

ATTACHMENT 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TENNESSEE
3 NORTHERN DIVISION, AT KNOXVILLE, TENNESSEE

4 Daryl Keith Holton,
5 Plaintiff,

6 Vs.

7 Ricky Bell,
8 Defendant,

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: 1:05:202
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10 Transcript of proceedings before the Honorable
11 Thomas W. Phillips on September 5, 2006.

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13 APPEARANCES:

14 ON BEHALF OF THE PLAINTIFF:

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16 Amy Tarkington
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September 5, 2006

1 COURTROOM DEPUTY: Motion hearing in
2 1-05-cv202, Daryl Keith Holton, versus Ricky Bell.
3 Stephen A. Ferrell and Susanne Bales are here on behalf
4 of Mr. Holton. Are you ready to proceed?

5 MR. FERRELL: Yes, we are.

6 COURTROOM DEPUTY: Jennifer Smith and amy
7 Tarkington are here on behalf of the State. Are you
8 ready to proceed?

9 MS. TARKINGTON: We are.

00:02:10 10 THE COURT: This is a preliminary hearing
11 to determine whether Daryl Keith Holton, the named
12 petitioner in this habeas corpus case who is an inmate
13 on death row, is competent to choose not to seek federal
14 habeas corpus review of his death sentence.

15 Mr. Holton's execution is scheduled for September 19th,
16 2006. Stephen A. Ferrell with the Federal Defender's
17 Services of Eastern Tennessee was appointed counsel for
18 Mr. Holton for the limited purpose of addressing pending
19 motions, more particularly, the respondent's motion to
00:02:44 20 dismiss the habeas corpus petition as unauthorized.

21 This hearing began on July 31st of this
22 year when the court set this matter for a hearing on
23 pending motions including the ex-parte motion by the
24 Federal Defender for an order requiring Mr. Holton to
25 meet with the psychological expert Dr. George Woods for

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1 a mental evaluation as to Mr. Holton's competency in
2 regard to the habeas corpus litigation. The State of
3 Tennessee took the position at the hearing, and
4 maintains that position today, that the jurisdiction of
5 this court has not been properly invoked and that all
6 pending motions should be dismissed because Mr. Holton
7 has not agreed to be represented by the Federal
8 Defender's Services of Eastern Tennessee, has not
9 authorized that organization to seek a psychological
00:03:38 10 examination of him and has not authorized or agreed to
11 that organization representing him in this court for
12 habeas corpus review. In fact, Mr. Holton testified at
13 the previous proceeding that was held in this case that:
14 "I'm satisfied with the finding of the state court's
15 jury and the sentence of death. I believe that the
16 death sentence is appropriate for the crime which I was
17 convicted. I just don't have a problem with it. I'm
18 not going to waste the court's time with frivolous
19 issues. Like it or not, you can have four convictions
00:04:14 20 of first degree murder and four death sentences and
21 still have scruples. I just happen to think I do."

22 Thus, it was apparent to the court and to
23 all parties that the defendant adamantly declined to
24 have his case reviewed by the Federal Courts pursuant to
25 a petition for habeas corpus. Counsel for Mr. Holton

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1 has filed with his request to have Mr. Holton examined
2 to determine his mental competency the affidavit of
3 Dr. George Woods who opined that it was his professional
4 opinion there is reasonable cause to believe that
5 Mr. Holton is suffering from a mental disease or defect
6 rendering him mentally incompetent. Thus, Dr. Woods'
7 affidavit brought forth a suggestion of incompetence
8 which would prevent Mr. Holton from understanding his
9 legal position and the options available to him and
00:05:04 10 being capable of making a rational choice among his
11 options.

12 The State of Tennessee, on the other hand,
13 countered that as recently as May of 2006 the Tennessee
14 supreme court made a specific finding there was
15 insufficient evidence presented to demonstrate
16 Mr. Holton's incompetence and the record reflects that
17 three mental health experts testified at trial that the
18 defendant did suffer from a major mental illness, a long
19 history of major depression, but all three also found
00:05:36 20 that he was competent at the time of trial.

21 While this court was concerned as to
22 whether the Federal Defender Services of Eastern
23 Tennessee had standing to pursue the pending motions
24 before the court, the court concluded that pursuant to
25 the Supreme Court's decision in *Pate v. Robinson* once

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1 Holton's competence was placed in issue he could not
2 waive his right to have his competence determined.

3 Accordingly, the court found it was
4 necessary for Mr. Holton to undergo a psychological
5 evaluation and testing by an independent psychologist
6 and appointed Dr. Bruce G. Seidner, a clinical
7 psychologist, to perform the psychological evaluation to
8 determine Mr. Holton's competency to choose not to seek
9 federal habeas corpus review.

00:06:26

10 Dr. Seidner was specifically directed to
11 address: Number one, whether Mr. Holton suffers from a
12 mental disease, disorder or defect. Number 2, whether a
13 mental disease, disorder or defect prevents Mr. Holton
14 from understanding this legal position and the options
15 available to him, and, number three, whether a mental
16 disease, disorder or defect prevents Mr. Holton from
17 making a rational choice among his options.

00:06:58

18 Specifically, this court must determine
19 whether there is reasonable cause to believe that
20 Mr. Holton may presently be suffering from a mental
21 disease or defect rendering him mentally incompetent to
22 waive his right to further appeals. The standard
23 governing this court's determination in this regard is
24 set forth in the Supreme Court's decision in *Rees v.*
25 *Peyton*, that is, whether Mr. Holton has the capacity to

1 appreciate his position and make a rational choice with
2 respect to continuing or abandoning further litigation,
3 or, on the other hand, whether he is suffering from a
4 mental disease, disorder or defect which may
5 substantially affect his capacity in the premises.

6 It was for this reason that the court
7 appointed Dr. Seidner. Dr. Seidner has now filed his
8 written report of evaluation. The parties have been
9 given copies of the written report and Dr. Seidner is
10 present today to present his findings.

00:07:48

11 Mr. Ferrell, I assume you have some
12 questions of Dr. Seidner you would like to ask of him,
13 do you not?

14 MR. FERRELL: Yes, I do, Your Honor.

15 THE COURT: Dr. Seidner, if you would
16 please stand to be sworn.

17 BRUCE G. SEIDNER

18 was first duly sworn and testified as follows:

19 THE COURT: Since Dr. Seidner is
20 essentially my witness, I get to question him first.

00:08:18

21 DIRECT EXAMINATION.

22 BY THE COURT:

23 Q. Dr. Seidner, if you would relate for the
24 assembled individuals your educational training and your
25 background.

1 A. I did my undergraduate degree at Antioch
2 College and worked in a number of hospitals prior to
3 beginning graduate school. I was at the Menninger
4 Foundation prior to graduate school where I studied, I
5 took courses in the psychiatric residency there and
6 worked as a child-care worker for approximately two
7 years prior to graduate school here.

8 I entered the University of Tennessee in 1979
9 and did my internship and was licensed at the doctoral
00:10:20 10 level in '87. I have practiced on both an inpatient and
11 outpatient basis primarily working with adolescents,
12 children and their families. I have always maintained a
13 very active assessment practice and about ten years ago
14 began to do more and more forensic assessments. I have
15 worked a good deal with the family and juvenile courts
16 where I have done approximately 45, 50 custody
17 evaluations. I have worked for both the defense and as
18 a court witness in a number of criminal matters in both
19 state and Federal Courts.

00:11:18 20 Q. Dr. Seidner, would you relate for us, please,
21 the manner in which you went about your examination of
22 Mr. Holton and the tests you administered and the
23 process that you went through in reaching your
24 conclusions.

25 A. I have a large record. I have seven notebooks

1 of records which include the material that was supplied
2 by the Federal Defender's Service and that included the
3 mitigation and social history notes of the inquisitors,
4 the inquisitor's interview and investigative file, the
5 VA records, Bedford County Jail records, the military
6 records, the Alvin C. York Medical Center records, the
7 psychiatric report of Dr. William Kenner and the
8 testimony of Dr. William Kenner. This is at the
9 original trial.

00:12:20

10 The testimony of Dr. Pamela Auble, as well as
11 the report of Dr. Pamela Auble. Dr. Auble was kind
12 enough to send the raw data as well from that
13 evaluation.

14 I have a letter from Dr. George Woods, and
15 affidavit of Dr. George Woods. I have the report of
16 Dr. Daniel Martell, as well as the testimony of Daniel
17 Martell. I have what was represented as the complete
18 record of the Riverbend Maximum Security Institute
19 records. I have his legal, administrative, medical
20 correspondence, visitors, behavioral observations from
21 RMSI.

00:13:00

22 I have a transcript from the Circuit Court of
23 Bedford County, State of Tennessee versus Holton. It's
24 case number 14304. It's a transcript of hearings from
25 November 19th, 1999 and January 14th, 2000.

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1 The Court of Criminal Appeals of Tennessee
2 opinion in the State of Tennessee versus Holton. That
3 is the 7-17-02 opinion. I have the transcript of the
4 recent hearing on 7-31-06 here in the Eastern District
5 of Tennessee court, Holton versus Bell, the motions
6 hearings transcript. There is the letter that Your
7 Honor referred to written 10-19-05 from Mr. Holton to
8 the court wishing to waive further appeals.

9 On 8-25-06 I spent the afternoon at Riverbend.
00:14:16 10 I interviewed Warden Bell and several correctional
11 officers who have direct experience with him. I
12 interviewed Mr. Matthew Pennington, John Johnson,
13 Corporal Jim Weedon and Sergeant Valery Hampton.

14 Sergeant Valery Hampton is an investigative
15 officer. While she was printing off the phone log so I
16 could see what calls were going in and out to Mr. Holton
17 she offered to and played a 30 minute recording of
18 Mr. Holton and his mother so I had access to that as
19 well.

