be meticulous as these assessments are likely to undergo serious scrutiny. It is good practice for CFE evaluators to speak to the individual who retained their services before preparing a report. Although it remains arguable whether CFE evaluators should speak to the ultimate legal issue, they should certainly present the evidence before the triers of fact in a manner that will be of assistance in reaching a decision about whether the offender is capable of a specific psycholegal ability or required capacity (e.g. include a full history, observations, and testing including descriptions or observations of the offender and perhaps extensively quoting the offender's responses).

CURRENT PRACTICES IN THE ASSESSMENT OF COMPETENCY FOR EXECUTION

To evaluate current practices in the evaluation of competency for execution and identify assessment issues that are considered to be important by professionals who conduct this type of evaluation, we interviewed seven mental health professionals who have been involved in evaluating competency to be executed. We asked these professionals about (i) their past experiences with specific cases in an attempt to determine how they conceptualize the nature of this type of competency and the pertinent issues in conducting this type of evaluation and (ii) specific checklist areas that may or may not be useful and/or necessary to include in an interview evaluation checklist for competency to be executed.

All seven of the mental health professionals that were interviewed held a Ph.D. degree; one also held a J.D. and one held an M.S.Ed. degree in addition to the Ph.D. Two individuals had conducted (or were presently involved in) competency for execution evaluations during the current year (in Arkansas and Tennessee), three others had conducted their last evaluation of this type in the 1990s (in Alabama, Missouri, and Texas), and two of the professionals last conducted a CFE evaluation in 1989 (in Utah and Arkansas).

When asked about current practices in the evaluation of competency for execution, the professionals identified a number of components that they believe make up the structure of a thorough CFE evaluation. Identified components included reviewing case materials, prison records, medical records, trial transcripts, and psychiatric records (including those during and prior to the offender's incarceration on death row); examining statutes or relevant court decisions to determine the

[4]Video or audio recording is useful in that the evaluator is able to review the evaluation as well as present the tape to complement his or her testimony; however, recording the evaluation is also subject to legal–strategic decisions by the attorney and, therefore, should be discussed with the retaining attorney beforehand.

applicable criteria for a given jurisdiction; consulting with the retaining attorney; interviewing and conducting psychological or other relevant testing with the offender; interviewing family members of the offender, prison officials and correctional officers, and other offenders who have had contact with the offender; and observing the offender in his cell on death row.

The CFE evaluators reported using a number of different psychological tests during CFE evaluations including the MMPI (or MMPI-2), MCMI (or MCMI-II), PAI, SADS, or PSE to assess psychopathology and test-taking style; the SIRS, VIP, or Rey 15 to assess malingering (when indicated); the WAIS-R[5], Shipley, TONI, or KFAST to assess intellectual functioning or to diagnose mental retardation; the PPVT-R to assess language functioning; the BEERY or BNT to assess dementia; the PCL-R to assess psychopathy (when indicated); the IFI to assess reasoning ability; and the Halstead-Reitan to assess neuropsychological functioning (when indicated). There was some disagreement about whether or not to use projective techniques for this type of evaluation, with one professional indicating that he would use the Rorschach 'when indicated,' and another stating that he would 'never' use the Rorschach or any other projective technique for this type of evaluation. None of the other CFE evaluators mentioned projective techniques.

In response to inquiries about the assessment of the specific criteria for incompetency, all of the evaluators indicated that they asked the offenders specifically about each of the relevant criteria (for their respective jurisdictions). One evaluator indicated that he also used an unpublished checklist of items (Ackerson, unpublished doctoral dissertation) and another evaluator indicated that he used a forensic assessment instrument that was developed to assess an offender's reasoning abilities (the Interdisciplinary Fitness Interview). In addition, all of the evaluators reported that they focused specifically on the offender's understanding of death and the reasons for it. Three of the evaluators indicated that they made an attempt to assess the offenders' reasoning abilities, in addition to simple factual understanding, with respect to death.

When asked about the most challenging aspects of the evaluation of an offender's competency for execution, three global issues were identified: (i) the nature of the inquiry itself and the gravity of the consequences, (ii) the difficulty the evaluator may experience in trying to remain objective, and (iii) the evaluator's own personal difficulties with the death penalty.

With regard to the gravity issue, the CFE evaluators reported feeling that the magnitude and the immediacy of the consequences for the offender had an impact upon their evaluation in terms of the amount of time and energy they put into ensuring that they conducted a thorough and comprehensive evaluation. With regard to objectivity, one professional, speaking candidly, indicated that he found it difficult to maintain objectivity for three reasons: (i) you become sharply aware of your own personal beliefs about the death penalty, (ii) you get to know the offender and may not see anything to prevent the offender from being executed, and (iii) it is difficult to resist the pull to affiliate with the attorneys who retained you as the case is always presented to you from their point of view. Finally, with regard to the personal

[5]The reader is reminded that the majority of these evaluations were conducted a number of years ago and, therefore, some of the instruments reported, while perhaps out of date now, were not out of date at the time of the evaluation.

difficulties, several CFE evaluators reported feeling that this type of evaluation can be emotionally difficult for the evaluator because the task forces the evaluator to deal with his or her own feelings and beliefs about capital punishment. When asked whether they would consider conducting another CFE evaluation in the future, six of the seven evaluators indicated that they would. Each of these evaluators felt that they were prepared to do these evaluations with what they perceived as the necessary amount of comprehensiveness and scrutiny. In addition, they felt that they would be leaving this task to someone who might not do as thorough a job if they declined. It appears that these evaluators were alluding to the distinction we made earlier in this paper. That is, that some evaluators might conduct evaluations that meet only the minimum standards rather than professional standards. The one evaluator who indicated that he would not conduct another CFE evaluation stated that he has had a change of heart with respect to capital punishment and no longer feels that the death penalty is an acceptable form of punishment. This evaluator felt that individuals who conduct this type of evaluation have to be in favor of the death penalty. We do not agree with this assertion but did not poll other evaluators about their opinions on this matter.

Specific problems that were encountered by these professionals in conducting CFE evaluations included difficulty in accessing medical records from other facilities, difficulty in finding a proper setting for this type of evaluation, difficulty in gaining access to the offender at times (e.g. being required to interview from behind glass at some facilities), difficulty in establishing or maintaining rapport with embittered offenders or those who refused to cooperate, and insufficient allocation of resources by the court (i.e. in terms of time required to obtain all the relevant records as well as compensation).

When asked to give their opinions about their respective jurisdiction's criteria for incompetency for execution, most of the evaluators indicated that they believed the criteria to be very minimal standards that were patterned after *Ford*, which has a very low threshold for competence. Several evaluators felt that the courts interpret the *Ford* criteria as *factual* understanding, whereas they believe that the courts should consider the higher standard of *rational* understanding when making CFE determinations. Similarly, when asked about the most difficult aspect of the CFE criteria to assess, a number of evaluators felt that it was difficult to distinguish between a factual and rational understanding of death. One evaluator indicated that this was especially so since there is no 'gold standard' for understanding death. When asked how they might change the CFE criteria if they could, a number of CFE evaluators stated that they would further define the required level of understanding.

In addition to questions about current practices in the evaluation of CFE, the CFE evaluators were also asked to give their opinions about items we had included in a preliminary version of our CFE interview checklist. We now turn to the subject of this last part of the inquiry: a checklist for CFE evaluations.

CHECKLIST FOR EVALUATIONS OF COMPETENCY FOR EXECUTION

Prior to conducting the interviews with the CFE evaluators, we compiled a list of content areas that we felt were important or useful to include in a checklist for

evaluations of CFE. We then asked the CFE evaluators about the importance and utility of each of the checklist topics. Their responses were then used to revise and edit the checklist topic areas. The revised version of the checklist is presented in the Appendix.[6]

The checklist is divided into four sections: understanding the reasons for punishment, understanding the punishment, appreciation and reasoning (in addition to simple factual understanding), and ability to assist attorney. These four sections are representative of the legal criteria for CFE that have been set out by various states (see Acker & Lanier, 1997; Harding, 1994).

Most states model their statutes after the criteria set out in *Ford* and, therefore, consider only the prisoner's ability to understand the punishment that is being imposed and the reasons why it is being imposed. The first two sections of the checklist parallel these two *Ford* criteria. The first section targets the offender's understanding of the reasons for punishment: that is, his or her understanding of the crime and other conviction-related information. Specific topic areas include the offenders' understanding of the reasons why they are in prison; their place of residence within the prison; the crime for which they were convicted, including an explanation of the criminal act and victim identifying information; the perceived justice of the conviction; reasons why other people are punished for the same offense; and any self-identified, unique, understandings of the offense and trial that the offenders may have. These areas were identified as relevant content areas to determine the extent of the offender's factual understanding regarding punishment.

The second section targets the offender's understanding of the punishment: that is, that the punishment he or she is facing is death. Specific topic areas include the offender's understanding of the sentence; the meaning of a sentence of death; what it means for a person to be dead; specific understandings about death from execution; and the reasons for execution. The evaluators surveyed indicated that it was important to ask questions about death from a number of different angles (e.g. meaning of death, specific understandings about death from execution) so as to facilitate a thorough evaluation of any irrational beliefs or ideas the offender may hold regarding death.

The literature on other types of competence (e.g. competence to consent to treatment) documents that there is often a relationship between the severity of the consequences (to the individual being assessed) and the stringency of the standard used to evaluate competence (see, e.g., see Roth, Meisel, & Lidz, 1977). This, coupled with the gravity of the consequences in the particular instance of CFE, leads us to believe that it is important to assess the offender's appreciation and reasoning abilities (in addition to simple factual understanding). Therefore, the third section of the checklist lists topic areas specific to the assessment of an offender's appreciation and reasoning abilities with respect to death and execution. Specific content areas in this section include the offender's appreciation of the personal importance of the punishment and the personal meaning of death; the offender's rationality or reasoning about the physical, mental, and personal changes that occur during and after execution; beliefs regarding invulnerability; inappropriate affect; acceptance or eagerness for execution; and beliefs against execution. Although the *Ford* criteria are

[6]A user-friendly version of the checklist (i.e. with space for the offender's responses and the evaluator's comments) is available from the authors.

often interpreted as the offender's *factual* understanding, we believe that mental health professionals involved in CFE evaluations should also assess the offender's appreciation and reasoning and leave it to the court to determine how to interpret the *Ford* (or other relevant) criteria in each specific case.

Finally, the last section of the checklist identifies issues related to the offender's ability to assist his or her attorney. This section will be especially relevant in jurisdictions that rely upon criteria that are broader in nature than those outlined in *Ford*, such as the capacity to comprehend the reasons that might make the capital sentence unjust and to communicate these reasons effectively. Specific topic areas in this section include the identity of the offender's attorney and the amount of time that the attorney has been working for the offender; the offender's trust in the attorney; awareness of execution date; status of appeals; what the attorney is attempting to accomplish through the appeals; how the appeals will be processed and assessed; the actual substance of the appeals; important content that the offender may have withheld from the attorney; and any pathological reasons for not planning or discussing appeals.

Using the Checklist

Several issues need to be emphasized regarding the use of this checklist. We have intended this checklist to serve as an *aide memoire* to assist professionals in conducting the interview portion of CFE evaluations.[7] While we have sought to be comprehensive, the evaluator needs to be mindful that important issues might arise in a particular case that have not been included in this checklist. Although the purpose of this checklist is to guide the evaluator through relevant issues pertaining to competence for execution, simply going through this checklist is not enough to assess every individual adequately with respect to competence for execution. We think of this checklist as an organizing structure to be used to guide the evaluator through relevant topic areas in the assessment of competency for execution.

Specific areas of inquiry follow each of the topics included on the checklist. Specific questions were deliberately not listed in order to encourage evaluators to develop their own style of questioning for each of the content areas. On a related note, it is important for evaluators to phrase questions in such a way so as not to lead the offender to exaggerated or malingered pathological responses. This precaution is, of course, part of all forensic interviewing in which evaluees may be motivated to exaggerate or present false impressions of psychopathological disorders.

The available research on death row offenders indicates that they are disproportionately intellectually limited and academically deficient (Cunningham & Vigen, 1999, manuscript under review). Therefore, it is important for evaluators to use language that is straightforward and understandable when evaluating a particular offender. If a particular offender holds a known delusional system, it would be important for an evaluator to assess this delusional system directly with respect to the execution process, the reasons why this individual is to be executed, and what it means to be executed, as well as the offender's beliefs about the perceived role that his or her attorney plays in this process.

[7]The evaluator is cautioned that the interview is only one component of a comprehensive competency for execution evaluation.

CONCLUSION

In conclusion, we would like to make a few general points about the evaluation of competency for execution. First, we encourage professionals who perform CFE evaluations to think of them as being an area of specialization within their work. Although CFE evaluations would probably not be an *exclusive* area of practice for most practitioners (considering the low base rate of this type of evaluation), it is important to treat it as a specialization and to devote concentrated and attentive study, feedback, consultation, and continuing education to this task.

Second, we view CFE evaluations as an area of evolving practice. Although the *Ford* criteria, specifically, have evolved little, the consideration and understanding of what the *Ford* criteria mean to CFE evaluators appears to be evolving. In addition, the practice of psychological evaluations in this arena continues to develop. We view our work in this area as contributing to the dialogue and elaboration of issues that is designed to move this evolution along to the next stages. We encourage other professionals to do so as well in the interests of a fuller understanding of these important issues.

Finally, this checklist represents a first step that will need to go through a process that includes field-testing, standardization, and the development of norms. For this to happen it will be important to receive feedback from professionals who use this checklist in their practice.

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APPENDIX: INTERVIEW CHECKLIST FOR EVALUATIONS OF COMPETENCY FOR EXECUTION

This checklist was developed for use in evaluations of competency for execution. The evaluator is encouraged to ask additional and follow-up questions to ensure a thorough understanding of the offender's abilities in each area. Specific areas of inquiry are included for each topic in the checklist.

I. Understanding of the reasons for punishment

i. Reason why in prison
   a. How offender came to be in prison
   b. What offender did to get there
   c. Initial charges and how they led to actual conviction
   d. Sequence of events from offense to arrest, trial, sentence, and then to imprisonment

ii. Place of residence within the prison
   a. Where offender currently resides within the prison, including number of cell or dorm, name of cell block, and the area of the prison (e.g. protective custody, segregation, death row, general population)
   b. Prior places of residence within the prison, including hospital, segregation, holding cells, or other units

iii. Conviction information
   a. Crime for which offender was convicted
   b. When offender was convicted
   c. In what city or county, state, and court the trial was held
   d. How long offender has been in prison

iv. Explanation of criminal act
   a. Name of the criminal act offender committed
   b. Similarities and differences between this and the actual behaviors involved in the offense
   c. What (insert charge for which offender was convicted) involves/entails

v. Victim identifying information
   a. Name of the victim
   b. Age of the victim
   c. Whether the victim was a male or female
   d. Ways in which the victim is described and understood by offender

vi. Perceived justice of conviction
   a. What offender believes was just about his/her conviction

b. What offender believes was unjust about his/her conviction
c. Fairness, accuracy, and what was and would be right are explored

vii. Reasons other people are punished for same offense
a. What offender believes about *why* other people convicted of (same offense) are punished
b. What offender believes about the type of punishment that *anyone* convicted of (same offense) receives
c. Reasons for different degrees of punishment

viii. Self-identified unique understandings of offense and trial
a. Any special understandings of his/her *offense* that makes sense only to the offender
b. Special understandings of his/her *trial* that makes sense only to the offender
c. Aspects of this charge or crime that most people would not understand unless the offender told them

II. Understanding of the punishment

i. Sentence for the crime—specifically
a. Sentence that offender received for his/her conviction

ii. Meaning of a sentence of death
a. Beliefs about what it actually means to receive a sentence of death

iii. Meaning when a person is dead
a. Beliefs about what it means for any person to be dead
b. Beliefs about what it would mean for him/her to be dead
c. How he/she would know that someone was dead

iv. Specific understanding about death from execution
a. Explanation of the procedures for execution that he/she will undergo: what happens, how it works
b. Explanation of what will be done with his/her property after execution
c. Explanation of what will be done with his/her remains after execution

v. Reasons for execution
a. Reasons and beliefs about why s/he *should* be executed
b. Reasons and beliefs about why s/he *should not* be executed
c. Societal reasons, religious ideas, legal issues, involvement of other persons, personalized reasons

III. Ability to appreciate and reason in addition to simple factual understanding

The following items address the issues of appreciation and reasoning. Although the criteria for competency to be executed from *Ford v. Wainwright* do not specifically use the terms appreciation or reasoning, it may be important to establish the offender's appreciation of the personal importance of these proceedings and reasoning or ability to rationally manipulate information regarding the proceedings.[8]

[8]With respect to the criteria for competence to stand trial, many jurisdictions require the defendant to have the ability to appreciate and reason in addition to simple understanding. In addition, the literature in the area of competence to consent to treatment indicates that there is often a relationship between the severity of the consequences and the stringency of the standard used to evaluate competence. Given the serious nature of the consequences in the case of competence for execution and the fact that more than the simple ability to factually understand is usually required for competence to stand trial, it would therefore, make sense for a stricter standard than simply the ability to factually understand be used for competence for execution. This standard could include understanding as well as appreciation, and rationality or reasoning.

i. Appreciation of the personal importance of this punishment
   a. What it would mean to be executed
   b. Issues of triviality, irrelevance, involvement, salience
ii. Appreciation of the personal meaning of death
   a. What it will mean personally to be dead: events, activity, consequences, changes
   b. Ways in which the offender will be otherwise affected
   c. Ways in which others (important to the offender) will be affected
iii. Rationality/reasoning regarding the physical changes during and after execution
   a. Explanation about whether s/he will be physically different after s/he is executed (than s/he is now)
   b. Explanation about exactly what happens physically when *anyone* is executed (and when the offender him or herself is executed)
iv. Rationality/reasoning regarding the mental changes during and after execution
   a. Explanation about what will happen mentally when s/he is executed
   b. Beliefs about whether and how s/he will be any different mentally after execution than s/he is right now
v. Rationality/reasoning regarding other personal changes during and after execution
   a. Beliefs about transformations or changes that will happen to him/her after execution
vi. Rationality/reasoning regarding beliefs in invulnerability
   a. Reasons or beliefs why s/he will not or may not die when executed
   b. Whether anything different would happen personally upon execution than to anyone else who is executed
vii. Inappropriate affect about execution with associated rationality/reasoning
   a. Current feelings when s/he thinks about being executed
   b. How the offender imagines s/he will feel just prior to being executed
   c. Unexpected or peculiar affect
viii. Rationality/reasoning regarding acceptance or eagerness for execution
   a. Reasons why the offender might be looking forward to being executed
   b. Reasons why the offender may have accepted his/her execution

ix. Rationality/reasoning regarding factors associated with beliefs that person should not be executed
   a. Reasons why s/he *should* not be executed
   b. Reasons why s/he *might* not be executed

IV. Ability to Assist Attorney

i. Identity of attorney
   a. Name of the offender's attorney
   b. Where located
   c. Address or phone number
   d. What attorney looks like
ii. Time with current attorney
   a. How long since this attorney has been retained by the offender
   b. Last time that the offender saw or spoke to attorney
   c. Frequency of correspondence with attorney

   d. Frequency with which the offender has seen attorney (over some length of time)
iii. Trust of attorney
   a. Trust in attorney's skills and competence
   b. Trust in attorney's caring and investment in case
   c. What the attorney has specifically done to show that he or she is trustworthy
   d. Indications that attorney can or cannot be trusted
   e. Beliefs regarding for whom attorney works
iv. Awareness of execution date (if any) or likely date
   a. Knows if execution date has been set
   b. If a date has been set, what that date is
   c. If a date has or has not been set, ideas about when he/she might be executed
v. Status of appeals
   a. Knowledge if whether attorney is currently working on an appeal, and, if so, what it is
   b. Knowledge of filings of any previous appeals on his/her behalf
   c. What (if any) appeals are still available
vi. What attorney seeks to accomplish through appeals
   a. Understanding of issues and goals in appeals
   b. What could happen as a result of the appeals
vii. How appeals will be processed and assessed
   a. Understanding of what happens as appeals are processed and assessed
   b. Knowledge of who is responsible for hearing and making a decision about appeals
viii. Actual substance of appeals
   a. Whether the offender has read any of the information prepared for the appeals
   b. Offender's understanding about what issues the appeals are based on
ix. Important content withheld from attorney
   a. Whether attorney has been told everything needed in order to file appeals on the offender's behalf
   b. Anything that the offender has deliberately withheld from his/her lawyer
   c. Any information that the offender would never tell his/her lawyer
x. Pathological reasons for not planning or discussing appeals
   a. Any personal reasons that other people might not understand for why offender might not plan an appeal
   b. Any special reasons why the offender might not discuss an appeal
   c. Anything happening that keeps the offender from believing attorney or speaking freely with attorney

Appendix C

APPENDIX D

Comprehensive
PSYCHIATRIC SERVICES of Atlanta

September 9, 2016

The Honorable Carter Tarrance
392nd Judicial District Court
Henderson County, Texas

Re: Mr. Randall Mays
DOB: 8/3/59

Dear Judge Tarrance:

Enclosed is my report concerning the psychiatric evaluation of Mr. Randall Mays, performed on June 6, and August 18, 2016, at the Polunsky Unit in Livingston, TX. This evaluation was performed pursuant to your request, in order to assess Mr. Mays's competency to be executed. The opinions expressed in this report represent my professional opinion to a reasonable degree of psychiatric certainty, based upon my clinical interviews with Mr. Mays and review of relevant records provided by the State and defense counsel.

A copy of this report is being sent only to you.

Summary of Qualifications

My name is Bhushan S. Agharkar, M.D. I have been licensed to practice medicine in Georgia since 2002. I am a psychiatrist in private practice with Comprehensive Psychiatric Services of Atlanta. I am an Assistant Professor of Psychiatry at Morehouse School of Medicine and a Clinical Assistant Professor with the Emory University School of Medicine. I earned my Doctor of Medicine degree from the State University of New York Health Science Center at Syracuse, completed my residency at Emory University School of Medicine Department of Psychiatry and Behavioral Sciences where I was Chief Resident, as well as a Forensic Psychiatry Fellowship. I hold dual board certification as a Diplomate of Adult Psychiatry (AP) and Forensic Psychiatry (FP) of the American Board of Psychiatry and Neurology (ABPN). I am also a Distinguished Fellow of the American Psychiatric Association.

4062 Peachtree Road NE, Suite A-203 | Atlanta, GA 30319
Tel: 404.939.6636 | Tel/Fax: 866.824.5215

Sources of Information:

I was appointed by the Court to conduct a psychiatric evaluation of Mr. Mays. I conducted face-to-face clinical interviews of Mr. Mays on June 6, and August 18, 2016, for approximately 2 and 1.5 hours, respectively. I have also reviewed documentary information regarding Mr. Mays, attached as an index.

Notification of Non-Confidentiality:

At the outset of the evaluation, I informed Mr. Mays that I was conducting a psychiatric evaluation, that it was not confidential, that anything he told me I might be asked to testify about in a hearing, and that a copy of this report would be sent to you. Mr. Mays stated that he understood these conditions and agreed to proceed. At our second visit, though he recalled my name and occupation, he needed a reminder as to what I was assessing and at who's direction.

History of Presenting Problem:

Mr. Mays is a 57-year-old Caucasian male who was incarcerated after his murder arrest approximately nine years ago and sentenced to death in 2008. During our interviews, Mr. Mays was guarded and paranoid. He frequently minimized his symptoms or responded, "I don't like to dwell on negative things." He would often answer, "I don't think about those things," when asked about his current legal circumstance. Mr. Mays was often perseverative and disorganized in his responses. He complained that the guards poison him in the prison by tampering with his food and pumping pepper gas through the air vents. He quickly derailed into talking about acid rain and how this affects him in the prison by making him drowsy, fatigued, and "can't think."

Mr. Mays reported that the medications given to him in the prison cause him to hallucinate and therefore, he does not take them. He was able to recount that he was diagnosed with Schizophrenia and depression in the past but did not believe he has these illnesses because "everyone has this, don't they?" He did admit to having "thinking problems" including problems with his memory but did not want to discuss this further, saying he wanted to "stay positive."

Mr. Mays reported hearing the voice of God talk to him directly since he was a newborn. He described the voice as male and intermittent in frequency, originating from outside his head. He claimed that he tried to climb the roof of a building as a child to "get closer to God" and was stopped by an adult in the vicinity. He further discussed that since his incarceration, he received a patent on his design for a renewable energy source. While it was difficult to follow his thinking, he described his invention as a way to transfer "flux energy" from a transformer. However, he believes the prison has leaked the nature of his invention to the general public because it was only after he sent out the paperwork on his

patents from the Texas Department of Corrections that he started seeing the technology discussed in newspapers. Mr. Mays thinks the technology is already being used in Arizona and Pennsylvania because the prison leaked it.

Based on Mr. Mays's perception that the prison is aware of his technology patent, he believes the state of Texas is trying to execute him to keep him from making his invention. He said, "a lot of businesses would lose a ton of money," and the major electric and oil companies would not want to see this invention made because it would save the average consumer a great deal of money and put them out of business. He also believes Texas wishes to execute him so they would not have to pay for all his medical costs, which he believes to be significant. Mr. Mays also stated to me that the warden could be pressured by the power companies to execute him since they would stand to lose "billions of dollars" if his invention was made. He also told me the warden makes "a lot money by executing me" and that he's "paid a lot of money to do it," though it was not clear to me if this money would come from the electric/power companies.

