

1 IN THE DISTRICT COURT OF THE UNITED STATES
2 DISTRICT OF SOUTH CAROLINA
3 CHARLESTON DIVISION

4 UNITED STATES OF AMERICA,) 2:15-cr-00472-RMG
5)
6 Plaintiff,)
7)
8 VS) Charleston,
9)
10 DYLANN STORM ROOF,) South Carolina
11)
12 Defendant.) January 2, 2017

13 TRANSCRIPT OF COMPETENCY HEARING
14 BEFORE THE HONORABLE RICHARD M. GERGEL,
15 UNITED STATES DISTRICT JUDGE

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THE COURT: Let me begin the proceeding by saying the only persons permitted to be present are counsel of record and the parties, but everyone else must leave.

MR. BRUCK: May I?

THE COURT: You may.

MR. BRUCK: We would ask that counsel of record include two lawyers who are counsel of record in the State proceeding for Mr. Roof; that is, Mr. Pennington and Ms. Norris who are present.

THE COURT: You know, Mr. Bruck, I'm keeping victims out, and I'm not allowing any -- I'm unbending in that rule. Only federal counsel of record and parties are allowed to be present and the witness Mr. Ballenger and the Court examiner. Everyone else should leave.

MR. BRUCK: I appreciate the Court did not grant this motion last time, but I would also request for other reasons in the interests of efficiency to allow the expert witnesses to hear the testimony of other experts in this case in order to be able to move things through expeditiously and avoid unnecessary repetition.

THE COURT: They received Dr. Ballenger's report.

What's the Government's view of this?

MR. RICHARDSON: Your Honor, we ask they be sequestered.

THE COURT: Granted.

1 MR. RICHARDSON: Just because of the phrasing you
2 used last time, the lead case agent, FBI agent.

3 THE COURT: He is a party.

4 MR. RICHARDSON: Thank you, Your Honor.

5 THE COURT: As Mr. Roof can be present, as both
6 self-representing counsel and a party.

7 MR. BRUCK: If we may also have five minutes to
8 confer with the client. In view of the Court's statements
9 during the closure hearing, we have a matter to take up with
10 him.

11 THE COURT: Go right ahead, Mr. Bruck.

12 MS. STEVENS: May we speak with him?

13 MR. ROOF: I'm not going to talk. I'm not going to
14 talk to them.

15 MR. BRUCK: We'll be back soon, then.

16 THE COURT: Okay. Mr. Roof, just tell them that
17 when you step out, and if you would, come back in, if that's
18 your desire.

19 MS. STEVENS: Thank you, Your Honor.

20 (Thereupon, there was a brief recess.)

21 THE COURT: Okay. The defendant and the standby
22 counsel are back into the courtroom. And we are going to
23 commence this hearing.

24 Let me lay out some -- yes?

25 MR. ROOF: Before we start, I just -- I want to say

1 some things. First of all, I don't understand what right
2 they as standby counsel have to put me through another
3 competency hearing. Besides that, I don't want them as my
4 standby counsel anymore. I want you to dismiss them, if you
5 can, as my standby counsel, and I don't want to have standby
6 counsel.

7 THE COURT: Okay.

8 MR. ROOF: I don't understand why I have to be put
9 through another competency hearing just a little bit over a
10 month from my last one, and what right they have to do that
11 as my standby counsel? And I also have one last thing.

12 THE COURT: Yes, sir.

13 MR. ROOF: The marshals came to the jail and gave me
14 this with some other papers. It's a draft of something that
15 says "Defendant's Eighth Amendment motion to preclude
16 application of the death penalty under *Simmons* and *Atkins* due
17 to the defendant's youth, autism and mental illness" and in
18 the beginning it says, "The defendant through counsel files
19 this motion."

20 THE COURT: It's not signed. It's a draft. They
21 have not submitted it.

22 MR. ROOF: But you have it.

23 THE COURT: I'm not considering it. It's a draft.
24 I wouldn't consider it. It's not a motion before me. I have
25 said, Mr. Roof, that no motion can be filed on your behalf

1 without you signing it as long as you are self-representing.
2 Sit down. Let me discuss with you -- because you raise an
3 issue that I was about to begin addressing right before you
4 stood up -- I have instructed standby counsel to serve as an
5 advisory role and to not file any motions without the consent
6 and written authorization of the defendant.

7 Standby counsel correctly cited a body of law that
8 says if they have a belief the defendant is not competent,
9 they have an ethical duty to raise that with the Court. I
10 think that is correct. And, yes, it's five weeks since the
11 last competency hearing. I'm going to address what is
12 actually at issue here because we are not relitigating the
13 prior competency case. Everything is going to be from
14 November 22nd forward because I've already ruled. The
15 defendant as of November 22nd was competent. We are not --
16 this is not a redo. We are going to address new issues.

17 The defense standby counsel raised a series of
18 issues. I thought out of an abundance of caution that I
19 should not ignore it, that it would be an issue later if I
20 did. I took it seriously. I asked Dr. Ballenger, the Court
21 examiner, to interrupt his personal vacation to come back to
22 Charleston, which he did -- the Court greatly appreciates his
23 service here -- and asked him to meet again with the
24 defendant. He did. He issued a report which says his
25 opinions have not changed as to the defendant's competence.

1 He's going to testify here today. He's going to be subject
2 to cross-examination.

3 And I think it's important for purposes of
4 addressing this issue that for this limited purpose, I'm
5 going to allow the standby counsel to prosecute this issue.
6 I think it's important for due process that in the interests
7 of justice for this record that they do that. And I appoint
8 them to represent the defendant's -- to represent the
9 position here. I know it's contrary to the defendant's
10 personal desire, and for this limited purpose, does not
11 otherwise modify the standby counsel role. But I know they
12 were anxious in filing this.

13 They were -- I want to say that I didn't think you
14 were defying -- I think you were doing what you should do.
15 And I know you went to some length citing cases because you
16 were worried about defying the Court, and I appreciate your
17 respect to the Court and why you did it. But I agree with
18 you. I think you had a duty to do it. Whether there is
19 merit to it is another question. We are going to go through
20 that.

21 But we need to establish a few ground rules. I have
22 already mentioned one of them. The law of the case is that
23 as of November 22nd, 2016, the defendant was competent. If
24 there is any material change since then, I want to hear about
25 it. No witness is going to be talking about something before

1 that date because the law of the case is already established.

2 Now, if there is new information, I'm glad to hear
3 that.

4 I received a declaration, joint declaration by
5 counsel. Mr. Bruck, how do you propose to present evidence?
6 Are we looking at cross-examination by Government lawyers? I
7 don't like this. How do we do this?

8 MR. BRUCK: Well, we tendered that at this time,
9 that declaration as evidence. If the Court wishes to
10 sequester each of us individually, question us -- each of us
11 individually, we are prepared to answer the Court's
12 questions. If the Court prefers the Government to question
13 us on the witness stand --

14 THE COURT: I felt like, frankly, the declaration
15 was merely a fuller statement of the motion. That is what it
16 was intended to do, right? And I don't have any questions.
17 I mean, I asked Dr. Ballenger to address those issues, you
18 know, to address each, and he did. I saw in his report that
19 he addressed each of those issues. I don't have any
20 questions for you, frankly.

21 Mr. Richardson, what is the Government's view?
22 Because I believe you would have a right to cross-examine if
23 you wished to do so.

24 MR. RICHARDSON: Your Honor, we don't agree with
25 everything that is included in the declaration, and we --

1 THE COURT: Of course.

2 MR. RICHARDSON: We think --

3 THE COURT: Neither did Dr. Ballenger.

4 MR. RICHARDSON: -- that -- you anticipate well,
5 Your Honor.

6 And so we think that it is most readily
7 challengeable through Dr. Ballenger's testimony as well as
8 the Court's own observation of the defendant throughout the
9 course of this proceeding. And so we are recognizing the
10 difficulties that are raised by subjecting counsel to --

11 THE COURT: Why don't you reserve this discussion
12 until at the end of the proceedings, but forego it for now.

13 MR. RICHARDSON: That's what I would propose doing,
14 Your Honor. At this point I think that those are issues that
15 we can flesh out based on the Court's observations. If
16 necessary, we could submit an alternative declaration. But I
17 think Dr. Ballenger probably will address most of that.

18 THE COURT: Listen, I've sat and watched the
19 defendant, okay? I mean, and so I -- this is not
20 something -- you know, sometimes I get information. I have,
21 like, no background in what the experts are saying. I have
22 no independent basis to judge. But, you know, I have made it
23 clear in my prior competency order that I observed the
24 defendant, and at that time I found him competent and that I
25 thought the comments about his lack of competence were

1 without merit. I mean, I made that pretty clear. But I do
2 think we all do ourselves a favor by not blowing off a new
3 motion. I opened the courthouse on a holiday, you see my
4 marshals sitting here. We brought everybody here to do this
5 because it's important to do, to not cut corners, to round
6 every corner, and to do it right.

7 So, Mr. Bruck, tell me about what witnesses you
8 might propose to offer.

9 MR. BRUCK: Yes, Your Honor. We will anticipate
10 that the Court intends for Dr. Ballenger to testify.

11 THE COURT: Correct. I'm going to have him briefly
12 go through his report. I'm going to ask him to address each
13 of those issues, that we start from about page 15 of his
14 report, and he goes through each of those sort of concerns
15 that you raised, and how he -- I'm going to ask him to walk
16 through those for us. And after -- and I presume you are
17 going to want to cross-examine him.

18 MR. BRUCK: Yes.

19 THE COURT: Your cross-examination should address
20 issues since the 22nd of November.

21 MR. BRUCK: Yes.

22 MR. ROOF: Can I cross-examine the witnesses?

23 THE COURT: Yes.

24 MR. ROOF: Can I bring something up?

25 THE COURT: Well, have a seat now, Mr. Roof. Let's

1 finish this, and I will hear from you.