00:15:04 20 On 8-26, Saturday, I had a four hour interview
21 with Mr. Holton and it was basically a six, seven hour
22 day, but two hours were taken of that with Mr. Holton
23 completing an MMPI. I interviewed him for a couple of
24 hours. He took the MMPI. I interviewed for another
25 couple of hours and then on Sunday morning, on the 27th,

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1 I interviewed Mr. Holton for four hours.

2 I have looked carefully through the record for
3 indications of previous evaluations, and, you know,
4 looking especially for any findings of incompetence in
5 the past, any issues of trial competence. I found none.
6 His trial competence, adjudicative competences, has just
7 not been an issue that I can find either in the original
8 reports at the time of the trial or subsequent. The
9 only exception is Dr. Woods who in October of '05 in his
00:16:38 10 affidavit suggested that Mr. Holton suffered from Post
11 Traumatic Stress Disorder and was not competent to
12 waive, you know, appeals, but that is the, you know,
13 that is sort of a lone standout from the record.

14 The trial court judge is quoted in the Supreme
15 Court opinion and it's paraphrased, but it says
16 essentially Mr. Holton has been evaluated by no less
17 than five mental health experts, none of whom have
18 raised issues of his trial competence.

19 There is nothing in the Riverbend record that
00:17:28 20 would suggest incompetence. There are folks who have
21 very very poor adjustments on death row and
22 decompensate. Mr. Holton is not one of them.
23 Mr. Holton has a regular schedule, he interacts well
24 with guards and inmates. There is no report, I mean,
25 again and again he was referred to as a, you know,

1 pleasant, appropriate, respectful model prisoner,
2 someone who takes full advantage of opportunities to
3 exercise, listens to the radio, talks appropriately.
4 There are no, there is no evidence or external evidence
5 of any mental health problems. There is no objective
6 evidence I could find that would suggest a mental
7 disorder or defect in terms of those sorts of
8 observations.

9 I did do an MMPI-2 and it is not suggestive of
00:18:58 10 the kind of mental disorder or defect that rises to a
11 level of any question of his rational process. I do
12 believe that there is a previous and credible history of
13 depression and a previous and credible history of drug
14 abuse, arguably, dependency.

15 At present I find nothing in my interviews of
16 Mr. Holton to suggest that he does not have a rational
17 process. Would another individual make the same choices
18 as he? You know, arguably, yes. Are his choices
19 consistent with his rational process? Yes. He was
00:20:04 20 questioned extensively about this in the trial
21 transcript November 19, 1999, and January 14, 2000, by
22 the court and he more than holds his own in terms of his
23 knowledge of the legal process. I don't anticipate
24 there would be any disagreement that he is someone who,
25 you know, has a very strong knowledge base.

1 In talking to him about how he views his
2 situation, I could find no evidence of psychopathology,
3 unusual thinking, you know, the sort of, you know, rigid
4 and variant process that is associated with some mental
5 disorders. My opinion which I gave is that I could find
6 nothing to challenge his competence, in fact, I found
7 much that underline his capacity as quite competent.

8 Q. Dr. Seidner, if you would, please, based upon
9 your background, training and education, considering the
00:21:42 10 information that you have reviewed in preparation for
11 interviewing Mr. Holton and in view of your actual
12 interview of him and testing of him would you relate
13 within a reasonable degree of psychological certainty
14 your findings as to the three questions presented to you
15 by the court.

16 A. The first question was whether Mr. Holton
17 suffers from mental disease, disorder or defect. It is
18 my opinion that Mr. Holton does not currently present
19 with a mental disease, disorder or defect. For example,
00:22:26 20 he does not currently present with depression or
21 symptoms of PTSD. While I do believe he is credibly
22 diagnosed with a personality disorder at present, this
23 does not rise to the threshold of the meaning of mental
24 disease, disorder or defect relevant to issues of
25 competence.

1 Two, whether a mental disease, disorder or
2 defect prevents Mr. Holton from understanding his legal
3 position and the options available to him. It is my
4 opinion that there is no condition that affects
5 Mr. Holton's competence. He is fully competent and
6 especially informed about his legal position and the
7 options available to him.

8 The third question, whether a mental disease,
9 disorder or defect prevents Mr. Holton from making a
10 rational choice among his options. It is my opinion
11 that Mr. Holton is fully rational. He is especially
12 informed of his legal options. He is especially aware
13 of the consequences of his legal options. He has no
14 unusual beliefs about death and fully understands the
15 legal reasons for and consequences of his execution and
16 death. He is not overborne by guilt, delusion or
17 irrational thinking. He is not a "death row volunteer."
18 His adjustment to death row has been as good as one
19 could expect.

20 THE COURT: Thank you, Dr. Seidner. Your
21 report will be received and made a part of the record in
22 this case. I guess we probably need to since it is a
23 psychological evaluation, place it in the record under
24 seal.

25 (Psychological report filed under

1 seal).

2 THE COURT: Okay, now, Mr. Farrell, do you
3 have questions of Dr. Seidner?

4 MR. FERRELL: Yes, Your Honor.

5 THE COURT: Incidentally, Mr. Ferrell, we
6 did receive just a moment ago your additional
7 attachments in support of your motion for appointment of
8 counsel and evidentiary hearing. The unsigned
9 declaration of George W. Woods and the affidavit of
00:24:24 10 Kelly Gleason. If you want to use that in your cross
11 examination of Dr. Seidner, we probably need to give him
12 a chance to read it because we just received it.

13 MR. FERRELL: I understand that. That was
14 due to the late nature of us getting the report. We
15 were trying to comply as best we could. I do plan to
16 use that report to cross-examine him.

17 THE COURT: You may proceed.

18 **CROSS EXAMINATION**

19 BY MR. FERRELL:

00:24:48 20 Q. The first question I wanted to ask you, you
21 have used the term "rational" a number of times. What
22 is your definition of rational?

23 A. There needs to be an intellectual capacity to
24 differentiate between options. There needs to be
25 sufficient memory to, you know, hold information. There

1 should not be some, you know, delusional or major
2 psychopathology that disrupts the, you know,
3 intellectual process. There is good reality testing.
4 It is a competence to have information and to use that
5 information realistically and adaptively.

6 Q. What I am gathering is there is a big
7 difference in that definition between reality and
8 delusion. Is that the main thing, that you recognize
9 what is real and what is a delusion?

00:26:18

10 A. There is not always a bright line, but that
11 would be important.

12 Q. And would an opinion on the law ever rise to a
13 delusion, do you think?

14 A. Well, that's a legal question, but I think it
15 is the context in which a psychological expert is
16 operating. In terms of prongs, let's say in dusky, for
17 instance, there needs to be present rational ability.
18 There is an interactional component. One has to be able
19 to work with the attorney. You know, gone is what used
20 to be called motivational volitional kind of prong. I
21 probably have gone way over the bounds of your question.
22 Have I answered the question?

00:27:28

23 Q. I think you have answered the question.
24 Especially one thing you just said. You think someone
25 needs to be able to work with their attorney as far as

1 competence goes. That is one of the things you are
2 considering in determining competence?

3 A. Yeah, work with, have the capacity. You know,
4 if someone is mentally retarded, for instance, you know,
5 their capacity to talk about, you know, what is relevant
6 to their attorney, you know, their trial competence is
7 compromised by that incapacity.

8 Q. Did you see in your review of the records,
9 particularly some of the transcripts from the trial, any
00:28:24 10 indications that Mr. Holton had difficulties working
11 with his attorneys?

12 MS. SMITH: Your Honor, I object to the
13 relevance of this question. This is not a competence to
14 stand trial inquiry. The standard is quite different at
15 this stage.

16 THE COURT: I will let him answer the
17 question. The issues before this court today are clear
18 cut. Let's not try to decide whether he was competent
19 to stand trial. That is irrelevant to these
00:28:50 20 proceedings.

21 MR. FERRELL: I know, Your Honor. The
22 witness said he had considered that. I wanted to --

23 THE COURT: You can answer the question.

24 THE WITNESS: I have been a part of a lot
25 of trials and have witnessed any number of defendants

1 and their attorneys work around trial tactics and
2 strategy. To my knowledge there was a good deal of give
3 and take between Mr. Holton and his attorneys. At no
4 point in time am I aware of there being an inability to
5 work with the attorneys. To my knowledge he was fully
6 compliant with the attorneys' recommendations during the
7 trial.

8 BY MR. FERRELL:

9 Q. I am going to go ahead and sort of back up and
00:29:52 10 do a little bit of the preliminary work for this
11 evaluation or a little bit of the preliminary
12 circumstances. Were you given any -- the instructions
13 were in the entry that were given. Were you given any
14 other special instructions or limitations in conducting
15 this evaluation?

16 A. No, not by the court.

17 Q. Okay. And in your report you list items 1
18 through 14 that you reviewed. Do you have any idea how
19 much time you spent reviewing that background material?

00:30:30 20 A. Yeah. There is, there are the hours you spend
21 and then there are the hours you bill for. You know, I
22 have in excess of 20 hours.

23 Q. Reviewing these materials?

24 A. Yes.

25 Q. Do you feel you had time to adequately review

1 them?

2 A. Yes.

3 Q. Looking at the other items you relied on, item
4 15, Riverbend Maximum Security Institute records.

5 A. Yes, sir.

6 Q. Those are the records attached, or not
7 attached but that you brought with you to this court?
8 You didn't attach those to your report?

9 A. No, sir.

00:31:10

10 Q. Okay.

11 A. They are these (indicating).

12 Q. About how long did you spend reviewing those?

13 A. Probably -- a lot of these are pretty routine.
14 Many of them are dupes. Maybe I don't know, an hour and
15 a half, two hours.