Keeping Mr. Mays on task was a challenge as his thought processes were tangential and often involved persecutory and paranoid delusional beliefs. When I attempted to press him on details or explore some of the statements he made, Mr. Mays quickly changed the subject or refused to answer. It appeared he knew what sounded "crazy" and did not want to appear mentally ill. He fixated on various medical issues and somatic complaints and in fact, accused me of not being a medical doctor because I would not aid him in his medication needs. This necessitated my having to remind him again of the nature and purpose of our evaluation. The more I tried to get details from Mr. Mays and explore his reasoning, the more agitated and paranoid he became. In fact, he noticed my shirt had a name and series of numbers on it and he inquired as to its meaning. When I explained that it was the name of the manufacturer and that I did not know what the numbers meant, he scoffed and said, "Yeah, right. You mean to tell me you're wearing a shirt but have no idea what the code means huh? Okay…" in a suspicious and disbelieving tone. Mr. Mays became more guarded and defensive and it was apparent he believed my shirt contained some hidden message or code that I was not sharing with him. It was unclear if he understood what the "code" was as he refused to answer my questions about this. He then accused me of trying to "psyche him out" and "put words in his mouth" though he would not tell me what he thought I was trying to get him to say.

Brief History:

Personal History:
Mr. Mays grew up in Eustace, Texas, and dropped out in the tenth grade. He reported his parents divorced when he was six years old. He refused to answer questions about how he was disciplined at home. He has worked as a welder, a mechanic, and in construction. He reported using marijuana, alcohol, and methamphetamine regularly during adulthood. However, he stopped drinking alcohol in 2005 and stopped using methamphetamine in

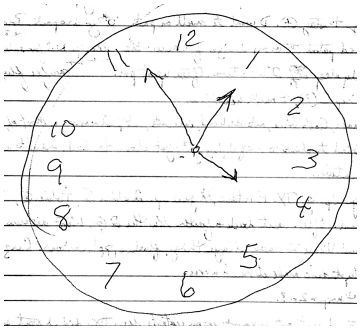
his 20's. He said he and his wife used to drink heavily and that he had withdrawal symptoms when he stopped drinking. He reported being psychiatrically hospitalized two or three times in his life.

Medical History:
Mr. Mays endorsed a history of hepatitis C, though he was not sure of that, and reported multiple head injuries over his lifetime.

Family History:
Mr. Mays reported his uncle possibly has Alzheimer's disease and there may be other family members who do as well, but he could not recall.

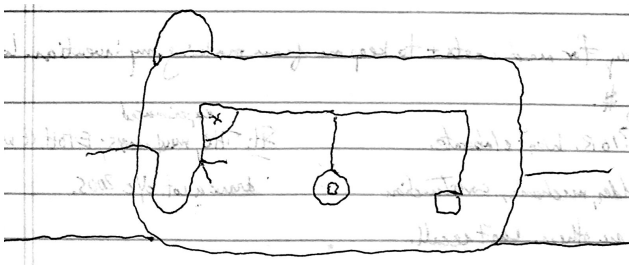
Formal mental status examination:

Mr. Mays was a 57-year-old Caucasian man of average height and slender build, dressed in jail attire. His grooming appeared adequate. His left arm was deformed consistent with his reported prior injury. He was irritable at times and had reasonable eye contact with his examiner throughout the interview. His speech was within normal limits. He was oriented to person, place, time and situation. He endorsed an "ok" mood overall. His affect was restricted. He denied current auditory and visual hallucinations. He denied any homicidal or suicidal thoughts or attempts in the recent past. His thoughts were often disorganized, perseverative, and tangential. He could not follow and demonstrate an organized series of hand movements. He could not accurately recall a short story fifteen minutes after I read it to him. When asked to name all the letters of the alphabet that rhyme with the word "key," he incorrectly responded, "b, n, k, g, s, and h." He could not accurately draw a clock showing the time "11:10." Instead he drew:

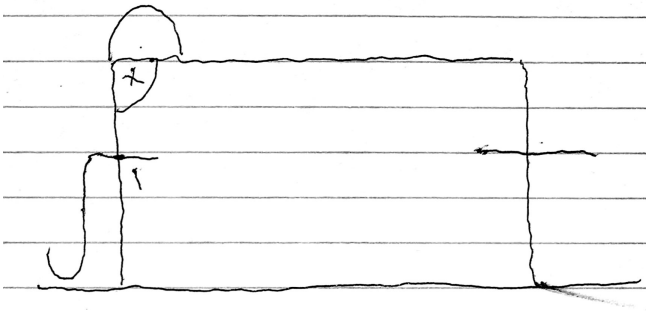


He initially placed the hour hand at the 4 o'clock position then, realizing his error, changed it to the 1 o'clock position. This was still incorrect.

When asked to draw a complex figure after being shown this picture, he copied:



After approximately fifteen minutes, he was asked to draw this figure from memory. The image degraded as follows:



When asked simple standard questions to detect for overt malingering such as the colors of the United States flag and how many legs a dog has, he answered these questions correctly.

Assessment:

Mr. Mays is a 57-year-old Caucasian male who has been sentenced to death. A psychiatric assessment was requested to ascertain if he was competent to be executed. Based on my clinical interviews and review of collateral information, it is my opinion, to a reasonable degree of psychiatric certainty, that Mr. Mays is **not** competent to be executed.

Mr. Mays appears to have had a long history of psychotic mental illness most consistent with Schizophrenia. There are numerous reports of odd and bizarre behaviors dating back at least thirty years. He has reported persecutory and paranoid delusions pre-trial to mental health professionals and letters he has written from prison indicated his designs and plans for "renewable energy." He appeared overtly paranoid and irritable at times in our interviews. His thought processes were often disorganized and tangential. He would often fixate and perseverate on topics unrelated to our discussion or on insignificant matters as they arose. These symptoms are consistent with Schizophrenia.

According to the neuropsychological testing by Joan W. Mayfield, Ph.D., Mr. Mays demonstrated significant deficits in executive functioning and memory impairment. She diagnosed him in 2009 with Dementia Not Otherwise Specified. The types of damage detected by Dr. Mayfield's battery are consistent with Mr. Mays's poor performance on a number of neurocognitive screenings with me. His inability to accurately draw a clock or complex figure from memory, his inability to recall details from a short story read to him fifteen minutes prior, and his inability to correctly sequence a pattern of organized hand movements are consistent with the deficits seen in Dr. Mayfield's more extensive neuropsychological battery. These deficits were primarily in the frontal and temporal lobes. These areas of the brain are responsible for memory, affect and mood regulation, impulse inhibition, effective weighing and deliberating, and the ability to see the long-term consequences of your behavior.

Mr. Mays has a severe and persistent deteriorating brain disease. The combination of a psychotic condition in addition to a dementing cognitive process is worse than either alone for Mr. Mays. In other words, these illnesses would exert a synergistic effect on each other. He is not receiving treatment for either his mental illness or dementia. While neither is a curable condition, medications may be helpful is slowing the progression of the illness and ameliorating some of his psychotic symptoms. Antipsychotic medication, while potentially helpful for Mr. Mays's delusional beliefs and aberrant thought processes, are unfortunately not particularly effective for the cognitive deficits he exhibits.

It is the combination of conditions Mr. Mays suffers from that impacts his current competency. He has a profoundly delusional belief system involving paranoid and grandiose beliefs. He evidenced disorganized and irrational thought processes which were not amenable to redirection, clarification, or confrontation. In fact, when I attempted to gather more details and clarify his beliefs, they became further entrenched and he grew more paranoid and irritable. Consistent with his brain damage, I found Mr. Mays unable to effectively weigh and deliberate options given to him. He was often perseverative in his responses. Thus, while Mr. Mays knew where he was located and that the state of Texas intended to execute him, he did not evidence a rational understanding as to *why*. His beliefs about why he is to be executed are rooted in delusional thinking, the product of a severe psychotic mental illness and a damaged brain. Indeed, it is particularly his significant brain damage that makes it extremely unlikely that Mr. Mays will ever rationally understand why he is to be executed as this condition exacerbates his paranoia and severely hampers his ability to rationally consider his present situation. It is therefore my opinion, to a reasonable degree of psychiatric certainty, that Mr. Mays is incompetent to be executed.

I considered the possibility that Mr. Mays malingered his impairments but in my opinion, he did not. Given his minimization of mental health symptomatology, that the symptoms

elicited and observed are consistent with other mental health professionals' observations and reports in the past, his demonstration of aberrant thought processes, not just thought content, often unknown to laypeople, that his difficulties on neurocognitive screenings with me matched Dr. Mayfield's testing results, and his correctly answering simple standard questions to detect overt malingering with me, I do not believe Mr. Mays to be malingering.

If you have any questions about this report, I would be happy to answer them. Please feel free to telephone me at 404.939.6636.

Sincerely,

Bhushan S. Agharkar, M.D., D.F.A.P.A.
Distinguished Fellow, American Psychiatric Association
Diplomate, American Board of Psychiatry and Neurology, with Added Qualifications in Forensic Psychiatry

APPENDIX E

G
WW GEORGE W. WOODS, JR., M.D., F.A.P.A.
A PROFESSIONAL CORPORATION
DIPLOMATE OF THE AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY

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Oakland Atlanta Evansville

May 1, 2017

The Honorable Joe D. Clayton
Senior State District Judge
First Place
100 E. Ferguson, Suite 1114
Tyler, Texas 75702

Re: Randall Mays (DOB 8/3/1959)
Cause No. B-15,717 – The State of Texas v. Randall Wayne Mays
Article 46.05 Report

Your Honor,

I have performed a neuropsychiatric examination of Mr. Randall Mays pursuant to the Agreed Order on Preliminary Article 46.05 Proceedings, dated February 18, 2016.

In order to complete this examination, I reviewed the documents provided by the Court and listed on the index of Materials Reviewed. (Exhibit A) I conducted an interview with Mr. Mays on April 27, 2017.

Referral Question

The Court's referral questions are as follows:

1. Does Mr. Mays suffer from a mental illness or mental impairment?

2. If so, does Mr. Mays's mental illness or mental impairment deprive him of a rational understanding of the connection between his crime and punishment, i.e., "if [Mr. Mays's] mental state is so distorted by a mental illness that his awareness of the crime and punishment has little or no relation to the understanding of those concepts shared by the community as a whole?" *Pannetti v. Quarterman*, 551 U.S. 930, 958-59 (2007).

In its order, the Court further instructed:

> In making the foregoing determination, the expert shall consider whether Mr. May's mental illness or mental impairment deprive him of: (1) a rational understanding that he is to be executed and that the execution is imminent or (2) a rational understanding of the reason he is being executed. (TEX CODE CRIM. PRO. ART. 46.05(h).)

The Court has further provided a copy of the article, "Assessment of Competency for Execution: Professional Guidelines and an Evaluation Checklist." (Zapf et al, 2002)

Summary

Mr. Mays suffers from Major Neurocognitive Disorder. It has been documented that his cognitive functioning has been historically limited. Dr. Mayfield's examination establishes an extremely low baseline IQ and documents significant impairments in memory, being able to effectively weigh and deliberate, understand the big picture, and understand context. Current findings indicate a severe decline in cognitive functioning from that baseline. Mr. Mays also has a long history of severe mental illness. He has received some treatment; however, most of his life, his condition has largely gone untreated. This includes during his incarceration in the Polunsky Unit. His neurological deficits are amplified by profoundly delusional thinking and psychotic presentation.

It is my professional opinion, which I hold to a reasonable degree of neuropsychiatric certainty, that Mr. Mays suffers from several neuropsychiatric disorders that impact his understanding of the capital proceedings he currently faces. Mr. Mays' is unable to rationally understand why he is being executed. Therefore, he is incompetent to be executed.

Qualifications

I am a licensed physician specializing in neuropsychiatry. I have offices in Oakland, California; Atlanta, Georgia; and Evansville, Indiana. My private practice focuses on neurodevelopmental disabilities, acquired neurocognitive disorders, cognitive impairments secondary to neuropsychiatric disorders, ethnopsychopharmacology, workplace safety, and consultation-liaison psychiatry, i.e., medical disorders with psychiatric manifestations. For the last thirty-four years, I have assessed and treated clients with developmental disabilities, acquired brain injuries, and cognitive impairments secondary to neuropsychiatric disorders. In addition to my clinical practice, I also perform forensic consultations in civil and criminal cases.

I am a lecturer at the University of California, Berkeley – Boalt Hall, School of Law. I teach a course on Law and Mental Health with Jennifer Johnson, Esq. Ms. Johnson and I also teach a continuing education webinar, "Where Mental Health Meets the Law," a comprehensive curriculum that tackles the evolving field of forensic mental health through Thomson Reuters West Legal Education. I am currently on sabbatical from my position as Adjunct Professor at Morehouse

School of Medicine in Atlanta, Georgia, where I teach "Clinical Aspects of Forensic Psychiatry" and "Introduction to Geriatric Psychiatry."

I have written extensively about the forensic assessment of neurodevelopmental disorders, cognitive impairment in the elderly, fetal alcohol spectrum disorder, trauma, financial deception in elderly populations, comorbidity and the death penalty.

I am a Fellow of the American Psychiatric Association. I am a member of the Northern California Psychiatric Association, the California Psychiatric Association, the American Neuropsychiatric Association, the International Neuropsychological Society, and the American Psychological Association. I am also a member of the American Association on Intellectual and Developmental Disabilities (AAIDD) and the AAIDD Task Force on the Determination of Intellectual Disability for the Courts. I co-wrote two chapters in the AAIDD Manual, *The Death Penalty and Intellectual Disability*. I am also a member of the International Association for the Scientific Study of Intellectual and Developmental Disabilities (IASSIDD), and I am Deputy Chairperson for the Challenging Behavior Specific Interest Research Group (SIRG). I serve as Editor for the Challenging Behavior and Mental Health Special Interest Research Group (SIRG) newsletter and as Associate Editor for the Journal of Practice and Policy for Intellectual Disabilities for IASSIDD. I am President of the International Academy of Law and Mental Health (IALMH) and serve on the Scientific and Executive Committees.

I received my medical degree from the University of Utah in 1977. I completed my psychiatric residency at Pacific Medical Center in San Francisco, California. The medical training I have undertaken since my residency has been geared toward a neuropsychiatric practice that combines an understanding of the relationships among psychiatric disorders, brain dysfunction, metabolic disruption, and endocrine abnormalities. It has been supplemented with training in neuroanatomy and neuropsychological investigation, psychopharmacology, neuroimaging, and other relevant subjects, such as sleep disorders, intellectual disability, developmental disability, and dysmorphology, which is the study of structural abnormalities in bone which often relate to developmental disorders.

I participated in a National Institute of Mental Health/American Psychiatric Association Fellowship (NIMH/APA) directly after my residency. During the fellowship, I developed the first medical/psychiatric unit at Pacific Presbyterian Hospital. This unit administered to patients with either medical illnesses that had psychiatric manifestations or psychiatric patients with severe medical illness that could not be treated effectively for their psychiatric symptoms on regular medical units. Many of these patients had neurological impairments, significant drug interactions that required diagnosis and monitoring, or unusual symptom presentations due to the multiple disorders from which they were suffering.

The focus of my NIMH/APA Fellowship was Geriatric Psychopharmacology, the study of medication physiology, pharmacology, and use in elderly populations. The elderly inmate is defined by current criminal justice standards as 50 years of age due to the multiple comorbid factors impacting many inmate's lives. Elderly patients present with several pharmacological

challenges. First, an understanding of drug interactions is paramount due to the variety of medications patients are prescribed. Second, in the elderly, changing metabolism, history of chronic diseases, and body composition must be taken into consideration when understanding the effects of drugs. Third, due to the above factors, neurological phenomena, such as delirium, confusion, altered states of consciousness, and organically derived psychotic states occur more commonly, and must be appropriately diagnosed and treated. This is true for a growing percentage of the prison population.

I have consulted with neuropsychologists on neuropsychological tests, such as the Wisconsin Card Sorting Test, Halstead Reitan Battery, the Cognistat, the Montreal Cognitive Assessment Instrument (MOCA), and Delis Kaplan Executive Function System (DKEFS). I have also studied other psychometric instruments, including, but not limited to, the Minnesota Multiphasic Personality Inventory (MMPI-1, 2, and RF), the Millon Clinical Multiaxial Inventory, the Personality Assessment Inventory, the Rorschach, and instruments measuring effort.

I have been qualified as an expert in neuropsychiatry in state and federal jurisdictions, including California, Georgia, Arizona, Arkansas, Florida, Hawaii, Louisiana, Massachusetts, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, Tennessee, Washington, Wyoming and Texas.

My qualifications, publications, and expert witness experience are fully set forth in my curriculum vitae, attached hereto as Exhibit B.

Legal Standard

> The trial court shall determine whether, on the basis of reports provided under Subsection (i), the motion, any attached documents, any responsive pleadings, and any evidence introduced in the final competency hearing, the defendant has established by a preponderance of the evidence that the defendant is incompetent to be executed. If the court makes a finding that the defendant is not incompetent to be executed, the court may set an execution date as otherwise provided by law. (TEX. CODE CRIM. PROC. art. 46.05(k))

Pursuant to Article 46.05, subdivision (a), a person who is incompetent cannot be executed. (*Ford v. Wainwright,* 477 U.S. 399, 409-10 (1986); *Green v. State,* 374 S.W.3d 434, 442; Tex. Crim. App. 2012)) The United States Constitutional standard is that "the Eighth Amendment forbids the execution only of those who are unaware of the punishment they are about to suffer and why they are to suffer it." (Ford, 477 U.S. at 422).

A defendant is incompetent to be executed if (1) he does not understand that he is to be executed and that his execution is imminent, and (2) he does not understand the reason for his execution. TEX. CODE CRIM. PROC. 4 art. 46.05(h). (Hervey, J. Opinion in the Court of Criminal Appeals, p. 3-4) A defendant does not understand the reason for his execution unless he has a "rational understanding" of that reason. (See P Panetti v. Quaterman, 551 U.S. 930, 959 (2007)

Based on historic records reviewed, trial testimony and my current neuropsychiatric evaluation Mr. Mays is not competent to be executed, an opinion I hold to a reasonable degree of neuropsychiatric certainty. I am available to review and consider any further materials which may weigh for or against my opinion.

Mr. Mays' multiple cognitive impairments and delusional thinking prevent him from having a rational understanding of the legal circumstances he currently faces. Impairment coupled with delusions have resulted in, as his attorney Brad Levenson pled, "an utter lack of appreciation for the imminence of his execution date." (Levenson, Motion Re Competency to Be Executed Pursuant to Code of Criminal Procedure Article 46.05, p. 17)

Procedural History

Mr. Mays was convicted of capital murder and sentenced to death on May 13, 2008. The Court of Criminal Appeals (CCA) denied Mr. Mays' direct appeal on April 28, 2010. *Mays v. State,* 318 S.W.3d 368 (Tex. Crim. App. 2010). Mr. Mays' petition for writ of certiorari was denied by the Supreme Court on March 7, 2011. Mr. Mays' s state writ of habeas corpus was denied on March 16, 2011. (*Ex parte Randall Mays,* 2011 WL 1196799 (Tex. Crim. App. 2011) (unpublished)) The petition for certiorari from the state application was denied on October 17, 2011. (*Mays v. Texas,* 132 S. Ct. 453 (2011))

Mr. Mays's federal petition for writ of habeas corpus in the Eastern District of Texas was denied on December 18, 2013. (*Mays v. Director, TDCJ-CID,* 2013 WL 6677373 (E. Dist. Tex. 2013)) The Fifth Circuit denied the petition on June 27, 2014. (*Mays v. Stephens,* 757 F.3d 211 (5th Cir. 2014). The petition for writ of certiorari from that decision was denied on January 12, 2015. *Mays v. Stephens,_* S. Ct._, 2015 WL 133144 (2015).

Mr. Mays was scheduled to be executed on March 18, 2015.

The Office of Capital Writs (OCW) learned of Mr. Mays' case and began its investigation into additional potential litigation that had not yet been exhausted. Three days into its investigation, OCW filed a motion to challenge competency on February 24, 2015. After a hearing, the court denied the motion, "finding that Appellant had raised 'some doubt'" about his competency.

> He subsequently challenged his competency to be executed. The trial court denied Appellant's motion because he failed to make a substantial showing of execution incompetence. Appellant now argues that the trial court erred. We agree. Because we hold that Appellant did make a substantial showing that he is incompetent to be executed, we set aside the order of the court denying relief and remand this cause to the trial court for further competency proceedings, including the appointment of mental-health experts. The current stay of execution shall remain in effect pending the outcome of the competency proceedings in the trial court. (CCA Opinion, p. 1-2)

The current 46.05 proceedings before the court is to determine if Mr. Mays is competent to be executed.

Mental Health History

Randall Mays is a 57-year-old, white male. He is currently incarcerated in the Polunsky Unit, Texas Department of Corrections in Livingston, Texas. Mr. Mays has been incarcerated since 2008.

Mr. Mays has been hesitant to discuss his personal history, so little is known about it. Mr. Mays was born in Eustace, Texas. Although he would not answer questions concerning his family, he acknowledged that he dropped out of school after the 9th grade. In her report, Dr. Mayfield stated,

> He was described as quiet and average in school; he had friends. He has a ninth grade education. Mr. Mays did not report that he was "kicked out" of school in the tenth grade. School records were not provided; however, Mr. Mays reported that he received special education support services in reading and writing. (Dr. Mayfield's report, p. 1)

His employment history is one of manual labor, including mechanics, building boat launches, road construction, concrete pouring, carpentry, and welding.

Mr. Mays's medical history documents mental illness and brain impairment. Mr. Mays has a history of psychiatric symptoms extending at least 34 years. Mr. Mays has been diagnosed with the following, Major Depressive Disorder, Paranoid Personality Disorder-Not Otherwise Specified, Psychosis-Not Otherwise Specified, Dementia and Impaired Memory. His symptoms include: delusions, hallucinations, agitation, impaired memory, and paranoia. Although there is not extensive mental health information about the Mays family, his brother, Noble, was hospitalized for a 90-day observation after he was arrested for murder. Noble Mays was convicted and is currently serving a sentence for murder. In addition to mental illness and cognitive impairment, Mr. Mays also endorses a long-term history of chemical dependency, including methamphetamine, marijuana, alcohol, as well as other substances. It appears his methamphetamine dependency stopped around a decade or more before the offense.

Pre-Arrest

Prior to his arrest, Mr. Mays was involuntarily committed to Terrell State Hospital In-Patient Psychiatry Unit on two occasions. In 1983, he presented as delusional, hallucinating, and combative. Mr. Mays was diagnosed with "hallucinosis." Medical records indicate he was "actively psychotic."

> Mays's psychiatric evaluation upon commitment to the Terrell State Hospital reported that Mays suffered from a "thought disorder as manifested by verbalizations of [auditory and visual] hallucinations." (Ex. 10 at 2 [Terrell Records (1983)].) His family described him as pacing, talking to himself, and refusing to communicate with others. "He was hallucinating and stated that the Devil had possession of him." *(Id.* at 5, 9, 13.) Ten days after his

> commitment Mays was discharged and instructed to return to the psychiatric hospital if he experienced psychosis in the future. *(Id.* at 7, 1 7.) (Levenson, Motion Re Competency to Be Executed Pursuant to Code of Criminal Procedure Article 46.05, p. 11)

In 1985, he was involuntarily hospitalized a second time at Terrell State Hospital due to auditory hallucinations. Police officers brought him in for evaluation reporting that he was also suffering from methamphetamine intoxication, or "spaced out on crystal."

> Mays was noted to express "some paranoid ideation" and he described "thoughts about devils/demons, hearing voices that tell him to do things." *(Id.* at 22.) Staff went on to say that "[Patient] admits he does act upon these directives and cannot distinguish [auditory and visual] hallucinations and thoughts in head from objective reality." *(Id.)* Mays's family reported that prior to his readmission to Terrell State Hospital, Mays "began to make bizarre statements and to act as if he were responding to internal stimuli." *(Id.* at 28.) (Levenson, Motion Re Competency to Be Executed Pursuant to Code of Criminal Procedure Article 46.05, p. 11)

These involuntary hospitalizations documented a profoundly impaired man. In the years that followed, there are no medical records. The absence of records indicates a lack of treatment for his severe mental illness.

Time of Arrest

Mr. Mays was treated for a gunshot wound at the Texas Medical Center at Tyler in May of 2007 following his arrest for the instant offense.

> During his eight-day hospitalization, the nurses at times noted that he exhibited non-compliant and inappropriate behavior. At one point, he was lying in bed screaming for help and stating that he thought people were trying to kill him and that he thought they had killed his wife. He was also observed talking to someone who was not there and would urinate on himself. (Hervey, J. Opinion in the Court of Criminal Appeals, p. 12)

Medical records from this hospitalization record him suffering from delusional thinking, believing that his wife had been killed.

> In another particularly unsettling account, hospital staff noted: "[Patient] lying in bed, screaming for help. [The patient] [s]tates 'I think people are trying to poison me. I've wrote help on my tray, please try to get someone from outside in here to talk to me. I think they killed my wife.'" (*Id.* at 8.) (Hervey, J. Opinion in the Court of Criminal Appeals, p. 12)

The officers at Smith County Jail recognized that Mr. Mays "suffered from mental illness." (Hervey, Opinion in the Court of Criminal Appeals, p. 12) He was diagnosed with "Organic brain syndrome" a term for what is now includes dementia among other neurological syndromes and diagnoses.

> In October 2007, while still in the Smith County Jail, officials noted that Appellant continued to suffer from paranoia and odd affect, so he was prescribed a powerful anti-psychotic. A month later, he was again described as paranoid and guarded. (Hervey, J. Opinion in the Court of Criminal Appeals, p. 12)

Mr. Mays has been described as mentally ill by numerous lay and expert witnesses because he has exhibited patterns of irrational behavior and delusional thinking over time, prior to being involved in the courts. Trial counsel presented substantial testimony regarding Mr. Mays' history of mental illness, which included reports of his irrational behavior. He was treated for mental illness briefly at Smith County Jail. Mr. Mays has not been treated for mental illness since he left Smith County Jail. He continues to suffer from delusions and impaired thought processes.

The Texas Department of Public Safety issued a toxicology report on July 10, 2007.

> **Results of Analysis and Interpretation**
> Blood Drugs: No drug detected.
>
> Blood Analysis: An enzymatic method (EMIT) was used to screen for five classes of drugs: amphetamines, barbiturates, benzodiazapenes, cocaine and its metabolites, and opiates. The detection cut off for most drugs of interest is 0.1 mg/L in blood.