2 Yes, sir.

3 MR. BRUCK: Our next piece of evidence, and I think
4 I made this clear, is our declaration where we will not be
5 appearing through live testimony, but I want to make it clear
6 we intend -- we want to tender that.

7 THE COURT: You endorse the statement?

8 MR. BRUCK: Yes, and do Ms. Stevens and Ms. Paavola.

9 THE COURT: I understand that. Yes.

10 MR. BRUCK: Then we have five witnesses present here
11 today, the four experts whose declarations were attached to
12 the competency motion. That is Dr. -- and this is the order
13 in which we propose to call them: Dr. Loftin, Professor
14 Robison, Dr. Moburg, and Dr. Maddox. We also intend to call
15 Father John Parker, who is the witness discussed in -- the
16 minister -- priest who had been visiting the defendant for
17 the last year and a half and whose relevance to this issue is
18 discussed in the -- in our submission by counsel. So those
19 are five witnesses.

20 THE COURT: Have any of these individuals examined
21 the defendant since November 22nd?

22 MR. BRUCK: Um, Doctor -- I'm sorry.

23 Father Parker has seen the defendant several times
24 since November 22nd. The defendant declined yesterday to see
25 Dr. Maddox and Dr. Loftin when they went to the jail to see

1 him. The other two --

2 THE COURT: Well, what would they be basing their
3 opinions on? About his changes since November 22nd?

4 MR. BRUCK: They will testify based on the facts
5 that have been made known to them through counsel.

6 THE COURT: You mean you want them to render an
7 opinion about what you told them?

8 MR. BRUCK: Based on the entire record, including --

9 THE COURT: We've already since November 22nd, my
10 law of the case is the law of the case. You are going to
11 tell me something -- we are not redoing this. I've listened
12 to Dr. Maddox for hours. We are not doing this again. I've
13 ruled. Now, if she hasn't seen him since then, I don't
14 understand what her relevance is. She has exhaustedly told
15 me her opinion. I have the transcript, I reread it last
16 night. It goes on for a hundred-something pages. I've read
17 it. I don't need it. I've ruled. If you've got something
18 new -- Dr. Loftin delivered a statement I considered earlier.
19 Mr. Robison delivered a statement I considered earlier.
20 The -- Dr. Moburg did not submit a statement, but according
21 to his evaluation, it was conducted in February of 2016.

22 MR. BRUCK: Yes, sir. These issues go to the first
23 prong of the competency and the *Edwards* issue, which is
24 whether the defendant suffers from a mental disease or
25 defect.

1 THE COURT: I've already ruled. As of
2 November 22nd, I've ruled on that. It's ruled on. If you've
3 got something since November 22nd, I'm all ears. I'm not
4 redoing a competency hearing.

5 MR. BRUCK: The additional evidence that has been
6 made known to the experts include video visits from the
7 period since November 22nd until the present, which they have
8 observed; that is recordings of family visitation.

12 MR. BRUCK: Correct. And, of course, they have now
13 seen each other's reports with the reports --

18 MR. BRUCK: That is the -- inasmuch as the defendant
19 has made it impossible for them to reevaluate him, that is
20 the record.

1 Father Parker wants to talk about what he's seen since
2 November 22nd, let me say I'm glad to hear from him, okay? I
3 am glad to hear. Having these folks talk about double and
4 triple hearsay, it just -- it's not impressive to me. I
5 think you are trying to relitigate this issue. Now,
6 Dr. Loftin previously did not offer -- or in her report, an
7 opinion regarding competence. She offered an opinion that
8 the defendant had autism.

9 MR. BRUCK: She will testify today, if permitted to
10 do so, concerning the impact of autism on the issues of
11 competency in two respects. And I also want to flag a new
12 issue, which is the *Indiana vs. Edwards* question. And this
13 arises in two ways: One is that the Court in the exercise of
14 its discretion has authority, even if the defendant is
15 competent, to deny at this stage in light of the record as a
16 whole, including the statements that were made in open court.

17 THE COURT: Of course, I considered the *Indiana*
18 *versus Edwards* issue at the time I allowed the defendant to
19 self-represent, and I issued an order to that effect. He
20 does not, in my opinion, the information I have thus far,
21 fall into that gray defendant area described in *Edwards*.
22 It's not there. And I know you have a view, Mr. Bruck, that
23 a defendant on trial for his life should not be allowed to
24 self-represent. I understand that. There is a minority
25 view, a dissenting view you cite. You have represented that.

1 I'm a federal district judge. I don't make these rules, you
2 know, and I follow them, and I -- that's not the law. You
3 are going to have every opportunity one day to address that
4 issue, and you will do that. But I'm not changing the law
5 because that's not my role. That's not the way we do things.
6 So I'm applying the law as it exists, and he does have a
7 right to self-representation. And he does not fall into the
8 category, from the information I have thus far, that would
9 fall within the narrow section of *Indiana vs. Edwards*. So
10 I'm not -- and I considered all of that testimony at the
11 competency hearing.

12 Dr. Loftin had every opportunity then, she submitted
13 a statement, I recall. Was -- was she the one out of the
14 country?

15 MR. BRUCK: Yeah.

16 THE COURT: She gave a very detailed report. We
17 have a report in.

18 MR. BRUCK: Now --

19 THE COURT: We had one previously from her.

20 MR. BRUCK: It was two pages long, or three.

21 THE COURT: It's the same -- you know, I guess y'all
22 think if you go 20 pages, then, wow, you know. I had two
23 autism experts. We had the one who testified, and then we
24 had -- we had Dr. Loftin. We considered all this.

25 Dr. Ballenger said he has autism traits. We considered all

1 of this. We have been through this before. And my -- I
2 believe my order on the Indiana -- on the issue of
3 self-representation on November 29th, which followed my
4 November 25th order -- I've done this. That is the law of
5 the case. If there is something different, I want to hear
6 it. We are not redoing the competency hearing. We are not
7 redoing my orders for the law of the case or the two orders I
8 issued on November 25th and November 29th. New information.
9 I'm glad to do that.

10 Now, you know, I just don't know how anyone, other
11 than Father Parker, has anything to offer us other than the
12 attorneys' observations, and I have Dr. Ballenger who has
13 examined him about that. These other folks who haven't
14 examined him, you want to have them come in and talk about a
15 video? Is that what you want to talk about?

16 MR. BRUCK: Well, that is -- and that is relevant to
17 issues in Dr. Ballenger's own report about the defendant's
18 representation about his perceptions and awareness of his
19 capacity to gauge other people's reactions, which are all
20 critical trial skills, which are relevant to competence.

21 THE COURT: You know, Mr. Bruck, I've tried lots of
22 cases, and I had lawyers against me who had a certain
23 perception of their case. I had a certain perception of my
24 case. I was usually right -- I'm going to brag a little bit.
25 They were, I thought, wrong, but they were not incompetent.

1 They had their views, and I had mine, okay? That doesn't
2 mean someone is not competent to function because they had
3 different perceptions. I think you are way -- taking this
4 whole competency thinking way beyond the parameters that the
5 law allows. If you want to have these witnesses testify
6 about a video, I'll take it for whatever it's worth. Okay?
7 I'll let you talk about that. But I'm not letting you come
8 in and talk about things before or something you told them,
9 and then they are commenting on it. That is -- that is
10 ridiculous.

11 MR. BRUCK: Well, Your Honor, we have filed the four
12 reports.

13 THE COURT: I read them. I read every one of them.

14 MR. BRUCK: We would like those marked as exhibits
15 and be considered evidence.

16 THE COURT: I think they should be. Yes?

17 MR. RICHARDSON: No, we object strenuously to that.
18 These were all information that was available to those
19 experts before that hearing. They wanted to create a report,
20 they could do so. They didn't create a report so they
21 couldn't be cross-examined on it, so that they could prepare
22 a report after they were cross-examined on it.

23 THE COURT: They are here to be cross-examined. I
24 feel like I've already considered their information. Here is
25 the question: Dr. Ballenger made reference to it in his

1 report, that he had reviewed, okay? And I think that is
2 okay. If you want to put -- I think just for the fullness of
3 the record, but I'm not redoing this, Mr. Richardson.

4 MR. RICHARDSON: I'm not asking to redo it, Your
5 Honor. We think it ought to be struck. If they wanted to
6 submit them at the competency hearing, all of that
7 information was available to them at the time of the original
8 competency hearing. This is exactly what they've done
9 repeatedly, an attempt to relitigate after the fact, after
10 the Court has ruled, and to shove things into the record
11 after the fact.

12 THE COURT: Well, let me say, they do that, they are
13 trying to -- you know, it's a difficult situation. I don't
14 think -- at some point the appellate court might want to look
15 at what Dr. Ballenger is talking about when he made reference
16 to these opinions. I think it is clear they are the same
17 opinions that this Court already addressed, okay? I'm
18 putting that on the record. But I think just, you know, for
19 the fullness of the record, I would allow them to attach
20 them. I'm not going to have them come in and relitigate
21 those other issues. Okay?

22 MR. ROOF: Um --

23 THE COURT: Yes, Mr. Roof?

24 MR. ROOF: I would also just on top of that, I would
25 also like to object to them being part of the record simply

1 because, again, the reports consist of nothing but
2 observations before November the 22nd.

3 THE COURT: That is absolutely true.

4 MR. ROOF: That is the only objection I would have.

5 THE COURT: Thank you.

6 Now, let's talk a little bit of order here. We've
7 got a bit of an unusual situation. I want the issue of
8 competency to be litigated by standby counsel. And I appoint
9 you, Mr. Bruck, to handle that. I want -- Mr. Roof, if he
10 wishes, has a right to cross-examine witnesses. And I'm
11 going to allow him to do it, as well as the Government. Does
12 anybody have any problem with that? Okay.