16 Q. Okay.

17 A. You know, I have the ones that require more
18 interest tabbed, but most of these are, you know,
19 records that he has eaten or not eaten, you know, that
20 sort of business.

00:31:56

21 Q. Do those records contain conversations of
22 Mr. Holton or are they mostly like you just said sort of
23 his comings and goings, his eating, his habits?

24 A. Mostly that. That is why I spent Friday
25 afternoon interviewing the guards that I did.

1 Q. Did you take any notes of those interviews?

2 A. Oh, sure.

3 Q. Are they part of that file that you brought
4 with you today?

5 A. They are. I have, I have the typical hand
6 scratch that you are used to seeing.

7 Q. You didn't tape record the conversations?

8 A. I did not.

00:32:34

9 Q. Okay. Did you take notes as well in your
10 conversations with Mr. Holton?

11 A. I did. Those are also here.

12 Q. Did you ask Mr. Holton any questions about his
13 mental state in last October of 2005?

14 A. Yes. Well, he offered up his frustration. I
15 was making inquiry about his mental status, trying to
16 get information about his mood, his perceptions, any
17 kind of vegetative behavior that would support a
18 depressive diagnosis. He described himself as not being
19 depressed, but being frustrated at times by what he
20 characterizes as do-gooders who are -- this is in his
21 words, but impinging would be my word on what he
22 describes as, you know, his autonomy and right to in his
23 words be the captain of his own ship.

00:33:28

24 Q. Did you assess him on whether he may or may
25 not have been depressed at that time?

1 A. Back in October.

2 Q. Back in October. Is there any way to do that?

3 A. Well, there is retrospective sorts of
4 analysis. I read the reports when Dr. Woods had
5 interviewed him in October. He reported that not long
6 before Dr. William Kenner had interviewed him, and it
7 was Mr. Holton's feedback to me that Mr. Kenner had,
8 rather Dr. Kenner, had shared with the public defender,
9 and I am unsure whether the public defender had shared
00:34:54 10 this with Mr. Holton or Dr. Kenner shared it with
11 Mr. Holton, but Mr. Holton shared with me that
12 Dr. Kenner found him to be competent and not having, you
13 know, a mental disease or defect.

14 It was his frustration over being then
15 evaluated again by Dr. Woods. That is the blip in what
16 is otherwise what he characterizes as a good adjustment.

17 Q. When you say the evaluation by Dr. Woods, do
18 you know anything about the parameters of that
19 evaluation as you say?

00:35:40 20 A. Well, I only know about them from what
21 Dr. Woods describes and what Mr. Holton described.

22 Q. Were you aware they were very abbreviated
23 conversations or would you characterize them as full
24 evaluations?

25 A. I believe they were abbreviated. I believe

1 they were no more than one or two hour conversations on
2 two different dates.

3 Q. You conducted an MMPI. Did you bring the raw
4 data from the MMPI you conducted with you?

5 A. Yes.

6 Q. In your report did you list any of the scores
7 on the raw data?

8 A. I did not.

9 Q. You have not provided that raw data to any
00:36:30 10 other mental health professional at this time?

11 A. Not at this time.

12 Q. Is such sharing customary amongst mental
13 health professionals?

14 A. Absolutely.

15 Q. In fact, you reviewed Dr. Auble's raw data
16 from 1998, I believe?

17 A. That is correct.

18 Q. Are there sometimes different ways of
19 interpreting this raw data?

00:36:50 20 A. Sure. That is what makes it a horse race.

21 Q. How did you decide which collateral interviews
22 to conduct in this case?

23 A. I had written a letter ahead to both
24 Mr. Holton and to Warden Bell and asked -- the one to
25 Mr. Holton introducing myself. I have that here as

1 well, if you would like. And the one to Warden Bell
2 described my need to speak with correctional officers
3 who had daily interaction with Mr. Holton and could he
4 make those available, as well as to make the record
5 available. When I arrived on Friday, they had these
6 officers available. I met with them in I believe it was
7 in the infirmary area.

8 Q. So those correctional officers were chosen by
9 Warden Bell and his staff, to your knowledge, or you
00:37:54 10 don't know?

11 A. To my knowledge they were chosen based on
12 being the correctional officers who are in his pod and
13 who know him.

14 Q. And you listened to a tape recording of a
15 conversation with his mother?

16 A. That is correct.

17 Q. Do you have any idea how this tape recording
18 was chosen or this taped conversation was chosen?

19 A. Yes. I was in the medical records, the
00:38:20 20 records area. I asked for the phone log. The I guess
21 records keeper -- who knows everyone's number my
22 memory -- showed me to the security room where Sergeant
23 Hampton was sitting. She has got her computer and
24 everything. I asked for all of the phone logs. While
25 she was working on her computer to pull up and print the

1 phone logs she asked if I would want to hear the most
2 recent call from Mr. Holton. I was surprised that they
3 have such things. I said, sure.

4 Q. You have no idea if this phone conversation
5 was representative of his conversations with his mother?

6 A. There are not many of them. They don't talk
7 but about once a month.

8 Q. On the phone you mean?

9 A. That is correct.

00:39:30 10 Q. Do you have any idea how often she visits?

11 A. Yes, I have those records. Not often.

12 Mr. Holton has described being concerned that such
13 visits are upsetting for this family, upsetting for his
14 mother. He prefers that they not visit for that reason.

15 Q. Did you seek to interview his mother?

16 A. No, I did not.

17 Q. Did you not think that she might have more
18 insight into his emotional state than the prison guards?

19 A. No. I considered the prison guards to be
00:40:20 20 objective. Their interviews were consistent with
21 Mr. Holton's report. Had I in my interviews with
22 Mr. Holton discovered some inconsistency between the
23 relationships as characterized by the guards and the
24 relationships as characterized by Mr. Holton, I might
25 well have been more active in seeking other collateral

1 interviews.

2 Q. The prison guards, you are aware that they are
3 staff of a party in this action seeking to execute
4 Mr. Holton?

5 A. I think at an institutional level that is
6 correct. At a day to day personal level I don't believe
7 that is the way that they characterize themselves.

8 Q. Did they describe their conversations with
9 Mr. Holton?

00:41:12 10 A. They did.

11 Q. Do they enter into political -- not
12 political -- legal discussions with him?

13 A. Well, I can leave that, I mean, I can quote
14 some of those and you can characterize them. I would
15 characterize them as appropriate and social. They think
16 of themselves as professionals who need to know people
17 well enough to work and engage their behavior, but I,
18 don't believe -- I think they draw a line in terms of
19 technical legal discussions. I have no record there was
00:42:06 20 a technical legal discussion. I do have, you know,
21 quotes. "He is sharp as a tack. Knows lots of trivia.
22 Retains a lot of knowledge." This is with John Johnson.
23 They have shared military experience. A number of these
24 guards are retired military. You know, I was interested
25 in getting the day to day behavior and mood of

1 Mr. Holton. He is not someone who, for instance, one of
2 the guards said he is not one of these folks who walks
3 around like he has the weight of the world on his
4 shoulders. He is not a complaining sort. He eats well,
5 he sleeps well, he gets up. He keeps his cell clean. I
6 was looking for evidence of psych pathology.

7 Q. Wouldn't that be the type of thing the guards
8 would be the most interested in, whether he is following
9 the rules, whether he is compliant and not giving them
10 any trouble?

00:43:22

11 A. Yes, but that would, I would also be
12 interested in that, as would the court, because if he is
13 not rational, if he is, you know, lethargic, if his
14 thinking processes are not sharp as a tack and he is not
15 interacting around in terms of, you know, day to day
16 civil conversation, then those are things I would very
17 much want to know about.

18 Q. When you say sharp as a tack, you would agree
19 that intelligence does not equal competence?

00:43:58

20 A. No, it is necessary, but not sufficient.

21 Q. Did you speak with any of the defense
22 attorneys that have ever represented Daryl Holton?

23 A. No. As close as I have got to that is this
24 transcript where Mr. Holton has an attorney ad litem.

25 Q. Mr. Koger you mean?

1 A. Yes. I was trying to find the name of the
2 judge. He is really quite able to keep this process
3 going. It was with Mr. Appman and Jackson Deering, was
4 the public defender and Mr. Hershel Koger. I can't, I
5 don't see the name of the judge.

6 Q. It is Judge Lee from the cover of the sheet,
7 just for your information. You did not speak to John
8 Appman?

9 A. No.

00:45:04

10 Q. Nor Kelly Gleason from the Post Conviction
11 Defender's Office?

12 A. No, that is correct.

13 Q. Did you speak with any other personnel from
14 that office who have had interaction with Mr. Holton
15 during the last year?

16 A. No, I did not.

17 Q. Did you see the visitors logs to know how
18 often they had visited with him?

19 A. Yes.

00:45:18

20 Q. Was there any reason why you didn't talk to
21 these people?

22 A. I didn't see it as in the scope of my opinion
23 on his current capacity to waive his appeals.

24 Q. One of the things you say in your report is he
25 was able to articulate his legal position and his

1 options, but that you as a lay person could not fully
2 evaluate that. Would that not have been helpful to
3 speak with his defense attorneys about the viability of
4 his options?

5 A. I think that would be a call for the trier of
6 fact. That I wanted to note that while I could not
7 discern any distortions of the law, as he shared it with
8 me, nor could I comment to his tactical choices, I could
9 find no distorted process. For instance, if he said in
00:46:32 10 you know, in *Rees*, for instance, these are the factors,
11 but because of my special relationship with my Lord and
12 Savior they don't apply to me, then, you know, I would
13 as a psychologist be very interested and concerned about
14 that. You know, and his factual knowledge of this
15 information, of this knowledge seemed accurate. He
16 mentioned part of his concern was the signing on to an
17 agenda that was not his. He mentioned an opinion that I
18 did not know. It has to do with the ability of an
19 attorney to call issues from a list.