BLOOD EMIT RESULTS BATCH DATE: 07/05/2007 KH

STDS	BZE	RANGE	OPI	RANGE	AMINE	RANGE	BARB	RANGE	ALP	RANGE	PCP	RANGE
< NEG	141	< N	106	< N	99	< N	138	< N	188	< N	170	< N
B1	157	N	118	N	110	N	153	N	208	N	189	N
B2	175	0.1-0.3	148	0.1-0.3	138	0.1-0.3	179	0.1-0.3	263	.02-.06	273	0.05-0.15
B3	223	0.3-1.0	186	0.3-1.0	167	0.3-1.0	222	0.3-1.0	315	.06-.3	300	0.15-0.5
B4	277	1.0-3.0	249	1.0-3.0	207	1.0-3.0	285	1.0-3.0	343	.3-.9	311	0.5-1.5
B5	305	>3.0	301	>3.0	244	>3.0	316	>3.0	352	>.9	314	>1.5

CASES	BZE	CONC	OPI	CONC	AMINE	CONC	BARB	CONC	BENZ	CONC	PCP	CONC
B1NEW	154	< N	120	N	109	< N	153	< N	202	< N	217	N
B2NEW	172	N HighNeg	145	N HighNeg	134	N HighNeg	175	N HighNeg	255	N HighNeg	272	N HighNeg
B3NEW	211	0.1-0.3	182	0.1-0.3	158	0.1-0.3	209	0.1-0.3	299	.02-.06	294	0.05-0.15
B4NEW	275	0.3-1.0	242	0.3-1.0	200	0.3-1.0	282	0.3-1.0	275	.02-.06	311	0.5-1.5
B5NEW	303	1.0-3.0	289	1.0-3.0	236	1.0-3.0	310	1.0-3.0	310	.02-.06	311	0.15-0.5
358279	151	< N	115	< N	111	N	150	< N	196	< N	207	N
360549	153	< N	119	N	116	N	151	< N	192	< N	191	N
360561	303	1.0-3.0	123	N	112	N	153	N	199	< N	187	< N
360563	238	0.3-1.0	114	< N	109	< N	150	< N	317	.06-.3	183	< N
360564	151	< N	137	N HighNeg	108	< N	147	< N	191	< N	184	< N
360582	155	< N	117	< N	109	< N	148	< N	278	.02-.06	181	< N
360589	150	< N	122	N	109	< N	153	< N	197	< N	189	< N
360602	151	< N	136	N HighNeg	110	N	148	< N	301	.02-.06	178	< N
360603	152	< N	120	N	109	< N	147	< N	210	N	185	< N
360607	154	< N	118	< N	109	< N	149	< N	357	>.9	185	< N
360608	154	< N	117	< N	134	N HighNeg	145	< N	239	N HighNeg	183	< N
360609	158	N	121	N	111	N	147	< N	217	N	182	< N
360610	155	< N	122	N	110	N	144	< N	345	.3-.9	180	< N
360611	155	< N	118	< N	109	< N	147	< N	341	.06-.3	181	< N
360673	150	< N	127	N	100	< N	144	< N	242	N HighNeg	184	< N
360674	154	< N	115	< N	111	N	147	< N	300	.02-.06	178	< N
360675	150	< N	124	N	110	N	146	< N	303	.02-.06	183	< N
361149	152	< N	121	N	107	< N	147	< N	202	< N	183	< N
High Neg	170.		133		124		166		235		231	

The Post Arrest blood Toxicology reports are negative for drugs and alcohol, adding additional weight to the conclusion that the symptoms seen in the hospital setting were not due to substance abuse. At the time of the incident, he had not used drugs in almost a decade.

While incarcerated, Mr. Mays had reported complaints of being unable to breathe because of ozone gas or of being poisoned. His complaints indicate persisting delusional states that have gone untreated.

> On November 12, 2011, Mays complained to prison medical staff that he was having trouble breathing because he is allergic to "ozone." Records indicate that he had been seen twice the day before for similar complaints. (Ex. 14 at 2 [UTMB Records].) Mays complained of trouble breathing again in June 2012, stating "I am having problems breathing my head hurts and my chest hurts I am getting dizzy I believe the air vented in is the problem and I want to be moved." (Ex. 15 at 1 [Polunsky Records]; *see also* Ex. 14 at 9 [UTMB Records].) (Ex. 14 at 8 [UTMB Records].)

Medical staff found no signs of respiratory distress. In July 2012, Mays complained of problems breathing because of air being vented into his cell.

In July of 2013, Mr. Mays complained about being poisoned.

> In July 2013, after eating dinner, Mays complained that he felt sick to his stomach and that be believed his bread had been contaminated -- "maybe on purpose." Medical staff further noted, "[Mays] does believe someone intentionally put something in his food to make him sick. When asked who he thought did such a thing, he said 'the offenders, and maybe some officers.' When asked if he felt he had been singled out or if it was a general problem with the food he said 'maybe they singled me out because I won't participate in their games.'" (Ex. 14 at 10-11 [UTMB Records].)

On February 5, 2015, attorney Katherine Black interviewed Mr. Mays "for the purpose of determining whether I believed a substantial question existed with regards to Mr. May's competency, and to evaluate and document his current mental health status." (Affidavit of Katherine C. Black, p. 1) Mr. Mays also commented to Katharine Black about the air,

> Mr. Mays complained to me about the ozone. Specifically, he said that the ozone in the air was causing him pain. Mr. Mays also complained that the ozone was worse on a cloudy day and during the holidays when the cars on the road filled his prison cell with carbon monoxide. (Affidavit of Katherine C. Black, p. 2)

Mr. Mays also told Ms. Black about his business ideas, including a renewable energy venture he believe he could embark upon approximately a month and a half before his scheduled execution date. Mr. Mays continues to believe in this business venture.

Expert Opinions

Theresa Vail, M.D.

Dr. Vail is a medical doctor who was under contract with Smith County Jail to treat inmates psychiatrically. Her services were requested by Mr. Mays' defense attorney. Mr. Byington

suspected that Mr. Mays was suffering from depression. He also had doubts that Mr. Mays was able to assist in his defense. Dr. Vail gave testimony about Mr. Mays' mental state during his trial.

Dr. Vail initially diagnosed Mr. Mays with depression. He was tearful, very anxious and depressed. He manifested vegetative symptoms, including not eating or sleeping. In her testimony, Dr. Vail stated, "And he had some strange beliefs, but we didn't really delve into that, because he was just so very anxious." (Testimony of Dr. Vail, p. 19-20)

Dr. Vail also made another diagnosis:

> That was psychotic disorder, not otherwise specified. That basically means that he's having some psychotic symptoms, such as hearing voices, maybe seeing things that other people don't see or hear.
>
> Also, there are strange thoughts that people have, called delusions, which are fixed false beliefs. Those thoughts, no matter what you tell them, how you tell than that they are not true, they still hang on to them with tenacity. (Testimony of Dr. Vail, p. 19-20)

In her testimony, Dr. Vail gave examples of Mr. Mays' delusions:

> Q. Since you've been dealing with him, have any of his problems related directly to his perception of things that are happening in the jail?
>
> A. Yes.
>
> Q. Like what?
>
> A. He believes that his food is being poisoned either by the inmates or by the officers. And that his neighbor, who used to be near him, another inmate, they used to speak, but they don't speak anymore, And that was approximately three, four months ago, Randall stopped talking to him. He became paranoid and thought that he was telling other people things about him.
>
> Q. All right. And when you say his neighbor, you're talking about the neighboring cell?
>
> A. Cellmate, yes.
>
> Q. Okay. Does he have any particular complaints or suspicions about the guards?
>
> A. He believes that the guards are plotting against him, especially the black guards. (Testimony of Dr. Vail, p. 35)

Dr. Vail's impression was that he suffered from severe mental illness based on his depression, psychotic disorder and history of chemical dependency. She testified that there was no evidence that Mr. Mays was malingering. She prescribed Zoloft, an antidepressant, and Risperdal, an antipsychotic.

Dr. Gilda A. Kessner

Dr. Gilda Kessner is a psychologist with a private forensic practice. She was a defense expert, who based her conclusions on a record review, including the dashboard camera and the audio of the incident. Dr. Kessner also listened to Dr. Vail's testimony and reviewed her medical records of Mr. Mays' treatment while in custody at the Smith County Jail.

The Court provided the following instructions to mental health experts:

> Does the defendant have a mental defect?
> Identify the mental defect.
> Define the mental defect.
> Was that defect present with Mr. Mays on May 17, 2007?
> Can the defendant with that defect act intentionally or act knowingly?
> Counsel cannot elicit testimony as to any diminished mental capacity of the defendant.
> (Court's instructions during Dr. Kessner's testimony, p. 6)

Dr. Kessner testified about her opinion about Mr. Mays:

> A . That he suffers from a thought disorder, and it can be identified as having a paranoid thought process, a paranoid ideation.
> Q. What is an ideation?
> A. It's the thinking. It's the conceptual aspect of thinking.
> (Testimony of Dr. Kessner, p. 15)

Dr. Kessner rendered a qualified opinion based on review of documents and Dr. Vail's testimony:

> But I believe that he suffers from paranoid personality disorder, and that – under that disorder, people are susceptible to psychosis, and it can last, especially under situations of stress, from minutes to hours. So it could be fleeting. Psychosis can be fleeting, but they are consistently under the influence of a paranoid thought process. (Testimony of Dr. Kessner, p. 21)

When asked about the videotaped conversation and evidence of paranoia or delusional thinking, Dr. Kessner admitted her information was limited; however, she stated, "The – of course, the preoccupation with his wife, that she had been attacked, that could be involved because there are certain aspects of paranoia that involve sexual indiscretion by your partner." (Testimony of Dr. Kessner, p. 21) She testified that in the video Mr. Mays appears to be fearful, and he reacts like he is under attack. She didn't feel as though he was in control of his thought processes. She also stated that his thinking was chaotic. Dr. Kessner opined, "his actions are based on disordered thinking and a distorted concept of reality." (Testimony of Dr. Kessner, p. 40)

David Self, M.D.

Dr. David Self is a psychiatrist, who based his opinion on a record review and interviews with Mr. Mays' family members.

> Well, I believe, with reasonable psychiatric certainty, that Mr. Mays has a chronic and severe psychiatric illness, and I think that illness has caused him to experience delusional thinking and to act irrationally on the basis of that thinking. And I think that that distorted thinking and behavior driven by that was very centrally involved in the causality of this offense. (Testimony of Dr. Self, p. 129)

Dr. Self echoed Dr. Vail's explanation of delusions and expounded upon it,

> But delusions are irrational, untrue ideas that are clung to with a tenacity that's just unbelievable really. I mean, they're held more firmly than we all hold our basic core understanding and beliefs about the world.
>
> And the more you try to talk somebody out of them, the more evidence you present to them about those delusions, the tighter they're held as a rule of thumb. It's kind of the hallmark of delusional thinking, this tenacity with which they hold a grip on the mind. (Testimony of Dr. Self, p. 130)

Dr. Self testified about Mr. Mays' paranoid ideation. He believed that Payne Springs was poisoning him, "not just everybody, but specifically him." His investigation revealed that Mr. Mays also believed that Julio's Market was also intentionally trying to poison him. Dr. Self also referred to records which indicated that Mr. Mays thought his jailers were talking about poisoning prisoners. (Testimony of Dr. Self, p. 132-3)

From his review of the video of the incident, Dr. Self observed, "throughout the tape, you could hear him struggling to try to get back in equilibrium in several places, there, where you know, he was trying almost out loud [to] reassure himself it was going to be okay." (Testimony of Dr. Self, p. 139-140) Dr. Self continued, "You know, he was doing all he could to recompose himself and to come back and be in control again and not let the paranoia have its way." (Testimony of Dr. Self, p. 140)

Dr. Self conducted an investigation into Mr. Mays' childhood:

> Well, the environment he grew up in was not nurturing. It was not protective. As a matter of fact, it was frequently threatening. And so to come away from that environment with a perception of the world as a threatening and hostile place would be rational, basically.
>
> So I think it affected him it terms of just his world, view of the world as a hostile, unfriendly, threatening place, not irrationally so. I think that it affected him, his mental state more directly, because of the introduction to substance abuse at a tender young age, well before the ability to form good opinions or decisions or to be responsible for his own conduct. (Testimony of Dr. Self, p. 140)

Dr. Self was also asked to opine about Mr. Mays' home and property:

> Q. Okay. Now, I want to talk about the whole – I'm going to call it the Mays' property out there, the little two acres that he's got out there.
>
> Would someone that is in – that has this mental disorder that you've described, that Dr. Vail has described – would the way that that property has been set up with the iron fences around it, with the security cameras, with the "Keep Out" signs, would that be consistent – and the house not facing the road, would that be consistent with someone that exhibits these sort of –
>
> A Yes, sir. Some of those things, the security cameras and the motion-activated lights, the orientation of the house, are, I think, maybe derivates of the pathology. (Testimony of Dr. Self, p. 140-1)

Joan Mayfield, Ph.D.

Dr. Joan Mayfield has a doctorate in psychology and she specializes in neuropsychology. She was retained by defense counsel "to assess for organic brain dysfunction or cognitive impairment as a result of past drug history." (Dr. Mayfield report, p. 1)

Dr. Mayfield conducted an interview and administered testing to cover the following domains: intellectual functioning, academic functioning, attention/executive functioning, perceptual reasoning, memory, language and motor/visual perceptual functioning.

> Overall, Mr. May's performance throughout the evaluation was quite variable. He demonstrated strength in hands-on problem solving and academics (although relative to the population of individuals at this age level, his scores were consistently below the population mean). As the complexity of tasks increased, his performance declined relative to his performance on simpler tasks, as well as relative to the population of age-mates. Attention was problematic all day. He would voice understanding of a task, then after beginning the task would ask for further explanation. Memory abilities were impaired; however, delayed recall was superior to immediate recall. He demonstrated a constellation of cognitive and behavioral symptoms consistent with a Major Depressive Disorder. (Dr. Mayfield report, p. 5)

Dr. Mayfield made the following diagnosis:

Axis I	Dementia NOS secondary to chronic amphetamine and related sympathomimetic abuse
	Depressive Disorder, NOS
	Rule out Bipolar Disorder
Axis II	Deferred
Axis III	Status physical impairment to left arm secondary to gunshot wound
Axis IV	Incarceration, pending execution, separation from family and friends
Axis V	55 (Dr. Mayfield report, p. 5)

Dr. Mayfield's "Results and Interpretation" discuss Mr. Mays' various impairments. She administered a series of test of brain function to Mr. Mays. With respect to intellectual functioning, Dr. Mayfield found,

> Mr. Mays' cognitive functioning was assessed using the RAIS. His overall functioning was in the significantly impaired range with a Composite Intelligence Index score of 63. He earned a Verbal Intelligence Index of 68 and a Nonverbal Intelligence Index of 67. (Dr. Mayfield report, p. 3)

Dr. Mayfield found Mr. Mays IQ to be deficient. Mr. Mays IQ testing is greater than three standard deviations from normal.

In her testimony, Dr. Mayfield stated that testing gave the appearance that Mr. Mays was "functioning at a mild mental retardation range." Mr. Mays reported to Dr. Mayfield that he had received special ed services, and the records reflected placement in a special ed resource room. However, she felt that she didn't have evidence of a developmental or adaptive functioning delay based on her review of select documents. (Testimony of Dr. Mayfield, p. 11)

Dr. Mayfield noted, "His ability to mimic hand positioning of increasing complexity was significantly impaired." She remarked on his "impulsive response style." In her testimony, Dr. Mayfield noted a pattern,

> His attention was pretty variable during the testing. I would start and he would say that he understood the directions and then halfway through a task he would lose focus on what he was doing and I would explain, if possible. (Testimony of Dr. Mayfield, p. 8)

She also observed that not only did his performance deteriorate as the test progressed, testing revealed that his performance declined over time and with distractors. (Dr. Mayfield report, p. 3)

Dr. Mayfield testified that she believed Mr. Mays had dementia at the time of her testing and that he continues to suffer from dementia. (Testimony of Dr. Mayfield, p. 32) She further stated that Mr. Mays was not able to process, judge, react, or shift his decision-making as well as someone without dementia.

James C. Underhill, PsyD

Dr. James Underhill is a licensed psychologist in the State of Texas with a doctorate in clinical psychology. He was asked to offer an opinion as to whether Mr. Mays should be evaluated for competency to be executed. His opinion was formed from a record review, and he did not examine Mr. Mays.

Dr. Underhill cites to Mr. Mays' long history of mental illness. He notes that during his first hospitalization at Terrell State,

> At the time of admission, the attending physician noted that Mr. Mays was only oriented to month and year. Mr. Mays was noted to experience hallucinations and delusions at that time, would talk to himself, pace, and not communicate with others. Mr. Mays also reported that he was possessed by the devil. (Affidavit of James Underhill, p. 2-3)

Dr. Underhill summarizes dementia diagnosis by two previous experts.

> Dementia as a diagnostic term is indicative of a reduction in mental skills, most notably in memory and such cognitive skills as reasoning and problem-solving as well as just understanding the world around one's self in a cogent fashion. While the specific forms of his dementias were not designated by either doctor, the vast majority of dementias are progressive, meaning they result in a continuing deterioration, though at vastly different rates depending upon the specific form of dementia and it's treatment, of mental functioning. There is no indication that Mr. Mays has been treated in any manner that would slow his dementing process. Over a period of years, progressive dementias result in total incompetence and death. (Affidavit of James Underhill, p. 4)

Dr. Underhill also noted that his review of the Texas Department of Criminal Justice records do not document any treatment for his mental illness. In 2014, Mr. Mays was referred for mental health services, but there are no records to reflect that he received treatment.

> However, the lack of medication is concerning because Mr. Mays's diagnosed mental illnesses, brain impairment, and dementia are being left untreated, and thus, not improving and more possibly, becoming worse. This is evidenced in recent letters Mr. Mays has written to his family and friends. (Affidavit of James Underhill, p. 5)

Dr. Underhill concludes that "there is substantial doubt as to Mr. Mays's competency to be executed." He recommends further evaluation by mental health experts.

Cecil Reynolds, Ph.D.

Dr. Cecil Reynolds is Emeritus Professor of Educational Psychology, Professor of Neuroscience and Distinguished Researcher at Texas A&M University. Dr. Reynolds also formed his opinion based on a records review.

> These records reveal a man who has a history of serious mental illness in addition to multiple diagnoses of unspecified forms of dementia. The defendant is medically and psychiatrically complex. (Affidavit of Dr. Reynolds, p. 2)

Dr. Reynolds' conclusion is consistent with Dr. Underhill's opinion,

> Mr. Mays's dementia and other diagnoses, especially given Dr. Underhill's notation of a lack of recent treatment for these conditions, raise the question of whether he understands the imminent nature of his pending execution and rationally understands why the State seeks to execute him. (Affidavit of Dr. Reynolds, p. 3)

Summary of Expert Findings

All of the above experts in Mr. Mays' case found him to suffer from severe mental illness.

Dr. Vail assessed Mr. Mays after his transfer to the Smith County Jail. She recalled, in her trial testimony, that she had made diagnosed Mr. Mays as suffering from two psychiatric disorders, Major Depressive Disorder and Psychotic Disorder Not Otherwise Specified.

Dr. David Self also testified for the defense. He interviewed a number of family members and others who had direct knowledge of Mr. Mays. Dr. Self described the paranoid delusions Mr. Mays held prior to his incarceration, including believing that he was being poisoned, a delusion he continues to maintain. Dr. Self also discussed the long-term effects of chronic methamphetamine use. Although Mr. Mays abused methamphetamine, it appears that he stopped using it approximately 16 years prior to the offense. Although his history of drug abuse should be considered, differential diagnoses must be explored for the sequelae of symptoms with which Mr. Mays presents.

Dr. Mayfield concluded that Mr. Mays was able to handle brief or concrete situations; however, his attention declined as things became more complex or as time wore on.

> But where you would see the problems with the dementia or with the deficits that I saw with Mr. Mays is when a situation is novel, when something comes up that the person has not had a chance to think about or to process or to kind of generate a strategy of how to do it. So mainly, novel, complex, difficult stressful situations you would start seeing more signs of dementia or more difficulty. (Testimony of Dr. Mayfield, p. 29)

She also found Mr. Mays to be unable to effectively complete a simple task dealing with problem solving. Dr. Mayfield administered the Wisconsin Card Sorting Test to Mr. Mays to test his ability to effectively weigh and deliberate, to be able to adequately sequence his thinking, to understand social context and to respond accurately to social cues. Mr. May performed extremely poorly on this test in general, but there were specific problems he had that are relevant to competency. Mr. Mays did not understand the problem presented, although the problem was relatively simple. It took him 106 tries to get the first correct answer. Dr. Mayfield testified,

> He had a really hard time with this test. It took him 106 trials to determine that he could match them by color. There's -- if you get this test done correctly, there's six categories that you ought to be able to achieve. And he was ultimately able to do one category, and that was match by color. (Testimony of Dr. Mayfield, p. 16)

Dr. Mayfield diagnosed Mr. Mays with dementia, which is by definition a disorder that creates significant brain dysfunction. Dr. Mayfield's conclusions about dementia set the stage for the cognitive decline identification.

Dr. James Underhill and Dr. Cecil Reynolds both reported they had substantial doubt as to whether Mr. Mays has a rational understanding of the punishment of death. Both questioned whether Mr. May had the capacity to understand or believe that he could be executed.

Mr. Mays has an extended history of brain dysfunction manifesting as delusions, hallucinations, paranoid ideation, poor understanding of context and difficulty picking up social cues. His many letters from prison capture his inability to accurately understand his current social circumstances and context, i.e., being a prisoner on Death Row in Texas. Rather, he presents ongoing business opportunities to his family members as though he were out of prison. It is against this backdrop of longstanding, ongoing brain deficits leading to impaired problem solving and psychotic thinking that we must examine Mr. Mays in terms of his current competency to be executed.

Neuropsychiatric Mental Status Examination

A. General Description

1. *General appearance, dress, sensory aids* (glasses, hearing aid)

   Mr. Mays is a tall, white male, who looks older than his chronological age. His movements were slowed by his back, left shoulder, and left forearm deformities, which he said were secondary to a long-standing industrial injury. His right ear is also notched at its apex, and he has "railroad" ears, consistent with possible neurodevelopmental injury.

2. *Level of consciousness and arousal*

   His level of consciousness was good. There was no evidence of impaired arousal although he acknowledged awakening from a deep sleep just before the interview.

3. *Attention to environment*

   He was easily distractible despite attempts to focus.

4. *Posture* (standing and seated)

   Posture standing was somewhat bent due to his back injury. He was clearly uncomfortable sitting and rose several times.

5. *Gait*

   Gait testing was impaired by ankle shackles, which could not be removed. It appeared to be fluid, but tandem walking and skipping could not be tested.

6. *General demeanor* (including evidence of responses to internal stimuli)

   Mr. Mays' did not appear to respond to internal stimuli. He often had his left eye closed and would tilt his head in a quizzical look. Attorney Katherine Black noted similar observations: "At times during my visit, Mr. Mays had difficulty speaking with me and had to stop. During these pauses, Mr. May would at times grab his head and wrinkle his face with his eyes closed." (Affidavit of Katherine Black, p. 1)

7. *Response to examiner* (eye contact, cooperation, ability to focus on interview process)

   He had reasonable eye contact and was generally cooperative. However, his paranoid ideation led him to answer many questions with the refrain, "I'd prefer not to answer that, Doctor." This response was particularly true around questions about his personal life and about the instant offense. Katherine Black experienced similar response from him, "When I asked about why he was in prison, he did not give me a clear answer and he seemed somewhat confused by the question." (Affidavit of Katherine C. Black, p. 2)

8. *Native or primary language:* English

B. Language and Speech

1. *Comprehension* (words, sentences, simple and complex commands, and concepts)

   His comprehension was good for short sentences. He had difficulty with test instructions, however. For example, when I was giving him directions for the trail making, he kept looking at me rather than looking at the testing material. I had to direct him to watch the example exercise.

2. *Output* (spontaneity, rate, fluency, melody or prosody, volume, coherence, vocabulary, paraphasic errors, complexity of usage)

   His language was fluid with normal volume. Vocabulary was simple, yet straight forward. Testing for paraphasic errors was negative on the Montreal Cognitive Assessment.

3. *Repetition*

   There was repetition of theme, consistent with Dr. Mayfield's finding of perseveration, which is defined as getting stuck, on the Wisconsin Card Sorting, where Mr. Mays had over hundred attempts before he was able to complete the first set.

C. Thought

1. *Form* (coherence and connectedness)

   His thought processes were connected, but delusional. When his delusions were questioned, his paranoid ideation disrupted the quality of his thinking, and he would retreat by saying, "I would rather not talk about that, Mr. Woods.".

2. *Content*

   Thought content was paranoid, delusional, suspicious, grandiose. Mr. Mays described developing a sustainable product to be used in the energy sector. He believes he is being killed to keep the device from coming to market. It is his belief that this device would hurt the oil industry tremendously and, therefore, he is being conspired against. This delusion is consistent with culture bound delusions.

   a. *Ideational* (preoccupations, overvalued ideas, delusions)

      Mr. Mays' delusions preoccupy much of his time. He acknowledged working on his project more than his legal case and stated that he reads nothing else, except for the Bible. When asked if he would trade the secrets of his device in return for his life, he replied, "No," clearly making this delusion over-valued.

   b. *Perceptual* (hallucinations)

      Mr. Mays denies hallucinations on a consistent basis. However, he does note a period of time he cannot pinpoint exactly, when he believed a small man sat on his shoulder, waving a knife at him. Mr. Mays attempted to take the knife, but could not. It was Mr. Mays' belief that this hallucination was caused by a medication he was taking. He could not recall the name of the medication.

D. Mood and Affect

1. *Internal mood state* (spontaneous and elicited; sense of humor)

   Mr. Mays was anxious. He did not demonstrate any sense of humor. However, it was not an examination that elicited much humor.