13 With that, Mr. Bruck, anything further before I call
14 Dr. Ballenger?

15 MR. BRUCK: If you will indulge me just a moment.

16 Our declaration of counsel included as Exhibit A a
17 photocopy of two notes -- three notes, and I would like to
18 submit the original as A.

19 THE COURT: Any objection?

20 MR. RICHARDSON: None, Your Honor.

21 THE COURT: Very good. Attach it as Defendant's 1.

22 (Thereupon, Defendant's Exhibit 1 introduced into
23 evidence.)

24 MR. BRUCK: Thank you, Your Honor.

25 THE COURT: Dr. Ballenger, would you come forward,

1 please, sir.

2 Swear him, please.

3 THE CLERK: Place your left hand on the Bible, raise
4 your right. State your full name for the record, please.

5 THE WITNESS: James E. Ballenger, M.D.

6 THEREUPON:

7 JAMES C. BALLINGER, M.D.,

8 called in these proceedings and being first duly sworn
9 testifies as follows:

10 THE CLERK: You may be seated.

11 THE COURT: Can you state your full name for the
12 record, please, sir.

13 THE WITNESS: James C. Ballenger, M.D.

14 THE COURT: And, Doctor, I will dispense with your
15 experience. We have documented that well in the first
16 hearing, and we do not need to do that again here. And I
17 also make reference -- I believe you made that, your CV, a
18 part of the record in the first hearing as well.

19 THE WITNESS: Yes.

20 THE COURT: Doctor, you revisited -- I contacted you
21 over the holidays concerning the defendant's motion for a
22 second competency hearing; is that correct?

23 THE WITNESS: Yes.

24 THE COURT: And you generously agreed to return to
25 South Carolina to conduct that evaluation.

1 THE WITNESS: Yes, I was pleased to.

2 THE COURT: Thanks for your service to the Court.

3 And then did you commence to meet with the
4 defendant?

5 THE WITNESS: Yes, I did. The day after I got back,
6 I saw Mr. Roof on Friday for about three hours and Saturday
7 for two hours at the detention center obviously.

8 THE COURT: Was he cooperative in his discussions
9 with you?

10 THE WITNESS: He was fully cooperative.

11 THE COURT: And did he answer all of your questions?

12 THE WITNESS: Yes.

13 THE COURT: And you had, I believe, a copy of the
14 defendant's -- defense counsels' -- standby counsels' motion
15 identifying the specific instances since November 22nd that
16 they believe indicated that the defendant was not competent?

17 THE WITNESS: I did, and I based my examination in
18 my report on the issues raised in that motion.

19 THE COURT: And did you discuss each of those issues
20 with the defendant?

21 THE WITNESS: Yes.

22 THE COURT: Did you do it thoroughly?

23 THE WITNESS: Yes.

24 THE COURT: Did you feel like he made satisfactory
25 responses?

1 THE WITNESS: Yes, and I had satisfactory time to do
2 it.

3 THE COURT: And the general issue, did you find any
4 material changes in your opinions previously issued in your
5 original competency report?

6 THE WITNESS: No.

7 THE COURT: Did you note any material changes in his
8 behavior in any way that would affect his competence in the
9 last five weeks since your last evaluation?

10 THE WITNESS: The first answer is no, certainly
11 nothing in the negative. As I predicted, his experience in
12 the Court has reduced his anxiety about his -- about being in
13 a social/legal formal setting like this, and so he's less
14 anxious about that and more content.

15 THE COURT: That doesn't surprise you, though?

16 THE WITNESS: No.

17 THE COURT: If I -- let me hand you -- I believe
18 this is a copy of your report; is that correct, sir? And
19 make sure that is the page that is signed at the end. If
20 it's not, I want to make sure we have a signature page.

21 THE WITNESS: It is not signed.

22 THE COURT: Would you sign it? I'll provide you a
23 pen, and you can sign it right here.

24 MR. RICHARDSON: Just for the record, Your Honor, he
25 submitted a signature page.

1 THE COURT: He did. He did do that, and I just
2 wanted it for the record. I was getting ready to mark it to
3 have this one used. So we actually have an original
4 signature.

5 THE WITNESS: Now you have two.

6 THE COURT: Two. And, Ms. Ravenel, could we mark
7 this as Court Exhibit 1?

8 THE CLERK: Yes, sir.

9 THE COURT: Now, Dr. Ballenger, I want to direct
10 your attention, if I might, to beginning at -- I believe it's
11 on page 15 you began, I believe, systematically going through
12 each of those issues that had been raised in the motion. Is
13 that correct?

14 THE WITNESS: Yes.

15 THE COURT: And could you just address each of those
16 issues, the responses you received, and your observations and
17 your conclusions?

18 THE WITNESS: One basic issue raised in the motion
19 and in the proceedings was whether the defendant had the
20 capacity to understand the issues and to assist his attorneys
21 capably or the ability to communicate and cooperate well.
22 And I found there was no change in these two examinations on
23 Friday and Saturday.

24 THE COURT: In terms of his ability to do it?

25 THE WITNESS: In his ability to do it.

1 THE COURT: He is disturbed with his counsel?

2 THE WITNESS: Yes, and his willingness to do it,
3 that had significantly changed. He was much more definitive
4 in his refusal and -- to continue to work with them. That
5 had changed substantially, and he is much less willing.

6 THE COURT: Did he explain to you why that was so?

7 THE WITNESS: Um, in the extension of the same
8 reasons he had before. At this point, understandably,
9 defense counsel are trying to put together an ethically bound
10 effort to defend him; and both in the guilt, but also in the
11 death penalty phase, they want to do certain things. He does
12 not want to do them, and he feels the continuing
13 back-and-forth, which he feels some of it is disingenuous to
14 the point even of trickery, which makes him upset and angry.
15 That has proceeded to a point there are two issues: One, a
16 loss of trust and irritation about that; and two, increasing
17 clarity of the differences in what he wants to do and what
18 they want to do and an inability to resolve that.

19 THE COURT: So you believe he retains the ability to
20 cooperate if he chose to do so?

21 THE WITNESS: Absolutely.

22 THE COURT: But he has elected, by his own choice,
23 not to cooperate because he disagrees with their actions?

24 THE WITNESS: Yes. And I would go a step further to
25 say that that election, that choice of his, is based on

1 logical, rational thought of his, which is completely
2 consistent with everything he said from the moment he was
3 arrested until this morning. His reasoning is the same. It
4 is -- I understand it better, and I think others are
5 understanding it better. One of the things that happened in
6 my examination is that I got even better acquainted of why he
7 and his lawyers are at loggerheads, or a point of such
8 unfriendly disagreement.

9 THE COURT: Why don't we go to the next issue,
10 number two that you raised there at the bottom of the page.

11 THE WITNESS: And that is, and I would comment,
12 somewhat not surprising for everybody else to have trouble
13 understanding Mr. Roof's reasoning because it seems so
14 contrary to commonsense that he would not care what the
15 outcome of the penalty phase is. He sees both options as
16 equally bad, and he doesn't care about that. What he cares
17 about are the act, that it not be muddied or misunderstood.
18 It was a purposeful act, that he is pleased that he was
19 successful to do the way he wanted to do it, and he wants
20 that clearly understood. He doesn't want any efforts by
21 counsel to muddy that or muddy that water.

22 And, two, his reputation in the long-term about
23 this, to not have any diagnoses, mental health diagnoses or
24 neurobehavioral defects found against him. And then in the
25 secondary thing that I also put in a larger group, his own

1 more personal concerns about his forehead and how he looks,
2 and whether the manifesto was poorly written or has incorrect
3 grammar. Some of his autistic traits derive kind of things
4 about whether his sweater was washed wrong. That is what
5 he's concerned about.

6 He's not concerned -- and it has been taken as --
7 and I don't think this is surprising, but taken as evidence
8 that he must not be saying if he thinks -- if he doesn't care
9 about whether he gets the death penalty or not. I'm sure
10 their experience has been that almost everybody that they
11 work with cares. They don't want to not --

12 THE COURT: Did he think he was going to survive
13 that night?

14 THE WITNESS: He absolutely didn't. He was
15 dumbfounded. And, you know, his plan, careful plan, was that
16 he would be shot in the fuselage from the police after he
17 fired 77 rounds; and if not, that's why he saved a round, he
18 was going to kill himself. What he discovered and made clear
19 again to me is that that became a very frightening thing,
20 shooting himself, that he simply didn't have the bravery, his
21 term, and he said people who think suicide is a cowardly act
22 have never actually contemplated it. It actually requires a
23 lot of bravery to pull the trigger.

24 THE COURT: Your statement, "The examiner finds no
25 evidence and the lack of preservation is evidence of lack of

1 competence" --

2 THE WITNESS: That is my view in what I said in more
3 words before.

4 THE COURT: Number three.

5 THE WITNESS: One of the issues that standby counsel
6 has raised is in the penalty phase, he planned to, quote, to
7 call no witnesses, present no evidence, cross-examine no
8 government witnesses, or do anything otherwise to defend
9 himself. And, again, what I found is that his primary
10 concern isn't that. That seems odd. Impossible to
11 understand, almost crazy to people, particularly a death
12 penalty lawyer team. But that is right.

13 In his top four or five priorities for the death
14 penalty phase, winning -- he doesn't even know what winning
15 his death penalty phase would be, and he doesn't really care
16 about it. But that is not even on his priority screen at
17 all. So it puts them -- and he actually believes at this
18 point that the defense counsel is interfering with his
19 ability to do what he wants to do, and they are messing up.