00:47:40 20 Q. Would this be *Jones v. Barns*?

21 A. It would be. I looked, you know Find Law is
22 great. You can get right on it. It in fact dealt
23 explicitly with that issue. That was an indication to
24 me that his knowledge basis, as far as I can tell, is
25 accurate, but more importantly from my perspective there

1 was no pathological process or any sort of odd
2 interpretations, or, you know, idiosyncratic
3 understanding of this.

4 Q. If his defense attorneys articulated over the
5 years a tendency for him to misinterpret the law yet be
6 rigid about that misinterpretation, would that be
7 significant to you?

8 A. That was spoken to a number of times. You
9 know, there is a threshold and I think that is where the
10 trier of fact is likely going to make a decision. I
11 cannot imagine that he would be an easy litigant to work
12 with. He has expressed very strong opinions, but people
13 can arrive at opinions that I would not agree with, but
14 if they arrive at them in a rational process, then all I
15 can say is, you know, I don't believe I would have made
16 that choice, but it is their choice.

17 Q. If they arrive at conclusions that seem to be
18 in contradiction to what everybody else is thinking, is
19 that an indication that they are irrational?

20 A. I am unaware that he has come to any decisions
21 that everyone else disagrees with.

22 Q. If he consistently does come to conclusions
23 that everybody disagrees with, is that an indication of
24 irrationality bordering on incompetence?

25 A. If you will help me by being more specific.

1 Q. One thing that I am referring to in that
2 hearing, I don't know if you recall Mr. Holton was
3 seeking to raise claims of ineffective assistance of
4 counsel in direct appeal. He wanted to get a new
5 attorney because Mr. Appman could not do that. Everyone
6 was advising him that was a bad idea. Do you recall
7 that from that hearing?

8 A. There is a lot of the process that I did not
9 -- it was technical and I did not follow.

00:50:44

10 Q. I wanted to, if I may approach the witness
11 with a copy of the transcript.

12 THE COURT: You may.

13 BY MR. FERRELL:

14 Q. This is just a page from that transcript. If
15 I could just direct your attention to the bottom of page
16 58, that very last paragraph.

17 A. I have it highlighted.

18 Q. Could you read that paragraph and tell the
19 court who is speaking.

00:51:18

20 A. This is Mr. Appman who is speaking.
21 Mr. Appman says, "I became involved in representing
22 Mr. Holton I believe in May of 1998. Over that period
23 of time I met with Mr. Holton for many many hours. In
24 fact, I happen to have many hours listed here which the
25 court has observed which has been filed with the court.

1 During that period of time Mr. Holton has appeared to be
2 intelligent, and as it is reflected in the records that
3 have been introduced. He tells us about spending time
4 doing math. He is fairly articulate, but people who are
5 intelligent and who are articulate can still make
6 mistakes and suffer mental illness -- or I hate -- I
7 don't mean to use the term, Your Honor, mental
8 illness -- but if I look at, shall we say, Hornbook of
9 Competency from the American Psychiatric College, which
00:52:10 10 I happen to have in my briefcase, it talks about
11 competency to stand trial, factual understanding of the
12 proceedings against him or her. Mr. Holton has done
13 that I would think, wouldn't question that. Second,
14 though he or she has sufficient present ability to
15 consult with his or her lawyer with a reasonable degree
16 of rational understanding. We represent to the court
17 that Mr. Holton has been very fixed and rigid in his
18 interpretation of his reading of some of the laws, the
19 cases, without realizing that they are words of art or
00:52:40 20 might have different meaning."

21 Q. Okay. So would you recognize that Mr. Appman
22 at trial was concerned about Mr. Holton's reading of the
23 law in the decisions he was making?

24 A. No. I think from a broader perspective
25 Mr. Holton didn't like Mr. Appman's readings and that in

1 fact because they are words of art and have different
2 meanings, there was real disagreement.

3 Q. Wouldn't you say that Mr. Appman beyond just
4 disagreeing with him is questioning his competence?

5 MS. SMITH: Your Honor, I object to
6 relevance. Again, we are getting back to the trial.

7 THE COURT: I think we are really getting
8 a little far afield.

9 MR. FERRELL: Mr. Appman doesn't question
00:53:28 10 his competence in trial. He is questioning his
11 competence in understanding and reading the law, which I
12 think is something that is an important consideration.

13 THE COURT: I understand what he was
14 contemplating. I understand your point. Let's move on.

15 MR. FERRELL: Thank you, Your Honor.

16 BY MR. FERRELL:

17 Q. You did not interview Mr. Appman. I have
18 asked that question.

19 Would you agree that Mr. Holton wanted to be
00:53:52 20 found competent in your testing?

21 A. Yes, yes.

22 Q. And you note that Mr. Holton was frustrated
23 having to endure yet another uninvited evaluation. When
24 was the last report of his competency that you have read
25 in the records you reviewed?

1 A. October of '05.

2 Q. October of '05?

3 A. From Dr. George Woods.

4 Q. A preliminary finding that he may be
5 incompetent. When was the last time that a full
6 investigation with testing was done?

7 A. Those would have been done at the trial of the
8 incident offense. There are three evaluations. There
9 is Dr. Daniel Martell who testified for the state,

00:54:38 10 Dr. Pamela Auble and Dr. William Kenner.

11 Q. When was that?

12 A. Those would have been in '98.

13 Q. In '98. So when you say that there has never
14 been any question of his competence, you are saying that
15 everyone found competent, not that no one questioned it
16 as far as a legal questioning or the competency to be
17 evaluated?

18 A. I am not making -- I think we might be making
19 a distinction without a difference.

00:55:06 20 Q. What I am asking you is you are aware that
21 lawyers representing him throughout this process have
22 asked that he be evaluated for his competence?

23 A. I don't have in the record --

24 Q. If I could --

25 THE COURT: You may.

1 BY MR. FERRELL:

2 Q. This is an order from the record.

3 A. Okay. Am I mistaken, the trial judge is
4 quoted by the Supreme Court as saying that he has not
5 been found -- that he has been found competent
6 repeatedly.

7 Q. If I may, I think he has been found competent
8 after testing. As you just mentioned, there were three
9 people that have tested him but they tested would you
00:56:12 10 assume, or do you know, on what basis? That an attorney
11 asked for it?

12 MS. SMITH: Your Honor, again. I hate to
13 belabor the point. We seem to be getting back to a
14 completely different time frame. Dr. Seidner has
15 evaluated him presently and has a present opinion. That
16 is the scope of the time frame this inquiry is focused
17 on.

18 THE COURT: I will give you a little bit
19 of latitude, Mr. Ferrell.

00:56:38 20 BY MR. FERRELL:

21 Q. The main thing I am looking at, when you say
22 no one has questioned his competence, I am wondering if
23 you know if lawyers have asked that he be evaluated for
24 competence based on your review of the record?

25 A. I don't have, I have not read where that has

1 been an issue. As a matter of fact, I have read really,
2 my understanding is really quite the opposite that, that
3 while there were questions about his sanity at the time
4 of the offense, that there has been no question of his
5 adjudicative competence. I have seen nothing of that
6 and I was wondering where that was. That would be
7 interesting to me.

8 Going through the record the comment that made
9 understandable the lack of any discussion of this was
00:57:40 10 the Supreme Court tag line quoting the trial judge
11 saying, you know -- and I can find it, but I will
12 paraphrase again -- that there have been no less than
13 five mental health experts, none of whom have raised an
14 issue of his trial competence. That stood out and made
15 understandable why I didn't find the sorts of things I
16 would have been looking for.

17 Q. Were you aware that post conviction counsel
18 ask he be evaluated for his competence?

19 A. I am aware that Dr. William Kenner in I
00:58:28 20 believe August or September of '05 interviewed
21 Mr. Holton about his competence.

22 Q. You don't know if that was at the request of
23 the post conviction counsel?

24 A. I believe it would have been.

25 Q. You are aware that, of course, we are here

1 because we, Federal Defender Service, questioned his
2 competence?

3 A. Yes.

4 Q. So you are aware that the question has been
5 raised. Although there has been no finding of
6 incompetence, the question of competence has been
7 raised?

8 A. I asked Mr. Holton about that. His comments
9 relative to that issue are, you know, as long as he is
00:59:02 10 compliant with the advocacy of the defender services
11 then he is deemed competent, and in his words the minute
12 you question their trial advocacy, boom, you are
13 incompetent. I have that in my notes.

14 Q. Based on your review of the records for this
15 evaluation, would you agree that Mr. Holton has a
16 history of mental illness?

17 A. Yes.

18 Q. And would you agree this history is
19 long-standing?

00:59:36 20 A. Yes.

21 Q. For major depressive disorder?

22 A. It hasn't -- the things that you look for when
23 someone says major depressive disorder are the
24 modifiers. There is mild, moderate, severe, severe with
25 and without psychotic features. You know, when you see

1 major depression and there are not modifiers it is hard
2 to know where to put that. You know, I talked to
3 Mr. Holton about these previous diagnosis - so, I am
4 unable to talk about these records from the VA and from
5 what was it, Eldridge Air Force Base Hospital. They are
6 not specific. I would say it is a fair statement to say
7 he has had these diagnosis. They weren't as helpful to
8 me in terms of being able to really, you know, on that
9 continuum, you know, it's a spectrum really of major
01:00:58 10 depression, where to put him.

11 Q. Would there be a tendency or vulnerability on
12 recurrence due to the fact there has been such a prior
13 diagnosis?