2. *Future outlook*

   Mr. Mays' future outlook is clouded by his delusional thinking. When asked what the chances were of him being able to leave prison to complete and sell his sustainable device, he said, "50-50."

3. *Suicidal ideas and plans*: He denies suicidal ideation and plans.

4. *Demonstrated emotional status* (congruence with mood)

   Mr. Mays emotional congruence is consistent, yet very flat, which is consistent with his psychosis as well as his cognitive deficits.

E. Insight and Judgment

1. *Insight*

a. *Self-appraisal and self-esteem*

Mr. Mays' self-appraisal is limited because he is operating from a delusion. Mr. Mays reported, "I've been reading the encyclopedia about the wind. It's helping create my system."

b. *Understanding of current circumstances*

His understanding of current circumstances is undermined by his delusions. He understands Texas is trying to kill him. He believes they are trying to kill him to prevent him from developing and selling his wind device and technology, which he believes is worth "billions of dollars." When asked if he was willing to sell the technology to Texas to save his life, he asked, "How much are they willing to pay?" He then said, "No." He believes he has a 50/50 chance of getting out and selling his technology.

c. *Ability to describe personal psychological and physical status*

Mr. Mays believes he is taking Ibuprofen, a pain medication, for his asthma. He complains of severe breathing problems that are secondary to "different air in the cells."

2. *Judgment*

a. *Appraisal of major social relationships*

When asked about how the State of Texas found out about his sustainable business, he said they scanned his mail to his sister. He said he knew they read it. He then went on to elaborate how he had attempted to bring his sister into the business because she had worked in the "electrical" business for more than 20 years. He reported that she said she was "too busy with other things like family" to be part of his business. He hoped he would be able to enlist her when he was released. Mr. Mays' sister works in plumbing sales, not electricity.

b. *Appraisal of current situation*

When asked what stage Mr. Mays' legal proceedings were currently in, he frankly admitted that he did not know. "I think I'm on appeal, isn't that right?" Although technically correct, this is a simplified understanding of the current legal proceedings.

F. Cognition

1. *Memory*

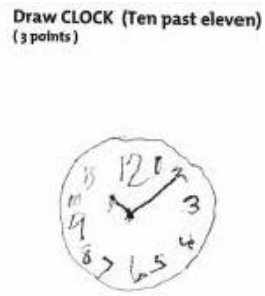
a. *Spontaneous* (as evidenced during interview)

Mr. Mays' memory is impaired. He could not tell me what medications he was taking, one time telling me he was on no medications, yet other times telling me he was on multiple medications. He could not tell me if a surgery he had undergone on what appears to be his submandibular glands was during his incarceration.

b. ***Tested*** (incidental, immediate repetition, delayed recall, cued recall, recognition; verbal, nonverbal; explicit, implicit)

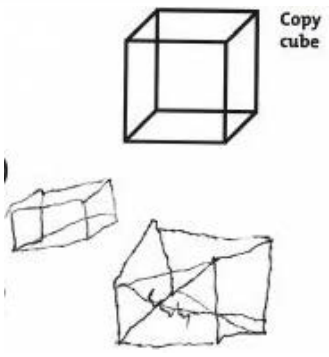
Mr. May's tested memory is extremely poor, a banner symptom for the diagnosis of dementia. Dr. Mayfield noted in her testimony, "The subtests look at verbal memory, a visual memory, how he's able to recall verbal information after a delay, and then it also gives us a composite memory. He did really poorly on all of these tests. His performance was in the significantly-impaired range overall for his verbal and nonverbal memory." (Testimony of Dr. Mayfield, p. 20)

3. *Visuospatial skills*



Visuospatial skills were mixed. On simple tests of visuospatial skills like the Clock Test on the Moca, he performed relatively successfully. (put Clock test here). However as Dr. Mayfield moved into more complex levels of visuospatial construction which brings in executive functioning skills, his ability eroded.

4. *Constructional ability*



Mr. Mays' constructional ability is currently limited. He was unable to copy of cube from the MOCA. This reflects the decrease in his construction skills. Alain Rowe, M.D., testified that Mr. Mays was able to construct fences and build docks for him. This degradation of skills is consistent with the diagnosis of Major Neurocognitive Disorder, Alzheimer's type.

5. *Mathematics*

Mr. Mays was able to perform serial 7s, correctly subtracting 7 from 100. He was able to correctly subtract 7 from each subsequent answer. Maintaining this childhood developed skill is, again, consistent with a later onset of dementia form illness.

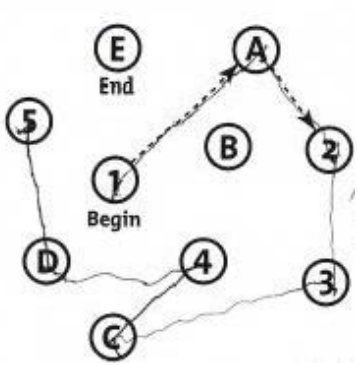
6. *Language and Paraphasic Errors*

Mr. Mays did not exhibit paraphasic errors, repeating two sentences from the MOCA accurately. However, he was only able to provide 5 words that started with F in a minute and repeated the word "fun" three times.

7. "Executive functions"

Executive functions, those cognitive skills that allow reflection, insight, effectively weigh and deliberate, understand social cues and context, and sequence thinking are significantly impaired in Mr. Mays. These are the very skills needed to appreciate his position, recognize options, plan for future action, and make decisions.

I administered a very simple trails making test with Mr. Mays. It took me several readings of the instructions to him for him to understand how to perform the task. He was unable to complete the task successfully.



Dr. Mayfield gave Mr. Mays a series of executive functioning tasks, including the Wisconsin Card Sorting Test. His results were consistently within the 1st percentile, meaning 99% of persons taking the test performed better than he did.

> That tells us when things are simple and concrete that he is able to perform a task at an appropriate level. But as things become more busy, as things get a little overwhelmed, as there's more to process at the same time, it takes him longer to be able to take that information and process it even on a simple task like connecting numbers. (Testimony of Dr. Mayfield, p. 14)

When Dr. Mayfield administered the Wisconsin Card Sorting Test, a straightforward test of executive functioning skills in the left lateral frontal lobe of the brain, Mr. Mays performed abysmally.

In summary, Mr. Mays' executive function was significantly impaired. Gary Kay, Ph.D., one of the developers of the Wisconsin Card Sorting Test, says the tasks it assesses should only be assessed with that instrument once in a life time, because the cueing effect of this test is so high, if a person takes it once, they should be able to pick up the system and perform it much better the second time. This is true of many executive skills instruments, since they

are primarily problem solving tasks. When I administered the very simple trail making task from the MOCA, Mr. Mays had been administered similar instruments from Dr. Mayfield. He was still unable to even approach the task effectively, repeatedly asking me for directions and looking at me as I was giving him directions rather than looking at the task, which had instructions built in.

8. *Abstraction*

Mr. Mays' abstraction ability was severely impaired. When asked what was similar between a banana and an apple, he replied, "They are both on trees." This is accurate, but extremely concrete. They are both fruit. Similarly, when asked what was similar between a bicycle and a train, his concrete answer was, "They both have wheels." Again, concrete, missing the abstract focus. They both are transportation. When asked the similarity between a watch and a ruler, he was initially stumped then brightened and said, "Both have numbers." Correct, and concrete. The abstract answer is they both measure.

He was also administered the Picture Test from the Cognistat. When asked what story told, Mr. Mays was unable to tell a coherent story. Rather, he said there was a man on a bicycle and two young girls were looking at him up on the bridge. There was only one other young person. The person with the hat asleep, which he didn't mention. There was a tree, which he mentioned. He did not mention the fish. Mr. Mays was unable to pull the pieces together and tell a coherent narrative based on the image. This is consistent with his inability to tell me what stage of legal proceedings he is currently in and with his belief that his chances of getting out and starting a sustainable energy business is "50/50."

His level of concreteness helps explain Mr. Mays' inability to see the big picture, to have awareness, but not the insight to accurately divine the obvious, in this case, the potential of his execution for crimes for which he has been convicted rather than a delusional belief that Texas does not want him to damage their oil business with sustainable energy.

Diagnosis

Major Neurocognitive Disorder

It is my professional opinion that Mr. Mays suffers from a Neurocognitive Disorder. The *DSM-5* criteria are:

A. Evidence of significant cognitive decline from a previous level of performance in one or more cognitive domains (complex attention, executive function, learning and memory, language, perceptual-motor, or social cognition) based on:

   1. Concern of the individual, a knowledgeable informant, or the clinician that there has been a significant decline in cognitive function; and
   2. A substantial impairment in cognitive performance, preferably documented by standardized neuropsychological testing or, in its absence, another quantified clinical assessment.

B. The cognitive deficits interfere with independence in everyday activities (i.e., at a minimum, requiring assistance with complex instrumental activities of daily living such as paying bills or managing medications).

C. The cognitive deficits do not occur exclusively in the context of a delirium.

D. The cognitive deficits are not better explained by another mental disorder (e.g., major depressive disorder, schizophrenia).

   Specify whether due to: Alzheimer's disease, Frontotemporal lobar degeneration, Lewy body disease, Vascular disease, Traumatic brain injury, Substance/medication use, HIV infection, Prion disease, Parkinson's disease, Huntington's disease, Another medical condition, Multiple etiologies, or Unspecified.

Mr. Mays meets the first criteria. Although he has been mentally ill for decades, there has been a clear decrease in his neurological functioning.

Dr. Alain Rowe was a family friend and employer of Mr. Mays. He described Mr. Mays as both psychiatrically impaired yet able to work effectively. Dr. Rowe's description of Mr. Mays' inability to read social cues and odd behavior is consistent with difficulty with cognitive planning; however, certain motor planning skills remained intact. That level of functioning had deteriorated by the time Dr. Mayfield tested Mr. Mays, who demonstrated impaired motor functioning and poor visuospatial functioning, meaning his ability to measure and visually organize things like building a fence was impaired by the time she examined him.

The second criteria, a substantial decline in cognitive functioning is documented. Not only does Dr. Mayfield's testing support the diagnosis of Major Neurocognitive Disorder, Dementia subtype, my screening neurocognitive examine also corroborates. Mr. Mays' ability to function in this specific context of everyday functioning is impaired.

Mr. Mays is currently free of substance abuse and has been for more than twenty years. This allows us to distinguish his neurobehavioral disorder from a substance use disorder which may have clouded his earlier presentation prior to incarceration.

Mr. Mays' home environment and genetic predisposition to mental illness along with his cognitive impairments limited him severely. As Dr. Self put it, "the twig got bent in the childhood, and the tree grew that way." (Testimony of Self, p. 158)

Rule Out Schizophrenia

In addition to major neurocognitive disorder, Mr. Mays manifests symptoms that are consistent with the diagnostic criteria for schizophrenia; therefore, a diagnosis of schizophrenia must also be ruled out.

A. Two (or more) of the following, each present for a significant portion of time during a 1-month period (or less if successfully treated). At least one of these must be (1), (2), or (3):

    1. Delusions.
    2. Hallucinations.
    3. Disorganized speech (e.g., frequent derailment or incoherence).
    4. Grossly disorganized or catatonic behavior.
    5. Negative symptoms (i.e., diminished emotional expression or avolition).

B. For a significant portion of the time since the onset of the disturbance, level of functioning in one or more major areas, such as work, interpersonal relations, or self-care, is markedly below the level achieved prior to the onset (or when the onset is in childhood or adolescence, there is failure to achieve expected level of interpersonal, academic, or occupational functioning).

C. Continuous signs of the disturbance persist for at least 6 months. This 6-month period must include at least 1 month of symptoms (or less if successfully treated) that meet Criterion A (i.e., active-phase symptoms) and may include periods of prodromal or residual symptoms. During these prodromal or residual periods, the signs of the disturbance may be manifested by only negative symptoms or by two or more symptoms listed in Criterion A present in an attenuated form (e.g., odd beliefs, unusual perceptual experiences).

D. Schizoaffective disorder and depressive or bipolar disorder with psychotic features have been ruled out because either 1) no major depressive or manic episodes have occurred concurrently with the active-phase symptoms, or 2) if mood episodes have occurred during active-phase symptoms, they have been present for a minority of the total duration of the active and residual periods of the illness.

E. The disturbance is not attributable to the physiological effects of a substance (e.g., a drug of abuse, a medication) or another medical condition.

F. If there is a history of autism spectrum disorder or a communication disorder of childhood onset, the additional diagnosis of schizophrenia is made only if prominent delusions or hallucinations, in addition to the other required symptoms of schizophrenia, are also present for at least 1 month (or less if successfully treated).

There is no evidence of delirium. However, a diagnosis of Schizophrenia should be considered, given the potential onset of psychosis during his twenties, which is a common time of onset of schizophreniform disease.

Attorney Katherine Black documented behaviors that fit this criteria:

> Mr. Mays also told me that he heard voices that he connected to "evil spirits." To avoid these voices, Mr. Mays would stuff his ears with paper, put socks over his head, lie with this head next to a fan flush the toilet, or make noise. (Affidavit of Katherine Black, p. 1)

Clearly Mr. Mays has a history of delusions and hallucinations. These symptoms have lasted for decades, which means drug induced psychosis has been effectively ruled out. A period of social deterioration occurs in Schizophrenia that may be missing in Mr. Mays presentation. However, the diagnosis is not the central factor. More important are symptoms that have the potential to impair understanding, problem solving, understanding of social cues and understanding of context. Mr. Mays is critically impaired in these areas.

Forensic Conclusion

Randall Mays is a profoundly demented man with additional delusional thinking. His delusional thinking, a deeply held belief that Texas wants to kill him in order to protect their oil business from his wind-driven sustainable concoction, is consistent with the fixed, false belief required for delusional thinking. His delusional beliefs are intermixed with an eroding brain that is no longer working, a brain that believes he is developing a wind- driven, sustainable energy source that he will be able to walk off Death Row to launch a successful business.

Mr. Mays does not understand Texas is attempting to execute him for committing a crime. He recognizes that he was convicted of a crime. He does not have a rational understanding of the connection between his crime and punishment. Mr. Mays does not connect the crime to his pending execution. Rather, he believes the State of Texas is vigorously attempting to prevent him from being able to perfect his technology and personally bring it to the energy market place. Mr. Mays' mental state is so distorted by a mental illness that his awareness of the crime and punishment has no relationship to the understanding of those concepts shared by the community.

The irony of Mr. Mays' delusion is that delusions are culture bound, meaning they often hold a touch of the culture a person is raised in. Mr. Mays worked on oil rigs for years as a young man. His delusion is much like someone in a Christian country thinking they are Jesus Christ, a culture-bound fixed, false belief. This lends a credibility to its content, refuting possible questions of malingering.

Mr. Mays has been administered significant cognitive testing which also demonstrates brain dysfunction. Through it, we see brain function deterioration. The internal consistency of test deficits in executive functioning and relative strengths in pre-adolescent strengths, such as subtraction, also refutes malingering.

Mr. Mays has awareness without insight, the very essence of Ford's and Panetti's findings. He is aware of a proceeding occurring, but he cannot identify them accurately. His understanding of the basis for the motivation of the current proceeding is delusional, documented long before this specific proceeding began. His delusions are intermixed with the perseverative immobility of a brain that no longer works except on the most concrete levels.

It is my professional opinion, which I hold to a reasonable degree of neuropsychiatric certainty, that Randall Mays meets the Ford standard for incompetence and is therefore incompetent to be executed.

Thank you for allowing me to examine Mr. Mays.

George Woods, M.D.

Exhibit A: Materials Reviewed

Court Documents

Agreed Order

CCA Opinion re Competency

Motion re Competency To Be Executed

Exhibits to Motion re Competency To Be Executed

- Affidavit of James Underhill
- Affidavit of Cecil Reynolds
- Affidavit of Katherine Black
- Trial Testimony of Dr. Theresa Vail
- Trial Testimony of Dr. Gilda Kessner
- Trial Testimony of Dr. David Self
- Randall Mays letters
- Report of Dr. Joan Mayfield
- Civil Commitment Records
- Terrell Records (1983)
- Terrell Records (1985)
- ETMC - Tyler Records
- Smith County Jail Records
- Selected UTMB Records
- Selected Polunsky Unit Records

Defense Punishment Phase Testimony

Testimony of Dr. Joan Mayfield

Other Documents

Miscellaneous Medical Records

Smith County Jail Medical Records

Randall Mays Hospital Records

State Copies of Randall Mays Letters

Randall Mays Letter to Judge

State Produced Summaries of Jail Phone Calls

Smith County Jail Miscellaneous Documents

Education Records

Randall Mays Criminal History in Gun Barrel City, Texas

Prior Calls for Police Service to Mays Residence

Past Crisis Intervention Records Involving Randall Mays

Transcript of Audio from Incident

Eustace Police Department Offense Report

Mabank Police Department Offense Report

Trinidad Police Department Offense Report

State Interview with Flight Nurse Kelly Cox

State Interview with Mays' Neighbor Kelly Nicholson

State Interview with Office Kevin Harris

Supplemental Offense Reports

Witness and Victim Statements re Offense

Post-Arrest Toxicology Report on Randall Mays

Exhibit B

GW GEORGE W. WOODS, JR., M.D., F.A.P.A.

A PROFESSIONAL CORPORATION
DIPLOMATE OF THE AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY

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Atlanta, GA 30319

437 South Rotherwood Avenue
Evansville, Indiana 47714

EDUCATION

1981-1982: American Psychiatric Association/National Institute of Mental Health Fellowship Pacific Medical Center, San Francisco, California

1981: Residency- Psychiatric - Pacific Medical Center, San Francisco, California

1977-1978: Internship—Medical/Surgical, Highland Hospital, Oakland, California

1977: MD, University of Utah, Salt Lake City, Utah

1969: BA, Westminster College, Salt Lake City, Utah

LICENSES & CERTIFICATIONS, OFFICES HELD

2016: Associate Editor, Journal of Policy and Practice in Intellectual Disabilities

2016: Deputy Chairperson, International Association for the Specialized Study of Intellectual and Developmental Disabilities, Special Interest Research Group(SIRG)

2015: President, International Academy of Law and Mental Health

2014: Certified International Association for the Scientific Study of Intellectual and Developmental Disorders Academy (IASSDD) Academy Instructor.

2013: President Elect, International Academy of Law and Mental Health

2009-2013: Secretary General, International Academy of Law and Mental Health

2008: Certified Mediation Specialist, California State University, Sacramento, California

2004-2005: Interim License, Zanzibar Revolutionary Government

2004: Fellow: American Psychiatric Association

1992: Certified by the American Board of Psychiatry and Neurology

1979: Licensed Physician in California

CLINICAL EXPERIENCE & CONSULTATION

2016: San Francisco Police Department Crisis Intervention Training (CIT)
The Brain

2015: San Francisco Police Department Crisis Intervention Training(CIT}:
Substance Abuse

2015: San Francisco Police Department Crisis Intervention Training (CIT):
The Adolescent Brain and Cognition: Slow Down and Watch

2015: San Francisco Police Department Crisis Intervention Training(CIT):
The Developing Brain

2015: Criminal Justice and Mental Health Reform.
San Francisco Collaborative Courts, Collaborative Courts Training Series

2015: Complex Trauma: Effects and Intervention.
San Francisco Collaborative Courts, Collaborative Courts Training Series

2014: Undoing the Damage: The Mental Health and Criminal Justice Tragedy.
San Francisco Collaborative Courts, Collaborative Courts Training Series

2014: The Constitutional Implications of Ebola: Civil Liberties & Civil Rights In Times of Health Crises, University of California, Irvine Law School

2014: San Francisco Police Department Crisis Intervention Training(CIT): The adolescent and geriatric brains, more alike than different?

2014: Moderator; The Easy Read Project: an investigation into the accessibility value of health-based "easy read" literature; Television viewing habits and preferences of adults and your people with intellectual disability: a survey using a Talking Mats Questionaire; Effectiveness of Computer-Based Simulations on Learning of Social and Communication Skills by Children with IDD and ASD; Social media and intellectual disabilities: IASSID European Regional Congress, Vienna.

2014 Risk Assessment in Neurodevelopmental Disorders, IASSID European Regional Congress, Vienna

2013: Task Force on Determination of Intellectual Disability for the Courts, American Association for Individuals with Intellectual Disabilities

2011: San Francisco Police Department Crisis Intervention Training (CIT): Suicide Assessment, Mood disorders, thought disorders, and personality disorders

2010: Task Force on Mental Retardation and Forensic Practice, American Association for Individuals with Intellectual Disabilities.

2006-2009: Projects Among African Americans To Explore Risks for Schizophrenia (PAARTNERS), Consensus Diagnosis Group, Minority Mental Health Research Group, Department of Psychiatry and Behavioral Sciences, Morehouse School of Medicine, Atlanta, Georgia

1996-present: Individual Private Practice, California Bay Area

2006: National Consortium on Disaster Response for the Poor and Underserved, Developmental Task Force for the Minority Mental Health Professions Foundation, Atlanta, Georgia

2006: Georgia Congressional Representative Cynthia McKinney's Post-Katrina Working Task Force

1998-2004: Consultant-the Board of Directors, Crestwood Behavioral Health Systems, Stockton, California

1994-1996: Senior Consulting Addictionologist, New Beginnings Programs, San Ramon and Pinole, California

1988-1996: Individual Private Practice, Pinole, California

1994-1995: Chemical Dependency Consultant, Physicians' Advisory Committee, Alameda Contra Costa Medical Association

1990-1995: Consultant, Insomnia Division of the Sleep Disorders Center, Doctors Hospital, Pinole, California

1992-1994: Qualified Medical Examiner, Industrial Medical Council, State of California

1990-1994: Medical Director, Pain Management Program, Doctors Hospital, Pinole, California

1991-1993: Psychiatric/Pharmacologic Consultant, Triumph Over Pain (TOP Program), Kentfield Rehabilitation Hospital, Kentfield, California

1991-1993: Psychiatric Consultation, NeuroCare Corporation, Concord, California

1989-1994: Clinical Director, New Beginnings Chemical Dependency Program, Doctors Hospital, Pinole, California

1988-1993: Private Practice, Comprehensive Psychiatric Services, Walnut Creek

1983-1990: Staff Psychiatrist, Crestwood Manor, Vallejo, California

1982-1983: Medical Director, Westside Geriatric Services of Family Service Agency of San Francisco

1982-1983: Staff Psychiatrist, Villa Fairmount Psychiatric Facility, San Leandro, California

1981-1982: Assistant Director of the Inpatient Center, Director of Geriatric Services, Pacific Medical Center, San Francisco, California

1980-1981: Medical Director, Clinica De La Raza, Blythe, California

1979-1981: Emergency Room Physician, Medical Emergency Services, Fairmount Hospital, San Leandro, California

INTERNATIONAL CLINICAL EXPERIENCE & CONSULTATIONS

2016: Cultural Implications of Utilizing and Developing Neuropsychological and Intelligence Instruments. United Nations Human Rights Commission, Zomba, Malawi

2015: Neurodevelopmental Disorders: Training for Clinicians. Zomba Mental Hospital, Zomba, Malawi

2006-2008: Adjunct Professor, Makerere University, Department of Psychiatry, Kampala, Uganda

2006-present: Human Rights Committee, International Academy of Law and Mental Health, Montreal, Quebec, Canada

2006: Visiting Staff Psychiatrist, Butabika National Hospital, Kampala, Uganda

2004: Clinical Consultant, Kidongo Chekundu Mental Hospital, Zanzibar, Tanzania

2004: Scientific Committee, International Academy of Law and Mental Health

1998-2004: Technical Advisor, Documentation Committee, Operation Recovery, Kenya Medical Association

1999-2003: Advisor - the Jomo Kenyatta National Hospital, PTSD Project, Nairobi, Kenya

1998-2003: Technical Advisor- Recovery Services, Ministry of Health, United Republic of Tanzania

ADVISORY BOARDS

2016: Marsh Clinics, Oakland, California

2013: International Association of Trauma Professionals

2013: ***Celebrating a Decade of Behavioral Health Court***, San Francisco, California, Honorary Committee

2012: Executive Committee, Challenging Behaviors Special Interest Research Group, International Association for the Scientific Study of Intellectual Disabilities

2006-present: Executive Committee, International Academy of Law and Mental Health

2004-2007: Advisory Board, Health Law Institute, DePaul University, College of Law

2004-present: Advisory Board, Human Dignity and Humiliation Studies, University of Trondheim, Norway

2004-2010: Board of Directors, The Center for African Peace and Conflict Resolution, College of Health and Human Services, California State University, Sacramento

2003-present: International Board of Directors, International Academy of Law and Mental Health

FACULTY AND PROFESSIONAL APPOINTMENTS

2012-present: Lecturer, University of California Berkeley School of Law

2012: Newsletter Editor, Challenging Behaviors Special Interest Research Group, International Association for the Scientific Study of Intellectual Disabilities

2008: Secretary, American Psychiatric Association's Africa Action Committee

2003: Adjunct Professor, California State University, Sacramento, Department of Educational Leadership and Public Policy, Sacramento, California

2002-present: Adjunct Professor, Morehouse School of Medicine, Department of Psychiatry, Atlanta, Georgia

1999-2004: Affiliate Professor, University of Washington, Bothell Campus, Interdisciplinary Arts and Sciences

1996-2000: Adjunct Professor, University of California, Davis, Department of Psychiatry, Forensic Fellowship

1992: Summer Faculty, North Central Educational Research Laboratory, Northeastern University

1986-2002: Adjunct Professor, University of Nebraska, Omaha, College of Public Affairs

CLINICAL LECTURES

2017: Culture, Science, and Justice: People of Color and the Mentally Ill as the Canaries in our Toxic Mental Health and Mass Incarceration System; *DIGNIFYING MADNESS: CIVIL COMMITMENT, DISABILITY RIGHTS, AND MASS INCARCERATION*
A Symposium at UC Berkeley School of Law

2016: United States Congressional Briefing: Gun Violence and Trauma, Washington, DC

2016: Culture, Science, and Justice: Hampton University, Hampton, Virginia

2016: Alcohol Related Neurodevelopmental Disorders: An Update on Diagnosis, Assessment, and Treatment, International Association for the Specialized Study of Intellectual and Developmental Disorders(IASSIDD), Melbourne, Australia

2016: Children and Adolescents with Developmental Disorders (Moderator); International .Association for the Specialized Study of Intellectual and Developmental Disorders (IASSIDD), Melbourne, Australia.