20 THE COURT: His defense?

21 THE WITNESS: His defense and his purposes and goal
22 for the remainder of --

23 THE COURT: And what do you understand his defense
24 to be?

25 THE WITNESS: His defense, I would say even he --

1 from the very beginning when he tried to talk to me about it
2 in the first set of examinations, he sees that no one else
3 will see it as a defense. He doesn't think you will allow
4 him to present it as a defense. He feels badly that he'll be
5 presenting it in front of African-Americans, most
6 particularly those who tragically were touched by this crime,
7 but his defense is that it was a purely political act. He
8 said Saturday, I think, that he really thinks the best way to
9 help people understand it is the analogy that he is like a
10 Palestinian terrorist, extremist who shot nine people in
11 Israel in the restaurant where he worked and is now in jail
12 for that and doesn't feel sorry, because he did exactly what
13 he wanted to successfully. Why should he feel sorry? He
14 realized he's killed people, and the people feel bad about
15 that, but he doesn't because he did what -- he carefully
16 planned and methodically carried out his mission, and his
17 defense is that, that it was a political act.

18 He realizes that that is not a political defense in
19 our world and --

20 THE COURT: But he wishes to make that statement?

21 THE WITNESS: Yes. And he might in the penalty
22 phase.

23 THE COURT: Now, he talked about offering no -- no
24 defense. He -- in fact did he share with you that he does
25 intend to do an opening and a close?

1 THE WITNESS: Yes. He plans and has worked on them,
2 and he also plans to cross-examine witnesses.

3 THE COURT: As needed?

4 THE WITNESS: As needed, and to present evidence.
5 He said his kind of evidence, his evidence, and that it
6 involves witnesses, implied that that witness might be
7 himself because he didn't plan to call any witnesses, if that
8 makes sense. Yes, he --

9 THE COURT: He is not planning to remain silent.

10 THE WITNESS: No. He's planning to do -- yes. He's
11 going to make -- he's going to cross-examine government
12 witnesses. He's going to be active, and he's going to
13 present the best defense that he can do that he wants to
14 present, that meet his goals.

15 THE COURT: So to the question three about not
16 calling witnesses and so forth, do you find that to be
17 evidence of incompetence?

18 THE WITNESS: No. I mean, he has competently --
19 been completely consistent from the day he was arrested to
20 Saturday. When I talked to him about what his purposes, his
21 goals are, are quite consistent, and he's sticking with them
22 despite having to work hard through a complex system he
23 doesn't understand to try to do that.

24 THE COURT: Question number four, this whole issue
25 about whether these alleged developmental disorders and

1 mental illness control his decision-making.

2 THE WITNESS: In the motion they asserted that the
3 various developmental mental illness, disorders, quote, "so
4 controlled his decision-making as to compromise his ability
5 to" -- "ability to assist his counsel and to represent
6 himself," end of quote, and that he planned to present no
7 evidence -- quote, "He plans to use the penalty phase to
8 dispel any questions about his mental health," close quote --
9 in fact, that illustrates the dilemma.

10 In fact, that is part, not entirely what he plans to
11 do in the death penalty phase, but that is what he wants to
12 do. He wants to continue to try to get out of the record any
13 evidence of mental illness or autism or any other defects and
14 keep out any of the things that embarrass him, like
15 photographs that he doesn't like, photographs of him with
16 pillow cases looking like Klan. He would like to clean the
17 record up of all of that, but that's not evidence of
18 competence. That is just, in my opinion, evidence of
19 continuing with his goal versus what his lawyers are pushing
20 and trying to accomplish for him.

21 THE COURT: And describe -- the goal was -- I
22 believe you described it more fully in your earlier report --
23 was his racial motivation about his perception that the white
24 race is in jeopardy, and there needs to be armed resistance
25 or resistance to the country becoming a minority country --

1 white minority country.

2 THE WITNESS: His rationale for the crimes, his
3 reasoning for the crimes was his consistently-held belief for
4 at least two years that there is black-on-white crime across
5 the world, including the United States, where blacks are
6 killing whites and raping whites, and that the media is
7 covering that up, and he wants to expose that this is
8 happening because people want -- in his thinking, go to the
9 Internet and find out it is true; in his opinion that there
10 is evidence on the Internet to do that, and the white race
11 needs to be awakened. And the reason he feels he had to do
12 it is because no one else was doing it, and it at times was
13 becoming increasingly perilous. He did it to call attention
14 to this.

15 He cares about what happens in this trial because
16 people are watching this trial, and the media is closely
17 watching this, and he wants the right message to get out and
18 not have it besmirched or muddied by saying that he did it
19 because he was psychotic or had somatic delusions or was
20 autistic, but that it simply be a political act, which he
21 knows and purposely planned for it to be, the most outrageous
22 political act he could think of is to kill nine nice black
23 people in their place of worship while they were worshipping,
24 knowing he didn't have anything against those nine people,
25 but knowing they would be newsworthy.

THE COURT: Let's go to question number five on page 18.

THE WITNESS: His attorneys assert that the defendant's denial of his own incompetence shouldn't be taken as evidence that he is not incompetent. I certainly didn't take that. He believes he's not incompetent. I believe he's not incompetent to stand trial, and that he is competent to stand trial. So every part of my examination beginning to the end was a test of his competency to stand trial. And I found the same as I did before, that I didn't find any significant problem with his competence to stand trial and defend himself.

THE COURT: Question six addresses the issue did not wish to speak to the lawyers during the -- during trial and didn't always follow their advice written on notes.

THE WITNESS: Yes. He made the good point to me, actually on Friday, I think, that he did in fact say that in September, that he no longer believes that he can handle that without embarrassing -- being embarrassed. He can handle it without having blushing attacks, which part of the things that all through this is that he has been staring at one spot and at times avoiding looking at witnesses, which he thinks it would be impolite for him to do, but that he stares to handle the emotion of all of this, that all of that does not mean he's incompetent, and that he can share notes, talk to

1 his standby counsel.

2 But he doesn't agree with much of what they want him
3 to do for two reasons: One, they want to do again the things
4 that practicing lawyers do. He has different agendas than
5 they do. He doesn't want certain things to go forward. He
6 doesn't want certain things emphasized, and also sometimes
7 he's embarrassed about doing that. But, again, their notes
8 are, in his opinion 100, percent not on his page about what
9 he wants to do. He said in summary -- I think it was a
10 spontaneous comment, but he said he feels like he's sitting
11 at the wrong table.

12 He wants -- wanted in the first phase to be
13 convicted. He said that on day one: "I did it." He's proud
14 he did it. He doesn't want anybody in the flow of history to
15 mistake that Dylann Roof did this, so he's not -- he wanted
16 to be convicted in the first phase, and he doesn't care what
17 happens to him in the second phase, although he would like to
18 stay alive as long as he can. So part of why, his strategy
19 is -- underlying is he wants to have as many appeals, which
20 he thinks are all going to be turned down, but that that will
21 keep him alive.

22 THE COURT: There is this thing about he doesn't
23 really think that this is serious, that he doesn't really
24 face the death penalty. I know you spent a lot of time on
25 both the prior examinations that handle that question, and I

1 presume did it again.

2 THE WITNESS: I did.

3 THE COURT: Talk to me about that.

4 THE WITNESS: Because it is something that bothers
5 his lawyers, is -- part of what they brought up is that he
6 seems blasé or indifferent to what is going on.

7 THE COURT: And they suggested that he doesn't
8 really think he could get the death penalty.

9 THE WITNESS: Yes, and that in some of their
10 communications that he says that people will -- people like
11 him too much to put him to death -- you like him too much --
12 that he doesn't think the prosecutor likes him, but that
13 somehow he might escape it.

14 Now, that has been there all along. But what he
15 told me in the last evaluation, and this one extremely
16 consistently, 100 percent consistent and credibly and
17 believably, that he doesn't believe that. His first
18 assessment was that he was 85 percent sure that he was going
19 to be executed. This time around he said he was 50 percent
20 sure that he is going to get the death penalty at the end of
21 this next phase. He has some hope that the death penalty
22 will be abolished and that he won't actually be executed, but
23 the fanciful notions that he'll be rescued by white
24 nationalists, revolutionaries who have taken over the
25 Government and let him out of jail, he laughs about the humor

1 involved with that, which has made me develop a hypothesis:

2 -- this is not an opinion, but in trying to understand where
3 these funny notions -- how they get into his interactions
4 with -- particularly his standby counsel, is that he likes to
5 mess with people. He --

6 THE COURT: Did he mess with you?

7 THE WITNESS: Yes. And so he says things that sound
8 insane, sound psychotic, like "The jury is going to like me
9 so much they are not going to find me guilty." It is my
10 opinion and belief that he doesn't believe that. What he
11 believes is from the very beginning that he would be found
12 guilty -- he wanted to be found guilty -- that he will almost
13 certainly get the death penalty, and it doesn't really matter
14 whether he gets that or life in prison. The only real
15 difference he could stick with is that if he gets the death
16 penalty, he knows which prison he goes to, and there are more
17 appeals available in that scenario. But, otherwise, he's
18 hard pressed to find any real differences, and it doesn't
19 make a difference to him.

20 THE COURT: Does he appreciate the real risk that he
21 faces, the potential for death from this trial and from this
22 sentencing?

23 THE WITNESS: I don't think he has a shred of doubt
24 about that.

25 THE COURT: Question seven, he was overly concerned

1 about what certain people, the Judge, whether they like him.

2 THE WITNESS: That is an issue that has been there
3 all along, and we talked about that because it was raised by
4 his standby counsel. He does care, as he points out, much
5 more than most people, and he credibly raised the issue that
6 to say he's unaware of social cues is completely wrong. He
7 says he is hypersensitive to facial cues about whether the
8 person is liking him, and he is overly focused on that and
9 said this is part of his anxiety -- his social anxiety
10 disorder that he acknowledges he does have, and that he is
11 overly concerned with that.