14 A. Yes. People who have had histories of
15 depression are vulnerable in the future.

16 Q. Are they also more vulnerable to perhaps other
17 mental illnesses due to the fact that they have had
18 major depressive disorder?

19 A. I think they -- I don't know about talking
01:01:38 20 about this causally, but people that have these
21 diagnoses will tend to have similar or other diagnoses
22 in the future, yes.

23 Q. Your answer to that question would be, yes?

24 A. Right, not in some causal way.

25 Q. Just they tend to be more prone to other

1 diagnosis?

2 A. It is a troubled person who may well have
3 trouble in the future.

4 Q. Did you discuss the details of the crimes with
5 Mr. Holton?

6 A. No.

7 Q. The events leading up to it?

8 A. No.

9 Q. Okay. Or his feelings about the crime?

01:02:14 10 A. He offered that, but I did not inquire.

11 Q. Okay. When you say he offered that, his
12 feelings about what happened at that time, what he was
13 going through or more the punishment today?

14 A. Well, it was in terms of speaking to the scope
15 of my evaluation.

16 Q. Would that mean he did not want to go in that
17 direction?

18 A. Correct. That he wanted to be clear what we
19 were doing together relative to his informed consent and
01:02:52 20 relative to the court's order.

21 Q. Did you feel those facts were important to
22 your evaluation in rendering this opinion?

23 A. It is hard to assign. You know, these are the
24 atmospherics, but, no, how you find someone today and
25 their capacity today is what the court is asking. You

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1 know, for me trying to work in an ethical standard of
2 practice way, you know, those concerns and issues
3 infiltrate because, you know, it isn't always that
4 clean.

5 The major concern was does this person sitting
6 in front of me have the, understand his options and be
7 able to rationally choose among his options or is there
8 some mental disease or defect that is precluding this.
9 That was the focus of my interview. You know, it
01:04:14 10 wasn't, that doesn't occur in a vacuum. Otherwise you
11 get these sort of I like to call them drive-by
12 assessments, you know. Do you know what a judge is? Do
13 you know what you are being charged for? Dad gum, we
14 are out of here. I didn't want to do one of those.

15 Q. Did Mr. Holton make any comments to the effect
16 that the punishment was appropriate or proportional to
17 the crime?

18 A. He said that if he were to take himself out of
19 the situation and look at it objectively, that it was
01:04:58 20 proportional to the crime and that, you know, that they
21 didn't have -- yeah, that he was accepting of that.

22 Q. Would you say that he depersonalized his
23 discussion of the crime by taking himself out, as you
24 just said?

25 A. No. No, that was for the purposes of -- I

1 think it was really very personal. He talks about it
2 being, he has very strong feelings about it. This is
3 not some, you know, shut down, and, you know,
4 dissociative fellow that I was talking to.

5 Q. When you say he "disavows affect", what you do
6 mean by that?

7 A. Oh, that he doesn't, it is not that he doesn't
8 have emotion, but that he will tend to under value it
9 and kind of lead with his head rather than with his
10 heart, as some people do.

01:06:18

11 Q. Were his defensiveness scales at all elevated
12 on the MMPI?

13 A. They were. They took some looking at. Your
14 expert has not seen the MMPI and I can -- we have got a,
15 shall I report them?

16 Q. Yes.

17 A. Yeah, because there is probably some
18 discussion that would ensue.

19 F is at a 37. L is 61. K is 71. S is 67.

01:07:22

20 Q. S did you say S as in Sam?

21 A. S as in superlative.

22 Q. Does that indicate -- unfortunately I don't
23 have my expert right here in my ear.

24 A. She'll tell you that this is somebody who is
25 very concerned to present themselves as okay. I do a

1 lot of custody work. I do fitness evaluations. If you
2 are an airline pilot whose six figure income is
3 predicated in the outcome of this sort of test or you
4 are a custody litigant who is proposing that you are the
5 more fit parent, you are going to see these sorts of
6 defensive validity. These are test-taking orientations.
7 This is the orientation with which the person takes the
8 test and there are no clinical scales that rise to a
9 level of significance. You wonder if that isn't because
01:08:38 10 of a certain guardedness or lack of candidness.

11 Q. To interrupt real quick, would that make you
12 more skeptical of what he has to say?

13 A. It depends. You have to see what is kicking
14 the K up, which is a scale that measures defensiveness.
15 You know, sort of lack of forthcoming, you know, denial
16 of symptoms, okay. Seeing a K kicked up like that, you
17 know, I wanted to know what comprised that. There are
18 subscales that help you make some sense of that.
19 Specifically in custody litigants I have a lot of
01:09:42 20 experience looking at these elevated K scales. There is
21 a difference between sort of a conscious dissembling
22 like I am going to, I have symptoms, but I am going to
23 lie about them versus people who really believe that
24 about themselves, that they really do possess these
25 superior qualities, that they are very well adjusted.

1 Basically the other deception scale, which is
2 basically the dissembling scale which helps you
3 understand what is kicking K up is not significant,
4 whereas the Edwards Social Desirability scales, the T of
5 64, with an L as high as 61, and a K at 71 this is
6 someone that is really viewing themselves as possessing
7 these qualities of, you know, high moral concerns,
8 someone that holds themselves, thinks of themselves as
9 holding themselves in very high standards.

01:11:04 10 You know, a K of 71 is not some, you know,
11 automatic, you know, this is an invalid MMPI.

12 Q. It does show defensiveness?

13 A. Absolutely. The defensiveness, is this a
14 conscious dissembling or is this part of this person's
15 character. My reading is this is his character. He
16 really sees himself as holding himself to those higher
17 standards and being more you know, having more scruples
18 than the average person and having less problems than
19 the average person.

01:11:48 20 THE COURT: Are you just about finished
21 with your cross-examination?

22 MR. FERRELL: I have probably about ten
23 more minutes.

24 THE COURT: Why don't we take a ten minute
25 recess. We'll reconvene at 11:25. You may come down,

1 Doctor. We'll give you a chance to regroup.

2 (Off the record.)

3 (Back on the record.)

4 BY MR. FERRELL:

5 Q. Dr. Seidner, I want to clarify one point that
6 I may have made clear, but I want to make sure we are
7 all clear on it. Did you seek to talk about the events
8 of the crime in this case with Mr. Holton, or did you
9 not ask about them?

01:24:04

10 A. I did not make that a focus of my evaluation.
11 He volunteered about the offenses.

12 Q. What was that statement?

13 A. It was, this is in the context of as I am, you
14 know, the job was to speak specifically to his
15 competence to waive his appeal. I was pushing around
16 the margins of that getting his views on death and
17 justice, and, you know, and I was looking for some kind
18 of pathological process. I would not have been
19 satisfied just to leave there not pushing those limits.
20 He had talked about how overwhelming the evidence was at
21 his trial saying that, you know, they stacked the bloody
22 clothing of four children in front of his jury. I mean,
23 he was talking about just the overwhelming evidence,
24 briefly, at the trial. I am pushing asking about, you
25 know, his history of depression, and, you know, the

01:25:18

1 history at the VA. I shared that I read those records
2 as well as the Air Force base records. Then he says,
3 "look, my wife moved to a crack neighborhood. I didn't
4 want my children to grow up as white trash or niggers
5 and I shot them. End of story. There is no new
6 findings of fact you are going to make and this has
7 nothing to do with anything. You are conducting a
8 forensic evaluation and that is not appropriate. All
9 you have to do is find whether I am able to waive my
01:26:40 10 right to appeal. I am not a lawyer and would not go to
11 trial without one. What I don't want is someone
12 representing me that doesn't know the issues or who has
13 their own agenda."

14 Q. When he said "end of story" would you have
15 interpreted that as cutting off any questioning about
16 those events or expressing a desire not to talk about
17 those events?

18 A. Well, as circumscribing our work around the
19 interview which was for his competency to waive his
01:27:16 20 habeas appeal. He is saying, you know, look, you are
21 pushing around the margins of my history of depression
22 and all this business. That is not what you are here to
23 do. You are here to talk about my competence to waive
24 habeas and whether, you know, and that is when he says,
25 you know, I am not a lawyer and would not go to trial

1 without one. What I don't want is someone representing
2 me that doesn't know the issues or who has their own
3 agenda. For him he is asserting his competence because
4 he is resisting the habeas appeal that he did not ask
5 for.

6 Q. Is he also asserting the fact or his belief
7 that the facts of the crime and those things are
8 irrelevant to such an evaluation? That is how you would
9 have interpreted that or how you did interpret it?

01:28:08

10 A. I am not quite following.

11 Q. Would you characterize that statement where he
12 summarizes, encapsulates the evidence at trial or what
13 happened and says, end of story, would you have
14 interpreted that or did you interpret that as his belief
15 that those events have nothing to do with his decision
16 or the competency of his decision whether or not to seek
17 habeas relief or other forms of relief?

18 A. Yes. From his perspective.

19 Q. Those are irrelevant?

01:28:42

20 A. That material is irrelevant.

21 Q. Would you agree with that statement?

22 A. Yes and no. Psychologists, you know, yes and
23 no. It is, you know, it is not irrelevant but it is not
24 figural. It is the context, but what is figural are his
25 present capacities, his present process. His present

1 process exists in a life history. I wouldn't say it is
2 irrelevant, but I would agree, it is not figural.

3 Q. But would you agree that it was his effort to
4 not discuss those events or not to figure in those
5 events?

6 A. Had I -- he was, as we got into this, really
7 quite compliant and had I gone, I had a sense that I
8 could have.

9 Q. But you didn't go there?

01:29:50 10 A. No, I didn't.

11 Q. One other thing about the prison personnel.
12 Are you aware that Mr. Holton is a C level?

13 A. Yes.

14 Q. And why is he a C level? Explain, if you
15 know, for the court what C level means and why is
16 Mr. Holton C level?