2016: Psychiatric Conditions and Developmental Disabilities (Epilepsy, 22q11.2 deletion syndrome, Potoki-Lupski duplication syndrome) (Moderator): International Association for the Specialized Study of Intellectual and Developmental Disorders (IASSIDD) Melbourne, Australia.

20016: Aging and Cognition in Prisoners with Intellectual and Developmental Disabilities (Workshop): International Association for the Specialized Study of Intellectual and Developmental Disorders (IASSIDD), Melbourne, Australia

2016: Justice For The Mentally Ill: The ABA Criminal Justice Mental Health Standards. Disclosing Danger and Other Real-World Issues. The American Bar Association and UC Hastings Constitutional Law Quarterly and Race and Poverty Law Journal

2015: Moderator**,** Women & Mass Incarceration: The U.S. Crisis of Women and Girls Behind Bars. Bad Science. The University of Californa Law School, Irvine

2015: Neurobehavioral Assessment: Malawi Human Rights Commission

2014: Adolescents and the Elderly; More alike than you would expect." San Francisco Police Department Crisis Intervention Training.

2014: Bipolar Disorder in Pregnancy: Meena Kumari, MD: George Woods, MD, Faculty Discussant

2013: High Prevalence of Brain Pathology in Violent Prisoners:
A Qualitative CT and MRI Scan Study: Journal Club, Racquel Reid, MD, George Woods, MD, Faculty Discussant

2013: Medical disorders that masquerade as psychiatric disorders. International Academy of Law and Mental Health, Amsterdam, Netherlands

2013: Does Policy Drive Science? University of California, Berkeley, Integrative Biology Course (MCB15).

2013: Understanding Combat-Related Post-Traumatic Stress Disorder: Andrea Brownridge, MD, JD; George Woods, MD, Faculty Discussant

2012: The Neurobiological Effects of Trauma: District of Columbia Criminal Court, Superior Division Third Annual Criminal Justice Conference, Mental Illness and Treatment: Past Present and Future

2012: Neurodevelopmental Disorders: International Association for the Scientific Study of Intellectual Disorders, Halifax, Nova Scotia

2012: Diabetes and Weight Control, Moderator: International Association for the Scientific Study of Intellectual Disorders, Halifax, Nova Scotia

2012: Health Inequalities in Developmental Disabilities, Moderator: International Association for the Scientific Study of Intellectual Disorders. Halifax, Nova Scotia

2012: The Neurobiology of Trauma: San Francisco YWCA Intern Training.

2011: Mood and Thought Disorders in Crisis Intervention: San Francisco County Sheriff's Crisis Intervention Training, San Francisco, California.

2011: Fetal Alcohol Spectrum Disorders and the Criminal Justice System, National Press Club, Washington, DC.

2011: The Epidemiology of Medicalization of Prisoners in the United States, International Academy of Law and Mental Health, Berlin, Germany

2011: Intellectual Disability and Fetal Alcohol Spectrum Disorder: International Academy of Law and Mental Health, Berlin, Germany

2011: Neuronal Plasticity: Cognitive Skills Retraining for students with acquired brain injuries or learning disabilities. College of Alameda, Alameda, California

2011: "The Neurobiology of Trauma In Children: Lessons About Early Childhood; Families First, Atlanta, Georgia

2010: From the Plantations/Asylums to the Prisons: The Relationship between Humiliation, Stigma, Economics and Correctional Care for the Mentally Ill: 2010 Workshop on Transforming Humiliation and Violent Conflict representing the 16th Annual Human DHS Conference and the Seventh Workshop on Humiliation and Violent Conflict Columbia University, Teachers College, New York

2010: Applying the Institute of Medicine Quality Chasm Framework to Improving Health Care for Mental and Substance Use Conditions; Morehouse School of Medicine, Department of Psychiatry, Journal Club

2010: Psychiatric Manifestations of Physical Disease. Morehouse School of Medicine, Department of Family Practice, Atlanta, Georgia.

2009: Sleep Disorders in Psychiatric Practice: Morehouse School of Medicine, Department of Psychiatry, Atlanta, Georgia

2008: Moderator: The Impact of Mental Health Issues on Aging, Particularly as it Relates to Alzheimer's Dementia and Parkinson Disease, National Medical Association, Atlanta, Georgia

2008: Aging and Mental Health: What is Wellness and What is Pathology? National Medical Association, Atlanta, Georgia

2007: The Price of Leadership and the Cost of Success: Urban Leadership Program, Graduate School of Educational Leadership and Public Policy, California State University, Sacramento

2007: Cognitive Assessment and Curriculum, Department of Educational Policy, Urban Leadership Program, Graduate School of Educational Leadership and Public Policy, California State University, Sacramento

2007: Complex disorders of trauma and torture: The neurological bases examined through sleep disorders, Padua, Italy

2006: Clinical Aspects of Forensic Evaluation, Makerere University, Department of Psychiatry,

Kampala, Uganda

2006: Memory, Medications, and Aging, Crockett, California Women's Club

2006: Cultural Differences: Ethics or Efficacy, Mental Health, Ethics and Social Policy, University of Montreal, Quebec, Canada

2006: An Update on Memory Function, Grand Rounds, Morehouse School of Medicine, Atlanta, Georgia

2006: Moderator & Respondent (Representing Morehouse School of Medicine) Consortium for the Poor and Underserved- Cultural Factors, DePaul University School of Law and Health, Health Law Institute

2005: Constitutional Theory and Medical Rights, Montreal, Quebec, Canada

2005: Medical Diseases with Psychiatric Manifestations: Morrison and Foerster, LLP

2004: Diagnosis and Treatment of Malaria-Induced Altered Mental States: Kidongo Chekundo Mental Hospital, Zanzibar, Tanzania

2003: Law, Mental Health, and Popular Culture: University of San Francisco College of Law

2003: Accommodating Mental Illness in the Workplace: The 28th International Conference, International Academy of Law and Mental Illness, Sydney, Australia

2002: Cultural and Psycho-biological Factors In the Assessment and Treatment of Trauma: Don't Believe Everything You Think: Traumatology 1003, The Trauma Recovery Institute, Morgantown, West Virginia

2002: Trauma, Recovery and Resiliency, University of Washington, Bothell, 2002

2001: Understanding the Relationship Between Neuroimaging, Neuropsychology, and Behavior: National Medical Association 2001 Annual Convention and Scientific Assembly, Nashville, Tennessee, 2001

2001: The Thrill is Gone: Keynote Address, African American History Month, Loras College, Dubuque, Iowa

2001: Disparate Access- Healthcare: University of Washington, Bothell Campus Nursing Program

2000: Anger Management: West Contra Costa Stroke and Aphasia Support Group, Doctors Hospital, San Pablo, California, 2000

2000: Race, Culture and Bioethics: American Society for Bioethics Annual Conference, Panel Discussion, Salt Lake City, Utah

2000: Globalization and Postmodernism: International Congress on Law and Mental Health, Siena, Italy

2000: Globalization and Neuropsychiatry: Answers that Transcend Culture? International Congress on Law and Mental Health, Sienna, Italy

1998: Managed Care in the Kenyan Medical Environment: Kenyan Medical Environment: Kenyan Medical Association, Aga Khan Hospital, Nairobi, Kenya

1994: The Relationship Between Holidays and Mood Disorders: Doctors Hospital Pinole, California

1994: The Role of the Mental Health Expert as a Liaison Between Chemical Dependency and Pain Management Programs: American Academy of Pain Management, Vancouver, Canada

1994: Chemical Dependency: Selected Topics: Critical Care Conference, Doctors Hospital, Pinole California

1993: Detox: The First Step to Recovery: National Medical Enterprises Management Services Division Annual Conference, Colorado Springs, Colorado

1993: Substance Use and Substance Induced Organic Mental Disorders: National Medical Enterprises Management Services Division Annual Conference, Colorado Springs, Colorado

1993: Dual Diagnosis in the Inpatient Setting- Professional Seminar, Doctors Hospital, Pinole, California

1993: Depression and Strokes: Brookside Hospital, San Pablo, California

1992: Drug Interactions in the ICU: Clinical Care Rounds, Doctors Hospital, Pinole, California

1992: Overview of Sleep Disorders: Grand Rounds, Doctor Hospital, Pinole, California

1991: Benzodiazepines: Uses and Abuses: Grand Rounds, Brookside Hospital, San Pablo, California

1990: Sleep Disorders in Schizophrenia: Quarterly Medical Staff Meeting, East Bay Hospital

1987: Afro-Centricity in Psychology: Grand Rounds, San Francisco General Hospital, San Francisco, California

1982: Geriatric Psychiatry-University of Southern California

PROFESSIONAL AFFILIATIONS

International Neuropsychological Society

American Academy of Psychiatry and the Law

International Association for the Scientific Study of Intellectual Disabilities

Northern California Psychiatric Society

American Society of Addition Medicine

American Psychiatric Association

Black Psychiatrists of America

American Neuropsychiatric Association

American Psychological Association

American Association for Intellectual and Developmental Disabilities

CLINICAL PROFESSIONAL ACTIVITIES

2016: Associate Editor, Journal of Policy and Practice in Intellectual Disability

2015: International Journal of Developmental Disabilities

2015: Journal of Policy and Practice in Intellectual Disability

2014: Cureus Journal Review

2014: Arts and Social Sciences Journal Review

2013: Journal of Politics and Law Journal Review

2012: Research in Developmental Disabilities Journal Review

2010: American Association for Intellectual and Developmental Disabilities, Task Force on Intellectual Disability and Forensic Practice

2007-2009: Neurocognitive Committee, PAARTNERS

2004-present: Scientific Committee, International Academy of Law and Mental Health

1993-1996: Medical Privileges Committee, Doctors Hospital, Pinole, California

1993-1995: Physicians' Advisory Committee, Alameda Contra Costa Medical Association, Oakland, California

1993-1994: Board of Directors, Solano Park Hospital, Fairfield, California

1992-1993: Board of Directors, East Bay Hospital, Richmond, California

1992: Chief of Staff, East Bay Hospital, Richmond, California

1992: Chairman, Medical Executive Committee, East Bay Hospital, Richmond, California

1992: Allied Health Committee, Doctors Hospital, Pinole, California

1992: Pharmacy & Therapeutics Committee, Doctors Hospital, Pinole, California

1991-1996: Physicians' Advisory Committee, Doctors Hospital, Pinole, California
(Chair, 1994- 1995)

1991: Professional Activities Committee, Easy Bay Hospital, Richmond, California

1990: Psychiatry Committee, Chairman, East Bay Hospital, Richmond, California

HONORS

2015: President, International Academy of Law and Mental Health

2013: Keynote Speaker, Tenth Anniversary of the San Francisco Behavioral Health Court

2013: Vice President/President Elect, International Academy of Law and Mental Health

2009-2012: Secretary General, International Academy of Law and Mental Health

2009: Co-Chair, International Academy of Law and Mental Health Congress, New York University Law School,

2007: Co-Chair, International Academy of Law and Mental Health Congress, University of Padua, Padua, Italy.

2007: Executive Committee, International Academy of Law and Mental Health

1993: Outstanding Professor Award, Goodrich Program, Department of Public Policy, University of Nebraska at Omaha

1992: National Medical Enterprises' Outstanding Medical Director of Psychiatric, Rehabilitation and Recovery Hospitals

1992: Chief of Staff Award for Outstanding Service, East Bay Hospital, Richmond, California

CLINICAL PUBLICATIONS

Norton, Johnson, Woods (2016) Burnout and Compassion Fatigue: What Lawyers Need to Know. The University of Missouri Kansas City Law Review

Norton, Woods (2015) *Interpersonal Violence: The Legacy of Trauma*. The American Bar Association's Ninth Annual Section of Labor and Employment Law Conference

Greenspan, Harris, and Woods (2015) *Intellectual disability is "a condition, not a number": Ethics of IQ cut-offs in psychiatry, human services and law*. Ethics, Medicine, and Public Health

Woods, Freedman ((2015) *Symptom presentation and functioning in neurodevelopmental disorders: Intellectual disability and exposure to trauma,* Ethics, Medicine, and Public Health

Greenspan, Woods, and Switzky (2015) *Age of Onset and the Developmental Period Criteria,* Intellectual Disability and the Death Penalty

Greenspan, Woods, Wood (In Press) *Risk-Unawareness and Legal Jeopardy: Identifying Non-Obvious Brain-Based Impairment, Springer's International Library of Ethics, Law, and the New Medicine*

Woods, Freedman (2015) *Intellectual Disability, Comorbid Disorders and Differential Diagnosis*, Intellectual Disability and the Death Penalty

Greenspan, Woods (2014) *Intellectual Disability as a Judgment Disorder: The Gradual Move Away From IQ-Ceilings*, Current Opinion in Psychiatry

Freedman, Woods:(2013) *Neighborhood Effects, Mental Illness and Criminal Behavior: A Review.* Journal of Politics and Law; Vol. 6, No. 3;

Woods, Freedman, Greenspan: (2012). *Neurobehavioral Assessment in Forensic Practice.* International Journal of Law and Psychiatry.

Norton, Woods, (2012). *Secondary trauma among judges, jurors, attorneys, and courtroom personnel.* Encyclopedia of trauma: an interdisciplinary guide. C. Figley, Sage Publications.

Greenspan, Switzky, Woods: (2012) *Intelligence Involves Risk-Awareness and Intellectual Disability Involves Risk-Unawareness: Implications of a Theory of Common Sense*, Journal on Intellectual & Developmental Disability. (Cited in Diagnostic and Statistical Manual, 5th Edition, online version)

Woods, Greenspan, Agharkar: (2012) *Ethnic and Cultural Factors in Identifying Fetal Alcohol Spectrum Disorders:* American Journal of Law and Psychiatry.

Bradford, Fresh, Woods: Not all patients are alike: (2007) *Ethnopsychopharmacology of Bipolar Disorder in African Americans*. Psychiatric Times, February.

Abueg, Woods, Watson: Disaster Trauma; (2000) Cognitive-Behavioral Strategies in Crisis Intervention: Second Edition, Guilford Press, New York and London; p. 73-290.

FORENSIC PRACTICE

1981-present: Psychiatric Consultant (Civil, Family Law, Criminal and Appellate Judicial Proceedings)

1993-2001: Consultant- the Victims' Assistance Program, State Board of Control, State of California, Sacramento, California

1983-2000: Medical Examiner Panel, San Francisco County, Marin County and Contra Costa County Superior Courts

FORENSIC PROFESSIONAL LECTURES

2016: Cutting Edge Issues in Employment Law: Practising Law Institute, San Francisco.

2016: Aging and Cognition; Paul Hastings Global

2016: Psychological Issues in Employment Law: Practising Law Institute, 2016, New York.

2015: Legal and Practical Implications of Domestic Violence in the Workplace: It's Not Just the NFL: American Bar Association Section of Labor and Employment Law 9th Annual Labor and Employment Law Conference, Philadelphia

2015: Cutting-Edge Employment Law Issues 2015: The California Difference. Mental Health and the Law, Practising Law Institute, San Francisco

2015: Discussant, Mass Murder: Patterns in Manifestoes: Vienna, Austria

2014: ADA and Mental Disabilities: Inquiries, Exams and Accommodations, Practising Law Institute, New York, New York

2014: Psychological Issues in Employment Law 2014, Practising Law Institute, New York, New York

2012: An Evolution in Practice at the Intersection of Mental Health and the Law: Where Mental Health Meets the Law by Jennifer Johnson, J.D. and George Woods, M.D. of Johnson Woods Education: a comprehensive curriculum on the evolving field of forensic mental health. The authors present the series in one-hour live webinars designed to provide legal professionals with tools to inform legal expertis when mental health is an issue in a case. The series features in-depth interviews with experts in the field who will bring practical and innovative perspectives to the discussion. Reuters Thomson Westlegal/EdCenter

2010: The Trial of Hamlet, Morrison and Foerster, LLP, Law College, San Diego, California

2009: Treatment of Mentally Ill Offenders in the United States, Canada, and Japan; Japanese Association of Forensic Psychiatry, Tokyo, Japan

1998-2007: In Association With The National Institute of Trial Advocacy Training, Notre Dame University, South Bend, Indiana; Georgia State Law School, Atlanta, Georgia; New York University Law School, New York City, University of North Carolina Law School, Chapel Hill, North Carolina; University of Houston Law School, Houston, Texas; University of Tennessee Law School, Knoxville, Tennessee; Atlanta, Georgia; University of Texas Law School, Austin, Texas; Temple University School of Law, Philadelphia, Pennsylvania

2006: Aligning Clinical Services with Correctional Treatment, Luzira Prison, Kampala, Uganda

2006: Decision Tree for Forensic Evaluations, Butabika Hospital, Kampala, Uganda

2006: Neuropsychiatry and The Courts: The University of Texas Law School, Austin Texas

2002: Demystifying Emotional Damages Claims: Paul, Hastings, Janofsky & Walker, San Francisco, California

2000: An Introduction-Multi-Axial Assessment and DSM-IV: Second National Seminar on Mental Illness and the Criminal Law, Miyako Hotel, San Francisco, California

2000: Psychiatric Manifestations of Mental Disorders: Second National Seminar on Mental Illness and the Criminal Law, Miyako Hotel, San Francisco, California

1999: An Introduction-Multi-Axial Assessment and DSM-IV: First National Seminar on Mental Illness and the Criminal Law, Radisson Hotel, Washington, D.C.

1999: Psychiatric Manifestations of Medical Disorders: First National Seminar of Mental Illness and the Criminal Law, Radisson Hotel, Washington, D.C.

1999: The Kenya/Tanzania Embassy Bombings: When Forensic Science, Politics, and Cultures Collide: International Academy on Law and Mental Health, Toronto, Quebec, Canada

1999: Research Collaboration Between East Africa and the United States: World Psychiatric Association/Kenya Psychiatric Association, First Annual East African Conference, Nairobi, Kenya

1999: Trauma/Resiliency In East Africa Workshop: World Psychiatric Association/Kenya Psychiatric Association, First Annual East African Conference, Nairobi, Kenya

1998: Mental Health Litigation and the Workplace: Sponsored by the University of California Davis Health System, Division of Forensic Psychiatry, Department of Psychiatry, and Continuing Medical Education, Napa, California

1998: Psychological Disabilities: Charting A Course Under the ADA and Other Statutes: Yosemite Labor and Employment Conference, Yosemite, California

1998: Current Trends in Psychiatry and the Law: Developing a Forensic Neuro-Psychiatric Team: CLE, Federal Public Defenders for the District of Oregon, Portland, Oregon

1997: The Changing Picture of Habeas Litigation: The National Habeas Training Conference, New Orleans, Louisiana

1997: Accommodating Mental Illness in the Workplace: Employment Law Briefing, Orange County

1997: Accommodating Mental Illness in the Workplace: Employment Law Briefing, Palo Alto, California

1997: Accommodating Mental Illness in the Workplace: Employment Law Briefing, Morrison & Foerster, San Francisco

1997: Psychiatric Evaluations in the Appellate Process: Emory University, Department of Psychiatry, Forensic Fellowship, Atlanta, Georgia

1997: So You Wait Until Discovery Is Over to Consult with a Psychiatrist? Can You Tell Me More About That? Morrison and Foerster Labor Law College, Los Angeles, California

1997: The Changing Cultural Perspectives in Forensic Psychiatry, San Francisco General Hospital Grand Rounds, San Francisco, California

1996: Evaluations of an Elementary School Child: Criminal Competency and Criminal Responsibility, Stanford University School of Medicine, Department of Psychiatry and Behavioral Sciences, Division of Child, Psychiatry and Child Development, Grand Rounds, Palo Alto, California

1996: Forensic Psychiatry: Cultural Factors in Criminal Behavior, Malingering, and Expert Testimony: The Black Psychiatrists of America Transcultural Conference, Dakar, Senegal, West Africa

1996: Dangerousness; Evaluation of Risk Assessment: Grand Rounds, Department of Psychiatry, University of California, Davis

1995: Violence in the Workplace: A Psychiatric Perspective of Its Causes and Remedies: The Combined Claims Conference of Northern California, Sacramento, California

1995: Experts: New Ways To Assess Competency- Neurology and Psychopharmacology: Santa Clara University Death Penalty College, Santa Clara, California

1995: Multiple Diagnostic Categories in Children Who Kill: Psychological and Neurological Testing and Forensic Evaluation: The American College of Forensic Psychiatry 13th Annual Symposium, San Francisco, California

1995: Mock Trial: Client Competence in a Criminal Case: Testing the Limits of Expertise, The American College of Forensic Psychiatry 13th Annual Symposium, San Francisco, California

1995: The Use of Psychologists In Judicial Proceedings: The California Attorneys for Criminal Justice/California Public Defenders Association Capital Case Seminar, Monterey, California

1994: Commonly Seen Mental Disorders in Death Row Populations: The California Appellate Project, Training Session for Legal Fellows and Thurgood Marshall Investigative Interns, San Francisco, California

1994: Anatomy of a Trial: Mock Trial Participant, The California State Bar Annual Convention, Anaheim, California

1994: Developing a Forensic Neuropsychiatric Team: The American College of Forensic Psychiatry 12th Annual Symposium in Forensic Psychiatry, Montreal, Quebec, Canada

1994: Responsibility in Forensic Psychiatry: Department of Criminology Faculty Seminar, University of Nebraska, Omaha

1994: Attorney/Investigator Workshop: Brain Function: The 1994 California Attorneys for Criminal Justice/California Public Defenders Association Capital Case Seminar, Long Beach, California

1994: Appellate and Habeas Attorney/Investigator Workshop: Evaluating Mental Health Issues in Post-Conviction Litigation: The 1994 California Attorneys for Criminal Justice/California Public Defenders Association Capital Case Defense Seminar, Long Beach, California

1993: Psychological Issues in Police Misconduct: Police Misconduct Litigation, National Lawyers Guild, San Francisco

1993: Neuropsychiatry, Neuropsychology and Criminal Law: Maricopa County Office of the Public Defender, Seminar on Investigation for Mitigation and Capital Cases, Phoenix, Arizona

1993: Working With Experts: California Appellate Project, San Francisco, California

1991: Forensic Psychiatry and Ethnicity-Black District Attorneys Association, National Convention

PROFESSIONAL FORENSIC PUBLICATIONS

Greenspan, Woods (2016) *Chapter 7 Personal and Situational Contributors to Fraud Victimization: Implications of a Four-Factor Model of Gullible Investing*. Financial Crimes: Psychological, Technological, and Ethical Issues. Dion, Weisstub, Richet. Springer Publishing

Wood, Hanoch, Woods (2016) *Chapter 6 Cognitive Factors to Financial Crime Victimization.* Financial Crimes: Psychological, Technological, and Ethical Issues. Dion, Weisstub, Richet. Springer Publishing

Woods, (2016) *Cognition and Aging: Impact in the Workplace*: Paul Hastings Global

Woods, (2016) *Treat or Assess: Which Hat Should Your Expert Wear*? Practising Law Institute

Bigler, Jantz, Freedman, Woods, (2016) *Structural Neuroimaging in Forensic Settings*, University of Missouri-Kansas City Law Review, Volume 82, No. 2.

Psychiatry and Criminal Law, Contra Costa Lawyer, Volume II, No. 8, August 1998.

Mock Trial: Client Competence in a Criminal Case: Testing the Limits of Expertise, The Psychiatrist's Opinion as Scientific, The Expert's Foundation As Sufficient, 1995 (Available from The American College of Forensic Psychiatry and on Audiotape).

Multiple Diagnostic Categories in Children Who Kill: Psychological and Neurological Testing and Forensic Evaluation, 1995. (Available from the American College of Forensic Psychiatry and on Audiotape).

Developing a Forensic Neuropsychiatric Team,1994. (Available from the American College of Forensic Psychiatry on Audiotape).

Anatomy of a Trial: 1994 (Available for the California State Bar).