12 It is an issue in the courtroom, in my opinion, but
13 it is not a significant undermining of his competence to
14 function in the courtroom. The phrase I use, there was no
15 evidence that this substantially affects his competence.
16 Excuse me.

17 THE COURT: Question eight, concern about the
18 photographs. You briefly addressed that already. Anything
19 else you wish to add about that?

20 THE WITNESS: Yes. Like his third or fourth
21 motivation is that his reputation later be as good as it can
22 possibly be. Obviously no mental illness, no autism if he
23 can get that out of the record, but also no unflattering
24 photographs. So he's concerned about how he's dressed. For
25 that reason, and some -- I think it's fair that some of his

1 autism traits come up, just sort of too much smoke about that
2 for it to be completely not there. But he doesn't want an
3 unflattering photograph. He thinks his forehead is too
4 broad.

5 He gave the excellent analogy: It is like a woman
6 who is carrying 20 or 30 pounds too much. She's not obese,
7 but she has too much, and he said, "Is it abnormal or really
8 weird that she is concerned about how flattering photographs
9 are or are not of her? I mean, am I the only person who
10 cares about this stuff?" He says, "You know, I want to look
11 nice because all of the people sitting behind me in the
12 courtroom are reporters. They are going to talk about what I
13 wore and so forth." That is an issue. And so he's very
14 concerned about the photographs with the pillow case that
15 make him look like a Klan member, which he's not. Very
16 concerned about the messiness that would be revealed in his
17 car, about the messy clothes and so forth. He doesn't want
18 that kind of thing -- and the photographs are just the
19 leading edge of them.

20 THE COURT: Question nine, that they noticed that he
21 would stare down, and that this was -- they were describing
22 this, standby counsel, disassociating, paranoia, and
23 seemingly being under the influence of delusions.

24 THE WITNESS: The defendant himself provides a very
25 logical explanation about that. He says he has smiled and

1 even laughed during very tense situations or just stared at
2 the floor trying to deal with the emotion, trying not to
3 reveal what he's feeling and not to have a blushing attack.
4 That -- yes, if he does that, and from a professional point
5 of view, that is logical. He's uncomfortable. A lot of
6 people smile when they are uncomfortable. It was part of his
7 pretrial evaluation that found that too. I don't see that as
8 a significant difficulty with his competency.

9 THE COURT: Does it suggest to you paranoia,
10 delusional behavior, disassociating?

11 THE WITNESS: Not at all. And his explanation helps
12 that as well.

13 THE COURT: And I take it these opinions which you
14 have reached, Doctor, are within a reasonable degree of
15 medical certainty?

16 THE WITNESS: All of them, yes.

17 THE COURT: One last question, the defendant
18 indicated that by self-representing, he was hoping to keep
19 certain evidence out of the trial. Did you happen to discuss
20 with him the potential that this information would be
21 released one day?

22 THE WITNESS: Yes. He's discouraged about that.
23 He's still trying. He said that to me. It's very difficult,
24 but there is a court web page that comes up the day after the
25 court or right after the court, and he realizes there are

1 severe limitations to his strong wish to control what comes
2 out of this and to manage to reduce any negative things about
3 himself, but also about his family, to protect their privacy
4 and protect them from feeling hurt and bothered by this.

5 THE COURT: Does he understand that much of this
6 psychiatric evidence may well go into the public realm after
7 the trial?

8 THE WITNESS: Yes.

9 THE COURT: Okay. With that the Court has finished
10 it's inquiry. Mr. Bruck, do you wish to examine the witness
11 or one of your team?

12 MR. BRUCK: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BRUCK:

15 Q. Good morning, Dr. Ballenger.

16 A. Good morning, Mr. Bruck.

17 Q. Happy New Year.

18 A. Happy New Year to you.

19 Q. How many hours have you spent on this case so far in all
20 up until today?

21 A. I really don't know. Since I had to estimate when they
22 called me, I think something around 25 or 30 this time
23 around, and probably twice that the first time, so that's an
24 estimate.

25 Q. Okay. And the 25 to 30 includes your travel time to get

1 back to Charleston?

2 A. No.

3 Q. The -- on page 1 of your report, and I don't know if you
4 want to look at it, but you stated that the defense expert
5 reports were again made available and rereviewed. Do you
6 recall which defense expert reports those were?

7 A. No. My memory of the first time around is not very
8 exact. I know which ones were submitted with the motion, and
9 I reviewed them.

10 Q. All right. Well, let me read from your report at page 1:
11 "Although the defense expert reports were again made
12 available and reviewed, they were available and included in
13 the original competency hearing and are not substantially
14 involved in this second competency hearing." Which expert
15 reports were available and included in the original
16 competency hearing?

17 A. That sentence and -- half of that sentence reflects a
18 misunderstanding on my part. I had been told that they were
19 part of the original submission. They were not part of what
20 I reviewed in a substantial way then, but I was told
21 accurately; and the second half of the sentence, they were
22 not substantially involved in the second competency
23 evaluation, and the judge said on questioning -- reiterated
24 that we were not going to do -- use any evidence prior to
25 the -- or accept evidence after the competency finding.

1 Q. So am I to understand that your instructions were not to
2 consider the reports -- the written reports that were made
3 available to you by Dr. Loftin, Dr. Maddox, Dr. Moburg, and
4 Professor Robison?

5 A. That they were not pertinent to this second competency
6 evaluation because they were all from before the decision.

7 Q. Okay. And you were told that by His Honor Judge Gergel?

8 A. Yes.

9 Q. Okay. And so you did not consider them?

10 A. I did not involve them.

11 Q. Thank you. Now, your report reflects -- I would like to
12 start from the beginning. I will get to the specific
13 questions towards the end. The beginning, the very first
14 thing the defendant said to you before you said anything to
15 him was to ask you about your suit and the colors of your
16 suit, correct?

17 A. Yes.

18 Q. And the next thing he said was to express irritation with
19 his attorneys? We are now at page 3.

20 A. Yes.

21 Q. And the third thing he said was to complain about -- or
22 demand to know why Professor -- that Robison's report was --
23 how Mr. Robison could possibly tell if another person was
24 autistic because Professor Robison himself has autism,
25 correct?

1 A. Let me explain that. The order went, he liked my jacket
2 and wanted to know what the colors were. And then he said
3 after I -- he went back to my comment that I was asked -- I
4 was here to -- because I had been reordered by the Court to
5 reexamine him, and so it was my understanding in the flow of
6 the conversation, he -- it was my understanding in the flow
7 of the conversation that then he went to the real issue which
8 was that he was irritated that his lawyers were messing with
9 him.

10 He had brought to the interview all of the reports
11 because he wanted, I learned, to point out things that were
12 wrong about them. So he was holding them, and he said -- he
13 started to talk about them, starting with Robison, because I
14 think that is the one that irritates him the most.

15 Q. I see. Now, can an autism spectrum disorder have
16 significance for competency to stand trial in your opinion?

17 A. Could you repeat that question, please?

18 Q. Can autism spectrum disorder have significance for the
19 question of a criminal defendant's competency to stand trial
20 in your opinion?

21 A. Yes, and depending on severity and the particular defects
22 of the person involved.

23 Q. All right. What about autism spectrum disorder without
24 intellectual disability?

25 A. Still yes.

1 Q. And your original report listed as one of your findings
2 possible autistic spectrum disorder?

3 A. Yes.

4 Q. What is your finding now, if you have one, respecting
5 autism spectrum disorder in this case?

6 A. By history, because I -- I have available to me and have
7 read Dr. Loftin's report, that there is enough evidence in
8 the record that she pulled together from many interviews that
9 he certainly came close, if not warranting the diagnosis as a
10 child, autistic spectrum disorder. Now it's my opinion from
11 the conduct I've had with him that it may -- it's more
12 accurate to describe that he still has some traits as opposed
13 to the full disorder.

14 Q. And is autistic traits a DSM-5 diagnosis?

15 A. No, but it is part of how we talk about it in the
16 profession.

17 Q. All right. In -- under the DSM, one either has autism
18 spectrum disorder or one does not. Is that correct?

19 A. That is a level of exactitude I don't think fits the
20 clinical picture in that when somebody -- say someone who has
21 autistic spectrum disorder and has wonderful treatment and
22 gets markedly better so that there is almost no way of
23 recognizing that, I don't personally think it's accurate or
24 reasonable to say they still have the whole disorder. Now,
25 honest people can disagree about that. But I would suggest

1 that we should say in some way markedly improved or they just
2 have traits. It's like somebody who has a diagnosis of
3 schizophrenia, and they have been symptom free for 15 years.
4 And your analogous question in that would be do they still
5 have schizophrenia.

6 Q. Well, there is a diagnosis of schizophrenia in remission,
7 correct?

8 A. Um, yes, and that's part of how we deal with it.

9 Q. Right.

10 A. But the way I might describe it in my own belief that
11 would carry more meaning, I might want to say that there is
12 someone who had that illness and disorder, and now they only
13 have a few traits or symptoms, and formally for billing
14 purposes, the diagnosis would be in remission.

15 Q. But autism spectrum disorder by definition is a
16 developmental disorder which is lifelong, correct? You do
17 not become cured of autism spectrum disorder?

18 A. No.

19 Q. Right?

20 A. That is true. But my retort back is how would you then
21 describe somebody who went from having hundreds of symptoms
22 to only having two?

23 Q. Okay. And in determining whether someone has symptoms of
24 autism spectrum disorder, is it sufficient to rely on the
25 person's own self-report and a clinical evaluation?

1 A. If you will permit me to split it apart, two parts of
2 your double question. No, it's not sufficient to rely on
3 their own report.