17 A. I needed to understand this as well. One
18 enters as a C level. After three years of having no
19 write-ups one goes before review of your correctional
01:30:26 20 officers and the supervisor and you can then go to a B
21 level which gets you -- I believe you go for an hour of
22 recreation to an hour and a half and also more choices
23 among they call them cages, you know, these enclosed
24 recreation areas, and then three more years of no
25 write-ups and you can go to A level which then affords

1 you some more hours and moves you into opportunities for
2 jobs. Mr. Holton has been eligible. I have records
3 where they have said you are eligible, and he has
4 declined. I asked Mr. Holton why he declined. He said
5 it was essentially it just was not of interest to him.

6 Q. So C level is his choice is your
7 understanding?

8 A. That is correct.

9 Q. Okay. Finally, toward the end of your report
01:31:32 10 you talked extensively about his legal options and felt
11 that he was informed of them. You note that he has, he
12 expressed this was a private decision as to what he
13 would choose to do. Do you find that in anyway evasive
14 or defensive in your questioning?

15 A. No, I don't think it is the least bit evasive.
16 I think it is explicitly defensive from a legal
17 perspective. He is very concerned not to introduce
18 anything that would get others involved. He has said
19 relative to his legal options that once he is free and
01:32:28 20 clear of -- again I will use my words -- of people who
21 would take control of his legal matters, then he is free
22 to exercise whatever options he chooses. I have said
23 what options would you be entertaining? At that point
24 he said politely, and with explanation and demur saying,
25 you know, that would be private. He did the same thing

1 in that transcript that you --

2 Q. Before this court you mean or in state court?

3 A. In the transcript he handed me in the '99/2000
4 trial with the attorney ad litem.

5 Q. Okay. And if, would it -- let me give you a
6 hypothetical. If a petitioner or defendant in
7 Mr. Holton's situation says he has options and the
8 options he chooses or argues for are nonexistent, would
9 that be delusional?

01:33:40

10 A. It depends. You know, if one of the options
11 is, you know, the Starship Enterprise is going to
12 teleport me at the last moment, that would be
13 delusional. If, you know -- I can't opine. It would
14 depend on, you know, the specific --

15 Q. So if he says it is a private matter, you
16 don't know if the options he is entertaining are
17 delusional, have a basis in the law or anything like
18 that because you don't what the option is?

01:34:34

19 A. I made an inference. My inference is that he
20 wants no interference and that he has accepted his
21 sentence.

22 Q. But he has left open the door to options?

23 A. That is correct.

24 Q. And we have no idea what those options are at
25 this time?

1 A. No. His characterization of the process is
2 he'll tell you this death penalty stuff is really big
3 business and there is all kinds of business interests
4 and political interests and interest group interests.
5 When you are the litigant, it is like you don't have
6 control over this. All you can do is sit back and see
7 what happens.

8 Warden Bell told me that he would be giving
9 notice to Mr. Holton on Friday that he would, because of
01:35:30 10 the law, that he would have a choice between
11 electrocution or lethal injection. I wanted to discuss
12 that with Mr. Holton. As it pertains to this question,
13 he said no matter what I choose likely somebody is going
14 to raise some kind of objection. Regardless of what I
15 choose, someone is going to read something into this and
16 raise some kind of objection that is not my objection,
17 but it is their agenda, their objection.

18 When he demurred and said these are my
19 options, it is in that context, not that, you know, I
01:36:16 20 am, you know, I have got some delusional fixed idea that
21 I am going to hide from you so much as, you know, this
22 is the context in which this is occurring where he
23 described himself as resenting being a puppet at the end
24 of the strings of any number of puppeteers.

25 That was my, you know, he had been very

1 straight shooting with me. He had been candid. He had
2 shared humor with me. He had been, you know,
3 nondefensive in our interview. To my experience he had
4 been as authentic and forthcoming as any -- well, even
5 in clinical interviews. It had feel of the kind of
6 candidness that I have experienced in a number of
7 interviews. It was not the least bit gamey. That was
8 my interpretation of saying, look, you know, I am not
9 going to share that.

01:37:32

10 Q. But he didn't tell you what his thoughts were
11 for you to make that assessment as to whether he sounded
12 delusional, rational or whatever?

13 A. No. My opinion on that is based on where the
14 judge ordered him to talk about his options.

15 Q. Did he at that time, did he at that time state
16 what options he planned on doing?

01:38:12

17 A. He stated the kind of catch 22 that he is in.
18 That if as someone who is sentenced to death if you
19 accept that then someone is going to make a case that
20 you are suicidal. The irony is that unless you are
21 fighting it and in opposition to it, then you don't
22 appear competent, that someone -- he is describing on
23 the horns of a number of dilemmas. His position has
24 been, as he describes it, to take a step back, be
25 compliant with, you know, anything a judge asks him to

1 do and to resist people who will interpose, in his view,
2 their agendas rather than respect his agenda.

3 Q. At the same time he has left open the option
4 of possible litigation to stop the death penalty or the
5 execution in this case?

6 A. Yes, but in the context, that is in the
7 context of his very acute awareness that no matter what
8 he says somebody is going to make an issue of it. You
9 know, I guess what I want to make a distinction, it
01:39:26 10 wasn't -- there are people who want interviews who are
11 really quite gamey and are being -- it's an awful term,
12 a passive/aggressive, you know. They are being quite
13 provocative, but doing it in a way that you really can't
14 complain about because they are using appropriate words
15 and language. There was none of that gaminess in our
16 interview. It was really quite sincere. I took his
17 saying, look, this is private, not as some attempt to be
18 evasive, because he had not been evasive that I could
19 tell during our interview. It was more, look, please
01:40:12 20 respect that I don't want to talk about this because I
21 don't want to introduce yet more material that someone
22 will hang their hat on to involve themselves, interpose
23 themselves in my litigation. It was not a gamey I am
24 holding my cards to my vest. It was, it felt entirely
25 appropriate and respectful, but I do not know the facts

1 of what he is thinking or not thinking.

2 Q. In the end you don't know what he believe his
3 options are?

4 A. That is correct.

5 MR. FERRELL: Thank you.

6 THE COURT: Thank you, Mr. Ferrell.

7 Mr. Holton, do you have any questions you
8 would like to ask of Dr. Seidner?

9 MR. HOLTON: Yes, sir.

01:41:02

10 THE COURT: Okay. Let's move the
11 microphone over to Mr. Holton. This is examination by
12 the defendant, Mr. Holton. You may proceed, Mr. Holton.

13 **CROSS EXAMINATION**

14 BY MR. HOLTON:

15 Q. Hello, Dr. Seidner. I believe we have met?

16 A. Yes, sir.

17 Q. You were asked by the court to perform an
18 evaluation of my ability to forgo litigation in the
19 habeas process, is that correct?

01:41:36

20 A. That is correct.

21 Q. Can you tell me what time period my competency
22 was at issue, during what time period was this
23 evaluation concerning?

24 A. The order went on July the 31st and so my
25 assumption is that we're talking about your competence

1 at that motion hearing and today and moving ahead.

2 Q. Do you -- and this may go to a bit of legal
3 knowledge, but I believe it would be pertinent. Do you
4 know when the statute of limitations ran, the deadline
5 to file a petition for habeas corpus relief, ran in this
6 particular case?

7 A. During our interview you informed me it had
8 already run, it was already over a year, but I only know
9 that from what you shared with me.

01:42:34

10 Q. Did you review any materials around that time?

11 A. I reviewed materials in -- I have the October
12 '05 material from Dr. George Woods. I requested the
13 interview that you had described from Dr. William
14 Kenner. I was told that was preliminary and had not
15 been memorialized. There was no report.

16 MR. HOLTON: I believe that is all I have,
17 sir.

18 THE COURT: Thank you, Mr. Holton.

19 Ms. Smith, do you have any questions of

01:43:42

20 Dr. Seidner?

21 MS. SMITH: Just a few, Your Honor.

22 **CROSS EXAMINATION**

23 BY MS. SMITH:

24 Q. Following up on Mr. Holton's question about
25 reviewing materials from the time frame of September or

1 October of '05, I believe you listed in your list of
2 materials reviewed that you reviewed an exhibit that was
3 introduced at the July 31st hear hearing in this court.
4 Do you recall the letter?

5 A. The letter from Mr. Holton to the Assistant
6 Attorney General.

7 Q. Do you recall the date of that letter?

8 A. By memory it's August of '05. I am sure you
9 have it up there.

01:44:32 10 Q. If I told you it was October 19th of 2005, you
11 wouldn't have any reason to disagree with that, would
12 you?

13 A. No, I would not.

14 Q. And regarding Mr. Holton's mental state in and
15 around that time frame, I believe you had testified in
16 response to Mr. Ferrell's questions that it's very
17 difficult to sort of step back in time and assess a
18 mental state after the fact. Is there anything, you
19 said you reviewed the prison records, you have spoken
01:45:06 20 with prison personnel. Is there anything in those
21 records or in those interviews that led you to believe
22 that Mr. Holton's personality, demeanor, mental
23 condition had changed in any way either for the better
24 or for the worse between that period and today?

25 A. No.

1 Q. It has been fairly consistent?

2 A. It is to my knowledge it is consistent. It is
3 consistent with the testing and interviews that I did.

4 Q. Is there anything in Mr. Holton's October
5 19th, 2005, letter that was made an exhibit at the
6 previous hearing in this court that you view as
7 inconsistent with your opinion that he is presently
8 competent to forgo his appeals?