FORENSIC PROFESSIONAL AFFILIATIONS

2013: American Academy of Psychiatry and the Law

1998: International Academy of Law and Mental Health

PROFESSIONAL DEVELOPMENT & CORPORATE SERVICES

2016: BetterManager, Expert Contributor

2016: Map1080, Big Timber, Montana, Advisory Board

2015: GradeLLC Evansville, Indiana Unified School District: Education/Neuroscience Collaboration

2015: The Science Advisors, Founding Partner

2015: Defend Your Head Corporation: Medical and Neuroscience Advisor

2014: Forefront Behavioral Telecare, LLC: Assistant Chief Medical Officer

2013: Generations in Transition: YearUp, Atlanta, Georgia

2011: Forefront Behavioral Telecare, LLC: Director of Clinical Research

2009-2010: Forefront Behavioral Telecare, LLC: Chief Medical Officer

2009: AgeServe Communications, LLC: Director of Research/Director of Government Programs

2004: Consultant, Corporate Structure, Tostan, Non Governmental Organization, Theis, Senegal

2004: Toward Effective Retention Efforts: The use of narratives in understanding the experiences of racially diverse college students., Narrative Matters, Fredericton, New Brunswick, Canada

2003: In Association with the Council on Education in Management, Charlotte, North Carolina, Accommodating Psychiatric Disabilities: Avoiding the Legal Pitfalls of the ADA, Human Resources Conference, Palm Springs, California

2001-2003: Consultant, Vulcan Inc., Seattle, Washington

1999: In Association with Matthew Bender Legal Publishing, New York: Psychiatric Disabilities and California Workplace Requirement, With the Bar Association of San Francisco, San Francisco

1998: Psychiatric Disabilities under the Americans With Disabilities Act: Without Pretrial Strategy, Atlanta, Georgia

1998: Psychiatric Disabilities under the Americans With Disabilities Act: Without Pretrial Strategy, Los Angeles, California

THE CRITICAL MOMENTS CONSULTING GROUP

2001: Part I- Responding Creatively to Cultural Diversity through Case Stories and Part II- Strategies and Challenges for Campus-wide Diversity Project: Models of Integrating Critical Moments, Fourteenth, Annual Conference on Race and Ethnicity in American Higher Education, Seattle Washington

2001: Teaching Complex Case Stories, Faculty Development, Loras College, Dubuque, Iowa

2000: Critical Moments: Creating a Diversity Leadership Learning Community, 13th Annual National Conference on Race and Ethnicity in American Higher Education (sponsored by the University of Oklahoma, Southwestern Center for Human Relations Studies), Santa Fe, New Mexico

2000: Critical Moments: Practicum on Teaching Diversity Through Case Stories, 13th Annual National Conference on Race and Ethnicity in American Higher Education (sponsored by the University of Oklahoma, Southwestern Center for Human Relations Studies), Santa Fe, New Mexico

2000: Improving Undergraduate Education: Teaching and Learning in the Context of Cultural Differences, The Washington Center for Improving the Quality of Undergraduate Education, Thirteenth Annual Conference, Seattle, Washington

1999: Critical Moments: Deepening Our Understanding of Cultural Diversity through Critical Analysis, Effective Interviewing, Case Writing, and Case Teaching, The Washington Center, Evergreen State College, Olympia, Washington

1999: Teaching Complex Issues with Case Studies: A Workshop for Faculty and Graduate Teaching Assistants, University of Nebraska at Lincoln, Teaching and Learning Center and Critical Moments Project

1999: Critical Moments: Writing the Stories of Diverse Students, Washington Center for Improving the Quality of Undergraduate Education Workshop for College and University Faculty, Administrators, Staff and Students, Evergreen State College, Bothell, Washington

1999: Critical Moments: A Case Study Approach for Easing the Cultural Isolation for Under-represented College Students, Presented at Transforming Campuses Through Learning Communities, National Learning Communities Conference, Seattle, Washington

1993: Contextualism and Multi-Cultural Psychology-Graduate Seminar, University of Nebraska, Omaha, Nebraska

1992: Curriculum and Developmental Stages-North Central Educational Research Lab, Northwestern University

CRITICAL MOMENTS PUBLICATIONS

Diane Gillespie, Ph.D., Gillies Malnarich, and George Woods, M.D. (2006). Critical Moments: Using College Students' Border Narratives as Sites for Cultural Dialogue, In M.B. Lee (Ed.), Ethnicity Matters: Rethinking How Black, Hispanic and Indian Students Prepare for and Succeed in College. (pp. 99-116). New York: Peter Land Publishing Group.

Diane Gillespie, Ph.D. and George Woods, Jr., M.D. (2000). Critical Moments: Responding Creatively Cultural Diversity Through Case Stories; Third Edition.

(Updated February 6th, 2017)

APPENDIX F

PRICE, PROCTOR & ASSOCIATES, LLP
A LIMITED LIABILITY PARTNERSHIP OF BOARD CERTIFIED FORENSIC PSYCHOLOGISTS
11882 Greenville Ave., Suite 107•Dallas, Texas 75243
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REPORT OF COMPETENCY FOR EXECUTION EVALUATION

IDENTIFYING INFORMATION:

Name:	Randall Wayne Mays
Date of Examination:	9/13/16
Date of Report:	10/14/16
Date of Birth:	8/3/59
Current Age:	57
Style of Case:	The State of Texas vs. Randall Mays
Cause Number:	B-15, 717
Judge:	The Honorable Carter Tarrance District Judge, 392nd Judicial District Henderson County, Texas

REFERRAL INFORMATION:

Pursuant to court order, I was one of three qualified mental health experts court-appointed to conduct an evaluation of Randall Mays' competency to be executed, pursuant to Article 46.05 of the Texas Code of Criminal Procedure. The referral questions were included as part of this court order.

Each mental health expert, using the Guidelines to assist in conducting his or her evaluation, was directed to reach a conclusion regarding the following:

> Does Mr. Mays suffer from a mental illness or mental impairment?
>
> If so, does Mr. Mays' mental illness or mental impairment deprive him of a rational understanding of the connection between his crime and his punishment, i.e. "if [Mr. Mays's] mental state is so distorted by a mental illness that his awareness of the crime and punishment

has little or no relation to the understanding of those concepts shared by the community as a whole?" *PANETTI V. QUARTERMAN*, 551 U.S. 930, 958-59 (2007).

In making the foregoing determination, the expert shall consider whether Mr. Mays' mental illness or mental impairment deprive him of: (1) a rational understanding that he is to be executed and that the execution is imminent or (2) a rational understanding of the reason he is being executed. TEX. CODE CRIM. PRO. ART 46.05(H).

I am qualified to conduct competency evaluations under the Texas Code of Criminal Procedure, Article 46. I have conducted hundreds of competency to stand trial evaluations and several competency for execution evaluations. A copy of my brief curriculum vitae can be found in Appendix A attached to this report.

EVALUATION PROCEDURES:

Review of Records
Behavioral Observations
Mental Status Examination
Clinical Interview and History
Structured Interview for Competency for Execution
Rey Fifteen Item Test (RFIT)
Montreal Cognitive Assessment (MoCA)

DESCRIPTION OF EVALUATION PROCEDURES:

A review of legal and medical records involves a reading of the legal records to determine the details of the crime for which the individual was convicted and other relevant legal information. If available, medical records, especially psychiatric or psychological evaluations or treatment, can assist with the determination of an accurate current diagnosis of a mental or personality disorder.

A mental status examination with behavioral observations is a structured inquiry into a person's mental health by both questioning and observation. Generally, it is to obtain information about the person's appearance and behavior, mood, speech, cooperativeness, motor activity, emotional state, awareness, orientation, memory, intelligence, insight, and judgment, consciousness, general appearance and behavior, attitude toward examiner, cooperation, speech, motor activity, mood and affect, perception, thought processes, thought content, orientation, attention, concentration, memory, abstract thought, judgment and insight, and general intelligence level.

A clinical interview and history involves a face-to-face interaction where a question and answer approach is taken to obtain or gather relevant information about the

interviewee's history and present signs and symptoms and clinical course that will assist in arriving at a diagnosis, if any, of a mental or personality disorder

The Structured Competency for Execution Interview is a focused inquiry consisted of series of questions to guide the evaluator in the evaluation of his competency for execution as set forth in *Panetti v. Quarterman* (2007) and in Article 46.05 of the Texas Code of Criminal Procedure.

The Rey Fifteen Item Test (RFIT) is a screening instrument for the detection of malingering cognitive deficits.

The Montreal Cognitive Assessment (MoCA) assesses several cognitive domains including short-term memory, visuospatial abilities, executive functions, attention, concentration, language, and orientation to time and place. The MoCA is used to detect Mild Cognitive Impairment and Dementia.

RECORDS PROVIDED FOR REVIEW:

- Opinion from Texas Court of Criminal Appeals Opinion regarding Randall Mays's Competency to be Executed, 12/16/15
- Motion regarding Competency to be Executed, 2/24/15
- Exhibits to Motion regarding Competency to be Executed, 2/24/15
  - Exhibit 1: Affidavit of Dr. James Underhill (2015)
  - Exhibit 2: Affidavit of Dr. Cecil Reynolds (2015)
  - Exhibit 3: Affidavit of Katherine Black (2015)
  - Exhibit 4: Trial Testimony of Dr. Theresa Vail (2015)
  - Exhibit 5: Trial Testimony of Dr. Gilda Kessner (2008)
  - Exhibit 6: Trial Testimony of Dr. David Self (2008)
  - Exhibit 7: Randall Mays Letters (2014-2015)
  - Exhibit 8: Neuropsychological Report by Dr. Joan Mayfield (2009)
  - Exhibit 9: Civil Commitment Records (1983)
  - Exhibit 10: Terrell State Hospital Records (1983)
  - Exhibit 11: Terrell State Hospital Records (1985)
  - Exhibit 12: East Texas Medical Center-Tyler Records (2007)
  - Exhibit 13: Smith County Jail Records (2007)
  - Exhibit 14: Excerpts from UTMB Medical Records (2011-2014)
  - Exhibit 15: Excerpts of TDCJ Polunsky Unit Records (2013)
- Defense Punishment Phase Trial Testimony (2008)
- Miscellaneous Medical Records (2007-2014)
- Smith County Jail Medical Records (2007-2008)
- TDCJ-ID Medical Records (2008-2016)
- East Texas Medical Center Records (2007)
- Randall Mays Hospital Records
- State Copies of Randall Mays Letters (2011-2015)

- Randall Mays Letter to Judge (2012)
- State-Produced Summaries of Jail Phone Calls by Randall Mays (2007-2008)
- Smith County Jail Miscellaneous Documents (2007-2008)
- Texas Department of Criminal Justice Inmate Records
- Texas Department of Criminal Justice use of Force Records (2015)
- Education Records (1971-1976)
- Gun Barrel City Criminal History Records (2005-2006)
- Prior Calls for Police Service to Mays Residence
- Transcript of Audio from Instant Offense (2007)
- Eustace Police Department Offense Report (2007)
- Maybank Police Department Offense Report (2007)
- Trinidad Police Department Offense Report (2007)
- State's Interview with Flight Nurse Kelly Cox (2007)
- State's Interview with Neighbor Kelly Nicholson (2007)
- State's Interview with Officer Kevin Harris (2007)
- Supplemental Offense Reports and Interviews (2007)
- Witness and Victim Statements Regarding Offense (2007)
- Post-Arrest Toxicology Report on Randall Mays (2007)
- Randall Mays Statements
- NBC Footage
- Jail Calls Between Randall and Candace Mays (2007-2008)
- Testimony Provided
  - Theresa Vail, M.D.
  - Gilda Kessner, Ph.D.
  - David Self, M.D.
  - Joan Mayfield, Ph.D.
  - James Underhill, Psy. D.
  - Cecil Reynolds, Ph.D.
  - Katherine Black, Attorney
  - Dr. Alain Rowe, employer
  - Mr. Don Kelly, employer
  - Mr. Robert Rudkin, employer
  - Ms. Sarah Goff, employer
  - Sherry Ross, sister
  - Linda Ross, sister
  - Dorothy Hillis, mother
  - Ms. Diana Gibson, LVN Smith County Jail

BRIEF SUMMARY OF RELEVANT RECORDS:

See Appendix B for a summary of all records provided for review.

Academic Records:

- Academic records from several schools were provided for review.
- Grades for the 6th, 7th, and 8th grades ranged from As to Fs with the majority being Cs and Ds.
- Grades for the 8th and 9th grades declined with more Fs.
- Grades were not available for the 9th grade when Mr. Mays withdrew from school.
- Standardized achievement test scores were included on the academic transcript but were difficult to read. Mr. Mays' SRA Composite scores from the 7th to 9th grade were widely variable with the composite score falling at the 1st percentile in the 7th grade, the 18th percentile in the 8th grade, and the 7th percentile in the 9th grade.

Terrell State Hospital:

- Mr. Mays was hospitalized at TSH on 7/25/83 and 6/3/85.
- Both hospitalizations were due to amphetamine abuse.

Offense Report:

- Police were dispatched to the Mays residence due to domestic violence.
- At standoff between police and Mr. Mays lasted for approximately 30 minutes before he shot and killed two law enforcement officers

Diagnoses by Mental Health Professionals:

- In the Smith County Jail, Theresa Vail, M.D. diagnosed Mr. Mays with depression and prescribed Zoloft and later Risperdal. Mr. Mays also evidenced anxiety, paranoid delusions, and excoriation.
- Gilda Kessner, Psy.D. diagnosed Mr. Mays with Paranoid Personality Disorder.
- David Self, M.D. diagnosed Mr. Mays with methamphetamine-induced psychosis and delusion thinking.
- Joan Mayfield, Ph.D. diagnosed Mr. Mays with Dementia secondary to chronic amphetamine abused and Depressive Disorder.
- James Underhill, Psy.D. opined that he had "substantial doubt" that Mr. Mays was competent for execution.
- Cecil Reynolds, Ph.D. opined that Mr. Mays should undergo psychological evaluation for competency for execution due to his Dementia and other diagnosis.
- In TDCJ-ID, Mr. Mays made frequent complaints about the quality of the air and possible contaminated food and his medical treatment. He also complained of pain and was dissatisfied with the treatment he received. However, his mental status was noted to be normal and no mental health diagnoses was indicated.

Prior Criminal/Legal Convictions (Texas Department of Public Safety):

- Resisting Officer, 4/7/81, Archer County
- Driving Under Influence of Drugs, 3/11/83, Young County
- Criminal Mischief, 7/3/87, Sulphur Springs

RESPONSE TO EVALUATION:

The defendant was examined in a secure interview room at the Polunsky Unit of the TDCJ-ID in Livingston, Texas. Conditions were adequate for the examination. Before the evaluation began, the following factors concerning this evaluation were explained to Mr. Mays: (1) that the evaluation was court ordered; (2) that the purpose of the evaluation was to determine competency; (3) that the court is responsible for the cost of the evaluation; (4) that the evaluation procedures include interview and testing; (5) that there are limits on the confidentiality of the findings of this examination; (6) that a report will be prepared and delivered to the judge in this case; (7) that expert testimony may be required concerning the results of this evaluation; (8) that no treatment or advice would occur; (9) that Mr. Mays was not a patient of Dr. Price; (10) that any uninvestigated child or elder abuse or neglect would be reported. The defendant indicated an understanding of the above and consented to be examined, but on advice from his attorney, he refused to sign the informed consent indicating that the above information had been communicated to him.

RESULTS OF CLINICAL INTERVIEW AND HISTORY:

The following information was obtained from the defendant during the clinical interview and history portion of this evaluation

Current Situation:

- Seldom comes out of his cell for exercise.
- Does not want to cause any problems.
- Prefers commissary items to prison food.
- Prefers to lie down because sitting is uncomfortable.
- Reads books about human anatomy.
- Thinks he is receiving improper treatment for his Hepatitis C.
- Complains of pain in right elbow, left shoulder, back, and liver.
- Only medication taking is ibuprofen and aspirin.
- Complains of difficulty breathing when in confined area due to ozone coming in through the ventilation.
- Has had trouble breathing since he was in his 20s.
- Quite smoking when he was in his early 30s.
- Mentally, he said he is "pretty messed up at times."
- Would like to be able to work and help his family.

Developmental/Social History:

- Reported being product of normal pregnancy and birth to the best of his knowledge.
- Attained developmental milestones on time to the best of his knowledge.
- Reported having 7 siblings.
- Three of his brothers are deceased (Noble, Ray, Kenny).
- Remains married to Candace but has not seen her for over a year,
- Continues to communicate with Candace by mail.
- Refused to talk further about his family.

Educational History:

- Highest grade completed was 9th.
- Described difficulty learning to read in school.
- Refused to talk further about school.

Occupational History:

- Past relevant work history includes roughneck and mechanic in Graham oil fields and working as a handyman.
- Expressed an eagerness to talk about the specifics and quality of his work as a handyman and how pleased his clients were with his work and his interactions with him.

Psychiatric/Psychological History:

- Remembers being sent to Terrell State Hospital in 1983 and 1985.
- Described this as a "crazy part of my life."
- Reason he was sent to Terrell was his use of methamphetamines.

Substance Abuse History:

- Drank alcohol in his 20s—usually 6-8 beers per day.
- Began using marijuana at 14 years of age.
- Experimented with heroin.
- Abused methamphetamines for 7 seven years.
- Hospitalized on two occasions at Terrell State Hospital for psychotic symptoms secondary to methamphetamine abuse.

Military History:

- Reported he "had to join" the military because his father kicked him out of the house.
- Joined the U.S. Army in 1976 on a "buddy plan" with his stepbrother.
- MOS of Artillery/Infantry .

- Remained in the Army for approximately 18 months.
- Went AWOL after a Sergeant hit him with a stick because he did not keep his head down on the firing line.
- Dishonorably Discharged.

BEHAVIOR OBSERVATIONS AND MENTAL STATUS EXAMINATION:

General Appearance and Behavior:

Mr. Mays is a tall, slender, balding man with basically good hygiene and grooming. He does have poor dentation. He was alert and oriented to person, place, and time. He tended to squint often and revealed that he requires reading glasses, but he did not have any. I provided a pair when he needed to read, but he complained they hurt his eyes and made him dizzy.

Motor Behavior:

Ambulation was unimpaired. His upper extremity mobility and range appeared impaired on the left side secondary to the gunshot wound he experienced during the instant offense. He engaged in frequent pain-related behaviors such as grimacing, moaning, stretching his back and neck, holding his arm, etc. He evidenced more of these behaviors when asked questions that he appeared to not want to answer.

Attitude and Rapport:

Mr. Mays was very friendly and polite. He inserted "Mr. Price" in nearly every statement he made. However, his cooperativeness deteriorated over the evaluation especially when testing was attempted. He remained polite but his refusal to answer certain questions and to complete testing tasks increased over the time of the evaluation until he terminated the evaluation after approximately two hours. He reluctantly completed two brief testing tasks, but he refused other attempts to administer cognitive tests, stating he did not see the point. He stated that he did not see the reason for the cognitive testing and that he could "see nothing good coming out of this evaluation", and he did "not want to dwell on the past". He refused to answer questions about the death penalty because it was unpleasant for him, and he would not say the words "death", "death penalty", "death sentence", etc. He attempted to divert any question about his legal circumstances to talking about something more pleasant for him. He was extremely reluctant to give details when questions pertained to his offense or his legal situation. He said that his attorney told him not to answer any questions about the offense for which he was convicted. When speaking of topics such as energy conservation and building houses, he spoke very freely and appeared to enjoy having the opportunity to talk to somebody. At approximately 2:15, he asked if I "had anything else" and if not, he wanted to stop the evaluation. I explained to him that I had two objectives one of which involved standardized testing of his cognitive abilities and the

other involved interviewing him about his knowledge and perception of his legal situation. He said that was not breathing well, he was thirsty, and he "saw no good coming from this evaluation". He said that he did not want to talk about the things I was asking him about because he does not want to dwell in the past. When I repeated my plan for the evaluation, he politely said he was terminating the evaluation.

Speech/Language:

Speech was within normal limits regarding rate, volume, quality, and intelligibility. Mr. Mays's speech content increased considerably when he began talking about his aches and pains and his concerns about his health in general. It was difficult to direct his answers when somatic issues were the topic. The other topic he particularly enjoyed was the environment and energy alternatives. The records indicated some mental health professionals have opined that his ideas about the environment, especially the ozone and starting an alternative energy company represented signs of a psychotic disorder. However, he sounded rational about these issues during this evaluation. He may be misattributing his breathing problems to ozone; he appears to be anxious in tight and confining spaces, which may affect his breathing, an unfortunate symptom when one is incarcerated on death row. Other language abilities such as confrontational naming (naming objects in pictures) were not impaired. A review of numerous TDCJ-ID grievances written and filed by Mr. Mays as well as letters to his wife and to Judge Tarrance all indicated written expressive language that adequately communicates his message. Some written grammar and spelling errors were noted consistently with his formal education history.

Mood/Affect:

Mr. Mays endorsed symptoms of depression such as sadness, pessimism, insomnia, appetite disturbance, and problems concentration. Affect was flat with a limited range. However his affect brightened and his rate of speech increased when discussing ways to improve one's health, ranching and farming, his love of building houses and teaching others to build houses and grow gardens, and trying to protect our environment. When discussing his current situation, signs of anxiety and distress were prominent. He showed signs of worry, difficulty concentrating, feeling shaky, irritability, shortness of breath, and dizziness.

Attention/Concentration:

Mr. Mays's attention and concentration were somewhat poor secondary to anxiety. When a relatively simple attention or memory task was presented, he clearly became anxious which interfered with his performance.

Memory:

Mr. Mays's immediate memory for unrelated words was intact, but his short-term memory for the same words was impaired. Immediate memory for sentences was intact. Memory for his own life events appeared grossly intact.

Thought Processes/Content:

No psychotic thinking was evident. No incoherence, derailment, flight of ideas, or thought insertion was noted. Mr. Mays was logical and goal-directed. He was somewhat tangential when discussing his physical symptoms and topics of great interest to him such as energy conservation, building houses, and growing gardens. No auditory or visual hallucinations were endorsed or evidenced. Delusions were evident, including paranoid ideation concerning air quality, food contaminants, somatic processes, and the legal system.

Judgment and Insight:

Historically, poor judgment and insight are indicated. He prefers to deny aspects of his current situation by refusing to discuss topics related to his impending punishment.

RESULTS OF PSYCHOLOGICAL TESTING:

Rey Fifteen Item Test (RFIT): The RFIT is a screening test for the malingering of impaired cognitive abilities. It is presented as a difficult task but is actually quite simple. The individual is asked to memorize 15 items in a very short time frame and then reproduce those items by drawing them. Mr. Mays correctly drew 14 items, which is not indicative of malingering.

Montreal Cognitive Assessment (MoCA): Mr. Mays was administered the MoCA, which is a standardized mental status examination of cognitive functioning measuring orientation, visual/spatial functioning, language functioning, attention, memory, and executive functioning. Scores on the MoCA range from 0 to 30. The following ranges are recommended for judging the severity of cognitive impairment:

Score Range	Severity Level
27-30	Normal Cognitive Functioning
18-26	Mild Cognitive Impairment
10-17	Moderate Cognitive Impairment
0-16	Severe Cognitive Impairment

Additionally, a cut-off score of 18 is usually considered to separate Mild Cognitive Impairment from Dementia. The average MoCA range of scores for mild cognitive impairment is 19-26. The average MoCA score for Early Dementia is 11-21. On this administration of the MoCA, Mr. Mays scored 26 out of 30, which places him in the mild cognitive impairment range but only one point short of the normal range. The results of the MoCA did not reveal deficits in visuospatial, executive, language, attention, abstraction, or orientation. The only deficit revealed was in memory, specifically in delayed recall for unrelated words.

DIAGNOSIS AND DIAGNOSTIC SUMMARY:

The following diagnoses regarding Randall Mays are based on the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) and the International Classification of Diseases-Tenth Edition-Clinical Modification (ICD-10-CM). The DSM-5 was developed and published by the American Psychiatric Association in 2013. The ICD-10-CM was developed and published by the World Health Organization and was modified for use in the United States by The National Center for Health Statistics (NCHS) in 1999. The current iteration of the ICD-10-CM was released for use beginning no later than 2014 in the United States. In the diagnostic table below, the DSM-5 code is listed first with the ICD-10-CM code in parenthesis:

Diagnostic Codes DSM-5 (ICD-10-CM)	Disorder or Condition
292.89 (F15.229)	Stimulant Use Disorder, Amphetamines, In Remission Secondary to Controlled Environment
301.0 (F60.0)	Paranoid Personality Disorder
331.83 (F19.188)	Substance-Induced Mild Neurocognitive Disorder, Secondary to Stimulant Use Disorder
296.31 (F32.0)	Major Depressive Disorder, Mild
300.02 (F41.1)	Generalized Anxiety Disorder, Mild

Diagnostic Formulation:

Mr. Mays presents with a variety of mental and personality disorders. Based on his school history, he appeared to have learning disorders in reading and mathematics, but his academic achievement test scores from Dr. Mayfield's neuropsychological evaluation in 2009 were low average to average, suggesting that his poor grades and standardized test performance when he was young were more likely due to other factors such as effort. Based on his records and his self-report, he clearly had a Stimulant Use Disorder for several years. At least partially stemming from his amphetamine abuse, he developed a Paranoid Personality Disorder, which remains a part of his current clinical picture. He is chronically suspicious of others, reluctant to provide personal information

to others, reads demeaning and threatening meanings into events, holds persistent grudges, and is quick to react angrily or to counterattack. Stemming from his years of amphetamine abuse, he has mild neurocognitive deficits mainly in memory processes. Mr. Mays is also experiencing mild depressive and anxiety symptoms.

Deficits Related to Diagnosis:

In my opinion this evaluation did not reveal any cognitive, behavioral, or emotional deficits that significantly impair competency abilities.

COMPETENCY FOR EXECUTION FACTORS:

The following information was obtained from the defendant during the competency for execution interview portion of this evaluation. A Structured Competency for Execution Interview was utilized. This interview protocol was based on the Interview Checklist for Evaluations of Competency for Execution. [1] ***A copy of this interview protocol can be found in Appendix C.***

Reason Why in Prison:

- "They say I murdered two police officers."
- Stated he went to prison because the police came on his property and put guns to his head.
- Reported he was charged with "capital murder for what happened that day."
- Reported the offense occurred on 5/17/07, arrested the same day, and jailed in Tyler, Texas.
- Stated he went to trial in May of 2008.
- Said he was sentenced on 5/16/08 and transferred to TDCJ-ID the next day.

Place of Residence in Prison:

- Stated he is housed in the Polunsky Unit in B-Pod 82 but would not say that it was death row, but he answered affirmatively to the question, "Do people refer to that area as death row?"
- Related that the inmates housed close to him are "Love, Sorto, and Ramirez."

[1] Zapf, P.A., Boccacccini, M.A. & Brodsky, S.L. (2003) Assessment of Competency for Execution: Professional Guidelines and an Evaluation Checklist. *Behavioral Sciences and the Law*, 21: 103-120.

Conviction Information:

- Stated that he was convicted of capital murder on 5/16/08 in Athens, Texas, located in Henderson County, Texas.
- Reported that he has been incarcerated for 8 years.

Explanation of Criminal Act:

- Said that he was convicted of capital murder.
- Defined murder as when a person "killed somebody or took someone's life."
- Defined capital murder as "similar to murder but like when more than one person's life is taken."

Victim Identifying Information:

- Stated the victims in his offense were "males."
- Said one victims name was Harris, then said that he "would rather not" name the other victims.

Perceived Justice of Conviction:

- Claimed that his conviction was totally unfair.
- Reasoned it was unfair because the "police were asked not to come on my property and then they pulled their guns."
- Stated the offense would not have happened if the police had "not come on my property and point their guns at me."