4 Q. And why is that?

5 A. Because they often deny that they have it.

6 Q. They don't want to have it, and they lack insight, both
7 things, correct?

8 A. Yes, and many, many people with various illnesses don't
9 like them, from obesity, bipolar illness and so forth.

10 The second half of whether or not it is sufficiently
11 diagnosable by clinical interview, I would say that sometimes
12 yes, they are very valuable. Sometimes if it's really mild,
13 it's difficult, but you would like to have collateral
14 information about that.

15 Q. And is it fair to say the high IQ would suggest how more
16 difficult it is to gain information about signs and symptoms
17 of autism in a clinical interview?

18 A. Yes, obviously dependent on how high, and the other
19 ability that is separate from intelligence many times, and
20 that is the ability to put oneself in the situation and to
21 figure out what would be the best way to make themselves look
22 really good, to look like they don't have it. Do you
23 understand that? Does that make sense?

24 Q. Yes.

25 A. And what would -- to put themselves in the shoes of the

1 person looking at them and figure out what they want me to
2 say so that I can prove I don't have autism, to be able to do
3 that, to have that ability. And that is an ability, as you
4 well know, that is central to autism by its generally being
5 absent, not being able to do that kind of fooling of a
6 clinical examiner.

7 Q. But the higher IQ a person has, the more likely they are
8 to be able to effectively deny symptoms?

9 A. Only if they also don't have defects in their language
10 ability because if somebody has a huge IQ, but can't talk --

11 Q. Of course. But if someone has a verbal IQ, say, of 141
12 and is extremely verbal, you would expect that they would
13 have quite a strong capacity to deny symptoms whether the
14 symptoms are in fact present or not?

15 A. Absolutely. But then it also cuts the other way, that
16 they are also more competent to be able to handle verbal
17 things like a trial.

18 Q. Right. Okay. You said that you had -- now, you told
19 Judge Gergel and you say in your report that he intends --
20 Mr. Roof intends to present evidence at his trial, but not
21 through witnesses, correct?

22 A. I tried to convey that he told me clearly that he plans
23 to present evidence and witnesses, but then he -- he didn't
24 want to tell me what his opening and closing statements were,
25 or how he was going to -- involve witnesses, and he implied

1 an unclear message to me, that the witnesses might not be
2 anybody but himself. So that's as good as I can answer that
3 question.

4 Q. So when you told Judge Gergel at the very beginning of
5 your testimony this morning that he did not refuse to answer
6 any of your questions, that is not quite accurate?

7 A. That's not 100 percent accurate. He said he didn't want
8 to tell me what the -- what his opening statement, in
9 particular his closing statement because that was going to be
10 dramatic and he didn't want to -- the thunder to be stolen
11 from that, so -- so that was the extent he wasn't fully
12 cooperative.

13 Q. And he also didn't tell you -- he didn't want to tell you
14 what evidence he was going to present with any specificity?

15 A. He did convey that that was in part because he wasn't
16 entirely sure how it was going to play out. For instance,
17 it's his belief that the Government will present as many as
18 30 witnesses or less, or he doesn't know exactly, and he
19 doesn't know what they are going to say.

20 Q. So as far as whether his plans to conduct his own defense
21 are rational or not, in the end you don't know because you
22 don't know what those plans are except in a general way?

23 A. In a general way of what he's told me. If he did only
24 what he's telling me, it is my opinion that they are
25 rational, that he's going to make an opening statement,

1 cross-examine witnesses that he chooses to, and have a
2 dramatic closing statement, and that will be it. That is
3 consistent with what he wants to do.

4 Q. Now -- but, of course, when you are assessing that as a
5 rational plan, that is without knowing the content of
6 anything that he intends to do and merely the structure, the
7 sequence of it?

8 A. Only that the implied content that he's talked to me
9 about throughout the five times I've seen him, that it is to
10 present the defense, his defense that I described to the
11 Judge earlier, that that would be to do -- that would be
12 consistent with what he said all along, what he told me in, I
13 think, our first interview, that what he would like to
14 present, but he doesn't think he'll be allowed to present.
15 He thinks it will outrage everybody and that that is an issue
16 that he's -- he feels bad about in some ways, not in others.
17 That is logical and connected to what he has said since his
18 arrest.

19 Q. Now, you said that in this connection that he is
20 concerned about his reputation, correct?

21 A. Correct.

22 Q. And the word "reputation," of course, refers to what
23 other people think about him, correct?

24 A. Yeah.

25 Q. What is his reputation? Did he say?

1 A. What he hopes it to be and what he's fighting to protect
2 that I know involves, he would like 100 years from now to be
3 in the history books saying it was Dylann Roof who did this
4 act that has an influencing effect for correcting white-black
5 relations, and the relations have been changed. That is the
6 reputation he wants it to be, to have no negatives, no
7 footnote that says that he was found autistic -- to be
8 autistic.

9 And he also doesn't want any photograph that shows
10 him in an unflattering light, that the photograph that comes
11 from this trial to not be embarrassing, which is a term I
12 know he's used with you. It's the term that socially anxious
13 people talk about all the time. That it be judged
14 negatively. So what I used the word and he used the word
15 "reputation" to mean is those -- at least those two large
16 pieces, historical reputation and smaller, more personal.

17 Q. Did he ever describe to you whether there are any living
18 people today with whom he has a good reputation that he needs
19 to protect; and if so, who are they?

20 A. That he needs to protect? The people or his reputation?

21 Q. No, his reputation among any group of people alive on the
22 earth today.

23 A. He didn't -- he didn't identify anybody like that.

24 Q. Did you ask?

25 A. Not in that exact terms. He talked about his family, but

1 that -- his reputation with them is not the reputation in the
2 history books 100 years from now.

3 Q. Right. And he didn't suggest that his family would be
4 disappointed if he did not put forward some sort of a
5 political agenda at his trial, did he?

6 A. No. I mean he's quite clear that everybody in his family
7 would prefer that he had not done this.

8 Q. Right. So the answer to my question is no, he has never
9 identified to you any living person with whom he has a good
10 reputation?

11 A. Um, in my last interview with him, in talking to him
12 about the issues of people saying he's rude, he said -- and
13 through my various examinations -- that he can't be rude
14 because all of his family would forgive him anyway. They
15 like him. They don't think badly. They don't feel like it's
16 rude. And that he has relationships with his grandfather,
17 with his father, with his mother that he cares about, and
18 that they care about him and his sister. So it's not true to
19 say he has no one that he's concerned about his reputation
20 with them.

21 He -- and I know that he's not part of a group.
22 He's not part of skinheads. He's not -- has never made
23 contact with anybody in the white nationalist movement. So
24 no, not in that sense is he concerned about any of those
25 people.

1 Q. Okay. He said he wants to kill me?

2 A. He did. And he did -- he did put a proviso in there, if
3 he were to ever get out of jail.

4 Q. Right. Does that mean that while he's in jail, he
5 doesn't want to kill me, or it's as a practical matter
6 contingent on his getting out of jail?

7 A. I think he sees it as a practical matter.

8 Q. And the reason he wants to kill me is the way I have
9 conducted his defense?

10 A. Um, yes. And at this point, "the continuing messing with
11 him" is the phrase I put in my report because that was
12 literally the phrase he used. But as he said this morning,
13 he's not happy about yet another evaluation, yet another
14 doctor, and so forth. He blames you for extending all of
15 that.

16 I asked him why not just plead guilty and not have
17 any of this which has proved to be so hard on you, and he
18 wondered about that. Then he got into the complexity of a
19 trial was necessary to create the publicity. It's also
20 necessary to create the ability when he's in jail afterwards,
21 which he sees as 100 percent certainty, that he needs to be
22 able to have appeals to prolong the -- his life span.

23 Q. And in that connection, you said in your -- I think last
24 time, he told you that his chances of getting the death
25 penalty were 85 percent, and this time they have gone down to

1 50 percent, correct?

2 A. I think that is correct.

3 Q. Did he give any explanation for why his odds have
4 improved by 35 percent in the time between your initial
5 evaluation and this weekend?

6 A. No, and I did not ask him.

7 Q. Are you aware of anything that has happened between now
8 and then that would plausibly give rise to the thought that
9 his likelihood of getting the death penalty is only 50/50?

10 A. No.

11 Q. Or that his chance of getting life have improved?

12 A. No.

13 Q. And he didn't offer any explanation?

14 A. No.

15 Q. Now, he made a lot of factual representations about
16 things that we have done to trick him or to lie to him or to
17 mislead him, correct?

18 A. Well, that's your word, "a lot of." He mentioned mostly
19 the tricking him by saying doctors were coming to see him to
20 talk about his thyroid when in fact they are mental health
21 experts; tricking him on your visits because he has to have
22 you come to bring him clothes -- sorry -- that he needs you
23 for that. But that you brought Robison with you in a covert
24 effort to trick him into being evaluated. He didn't dwell on
25 that, but he presented those couple of examples.

1 Q. Let's take that example. He represented to you that we
2 brought Professor Robison to see him unannounced, and he was
3 tricked into coming in to see him by the way we did that,
4 correct?

5 A. He didn't say all of those words and make it that clear.
6 It was just -- just that he was along with you. He didn't
7 say one way or the other whether he knew it, although in
8 retrospect, maybe he did imply that he knew it. He didn't
9 have any choice about it.

10 Q. The reason I ask is that's how you put it in your report,
11 to be sure I don't mislead you.

12 A. I'm actually a little unclear whether he implied that you
13 had told him ahead of time that Robison was coming with you.
14 I'm actually unclear in my memory about that.

15 Q. All right. Of course you did not request any additional
16 information from me or the other defense counsel in the
17 course of this second competency evaluation, correct?

18 A. That's correct.

19 Q. Including on any of these factual issues about whether we
20 had lied, misled, or manipulated him or tricked him, correct?
21 You didn't ask that?