9 A. No. It is part of the basis of my opinion
01:46:04 10 that says he is competent.

11 Q. You were asked a hypothetical about potential
12 legal options and the ramifications or the effect on
13 your opinion if legal options were nonexistent. As I
14 understand your testimony, Mr. Holton did not share in
15 your interview with him what he believed those options
16 to be. He just indicated he had options. Is that
17 correct? I am just trying to recall your testimony.

18 A. That is correct.

19 Q. But did you review the transcript of the July
01:46:38 20 31st hearing in this court I believe that was listed as
21 one of the materials?

22 A. I did.

23 Q. Do you recall his testimony in that hearing
24 where he listed such options as executive clemency,
25 petition for writ of error coram nobis, a petition for

1 writ of habeas corpus under state law. To your
2 knowledge, and I understand you are not trained in the
3 law, but are any of these legal options nonexistent?

4 A. Not to knowledge. They are existent. I
5 didn't know whether they apply or not.

6 Q. Correct.

7 A. None of those are, you know, evidence of, you
8 know, evidence of pathological process. It might be bad
9 lawyering, but, you know, it is not a pathological
10 process.

01:47:28

11 Q. Now, you were questioned about various things
12 that perhaps you would have explored, for example,
13 interviews with Mr. Holton's mother, perhaps interviews
14 with previous counsel about questions concerning his
15 competence in the past. Is there anything that you have
16 heard today that leads you to the opinion that perhaps
17 some additional information would form or alter your
18 opinion in anyway?

19 A. No. I had the time and would have explored
20 those had I needed them.

01:48:00

21 Q. In your opinion you had sufficient information
22 to render the opinions as directed on the specific
23 questions as directed by this court?

24 A. Yes.

25 Q. Nothing you have heard today changes that?

1 A. No, it does not.

2 Q. Was there anything, and this is just
3 background about your testing at Riverbend. Sort of I
4 believe you called it atmospheric earlier. Was there
5 anything about the location of the testing, any noises,
6 interruptions, or anything that would in your opinion
7 undermine the validity of your interview process with
8 Mr. Holton?

9 A. No. I mean, there is a whole literature on
01:48:46 10 the validity of MMPIs in special population like death
11 row, but it is a specialty literature. As far as the
12 administration of it, we were given a large
13 well-ventilated room with a table. The testing
14 conditions were fine.

15 Q. And Mr. Holton cooperated with the testing?

16 A. He did.

17 Q. There was no indication that he was resistant
18 to your asking him questions, conducting the evaluation,
19 as directed by the court?

01:49:26 20 A. That is correct.

21 Q. Aside from his interpretation of the
22 parameters of the court's order?

23 A. Even there he was willing to go into issues
24 that, you know, had someone been really lawyered up or
25 resistant they would have just drawn a line. He did

1 not.

2 Q. You specifically discussed with him, or
3 correct me if you did not, his legal position presently?

4 A. Yes.

5 Q. In other words, he understands that he is
6 facing the death penalty?

7 A. He does.

8 Q. He understands he stands convicted of four
9 counts of first degree murder?

01:50:06 10 A. He does.

11 Q. Does he understand in your view, based upon
12 your interviews with him, the facts that federal habeas
13 corpus was a legal option for him in terms of
14 challenging that conviction? Does he understand it on
15 that fundamental level in your opinion?

16 A. Yes, he does. He also thought it interesting
17 because in previous litigations where this has been an
18 issue the individual has at first signed on and then
19 withdrew and he described how he had never signed on and
01:50:48 20 how this was somewhat different than other, you know,
21 hearings around this sort of competence issue. He did
22 not sign on in the state or federal level.

23 Q. Aside from the specific legal claims and
24 whether or not Mr. Holton has an accurate or inaccurate
25 legal understanding of his available claims, is it your

1 opinion that he understood federal habeas corpus as a
2 legal option?

3 A. Yes.

4 Q. You talked about the MMPI. What I want to ask
5 you, just to be clear on the record, there are scales
6 built in -- correct me if I am wrong -- to indicate
7 whether the participant is being deceptive. I think you
8 alluded to this earlier.

9 A. That is correct.

01:51:50 10 Q. Did you assess those scales in this case to
11 determine whether Mr. Holton was being deceptive in his
12 answers to the questions?

13 A. I did.

14 Q. And again you may have testified to this, sort
15 of touched on it. What was your opinion based on that
16 assessment in terms of his deception?

17 A. That he wasn't taking the test with the
18 conscious intention to be deceptive. That the
19 test-taking orientation was consistent with someone who
01:52:24 20 felt that they were, you know, someone of, you know,
21 high integrity and morals so the guardedness is, you
22 know, this -- you have a range of discussion that occurs
23 between dissembly, essentially faking good to what is a
24 somewhat naive or self deceptive presentation of one's
25 self, you know, when one really thinks they are someone

1 that has these high principles versus someone that is
2 sitting there thinking I need to, you know, misrepresent
3 this issue. On the scales that look at how F is
4 comprised, it is my opinion that rather than, you know,
5 some deliberate effort to dissemble, this is somebody
6 that really views himself as having these qualities. I
7 see this quite often, especially in custody litigants.
8 There is a whole literature on the MMPI custody
9 litigants where these scales are extensively discussed
10 and how one interprets them.

01:54:00

11 Q. Just on that point, you mentioned earlier
12 there are different ways of interpreting the MMPI. I
13 just want to clarify your answer. There are standards
14 for scoring the MMPI, are there not, within the
15 profession. It's not completely subjective?

16 A. We all have the same, you know, dozens of
17 scales. How they relate to one another is what is
18 interesting. If some are high and others are low, that
19 has a different meaning than if -- the configuration of
20 the scales is interpretable. The scoring of the scales
21 is objective and standard. You key in the answers and
22 out come the scales.

01:54:40

23 Q. Is it accurate to say that it is where the
24 subjectivity comes in is the interpretation of the
25 scales and how they relate to one another?

1 A. The scale configuration, how they relate to
2 one another.

3 Q. The scoring itself is very objective?

4 A. Yes.

5 Q. And you talked briefly about his defensiveness
6 scales and said that the defensiveness was elevated. In
7 your opinion would it make a difference in that
8 elevation or could it increase the elevation, because it
9 seems like as a lay person it could. To me that

01:55:32

10 Mr. Holton is an individual that may sincerely believe
11 he is being put through this process against his will.
12 Would that belief or could that belief lead to an
13 elevated defensiveness scale, or does it measure
14 something different? That is my lay understanding of
15 it.

16 A. No, I think that is fair. That, you know, he
17 would be relatively guarded on the test. He has taken
18 it so many times -- you know, it was interesting. At
19 the front end of the test he said that there was one
20 question he was going to leave blank. I asked what that
21 one was. He said the one where they ask you if there is
22 anyone plotting to kill you. He said it with some
23 ironic humor. He has been through this a lot of times.
24 The MMPI is valid and reliable.

01:56:16

25 Q. It would not, it is neither surprising nor

1 particularly significant that the defensiveness scale
2 was a little elevated in this situation?

3 A. No. You would anticipate it. To contrast it
4 with custody matters, it is way down relative to what I
5 see so often in custody matters and in security
6 clearance matters. You know, where engineers are
7 wanting their Q clearance for the Oak Ridge facility,
8 their defensiveness is typically much higher than I have
9 found on his MMPI.

01:57:18 10 Q. Dr. Seidner, do you happen to have with you a
11 copy of a current CV?

12 A. I had sent that in ahead. I attached it to an
13 e-mail to the court and I -- you know, I have one on a
14 jump drive. I have one with me.

15 MS. SMITH: With the court's permission
16 what I would like to do is I would like to move that
17 current CV be introduced as an exhibit to Dr. Seidner's
18 testimony.

19 THE COURT: It will be received as an
01:57:52 20 exhibit to his testimony.

21 (Exhibit No. 1 was received in
22 evidence.)

23 BY MS. SMITH:

24 Q. As well you prepared, did you not, a written
25 report at the court's direction in connection with this

1 case?

2 A. I did.

3 Q. Is that report, the contents of the report
4 after your testimony today and after cross-examination
5 by Mr. Ferrell are you still of the belief that your
6 opinion in that report is accurate to the best of your
7 knowledge and information and to a reasonable degree of
8 psychological certainty?

9 A. I do.

01:58:20

10 MS. SMITH: Your Honor, as well we would
11 like to have Dr. Seidner's report introduced as an
12 exhibit to his testimony.

13 THE COURT: It will be received and placed
14 in the record under seal. I don't think it needs to be
15 unsealed at this point in time.

16 (Exhibit No. 2 was received in
17 evidence.)

18 MS. SMITH: Thank you, Your Honor. I have
19 no further questions.

01:58:34

20 THE COURT: Mr. Ferrell, any further?

21 MR. FERRELL: I have two really quick
22 points.

23 **RE CROSS EXAMINATION**

24 Q. In discussing the deceptiveness and all of
25 that, the main point that I want to make is that

1 Mr. Holton was not trying to portray himself other than
2 he was, correct?

3 A. Yes.

4 Q. But that doesn't mean that his assessment of
5 himself is accurate. Those are two different inquiries,
6 wouldn't you say?

7 A. Yes.

01:59:16

8 Q. Okay. And would you say that this is
9 something -- Dr. Auble informed me real quickly during
10 the break -- that his defensiveness scale had gone up
11 since her testing back in 1998, I believe. Did you note
12 that?

13 A. Right. L was about the same. K is up. That
14 is true.

15 Q. Okay. All right. Nothing further.

16 THE COURT: Thank you, Mr. Ferrell.

17 Mr. Holton, anything else you would like
18 to ask of Dr. Seidner?

19 MR. HOLTON: No, sir.

01:59:50

20 THE COURT: You may come down,
21 Dr. Seidner.

22 Dr. Seidner, the court would like to thank
23 you for your aid and your willingness to accept this
24 assignment on very short notice and for your diligence
25 in completing the assignment in a very timely fashion.