Reasons Other People are Punished for the Same Offense:

- Related that other people are convicted of similar offenses because they "killed for no reason or for money."
- When asked what should happen to other people who commit similar offenses to his, he responded, "I don't want to be a judge—who's to say?"

Self-Identified Unique Understandings of Offense and Trial:

- Repeated reasoning about the police coming on his property without his permission and then pointing guns at his head for no reason.

Specific Sentence for the Crime:

- Refused to state the specific sentence he received for his conviction.
- Similar to other answers in that he refused to say the words "death sentence", "execution", "death row", etc.
- When asked if his sentence was death or LWOP, he said, "the Bible says the devil is trying to kill me".
- When asked for clarification of the above answer, he said, "It's the word of God".
- Gave reason for his refusal to answer such questions, as "I don't want to dwell on the past."

Meaning of a Sentence of Death:

- When asked what it means to receive a death sentence, he responded, "only the Lord knows."

Meaning of Death:

- Stated death means "no consciousness."
- Refused to answer when asked what it would mean for him to be dead.
- Said it would be hard to determine if someone is dead.
- When asked for clarification, he said the person would not have a pulse and not be breathing.
- When asked about his beliefs about life after death, he responded "I believe in life after death, it's like the Garden of Eden."

Specific Understanding about Death from Execution:

- When asked about different ways in which people could be executed, he responded, "I don't want to think about it."
- When asked about how people in Texas are executed, he answered "I don't' want to dwell on it."
- When asked other questions about his specific understanding about death from execution, Mr. Mays replied that he did not want to talk about it and refused to offer a response.

Reasons for Execution:

- Denied there were any justifiable reasons that he should be executed.
- When asked for reasons he should not be executed, Mr. Mays responded that the offense was not his fault, and he would rather "work, build houses, help my family, and spread the Word."

Appreciation of the Personal Importance of This Punishment:

- Mr. Mays offered no response to questions about any personal importance of the punishment of execution, stating he did not want to talk about it because he did not want to "dwell on the past" or "dwell on negative things."

Rationality/Reasoning Regarding Physical Changes During or After Execution:

- Regarding this factor of execution competence, Mr. Mays offered no response and stated that he did not want to talk about it because he did not want to "dwell on the past" or "dwell on negative things."

Rationality/Reasoning Regarding Mental Changes During/After Execution:

- Regarding this factor of execution competence, Mr. Mays offered no response and stated that he did not want to talk about it because he did not want to "dwell on the past" or "dwell on negative things."

Rationality/Reasoning Regarding Beliefs in Invulnerability:

- Regarding this factor of execution competence, Mr. Mays offered no response and stated that he did not want to talk about it because he did not want to "dwell on the past" or "dwell on negative things."

Inappropriate Affect About Execution:

- Based on behavior observations and the mental status examination, Mr. Mays seemed extremely anxious about his current legal situation and the possibility that he will be executed. Mr. Mays appeared worried and distressed when asked to discuss his punishment. He readily expressed his anger and frustration over his offense and conviction. His attention and concentration were negatively affected when asked to talk about these issues. He evidenced somatic symptoms including shaking, difficulty breathing, and dryness of mouth.

Rationality/Reasoning Regarding Acceptance or Eagerness for Execution:

- Mr. Mays has not accepted his punishment is inevitable, and he is not eager for execution.

Rationality/Reasoning Regarding Factors Associated with Beliefs about Not Being Executed:

- Mr. Mays stated that he believes he could get out of prison someday because "the Lord works miracles."
- Mr. Mays believes his good behavior in prison should be considered in any decisions about his fate as he described his behavior in prison as "following the 10 commandments, being kind to others, and loving other people."

Ability to Assist Attorney:

- Initially, Mr. Mays appeared comfortable with answering question relevant to his current competency to stand trial.
- He named his attorneys as Benjamin Wolf, Jeremy Schafer, and Gretchen Sweeney.
- He related that his attorneys are "doing what they can to try to help me."
- He stated that the lead attorney is Benjamin Wolf.
- He reported that his attorney's office is in Austin, and he has their contact information in his cell.
- When asked to describe how his attorneys look, he initially answered, "Benjamin is a big guy", but then he stopped and said, "I don't think I should be giving you this information."
- At this point, Mr. Mays opted to stop this line of questioning and said, "if that's all you have to do here, I enjoyed your company" but he refused to continue with this section of the evaluation. At that point, I began trying to administer a battery of neurocognitive tests, but he refused to participate, stating " is there anything else here that could result in something good happening?" I attempted to respond but he terminated the evaluation.

CONCLUSIONS AND OPINIONS:

Based on the findings of this examination, my training and experience, and a reasonable degree of scientific and psychological certainty, the following conclusions and opinions are offered.

1. Several mental disorder diagnoses are appropriate for Randall Mays. He has a Stimulant Use Disorder (Amphetamines) in Remission Secondary to Controlled Environment, a Paranoid Personality Disorder, a Mild Substance-Induced Neurocognitive Disorder, and both Mild Depressive and Anxiety Disorders.

2. However, these mental disorders do not deprive Randall Mays of a rational understanding of the connection between his crime and his punishment even though he is against the death penalty, feels his conviction was totally unfair, and is so depressed and anxious about his impending execution that he intentionally will not say the words "death penalty" or "execution." He is extremely reluctant to discuss his punishment because it seems to upset him so much. He also has difficulty discussing the concept of death.

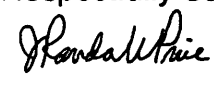
3. Mr. Mays has a rational understanding that he is to be executed and that it is imminent even though he is holding on to the idea that a miracle might happened which would result in his release from prison.

4. Mr. Mays understands that he will be executed because he was convicted of capital murder even though he believes his conviction was totally unfair.

5. In my opinion, Randall Mays is competent for execution.

It is a pleasure to be of service to the court in this matter.

Respectfully Submitted,



J. Randall Price, Ph.D., ABPP
Licensed Psychologist
States of Texas, Oklahoma, and Arkansas
Board Certified in Forensic Psychology
American Board of Professional Psychology

APPENDIX A

BRIEF CURRICULUM VITAE

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CREDENTIALS
Licensed Psychologist, State of Texas, #22571
Licensed Psychologist, State of Oklahoma, #940
Licensed Psychologist, State of Arkansas, #13-12
Licensed Sex Offender Treatment Provider, State of Texas, #99277
Board Certified in Forensic Psychology, American Board of Professional Psychology, #5664
Board Certified in Neuropsychology, American Board of Professional Neuropsychology, #217
Fellow, American Academy of Forensic Psychology
Fellow, American College of Professional Neuropsychology
Fellow, National Academy of Neuropsychology

EDUCATION		
B.S.	1970	Psychology, University of North Texas, Denton, Texas
M.S.	1971	General-Experimental Psychology, University of North Texas, Denton, Texas
Ph.D.	1982	Psychology, University of North Texas, Denton, Texas
Internship	1983	Clinical Psychology/Neuropsychology, Baylor Institute of Rehabilitation, Baylor University Medical Center, Dallas, Texas
Postdoctoral Fellowship	1995	Applications of Technology in Special Education and Related Fields, University of Kentucky, Lexington, Kentucky
Certificate	2016	Veterinary Forensic Science, University of Florida, Gainesville, Florida

CURRENT CLINICAL POSITIONS	
1983-Present	Clinical & Forensic Psychologist/Neuropsychologist, Price, Proctor & Associates, LLP, Dallas, Texas

CURRENT ACADEMIC APPOINTMENTS	
1975-2015	Professor Emeritus of Psychology, Richland College, Dallas, Texas (Retired on August 15, 2015)
1997-Present	Clinical Professor, The University of Texas Southwestern Medical Center, Department of Psychiatry, Dallas, Texas

PROFESSIONAL AFFILIATIONS
American Academy of Forensic Psychology
American Board of Forensic Psychology
American Board of Professional Psychology
American Psychological Association
American Psychology – Law Society
National Academy of Neuropsychology
Texas Psychological Association

A comprehensive curriculum vitae is available upon request

Appendix B
Review of Records

Terrell State Hospital Records (1983):

Mr. May entered Terrell State Hospital at age 22 under Emergency Admission from Kauffman County after an arrest 07/18/83 due to mental illness. The application was for indefinite commitment. His initial diagnosis was Hallucinosis. He was actively psychotic, delusional, hallucinating, combative and a danger to self and others. He was treated in a chemotherapy ward. His admission followed a Saturday night away from home with a girlfriend who was a heavy drug user. When he returned on Sunday morning, he was pacing in the driveway, talking to himself and would not communicate with others. He stated the devil had possession of him. He ate and slept little. He said he wanted help and his family convinced him to go to Terrell State Hospital on Monday night. He first agreed then changed his mind. He and his father began to fight and the police were called. The family reported it took five men to get him into the police car. They described him as being a different person when on drugs.

The historical information below was provided by his mother and stepbrother at the time of admission. Mr. Mays would not cooperate with interview. He was mute and stared into space.

- Developmental and School History:
  - He had normal birth and development.
  - He was quiet and average in school.
  - He had friends.
  - He quit school in 9th grade.
- Family History:
  - Parents were divorced for 20 years.
  - Father is a mechanic at Austin Industries.
  - He has regular contact with mother.
  - He has siblings and stepsiblings.
  - His older brother had been in the penitentiary 2 to 3 years for Capital Murder – his brother was seen for 90 days in Rusk State Hospital
  - Mr. Mays was with his 21-year-old brother when he was shot and killed 6 years prior and was deeply affected by the death and adopted an attitude of not caring about things.
  - He has never been married but had a girlfriend and 3-year-old child; they had not been together for several years.
  - No mental illness in his family.
  - He has a supportive family, and the family stated he could live with them at discharge.
- Work History:

- Joined the Army in 1976. Following discharge, he lived in Graham, Texas and earned his own living as a roughneck and mechanic (prior to 1983 hospitalization).

- Drug History (as described by mother and/or other family members)
  - He has a seven-year drug abuse history.
  - He was on six-months probation for possession of drugs at the time of hospitalization.
  - Since 1976, he used all types of drugs including crystal, amphetamines, and heroin.
  - Within the last year he had used drugs extensively (daily).
  - He had dealt drugs for past three years.
  - One-month prior, his mother took him to the VA for drug treatment – after arrival, he changed his mind and walked out. He reported he would quite drugs on his own.
  - Family reported a VA psychiatrist told then that he was very violent and capable of killing.
  - Chief complaint at Terrell was "drugs".
- Legal History:
  - Jailed for traffic violations (no details)
  - Six month probation for drug possession
- Terrell Hospital Diagnoses & Discharge:
  - 07/25/83: Diagnosis - Amphetamine or similarly acting sympathomimetic abuse, episodic
  - 07/28/83: Discharged and encouraged to volunteer for SAU

Terrell State Hospital Records (1985):

- Readmitted voluntarily on 06/03/85 after trying to break into a residence and being shot at. Police were summoned and he became violent, but agreed to hospitalization.
- Mr. Mays was readmitted due to drug abuse. He did not follow regime prescribed at 1983 discharge.
- He admitted injecting amphetamines and crystal.
- He admitted "seeing things."
- Mother reported he made bizarre statements and appeared to be responding to internal stimuli prior to admission. He had lived several places since last hospitalization.
- He had worked only sporadically since last admission and could not maintain continuous employment.
- He was oriented X3, had fair memory for recent events, had poor judgment in response to questions asked, had insight into reason for hospitalization.
- He requested help to stop abusing drugs.
- Diagnosis: Amphetamine or similarly acting substance abuse, episodic

- Discharged 06/10/85 AMA, as unimproved. No referrals were made due to unauthorized departure

Instant Offense Report (5/17/07):

According to officers' written transcripts/interviews of the offense and an audio transcript of the offense, on 5/17/07, neighbors called police to the residence of Randall Wayne Mays and Candace Mays due to domestic violence. The neighbor told police they heard gunshots and yelling between Mr. and Ms. Mays. Officer Valentine and a deputy were the first on the scene and Officer Valentine talked with Mr. and Ms. Mays in the yard of their residence. Mr. Mays explained something to the effect that he learned that his wife had been sexually assaulted when he was attempting to initiate sex with her earlier in the day. Sometime after this he and his wife were arguing. Mr. Mays admitted firing a gun outside his residence earlier in the day [was the impetus for the neighbor's call to police]. The deputy accompanying Officer Valentine went to the neighbor's house to determine why they had called. When he reported to Officer Valentine, Officer Valentine began reading Mr. Mays his Miranda warning at which time Mr. Mays turned and ran towards his house. Evidently, Officer Valentine attempted to stop Mr. Mays from leaving the yard and tore his shirt. Mr. Mays got away and entered his residence. Officer Valentine called for back up knowing Mr. May had guns in his home. Back up from several departments arrived. Mr. Mays was in his house with a gun, and police officers were on the road and surrounding his house. Mr. Mays came out of the house at one point but officers did not know if he was armed. Mr. Mays reentered the house. A standoff between police and Mr. Mays occurred for approximately 25 to 30 minutes in which police and Mr. Mays are talking back and fourth. The police are attempting to put down his gun and come out of the house so no one will get hurt. As a result of the talking back and fourth, Mr. Mays fatally shot two officers, Inspector Paul Steven Habelt and Deputy Tony Ogburn, and wounded, Deputy Kevin Harris. Mr. May was also shot in the elbow. He was arrested and taken to Tyler Medical Center for treatment. [A dash cam video recording of the offense is mentioned in the records, but the recording was not provided to this examiner.]

State's Interview with Deputy Kevin Harris Regarding Offense:

Deputy Harris told Ranger McDonald that he arrived at the Mays' residence and saw several squad cars. Mr. Mays and Deputy Valentine were having a heated argument in the front yard. Mr. Mays was very agitated, speaking unintelligibly, flailing his arms. Mr. Mays wanted Deputy Valentine out of his yard. Deputy Harris attempted to remain calm. Deputy Harris asked Mr. Mays if Deputy Valentine moved out would he show him (Deputy Harris) he was not armed and talk with him. Mr. Mays suddenly turned and sprinted to the residence. Deputy Valentine went after him but was unable to stop him before he dove into the residence through a window. The officers took cover. Soon shots were fired and two officers were down. Evidently many shots were being fired. Deputy Harris went to the side of the house to fire into the location where he believed

Mr. Mays to be. Mr. Mays came out and shot Deputy Harris in the leg. Deputy Harris dove behind a barn and began firing around the barn at Mr. Mays' location. Soon Mr. Mays surrendered.

State's Interview With Fight Nurse Kelly Cox:

Nurse Cox treated Mr. Mays for the gunshot wounds he sustained during the shootout. Nurse Cox told Texas Ranger McDonald that Mr. Mays said, " I'm sorry for causing you guys all this trouble" and "I'm sorry for hurting those guys." When asked if Mr. Mays appeared to be intoxicated, Nurse Cox, in his opinion, he did not seem intoxicated.

Texas Ranger Interview with Mr. Mays Following the Offense At Tyler Medical Center (Audio Recording):

Texas Ranger Kenny Ray conducted a recorded interview with Mr. Mays in the ER at Tyler Medical Center staring at 6:15 p.m. following the offense. Mr. Mays was being treated for gunshot injuries he incurred during the shootout. Mr. Mays apologized for shooting the officers, said it was a terrible thing that happened, continually referred to the Lord Jesus, reported parts of the offense, and defended his own actions regarding the offense because the officers were on his property pointing guns at him and threatening him. He often would not respond directly to Ranger Ray's questions and ramble about the offense allowing himself to avoid Ranger Ray's direct questioning [e.g., what type of gun were you shooting]. At 7:37 p.m. Mr. Mays asked for a lawyer.

East Texas Medical Center Records:

- Mr. Mays claimed he was allergic to milk, coffee, and meat.
- Refused cast on his arm as treatment for his gunshot injury.
- 08/26/07: Requested toenail clipper due to ingrown toenail. Request was granted.
- 01/11/08: Complained of sore throat and asked for antibiotics. Response form medical 1/19/08 indicated he reported feeling better and refused sick call.
- 02/07/08: Complained about food and requested a diet plate. Response from jail on 02/08/08 stated he could not get special diet unless medical ordered it.
- 02/08/08: Complained of needing medication. Response from medical stated he refused his medication most of the time and encouraged him to take it so it could help.
- 02/10/08: Complained of food causing headaches, stomach burning, gas, and blood in stool. Response from jail stated, "place on Dr. list." When seen 02/14/08, the bowel problem was under control.
- 02/11/08: Complained of stomach problems and requested a low "carbohydrate" diet. Response from jail - "place on Dr. list."
- 02/15/08: Asked to see Dr. Vail about medication. Response from jail on 02/16/08 stated he had seen Dr. Vail on 02/13/08 and he needed to give the medications a chance to work.

- 02/17/08: Complained of tooth hurting for months. He was seen at clinic, put on dentist list, He refused Ibuprofen or Tylenol.
- 02/23/08: Complained of blood in stool. He believed oatmeal made him ill so he could not eat it. He wrote, "it could just be the food. I do not have these problems all the time. I have heard one officer threatening to poison inmates." Response from jail – he was place on Dr. list. When he was seen on 2/28/08, he reported the bleeding had stopped. He refused rectal exam and labs drawn.
- 03/10/08: Complained of fresh paint in cell causing headache and eye watering. Action taken on 03/17/08 – Mr. Mays refused to go to the clinic or to have labs drawn.

Smith County Jail Miscellaneous Records:

Mr. Mays made a variety of requests while incarcerated. Examples include contact visits with his wife, request to get married, contact visits with tax consultant to complete his taxes, phone privileges, dietary requests. All were denied.

Dr. Vail's Evaluation and Treatment of Mr. Mays in Smith County Jail:

Dr. Theresa Vail first saw Mr. May on 09/05/2007 as requested by his attorney. Her initial notes include a history provided by Mr. Mays. His attorneys reported to Dr. Vail that Mr. Mays was having problems sleeping due to banging and digging noises on the walls of the jail. It appears Mr. Mays reported to Dr. Vail his two hospitalizations at Terrell State Hospital for drug problems. He used marijuana daily starting at age 19 and last used marijuana 15 years prior. He reported first using alcohol at age 7 with serious usage at ages 10 – 16. He reported drinking 7 to 8 beers daily for 10 years. His last alcohol use was 2 to 3 years prior. He also used cocaine daily for 2 to 3 years from ages 20 to 23. He believed his detox at Terrell State Hospital helped him. He also reported treatment for depression at Terrell. He denied DWI, admitted possession of marijuana and driving under the influence of drugs. He stated that he lost his fiancé and kid due to his drug problems. He reported persecution delusions in recent past. He thought his neighbors were dealing drugs due to the traffic in and out of their property; he called the police. The neighbors got mad, they had a large gun display, and he thought the guns were meant for him. So he bought another gun to protect himself. His mental status exam was reported as (a) cooperative, (b) fair, intermittent eye contact, (c) speech decreased in amount and rate, (d) coherent, simple, circumstantial thought processes, (e) increased anxiety regarding wife, (f) suicide/homicide ideation denied, (g) paranoid delusions denied, (h) depressed mood/affect, (i) tearful at times, (j) smiled when talked about situation. Dr. Vail notes she was unable to perform cognitive testing because Mr. Mays wanted to return to his cell. She diagnosed Depression and prescribed Zoloft 100 mg. Follow up visits included:

i) 10/3/07: He reported improved mood, still worries, improved sleep, no paranoid delusions, denied homicidal/suicidal ideation, felt safe in side cell and did not want to be in general population due to violence. Mental status

exam revealed sad affect, affect inappropriate at times but much less than initial visit. All other systems reported as normal.

ii) 10/10/07: "mood better, thought processes are slowed, simple, paranoia remains, odd affect." Risperdal was prescribed and Zoloft continued.

iii) Progress notes on 10/17/07, 10/24/07,11/07/07, 11/14/07 indicated Mr. Mays was doing well.

iv) 11/21/07: He was paranoid, guarded, delusional, odd affect yet polite, pleasant, and cooperative. He reported he was not taking his medications and had not asked to be given medication. Dr. Vail noted to jail staff that RN should ensure Mr. Mays take medication.

v) 11/28/07: He was polite, pleasant, cooperative, taking medication. He admitted depressed mood. Zoloft was increased to 150 mg. and Risperdal continued.

vi) 02/13/08: He (a) intermittently refused medication, (b) believed two of his inmate neighbors put something in his food to make him sick, (c) has stopped talking to his neighbors, (d) is more anxious with GI distress (nausea and burning), and (e) believes black officers are harassing him. Cell mates also reported Mr. Mays would not talk to them, and he was acting strange. His face was read and he admitted scratching skin to remove dead skin (excoriation). He was glad to see doctor. Mental status revealed good eye contact, smiling sadly, paranoid, guarded, no agitation, depressed mood, anxious, thought processes linear and coherent, speech clear with decreased amount, concerned about putting people out because he didn't want them mad at him, cognitively dull, denied SI/HI, endorsed auditory hallucinations – "taunts him, accursing others."

Mental Health Examinations and Opinions:

Theresa Vail, M.D.:

Dr. Vail, a psychiatrist in Tyler who also sees inmates at Smith County Jail, testified May 2008 in the punishment phase of Mr. Mays' trial. She did not testify as an expert nor was she paid for her testimony. Her testimony was based on her interviews with Mr. Mays while incarcerated in Smith County. Mr. Mays was jailed for the instant offense in May 2007. Dr. Vail saw him first in September 2007. Based on interviewing Mr. Mays, her diagnoses were Depression and Psychotic Disorder NOS. She opined that he was severely mentally ill at the time she saw him. She testified that medication helped some individuals with psychotic symptoms but not all. She prescribed Zoloft and an antipsychotic, however, Mr. Mays was not compliant with medications while incarcerated. She testified that stressful situation could induce psychotic behaviors. Dr. Vail did not talk with Mr. Mays about the offense and could not address his state of mind at the time of the offense. During cross-examination, it was established that Mr. Mays had been treated at Terrell State Hospital for drug addiction leading to psychotic behavior in 1983 and 1985. At the time of hospitalization, he was shooting

amphetamine and crystal meth heavily. When Dr. Vail was asked about Mr. Mays' life following his 1985 hospitalization during which time he built a home on his own land, married, worked, and had no further treatment or hospitalizations, she stated that she could not refer to that period in his life.

Gilda Kessner, Ph.D.:

Dr. Kessner was a forensic psychologist who testified in the guilt and innocence phase of Mr. Mays' trial. She based her testimony on her review of records. She specifically mentioned reviewing the dashboard video on the day of the murders and Dr. Vail's testimony. Dr. Kessner's diagnosis of Mr. Mays was Paranoid Personality Disorder making him susceptible to psychosis that could last minutes or hours depending on the stress level. She testified that his thought disorder had an effect on his intent when killing the officer.

David Self, M.D.:

Dr. Self, a psychiatrist, employed at Rusk Sate Hospital with a private practice in forensic psychiatry was hired by the defense to testify in the punishment phase of Mr. Mays' trial and asked to consider mitigating circumstances that might reduce Mr. Mays' blameworthiness. Dr. Self's testimony was based on a review of records including offense reports, Terrell State Hospital records, Dr. Vail and Smith County Jail records, and interviews with Mr. Mays' family members and friends. He did not see Mr. Mays. Dr. Self opined that Mr. Mays had a chronic and severe psychiatric illness causing irrational actions due to delusional thinking that was involved in the cause of the offense. Dr. Self opined, based on interviews with family and friends, that Mr. Mays began using drugs (especially methamphetamine) in 1977 or 1978 and continued until 1991. He testified that continuous use over time could cause damage to nerve cells in the brain. Based on the information he gathered, Dr. Self believed Mr. Mays symptoms were consistent with methamphetamine-induced psychosis.

Joan Mayfield, Ph.D.:

On October 9, 2009, Dr. Joan Mayfield conducted a neuropsychological evaluation at the request of Mr. Mays' attorney, Jeff Haas. Dr. Mayfield was asked to assess Mr. Mays for organic brain dysfunction or cognitive impairment as a result of Mr. Mays past drug abuse. Dr. Mayfield also relied on records from Terrell State Hospital, Cedar Creek Medical, East Texas Medical Center – Tyler, East Texas Medical Center – Athens, Ruben Garcia, MD, Urology Center of East Texas, Social Security, National Personnel Records, and Trial Testimony.

Dr. Mayfield provided a history of Mr. Mays' life according to the records. Mr. Mays was hesitant to discuss his history with Dr. Mayfield except that he reported he was kicked out of school in 10th grade and received special education services for reading and

writing. Records reported (a) he had a normal birth and development; (b) his parents are divorced and remarried; (c) he has one sister, four brothers, and one step-brother; (d) he has a brother who is incarcerated for murder - he was committed to Rusk State Hospital for observation following the murder; (e) he was quiet and average in school and had friends; (f) his areas of employment included carpentry, welding, concrete work, mechanics, and road construction; (g) he has an extensive drug history including crystal meth, amphetamines, and heroin since 1976, he used daily, and was a drug dealer for three years; (h) he was admitted to Terrell State Hospital for several days in 1983 due to hallucinations, delusions and failure to communicate; he was on probation for drug possession at the time; (i) he was, again, taken to Terrell State Hospital by police and admitted for 5 days in June 1985 due to his behavior resulting from crystal meth use – his admitting diagnosis was Amphetamine or Similarly Acting Sympathomimetic Abuse, Episodic - he had continued heavy drug and alcohol abuse following his 1983 hospitalization; (j) he had gone to the VA one month prior to his 1985 Terrell hospitalization for drug abuse treatment (no VA records available).

Dr. Mayfield administered the Test of Memory Malingering (TOMM); Reynolds Intellectual assessment Scales (RIAS); Woodcock Johnson Tests of Achievement – III; Delis-Kaplan Executive Function System (D-KEFS – selected subtests); Wisconsin Card Sorting Test; Comprehensive Trail Making Test (CTMT); Speech Sounds Perception, Seashore Rhythm Test; Test of Memory and Learning-2 (TOMAL-2); Comprehensive Receptive and Expressive Vocabulary Test (CREVT-2); Developmental Test of Visual Perception Adolescent and Adult (DTVP-A); Grooved Pegboard; Hand Dynamometer; and Finger Tapping Test. She also conducted an interview.