22 A. No.

23 Q. And, of course, if you had, you would have found out from
24 us --

25 MR. RICHARDSON: Objection, Your Honor.

1 Speculation.

2 THE COURT: It's in front of me. Go ahead.

3 Overruled.

4 BY MR. BRUCK:

5 Q. You would have found out what our representations were
6 about each of these events, correct? -- if you had asked?

7 A. I would have found expansion of those things that you put
8 in your motion, I assume, that expansion on them. I did
9 receive your late report after I had found out I was going to
10 report late yesterday afternoon, and so I do have an
11 expansion which I studied last night.

12 Q. You did study that last night?

13 A. Yes.

14 Q. Okay.

15 THE COURT: Let me just ask you, did it change
16 anything in your report after you studied the report?

17 THE WITNESS: No.

18 BY MR. BRUCK:

19 Q. I'm not going to go through every one of these factual
20 issues.

21 THE COURT: Thank you, Mr. Bruck.

22 MR. BRUCK: You are most welcome, Your Honor.

23 BY MR. BRUCK:

24 Q. But I did want to ask you about a few of them. He said
25 that -- on page 9, you were asked about -- this is one-third

1 of the way down the page. "When asked why he wore pants when
2 he worked in the summer, he went on to explain that this was
3 because the edger had lost the rubber shield; that therefore
4 it threw rocks and grass backwards and filled his shoes," and
5 so on. A logical explanation for wearing pants in the heat
6 of the summer, correct?

7 A. Yes.

8 Q. Were you aware at the time of his arrest he was wearing
9 sweatpants underneath his jeans and that he had quit his job
10 involving the edger a month previously?

11 A. I certainly was aware that he had quit his job. I was
12 not aware of what he was wearing.

13 Q. Okay. So this very logical explanation for why he wore
14 two pairs of pants in the heat of the summer sheds no light
15 at all on why he was wearing two pairs of pants on June 17th,
16 correct?

17 A. Which -- this is new information which I haven't had a
18 chance to talk to him about -- I do think some of his
19 clothing issues illustrate remaining autistic spectrum
20 concerns that he has.

21 Q. Okay. And those can be related to sensory distortions or
22 unusual sensory perceptions, need for pressure, or that are
23 related to your developmental disorder of autism, correct?

24 A. Yes.

25 Q. But that caveat does not appear in your report, nothing

1 with a very logical explanation that he offered, period,
2 correct?

3 A. Which caveat?

4 Q. The caveat that his wearing of these clothes to you today
5 this morning now appears as a symptom of autism spectrum
6 disorder, or a trait as you would put it?

7 A. Potentially, yes.

8 Q. That does not appear in your report?

9 A. I didn't know it until this morning.

10 Q. And that might be true of many facts in this report, that
11 if you had additional data, it would turn out the things that
12 would seem very logical when he explains them are not, in
13 fact, good explanations at all, right?

14 A. I think you are going too far with that. I already
15 acknowledged that part of the difficulty you have had with
16 your client is related to autistic spectrum traits and
17 concerns about clothes in particular, how his sweaters were
18 washed, with how much detergent leading them to smell
19 wrong. That is in my report -- both reports, that I believe
20 that it's part of the problem that you are having, but I do
21 not have it a part of his problem with competency --

22 Q. Okay.

23 A. -- significant problem with his competency. It may raise
24 questions, but that doesn't come to competency for me.

25 Q. All right. But, of course, autism spectrum disorder is a

1 disorder of social communication, correct?

2 A. In part, yes.

3 Q. And social communication is what a trial is about, right?

4 A. In part. It also involves facts and other issues.

5 Q. There's an enormous amount of communication and need to
6 see other people's reactions and thoughts that go on in a
7 criminal trial, right?

8 A. As you well know, many, if not most, defendants in a
9 trial like this never say anything out loud to the ears of
10 the courtroom. On the other hand, to assist you, their
11 familiarity with the witnesses and input to you I know is an
12 important part of your working relationship. And you have
13 difficulties in cooperation with any disagreements of what
14 you do and the style of which you do it and the questions.
15 All of those are real issues in my opinion, but in his
16 competence to stand trial and to defend himself, he is
17 sufficiently capable of doing that in my opinion in now two
18 different evaluations.

19 Q. Now, those -- you refer to the competency to stand trial
20 and his capacity or competence to defend himself. Those are
21 two separate questions, are they not? I don't mean legally,
22 I mean just factually.

23 A. Yes.

24 Q. There is a great deal more involved in being your own
25 lawyer than there is in being a criminal defendant with a

1 lawyer, right?

2 A. And there is a broad spectrum of quality of being their
3 own lawyers.

4 Q. And I suppose there is a broad spectrum of lawyers as
5 well?

6 THE COURT: Or psychiatrists.

7 THE WITNESS: I wouldn't know that.

8 BY MR. BRUCK:

9 Q. But a person with autism spectrum disorder has a lifelong
10 neurodevelopmental disorder of social communication, which is
11 the core feature of a criminal trial, right?

12 MR. RICHARDSON: Objection, Your Honor. This
13 witness has already testified that he does not diagnose the
14 defendant with autism spectrum disorder. We are way beyond
15 the relevance of what this witness is here to testify about.
16 He says he has some traits, but he does not have autism
17 spectrum disorder.

18 THE COURT: Wait, Mr. Bruck.

19 BY MR. BRUCK:

20 Q. Well, you have not ruled out autism spectrum disorder
21 either, have you, as a correct diagnosis in this case?

22 A. I have not definitively ruled it out. What I have ruled
23 in is that there is also a wide spectrum of people with
24 autism spectrum disorder ranging from people who never speak
25 to one of the experts you hired to testify in this trial and

1 evaluate Mr. Roof. That is really the question, and Mr. Roof
2 is much closer to Mr. Robison in his difficulties than he is
3 to anybody on the other end in my opinion.

4 Q. Now, before you make a judgment like that, isn't it
5 necessary to gather information not only from Mr. Roof, but
6 from people who know him, from his family, from people who
7 have interacted with him, to review such records as can be
8 gathered that bear on this precise issue, and to in effect
9 have a full autism evaluation?

10 A. As I said in my first report, and I would reiterate here,
11 the evidence that he was on the autistic spectrum was clearer
12 when he was a child, and I have many, many, many pages of
13 records of testimony of people about his childhood, his
14 adolescence. And what I said in that report was from that
15 period, there is considerable evidence that he's on the
16 spectrum. At this point the difficulties which you have made
17 and your team have made part of the record, those shall --
18 the difficulty he is displaying now, even under the
19 microscope and magnifying glass that you are seeing, they, in
20 my opinion, still don't rise to the level of incompetence to
21 stand trial or to defend himself.

22 Q. Correct. But I am trying to -- the first prong of the
23 competency determination is to identify what mental
24 disabilities or defects, if any, the defendant suffers from,
25 and --

5 THE WITNESS: And -- yeah.

6 BY MR. BRUCK:

7 Q. Is it fair are to say, with all due respect, that autism
8 is not your field?

9 A. True.

Q. I'm sorry?

A.

A. |

1000 J. POLYMER SCIENCE: PART A

Q. Right. And if you don't mind my asking, what --

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MR. RICHARDSON: Objection, Your Honor. That is wholly irrelevant.

THE COURT: Sustained.

MR. RICHARDSON: Also inappropriate.

THE WITNESS: I wasn't going to answer it anyway.

BY MR. BRUCK:

Q. And autism, the diagnosis of autism is a subspecialty of psychiatry or psychology, is it not?

A. Yes.

Q. It's an area of special expertise?

A. Yes.

1 Q. That involves specialized training?

2 A. Yes and no. I mean every single aspect of psychiatry
3 people can specialize in. It is fair that that has not been
4 a specialty area of mine.

5 Q. And if a person were -- if it was important to ascertain
6 whether someone who you saw, an adult, suffered from autism
7 spectrum disorder, it would be a standard of practice for you
8 to refer that person to a psychologist --

9 MR. RICHARDSON: Objection, Your Honor. We've gone
10 over this ground the first time, and we are going back over
11 it again repeatedly now.

12 THE COURT: Mr. Bruck, sustained. We are now
13 relitigating the competency issue from November 23rd. If
14 you want to ask him questions, ask it. I've already ruled as
15 to competency. It's the law of the case as of through the
16 hearing. Please proceed.

17 BY MR. BRUCK:

18 Q. Did you consider Dr. Loftin's administration of the ADOS,
19 or the standard instrument --

20 MR. RICHARDSON: This is literally going right back
21 into the same issue.

22 THE COURT: Sustained. Focus on the issue. He said
23 he read those reports. He had previously made a diagnosis
24 relating to the -- to autism traits. We are not relitigating
25 the competency issue previously reached. November 22nd

1 forward.

2 MR. RICHARDSON: At least for the record, Your
3 Honor, the ADOS test was done way before.

4 THE COURT: Of course it was. And we received
5 information from Dr. Loftin about that.

6 MR. RICHARDSON: Thank you, Your Honor.

7 THE COURT: I offered to do a Skype to allow her to
8 testify if she wanted to. We offered. Instead she submitted
9 the report.

10 MR. BRUCK: Bear with me just a moment, Your Honor.
11 I would like to confer with counsel.

12 THE COURT: Go right ahead, Mr. Bruck.

13 BY MR. BRUCK:

14 Q. Can it be hard to distinguish between psychosis and
15 autism in some circumstances?

16 A. Well, anything is possible. I would make that
17 circumstance extremely small -- I would make that
18 circumstance extremely small when it would be significantly
19 difficult to determine for the reason that psychosis involves
20 cognitive reality distortions that are of a major pervasive
21 in the -- for the experienced examiner are impossible to
22 hide. A severely ill autistic person would be difficult to
23 examine, but would not -- because of difficulty with speech
24 and intellect perhaps is a good example. But the positive
25 symptoms of psychosis, the things that make the diagnosis,

1 that cross the bar and say yes versus no are really primarily
2 the positive symptoms of reality distortion like
3 hallucinations and delusions.