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1 In addition, Mr. Holton, the court would
2 like to thank you for cooperating with Dr. Seidner in
3 making his evaluation.

4 The court wishes to thank the attorneys
5 for their work on this case and especially given the
6 time constraints placed upon the parties.

7 Mr. Holton, as you have heard from
8 Dr. Seidner, he finds that you are competent to make a
9 decision to waive any further federal habeas corpus
02:00:46 10 review of your conviction. You understand that that is
11 his conclusion?

12 MR. HOLTON: Yes, sir.

13 THE COURT: Do you until wish to waive
14 your right to have the Federal Courts review your
15 conviction by habeas corpus petition?

16 MR. HOLTON: Not totally, sir.

17 THE COURT: What do you mean by that,
18 Mr. Holton?

19 MR. HOLTON: It is my understanding that
02:01:12 20 by declining to sign Mr. Ferrell's punitive petition,
21 the one that the statute of limitations ran on the 3rd
22 of October of last year, that I did in my mind waive all
23 of the statutory exceptions to the statute of
24 limitations. In other words, direct appeal issues and
25 any issues that were raised in state post appeal

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1 conviction. It's my understanding I waived those issues
2 and those issues alone.

3 THE COURT: Okay.

4 MR. HOLTON: Your Honor, I am just trying
5 to state my perception. I am not trying to be
6 instructive. I am attempting to state my perception
7 here.

8 THE COURT: Okay. Is it your desire to
9 waive your right to have Mr. Ferrell file a petition for
10 you for habeas corpus review that would allow the court
11 to review the proceedings in your case, is that your
12 desire?

02:02:06

13 MR. HOLTON: In regard to those issues,
14 yes, sir.

15 THE COURT: Very well then.

16 Mr. Holton, this court must determine
17 whether or not you are competent to make the decision to
18 forgo any federal review of your case by a petition for
19 habeas corpus. In this setting, that means deciding
20 whether or not you have the capacity to appreciate your
21 position and to make a rational decision and choice to
22 abandon any further litigation concerning your
23 conviction and sentence of death or whether you are
24 suffering from a mental disease or defect which may
25 substantially affect your capacity to make such a

02:02:32

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1 decision.

2 Now, Mr. Holton, you understand that this
3 is a proceeding that could result in this court issuing
4 a stay of your execution, and your execution is
5 scheduled for September the 19th of this month. You
6 understand that, is that correct, sir?

7 MR. HOLTON: Yes, sir.

8 THE COURT: Well, Mr. Holton, if this were
9 a run-of-the-mill criminal case, there would be no
02:03:18 10 question but that you are competent. You're oriented as
11 to time and place, you know the nature of the
12 proceedings that you are involved in, you have been able
13 to follow those proceedings and you understand the
14 issues involved. Your prior testimony to the court and
15 in response to questioning by the counsel of the State
16 of Tennessee at our hearing on July the 31st leads the
17 court to the conclusion that you are quite intelligent,
18 articulate and capable of fully understanding your
19 position. I think you have the ability to assist your
02:03:52 20 attorney in your own defense, if you chose to do so.

21 This is not the run-of-the-mill case. It
22 is a death case. My focus has to be on whether or not
23 you have the capacity to make a rational choice to do
24 what you are asking to do. The question is not whether
25 I or anyone else would make the same choice, it is

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1 whether you have the ability to make that choice.

2 The burden is on Mr. Ferrell to show that
3 there is some reason to doubt your competence and to
4 doubt that you have the capacity to make this decision.
5 The evidence must be sufficient to raise a serious doubt
6 or give reasonable cause to believe that you are
7 incompetent.

8 The only evidence in the record to suggest
9 that you are incompetent is an affidavit of Dr. George
10 W. Woods, Jr. and an addendum to that affidavit that has
02:04:36 11 been filed here today, who performed a preliminary
12 neuropsychiatric evaluation of you at Mr. Ferrell's
13 request, and who gives his preliminary opinion that you
14 may be suffering from a mental disease or defect
15 rendering you mentally incompetent. Dr. Woods'
16 suggestion of incompetence does not, however, in my
17 mind, give rise to a reasonable doubt that you are
18 competent today, particularly in light of the testimony
19 of Dr. Seidner and your own testimony today and your own
02:05:12 20 testimony in the previous hearing on July the 31st,
21 2006.

22 In fact, the record reveals that, with the
23 exception of Dr. Woods, every psychiatrist and
24 psychologist who has examined you as to your competence
25 to stand trial, your competence to waive your right to

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1 pursue a direct appeal of your conviction and sentence
2 and your competence not to pursue federal habeas corpus
3 relief has found you to be competent.

4 According to the psychological evaluation
5 by Dr. Seidner, after meeting with you for a total of
6 approximately nine hours, reviewing all of your medical
7 and prison records and administering appropriate
8 psychological tests, it is the finding of Dr. Seidner
9 that you do not currently present with a mental disease,
10 disorder or defect, you do not currently present with
11 depression or symptoms of post traumatic stress disorder
12 and while you have been credibly been diagnosed with a
13 personality disorder, such disorder does not rise to the
14 threshold of the meaning of mental disease, disorder or
15 defect relevant to issues of competency.

16 In addition, Dr. Seidner has found that
17 there is no condition that affects your competence, you
18 are fully competent and especially informed about your
19 legal position and the options available to you.
20 Dr. Seidner found that you are fully rational,
21 especially informed of your legal options, especially
22 aware of the consequences of your legal options and have
23 no unusual beliefs about death and fully understand the
24 legal reasons for and consequences of your execution and
25 death. You are not overborne by guilt, delusion or

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1 irrational thinking.

2 Dr. Seidner opines that you are not a
3 "death row volunteer" and has suggested that you are
4 contemplating your legal options once unencumbered by
5 what you describe to Dr. Seidner as uninvited and
6 unwanted action of the Federal Defender Services.
7 Consequently, Dr. Seidner finds you fully competent to
8 waive your appeal for habeas review.

02:07:26

9 In addition, I have seen and heard you
10 testify, I have seen and heard you explain your thought
11 processes and the basis for your decisions. I don't
12 think anybody in this courtroom who has seen or heard
13 your testimony could doubt that you have the ability to
14 reason and to think rationally. There may be those who
15 disagree with your decision, but it is not up to them to
16 make the decision for you. It is your decision and
17 yours alone to make.

02:07:54

18 The court finds that there is no
19 reasonable cause to believe that Mr. Holton is not
20 competent to choose not to seek federal habeas review of
21 his death sentence. There is thus no reason to have a
22 full competency hearing on Mr. Holton's competence.
23 Consequently, Mr. Holton, I find there is no indication
24 that you are presently suffering from any mental
25 disease, defect or disorder which substantially affects

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1 your ability to make decisions on your own behalf.
2 Based upon your own stated desire to not pursue a habeas
3 corpus petition, I am going to dismiss the petition.

4 Accordingly, the respondent's motion to
5 dismiss the petition for writ of habeas corpus shall be
6 granted. All other pending motions will be denied as
7 moot.

02:08:44

8 The court will make as a part of the
9 record of these proceeding and Dr. Seidner's testimony
10 the transcript of hearing conducted on November 19,
11 1999, and January 14, 2000, and the order of Judge
12 Charles Lee, the circuit judge who heard the defendant's
13 original -- who heard Mr. Holton's original case, as
14 well as the findings of Dr. Seidner, his report will be
15 made as a part of the record of this case as well and
16 placed under seal.

17 (Exhibit No. 3 was received in
18 evidence.)

02:09:16

19 THE COURT: There was one other item,
20 Ms. Smith.

21 MS. SMITH: The current CV, Your Honor.

22 THE COURT: Yes, the current CV of
23 Dr. Seidner.

24 Anything further we need to take up at
25 this time on behalf of defendant, Mr. Ferrell?

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1 MR. FERRELL: This is probably moot in
2 light of your ruling. We ask that Dr. Seidner be
3 directed to turn over his raw material and notes to our
4 expert Dr. Pam Auble, who is present in this court, for
5 us to review to look at the accuracy and to see if she
6 would have any other insight into those proceedings.

7 THE COURT: Dr. Seidner, I understand you
8 have no objection to that material being turned over to
9 the defendant's expert?

02:09:56

10 DR. SEIDNER: That is correct. No.

11 THE COURT: We'll turn over these
12 materials. Dr. Seidner will make that available to your
13 expert witness.

14 MR. FERRELL: Furthermore, we ask this
15 court consider issuing a COA in this matter, a
16 Certificate of Appealability, to the to the Sixth
17 Circuit. That their legal officers could differ as to
18 the Court's interpretation of whether we have met the
19 *Harper* standard in this case.

02:10:22

20 THE COURT: Okay. Your position,
21 Ms. Smith?

22 MS. SMITH: No objection, Your Honor.

23 THE COURT: Okay. It shall issue.
24 Anything further, Mr. Ferrell?

25 MR. FERRELL: No, Your Honor. Not at this

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1 time.

2 THE COURT: Okay. If nothing further --
3 anything further from the state, Ms. Smith.

4 MS. SMITH: Nothing, Your Honor.

5 THE COURT: Very well then. We'll stand
6 if recess.

7 (Court was recessed.)

8

9 I CERTIFY THAT THE FOREGOING IS AN ACCURATE
10 TRANSCRIPT OF THE RECORD OF PROCEEDINGS IN THE
11 ABOVE-ENTITLED MATTER, THIS THE 7th DAY OF September,
12 2006.

11

12 /S/ Jolene Owen
13 JOLENE OWEN.
14 Registered Professional Reporter

13

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