Dr. Mayfield concluded Mr. Mays' performance (a) was variable; (b) was relatively strong on hands-on and academic tasks; (c) decreased as task complexity increased; (d) was problematic regarding attention; (e) showed memory impairment with delayed recall superior to immediate recall; (f) showed a constellation of cognitive symptoms consistent with Major Depressive Disorder. His profile was consistent with neuropsychological impairment resulting from chronic amphetamine abuse including impairments in decision-making, problem solving, reasoning, impulse control, and other executive functioning. "His ability to understand and function rationally in a complex, rapidly changing environment is highly suspect and certainly below that of the average person." Her diagnoses were:

Axis I	Dementia NOS secondary to chronic amphetamine and related sympathomimetic abuse Depressive Disorder NOS R/O Bipolar
Axis II	Deferred
Axis III	Status physical impairment to left arm secondary to gunshot wound
Axis IV	Incarceration, pending execution, separation from family & friends
Axis V	55

James G. Underhill, Psy.D.:

The Office of Capital Writs (OCW) requested James G. Underhill, Psy.D. to conduct a records review to determine if Mr. Mays should be evaluated for Competency to be Executed. Dr. Underhill expressed his findings in an affidavit dated February 22, 2015. At the time of his review, Mr. Mays' execution was set for March 18, 2015. He relied on (a) information from Mr. Mays 1983 and1985 Terrell hospitalization for drug addiction; (b) Dr. Gilds Kessner's diagnoses of Paranoid Personality Disorder; (c) Dr. David Self's testimony opining Mr. Mays suffered from delusions and paranoia secondary to methamphetamine use and symptoms could be controlled with medication; (e) Dr. Vail's diagnoses of Psychosis NOS and Risperdal treatment following the offense; (f) a 2007 Smith County Correctional Healthcare Management record stating that Mr. Mays suffered from organic brain syndrome (in his opinion synonymous with dementia); (g) Dr. Joan Mayfield's diagnosis of impaired memory and dementia secondary to methamphetamine abuse; and (h) no treatment for mental illness during his time in TDCJ. Dr. Underhill had "substantial doubt" that Mr. Mays was competent for execution.

Cecil Reynolds, Ph.D.:

At the request of the Office of Capital Writs, Dr. Cecil Reynolds submitted an affidavit dated February 22, 2015 regarding Mr. Mays' competence for execution. Dr. Reynolds is an Emeritus Professor in Psychology at Texas A&M and has had a private practice in neuropsychology for 30 years. He currently practices Forensic Neuroscience and works on capital felony cases with a death penalty option. Dr. Reynolds' affidavit relied on (a) Dr. Underhill's affidavit, (b) Dr. Mayfield's evaluation, and (c) records he reviewed. Dr. Reynolds opined that Mr. Mays should undergo psychological evaluation by court appointed experts due to his dementia and other psychological diagnoses and lack of recent treatment for mental illness.

Katherine Black:

Katherine Black, attorney, submitted an affidavit dated February 23, 2015. Her practice is death sentence habeas corpus litigation. She interviewed Mr. Mays on February 5, 2015 to determine her opinion of his competency and mental health status. She reported that Mr. Mays had trouble speaking with her; he described himself as "crazy" and "sad". He stated that he heard "evil spirit" voices, which he attempted to deter by putting paper in his ears, socks over his head, or interrupting with other noises (fans, toilet flushes). He complained about the ozone and its effects on his health. He mentioned his interest in a new renewable energy business. When asked why he was in prison, he seemed confused and did not answer. He appeared "vague and muddled" regarding his own life events (including dates and times). Ms. Black mentioned Mr. Mays' confusion about his age at the time of his brother's death; Mays said he was 16, while Ms. Black said he would have been 35 or 36. However, 1983 mental health

records from Terrell State Hospital document that Mr. Mays was with one of his brothers when he was killed 6 years prior to his hospitalization, and Mr. Mays' age was approximately 16. Ms. Black had "substantial doubts" regarding Mr. Mays' competence for execution and believed an evaluation was needed.

Mental Health Diagnoses Table Taken From Information Above

Mental Health Professional	Date	Diagnosis
Theresa Vail, M. D Smith County Jail psychiatrist.	09/2007 Based on Interview Testified in punishment phase	Depression Psychotic Disorder NOS Severely mentally ill when she saw him. Prescribe – Zoloft & antipsychotic but he was not compliant with meds.
Gilda Kessner, Ph.D. Testified in punishment phase	Diagnosis based on record's review.	Paranoid Personality Disorder making him susceptible to psychosis that could last minutes to hours
David Self, M.D.	Diagnosis based on record's review.	Chronic and severe psychiatric illness causing irrational actions due to delusional thinking regarding the offense. Based on drug use could have nerve damage in the brain.
Joan Mayfield, Ph.D. Neuropsychological Examination	10/29/2009	-Dementia NOS secondary to chronic amphetamine and related sympathomimetic abuse -Depressive Disorder NOS -R/O Bipolar
James G. Underhill, Psy. D. (OCW requested his opinion regarding competency to be executed based on records review)	Affidavit dated - 2/22/2015	-"substantial doubt" that Mr. Mays was competent for execution.
Cecil Reynolds, Ph.D. (OCW requested his opinion regarding competency to be	Affidavit dated 2/22/2015	Mr. Mays should undergo psychological evaluation by court appointed experts due to his dementia and other psychological diagnoses and

executed based on records review)		lack of recent treatment for mental illness.

Lay Testimony During Punishment Phase :

Dr. Alain Rowe, hematologist, who lived on Cedar Creek Lake. He employed Mr. Mays to do work on his dock. He also referred Mr. Mays to his daughter and a female neighbor; both needed work done on their properties. He testified that Mr. Mays did excellent work and was very gentle, honest, and kind. He reported that Mr. Mays had asked his advice about headaches since hitting his head on an object. Mr. Mays was wearing Icy Hot patches on his head for the pain. Dr. Rowe recommended a CAT scan, but Mr. Mays said he could not afford it. Dr. Rowe also testified that his daughter offered to take Mr. Mays on her sailboat, but Mr. Mays declined saying his wife would not like it if he went. Dr. Rowe praised Mr. Mays' work and integrity.

Mr. Don Kelly, a retired manager for Chrysler Corporation, testified that Mr. Mays had done construction work on Mr. Kelly's property approximately 1.5 years prior to his testimony. Mr. Kelly described him as competent, trust worthy, and honest. He stated he would hire him again. He described one day Mr. Mays was working and felt sick with a headache and nausea. Mr. Kelly told him to go home due to his illness.

Mr. Robert Rudkin, retired form information technology at Ratheon E-Systems testified that Mr. Mays completed several welding and construction jobs on his property over 7 or 8 years. Mr. Rudkin considered Mr. Mays a friend, trusted him completely, and would hire him again. Mr. Mays often did work for Mr. Rudkin and asked for no money, even though Mr. Rudkin always paid him.

Ms. Sarah Goff hired Mr. Mays to do many jobs on her property. She testified that prior to the offense, she had given him $1,000 to do some work. He seemed to work for her regularly. At the end of each week, he provided invoices for materials and labor and told her how much money was left. He still had some of the money when the offense occurred, and Mr. Mays was concerned and wanted to give her the remaining money. He had his wife Candice call Ms. Goff about the remaining money. She believed Mr. Mays to be a trustworthy and good man.

Ms. Sherry Ross, Mr. Mays' younger sister and a salesperson at National Supply for 22 years testified that her brother Nobel was executed for capital murder, her brother, Ray, was shot and killed in a drive by shooting, and her brother Kenneth died of an overdose. She provided a family history. After her parents divorced when all the children were young, her mother took them to California. Her father came to California and got all the children, took them first to their grandparents for a short time, then moved them to Mesquite with him. She testified about the relationships among the siblings. The attorney suggested some abuse of siblings by Nobel, but that line of questioning did not materialize. She did not have a close relationship with Randall Mays while he was in

the drug culture. She testified about Mr. Mays' purchase and building of his home and small farm in Payne Springs, Texas. He and Candice did all the work on their own and they did not owe any money. She described her brother as peculiar but loving. She described Candice as having problems but standing by her brother. When asked if Mr. Mays behaved strangely, she stated that he would sometime stare of into space, change the subject and talk crazy. When he talked crazy, she told him she didn't want to hear it or hung up on him.

Ms. Linda Ross, Mr. Mays' sister, testified about their upbringing. They always had a house, but they were on their own growing up. She also used methamphetamines with Mr. Mays. She testified that Mr. Mays still acts strange at times – his eyes get wide and he acts weird. She testified that after he bought his property in 1991, he did not do drugs again to her knowledge. He also did not want drugs mentioned in conversation.

Ms. Dorothy Hillis, Mr. Mays' mother, testified about her children's father taking the children away from her when she went to California. She also stated that Mr. Mays had spells where he got a weird look in his eyes like he was not there.

Ms. Christina White, Mr. Mays' stepdaughter, testified that her mother Candice Mays was dependent on her parents until she met Mr. Mays. She never drove and she never had a job. Ms. White stated that she was more the mother in the relationship. She believed her mother to have mental problems. Her mother met Mr. Mays in 1990 or 1991 and "they completed each other." They worked together to build their home and manage their property and animals. They went from living in a small trailer on the property to living in the house that they built. She never worried about her mother after she married Mr. Mays. She thought they were both strange, but they did well together. Ms. White had children and Mr. Mays treated them great – he was a great grandfather. She has seen Mr. Mays act strangely – go from one topic to another.

Ms. Lynn Forbus, Mr. Mays' daughter, testified that she had little contact with her father or mother. Her mother and father were never married and broke up when she was very young. Her mother left her with her grandparents. After several years of no contact, she reunited with her father. She testified that during her wedding when the bridesmaids were coming down the aisle, Mr. Mays sat in the aisle to take pictures. He also interrupted the ceremony (during a song) and went to the bride and groom to congratulate them. She believed these things to be strange, but she knew he did not mean any harm and was just very happy for them.

Ms. Diana Gibson, Smith County Jail LVN, testified that Mr. Mays sometime refused to take his medication when incarcerated in Smith County

Calls for Police Service Regarding Mr. Mays 1999-2005:

- 07/12/1999: Mr. Mays was arrested for assault on a public servant. Allegedly the auto driven by Mr. Mays almost hit the auto driven by Billy Valentine, a deputy from Kaufman County Sheriff. Mr. Valentine and Mr. Mays exited their vehicles, Mr. Valentine identified himself as a deputy, and Mr. May allegedly hit Mr. Valentine in the face. Mr. Valentine subdued Mr. Mays, a witness called 911, Mr. Mays was arrested but the case was closed due to insufficient evidence.

- 02/16/2000: G. B. Nicholson, Mr. Mays' neighbor, reported terroristic threat. Mr. Mays had threatened him and he wanted police in route.

- 06/04/2000: Gerald Nicholson called police and requested to meet with them about Mr. Mays.

- 07/17/2000: Gerald Nicholson reported shots fired in air from shotgun from Mr. May's property.

- 12/20/2000: Mr. Mays reported a white pickup was back at the unoccupied house.

- 01/29/2001: Mr. Mays reported criminal mischief – door was damaged due to trying to break in residence.

- 03/04/2001: Mr. Mays reported two males in white car were at his neighbor's house trying to break in.

- 09/13/2001: Mr. Mays reported neighbors were burning something that was "choking them out." Follow up indicated wood being burned.

- 10/24/2001: Mr. Mays reported two dump trucks in area – possible illegal dumping.

- 10/27/2001: Mr. Mays reported a lot of traffic coming from Bobby Ross's house.

- 11/12/2001: Mr. Mays called requesting patrol in his area due to lots of vehicles in area.

- 12/25/2001: Gerald Nicholson reported Mr. May came to his residence and gave him a 1400 pound steer and bull calf. Also stated that Mr. May had been acting strange over the last few days. [NOTE: This was Christmas day]

- 12/28/2001: 911 call from Randall Mays saying he knew someone that wanted the job working for the county. A female voice (possibly Ms. Mays) then came on the line and said, "have a good day." Callers were advised not to use 911 for such calls.
- 01/02/2002: Mr. Mays reported suspicious activity near his residence.

- 01/13/2002: Mr. Mays reported suspicious activity near his residence.
- 02/10/2002: Mr. Mays reported a minor accident near his residence.
- 04/01/2002: Mr. Mays reported an individual in a flatbed truck tried to sell him dope.
- 07/05/2002: Mr. Mays reported criminal mischief – vehicle shot during night.
- 08/11/2002: Mr. Mays reported a reckless driver near his residence.
- 08/14/2002: Mr. Mays reported a strong odor of propane gas.
- 09/23/2002: Mr. Mays called and wanted to speak with deputy – he said they knew where he lived.
- 12/04/2002: Mr. Mays reported a lot of speeding vehicles on his black top road. He did not want to speak with officers. He was rude and belligerent to operator who took call.
- 12/10/2002: Fran Nicholson (neighbor) called. Allegedly Mr. Mays shot at a car waiting at a bus stop. Police followed up with Mr. Terry Beville who was at the bus stop with his seven year old daughter when the shots were fired. Mr. Beville did not want to press charges but reported that Mr. Mays had shot from his property in the direction of others many times. Mr. Beville worried that someone would be hurt but refused to press charges.
- 12/11/2002: Mr. Nicholson, Mr. Mays' neighbor, also reported gunshots from Mr. May towards his property several times over the past two years. When police went to Mr. Mays' house to ask him about the gunshots, the police asked him for ID. Mr. Mays got his ID, held it up for the policeman to see but did not want to give it to the police. When his ID was taken, he became agitated and grabbed at the ID. The police had to push him back.
- 12/13/2002: Mr. Mays reported people yelling and sounds like a truck stuck in mud revving motor.
- 12/22/2002: Mr. Mays reported tractor going up and down his road keeping him awake. He did not want to talk with officers until next day.
- 08/21/2003: Mr. Mays reported Bobby Ross ran through a fence and left the scene.

- 10/11/2005: Candice Mays reported a pick up was parked by her residence and a container with needles and other stuff had been dragged up by her dog. A man was arrested near the location the previous night.

Gun Barrel City Police Department Records:

On 11/15/2008, a banker called police and complained that Mr. Mays had entered the bank to do business. The banker asked for his account number, and Mr. Mays became irate and stated he did not want his bank account number known. Mr. Mays took his money back and left the bank. He returned later and told the banker "he [the banker] was going to get buried." Several days later, Mr. Mays returned with his wife and no incident occurred; later that day, he came back and told the banker that he was being watched and he [Mr. Mays] was going to get him.

TDCJ Admission Summary:

Mr. Mays was received at TDCJ on 5/16/2008. Mr. Mays reported 6 arrests involving 2 violent offenses including the capital murder offense. He also reported he was dishonorably discharged from the US Army. Death Row Information Sheet showed prior arrests for possession of drugs in 1983, Public Intoxication in 1990, and Capital Murder in 2007.

TDCJ Medical Records:

TDCJ Sick Call Related to MHMR:

- 11/2011: Complained of air quality, packed his things, and requested to move to different cell. MH was called. He said he was better. Mental status was normal. No mental health issues observed or diagnosed.

- 7/3/2012: Complained of air quality concerns; he was having headaches and ear infections. When asked how his complaints related to mental health, he said, "When I told nursing they did not believe me so I thought it would be best to have mental health involved so they could let them know." No apparent mental health needs were observed.

- 07/17/2013: Complained of becoming ill after eating dinner bread. He thought the bread might have been contaminated intentionally by inmates and/or guards especially for him because "he wouldn't play their games." Mental status was normal. No mental health issues observed or diagnosed.

Medications Listed in TDCJ Medical File:

- Motrin 600 mg

- NP- Chlor -Trimeton
- NP-Salt Packets for gargle
- NP- Tylenol
- No medications related to mental health issues were noted.

Examples of Medical Complaints from Mr. Mays:

- 09/07/2011: Active Problems Listed
  - Mental health – no diagnosis or condition on Axis I
  - Chronic Care – Hepatitis C
  - HIV High Risk
  - Oral Soft Tissue
  - Shoulder Disorder
- 09/27/2011 – complained of left elbow pain. Diagnosis included elbow injury due to gunshot wound repaired with plate and screws – flexion deformity at injury site.
- 11/12/2011 Complained of breathing problems. No signs or symptoms when checked. Possibly malingering.
- 06/28/2012 Wanted to move from cell due to poor air quality.
- 07/2012 Complained about air quality in cell – headaches and chest pains.
- 2011-2015 On several occasions, refused treatment for flue vaccine, tetanus vaccine, TB test, labs, cold symptoms, orthopedic pain, dental procedure, prostrate exam.
- December 2015 – March 2016 Mr. Mays complained of and treated for
  - Left shoulder pain
  - Dry eyes
  - Dental pain
- 2008 – 2015 Intermittent request for front cuffs across years for shoulder pain.
- 12-19-2015 complained of treatment regarding arm and shoulder pain – history of left torn rotator.
- 03/04/2016 Requested to discuss treatment for Hepatitis C.
- 03/13/2016 Complained of arm pain – stated he had rods and screws in both arms and legs that caused pain. He does have plate and screws from elbow injury from gunshot and possibly a leg injury.
- 03/15/2016: He requested steroid injections and front cuffs for shoulder pain.
- 03/28/2016: Kenalog (steroid) injection prescribed for pain.

Over the course of TDCJ incarceration, Mr. Mays complained of breathing problems due to poor air quality, left shoulder and arm pain possibly due to rotator cuff injury), dental problems, needing treatment for Hepatitis C, needing front cuffs due to arm pain (which he was given).

02/01/2015: TDCJ Use of Force Video:

According to the report, Mr. Mays was being escorted to the showers, he stopped walking, he was told to return to his cell, he refused and said they would have to carry him, he pulled away from officers, at which time officers took him down. His cell was tossed, and he was moved to a near-by cell. Officer reports indicated that Mr. Mays' behavior was abnormal.

Addendum

Dr. Joan Mayfield's Neuropsychological Test Scores

RIAS

Composite Index:	63
Verbal Index	68
Nonverbal Index	67

TOMM

Trial 1	38 correct
Trial 2	50 correct
Retention	49 correct

Woodcock Achievement

Letter-Word ID	96 (SS)	39th %ile
Passage Comprehension	95 (SS)	38th %ile
Calculations	87 (SS)	18th %ile
Applied Problems	89 (SS)	24th %ile

CTMT

Trail 1	49 (T-score)	46th %ile
Trail 2	44 (T-score)	27th %ile
Trail 3	31(T-score)	3rd %ile
Trail 4	41 (T-score)	18th %ile
Trail 5	18 (T-score)	<1st %ile
Composite Index	78 (SS)	6th %ile

D-KEFS

Verbal Fluency

Letter Fluency	5 (scaled score)
Category	5 (scaled score)
Category Switching Response	2 (scaled score)
Category Switching Accuracy	3 (scaled score)

Color-Word Interference Test

Color Naming	4 (scaled score)
Word Reading	1 (scaled score)
Inhibition	4 (scaled score)
Inhibition/Switching	1 (scaled score)

Tower 9 (scaled score)

WCST (Computer)

Perseverative Response	21 (raw) WNL
Categories Completed	1 (raw) Below Average
Trials to complete 1st category	106 (raw) Below Average
Failure to Maintain Set	1 (raw) WNL

CPT-II Chances 86/100 attention problem exists

MEMORY

TOMAL-2

Verbal Memory Index	53 (SS)	<1st %ile
Nonverbal Memory Index	57 9SS)	<1st %ile
Composite Memory Index	58 (SS)	<1st %ile
Delayed Recall Index	76 (SS)	5th %ile

LANGUAGE

Comprehensive receptive & Expressive Vocabulary Test

Receptive	86 (SS)	18th %ile
Expressive	79 (SS)	8th %ile
General Vocabulary	79 (SS)	8th %ile

Speech Sounds Perception 2 (GNDS) mild to moderate impairment
Seashore Rhythm Test 1 (GNDS) normal limits

MOTOR & VISUAL PERCEPTUAL

Grooved Pegboard

Dominant Hand	Unable to assess
Non-Dominant Hand	47 (T-score)

Grip Strength

Dominant Hand	Unable to assess
Non Dominant Hand	59 (T-score)

Tapping

Dominant Hand	Unable to assess
Non-Dominant Hand	61 (T-score)

Developmental Test of Visual Perception

General Visual Perception	85 (SS)	16th %ile
Motor Reduced Visual Perception	89 (SS)	23rd %ile
Visual0Motor Integration		

APPENDIX C

EVALUATION OF COMPETENCY FOR EXECUTION

J. Randall Price, Ph.D, ABPP, ABN[1]

Understanding of the Reasons for Punishment

Reason Why in Prison:

1. Why are you in prison?
2. What did you do to be sent to prison?
3. With what were you charged?
4. What led to you getting convicted?
5. When did the offense occur?
6. When were you arrested?
7. Where were you confined?
8. When did you go to trial?
9. When were you sentenced?
10. When did you come to prison?

Place of Residence in Prison:

11. In what prison unit are you housed?
12. What do they call the area of the prison in which you are housed?
13. What is your cell number?
14. What inmates are close to your cell?

Conviction Information:

15. What is the legal term for the crime for which you were convicted?
16. When were you convicted?
17. In what county was your trial?
18. In what town was your trial?
19. How long have you been in prison?

Explanation of Criminal Act:

20. With what crime were you convicted?
21. What criminal act did you commit?
22. What is murder defined in the law?
23. How is capital murder different than murder?

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[1] Adapted from: Zapf, P.A., Boccaccini, M.A. & Brodsky, S.L. (2003) Assessment of Competency for Execution: Professional Guidelines and an Evaluation Checklist, *Behavioral Science and the Law 21:* 103-120.

Victim Identifying Information:

24. Were the victims male or female?
25. What were the victim's names?
26. How would you describe the victims?

Perceived Justice of Conviction:

27. What do you think was just or fair about your conviction?
28. What do you think was unjust or unfair about your conviction?
29. What would have been the right thing to do to you?

Reasons Other People are Punished for the Same Offense:

30. Why are other people convicted of a similar offense punished?
31. What should happen to other people convicted of a similar offense?
32. Why are some offenses punished more severely than other offenses?

Self-identified Unique Understandings of Offense and Trial:

33. What was different about the offense for which you were convicted?
34. What was different about your trial?
35. What do people not understand about what happened in your case?

Understanding of the Punishment

Specific Sentence for the Crime:

36. What sentence did you receive?

Meaning of a Sentence of Death:

37. What does it mean to receive a death sentence?

Meaning of Death:

38. What does it mean for any person to be dead?
39. What does it mean for you to be dead?
40. How would you know if someone is dead?
41. What are your beliefs about life after death?

Specific Understanding about Death from Execution:

42. What are some different ways in which people can be executed?

43. How are people executed in Texas?
44. What is your understanding of the procedures used in Texas?
45. How do these procedures result in death?
46. What is done with an inmate's property after execution?
47. What is done with an inmate's remains after execution?

Reasons for Execution:

48. What are the reasons why you should be executed?
49. What are the reasons why you should not be executed?
50. What does society believe about the death by execution?
51. What does religion believe about death by execution?
52. What does the law believe about death by execution?
53. What is your opinion about death by execution?

Ability to Appreciate and Reason in Addition to Factual Understanding

Appreciation of the Personal Importance of This Punishment:

54. What does it mean to you to be executed?
55. What will it mean personally to be dead?
56. How will it be different from being alive?
57. How will it affect you?
58. How will it affect others in your life?

Rationality/Reasoning Regarding Physical Changes During/After Execution:

59. What happens physically when anyone is executed?
60. What will physically happen to you if you are executed?

Rationality/Reasoning Regarding Mental Changes During/After Execution:

61. What will happen to you mentally if you are executed?
62. Will you be mentally different in any way if you are executed?

Rationality/Reasoning Regarding Other Personal Changes During/After Execution:

63. What do you think will be different about you if you are executed?

Rationality/Reasoning Regarding Beliefs in Invulnerability:

64. Do you believe you may not die if execution occurs?
65. Do you believe anything different would happen to you as opposed to anyone else if they execute you?

Inappropriate Affect About Execution:

66. How do you feel when you think about being executed?
67. How do you think you will feel just prior to being executed?

Rationality/Reasoning Regarding Acceptance or Eagerness for Execution:

68. Are you looking forward to being executed? Why?
69. Have you accepted the fact that you will likely be executed? How?

Rationality/Reasoning Regarding Factors Associated with Beliefs about Not Being Executed:

70. What are some reasons why you should not be executed?
71. What are reasons why you might not be executed?

Ability to Assist Attorney:

72. What are your attorneys' names?
73. Is there one main or lead attorney?
74. Where are they located?
75. Do you know their address and phone number?
76. What do your attorneys look like?
77. How long have you had these attorneys?
78. When was the last time you saw or spoke to any of your attorneys?
79. How often do you and your attorneys correspond?
80. How often do you see your attorneys?
81. Do you trust your attorneys' skills and competence?
82. Do you trust your attorneys' caring and investment in your case?
83. What have they done to show that they are trustworthy?
84. Any reason to think they cannot be trusted?
85. Who do you think your attorneys work for? Who pays them?
86. Do you know if an execution date has been set?
87. If so, when is it?
88. If not, when is it likely to be?
89. Are your attorneys working on an appeal?
90. Have any appeals been filed on your behalf?
91. Are appeals still available?

92. What are the issues on appeal?
93. What is the goal of an appeal?
94. What happens will appeals are processed and assessed?
95. Who is responsible for making decisions about appeals?
96. Have you read any of the information prepared for an appeal?
97. If so, what is your understanding about the issues on appeal?
98. Have your attorneys been told everything needed to file an appeal?
99. Have you withheld or kept anything from your attorneys?
100. Is there anything you would never tell your attorneys?
101. Is there any reason you would not want to appeal?
102. Is there any reason you would not want to discuss an appeal?
103. Is there anything that keeps you from believing your attorneys?
104. Any reason that keeps you from speaking freely with your attorneys?