4 Q. All right.

5 A. And that just doesn't occur in autism.

6 Q. The differential diagnosis between autism and schizoid
7 personality disorder, which is another diagnosis that you
8 listed in your report originally, correct?

9 MR. RICHARDSON: Objection, Your Honor. This is all
10 about things that happened in the last hearing and about his
11 report from the last hearing. It is not --

12 THE COURT: Ask him a question if his opinions
13 changed as to that diagnosis. How about that, Mr. Bruck?

14 BY MR. BRUCK:

15 Q. Your opinion, I gather, from your new report has not
16 changed respecting your diagnoses or -- and opinions
17 concerning the defendant's mental condition on the first
18 report, correct? Other than your discussion about the
19 lessened anxiety?

20 A. Yes. They have not changed.

21 Q. And is it fair to say that schizoid personality disorder,
22 which is one of the listed disorders, and autism spectrum
23 disorder are easily -- are difficult to distinguish from each
24 other in the absence of a childhood history that supports
25 autism spectrum disorder?

1 MR. RICHARDSON: Objection, Your Honor.

2 THE COURT: It's not -- you are relitigating the
3 competency issue, Mr. Bruck. Ask it as to questions relating
4 to changes since the Court had ruled on this issue.

5 BY MR. BRUCK:

6 Q. I take it that you have now reviewed more information
7 concerning the defendant's childhood than you had at the time
8 of the original -- of your earlier report.

9 A. This strikes me as a problem with your strategy of
10 submitting things late. I have an opinion in a report in the
11 first competency hearing. You submitted that report, which I
12 did read, from Dr. Loftin, but now we are here only to
13 consider changes in his mental status since that competency
14 report, and her report isn't in that. So --

15 Q. Okay. There is a reference in your discussion with
16 the -- in your new report in your discussion with the
17 defendant about magical thinking. Tell me about that. What
18 did he say about that? What do you say about that? Can you
19 clue us in on that?

20 A. He raised a very cogent point, that he disagrees with the
21 way my report was written and he found a missing two letters,
22 which is it should have read ruled out schizoid personality
23 disorder. He recognized that, and he said, "The correct
24 diagnosis is avoidant personality," which is a good argument.
25 I don't know where he went to psychiatry school, but it's a

1 good argument. But he said the critical thing on whether or
2 not there is magical thinking there, which is required for
3 the schizoid personality disorder diagnosis, which I wanted
4 it to have read as Dr. Wagner's report, that said he ruled
5 out.

6 We had a discussion then about whether the various
7 potential magical thinking was, in fact, magical thinking or
8 not, and he didn't like any of my examples. He said, "That's
9 not magical thinking," just sort of disagreed with them. And
10 I brought up two, maybe three, and he said, "No, that is not
11 magical thinking." And we stopped because it became an
12 unproductive piece of conversation.

13 Q. Can you tell me what the examples were that you brought
14 up of magical thinking?

15 A. Well, that's just what I was saying. I'm not sure I
16 remember. One was how could he know with certainty that
17 things on the Internet were true. He didn't have a complete,
18 convincing answer.

19 Q. An important question, isn't it --

20 A. Yes.

21 Q. -- in this case?

22 A. That's why I asked it.

23 Q. And he could not give you an answer?

24 A. Um, not that satisfied me.

25 Q. Not a rational answer?

1 A. His answer was rational; it was not complete. It was not
2 possibly accurate. But the import is if I retained my
3 opinion, which I mostly do, then it was magical thinking, it
4 goes back to my statement in my first report, ruled out
5 schizoid personality disorder.

6 Q. Okay. And can you tell us why you thought and continue
7 to think that his belief about the truth of items on the
8 Internet are true is an example of magical thinking?

9 A. It might be an example of magical thinking because --
10 there is no way he can know that everything is true, and so
11 it really comes back to a naive acceptance, acceptance that
12 it's on the Internet and it's consistent, and all of the
13 evidence that people who generated it and created the fact
14 put forth, so it's his belief that they have provided enough
15 evidence.

16 Interestingly, he's well aware that it's not all
17 true and that there are fake things that are put out there,
18 even brought them up. So he's aware that they don't
19 necessarily tell the whole truth, or that every story is
20 correct. He believes the ones about -- at least in the
21 overall sense, the ones about black-on-white violence are
22 true.

23 Q. And he believes that unshakably, correct?

24 A. I haven't tried to shake them, but I have asked him, I
25 think, on two occasions, how do you know that? And he said,

1 "I do. I just -- there is just so much evidence. It's
2 everywhere. All you have to do is search."

3 Q. And in context you found that to be a possible example of
4 magical thinking?

5 A. A possible example, and even if it were a good example,
6 it still falls way short of competence.

7 Q. Any other examples that you can recall now with magical
8 thinking that you asked him about?

9 A. No. I'm sorry.

10 Q. But there were some?

11 A. There was another one, I think.

12 Q. Okay. Would that be reflected in your notes?

13 A. No -- I don't know whether it would or not. I don't
14 remember that it is. I don't think so. I don't remember.
15 If I had, I would have put them in the report.

16 Q. When he -- when he -- you -- when he told you that he was
17 not going to present any witnesses or evidence, were you
18 aware of what the witnesses and evidence that the defense had
19 provided notice of was?

20 A. Um, he told me that there were either 28 or 30 victim
21 impact witnesses to be presented in the penalty phase. And
22 if I'm understanding this correct, each of the 30 could have
23 four witnesses, two family members and two nonfamily, but
24 related people.

25 Q. What I'm asking you about are defense witnesses. Did

1 he -- were you aware of what -- any of the witnesses who the
2 defense proposed to call were, who he told you he was not
3 going to call any? Maybe I should --

4 A. I don't think I was because he was going to do it his
5 way.

6 Q. And you have not reviewed the witness list that the
7 defense filed -- which, for the record, is docket entry 563
8 under seal -- listing the exhibits and the defense witnesses
9 that were -- who are under subpoena or -- well, I shouldn't
10 say under subpoena, but who were listed by the defense?

11 A. I was unaware of that document.

12 MR. BRUCK: If you will bear with me one more time,
13 I appreciate it.

14 Nothing further. Thank you, Doctor.

15 THE COURT: We are going to take a break right now.
16 We have been going over two hours. And we'll be back in
17 about ten minutes for Mr. Roof's questions and the
18 Government.

19 (Thereupon, there was a brief recess.)

20 THE COURT: Dr. Ballenger, if you can return to the
21 stand, please, sir.

22 MR. BRUCK: If I may be heard with respect to an
23 objection on cross-examination that was sustained, I think I
24 should be permitted without obviously asking for any names to
25 be given or people to be identified, but I do think I have a

1 right on the issue of bias to pursue the question of the
2 witness's direct personal experience involving a family
3 member.

4 THE COURT: Overruled.

5 MR. BRUCK: May I state my grounds briefly?

6 MR. RICHARDSON: Your Honor, we object to him trying
7 to after the fact bolster an argument that he did not make at
8 the time. This is exactly --

9 THE COURT: Mr. Bruck, this is really -- you know,
10 first of all, you know, this is a court examiner, and you are
11 trying to taint him as biased because he has a family member
12 who has autism?

13 MR. BRUCK: No. There are two -- there are two
14 aspects to this. One is that this is an expert with very
15 distinguished experience and credentials in areas other than
16 autism, but --

17 THE COURT: And he pointed that out. He's in
18 general psychiatry, former chairman of the Department of
19 Psychiatry at the Medical University. Also a person that has
20 world class knowledge of schizophrenia and social anxiety.
21 Nobody is going to have everything.

22 MR. BRUCK: All I'm saying is that there appears to
23 be a very relevant gap in experience involving the issue of
24 autism. However, the witness volunteered that he has a
25 direct relationship. We don't know how much observation or

1 knowledge, and we don't know anything about --

2 THE COURT: I think it's unimportant. What else
3 have you got?

4 MR. BRUCK: The other reason for bias is of a
5 different sort, which is that any person with a family member
6 who has autism is going to react, or going to -- this is a
7 universal observation about his case -- is that the autism
8 community; that is, family members of people with autism, do
9 not want Dylann Roof to be identified as a person with
10 autism. And that is something that I think I'm entitled
11 to --

12 THE COURT: I disagree. Those objections of the
13 Government are sustained.

14 MR. BRUCK: Very well.

15 THE COURT: Mr. Roof? Come to the podium and
16 question the witness.

17 CROSS-EXAMINATION

18 BY MR. ROOF:

19 Q. Um, you state in your report that I told you that the
20 only problem with my clothes is whether they are pressed and
21 washed. Do you remember putting that in your report?

22 A. Um, that as a general idea, yes.

23 Q. Right. And I told you that these repeated allegations
24 that I have problems with the texture or weight of my clothes
25 are untrue, right?

1 A. Yes.

2 Q. Okay. I would like to ask you what are the autistic
3 traits that you notice in me today, or when you evaluated me,
4 because you said that there were some that you still see.

5 A. Well, the first point is that I don't see very many at
6 all. That's the most important. There is evidence from
7 interviews with lots of people that you have, which I cannot
8 discount entirely. Just because you say that you don't have
9 issues about texture of clothes or pressure on your sensory
10 aspects, I can't discount the people who say that -- from
11 your past and from your defense team saying that. As you
12 admitted to me, you have a strong interest in exact
13 phraseology and making absolutely sure that what is quoted of
14 you in particular is quoted exactly accurately. That's
15 consistent with the autism. It doesn't prove anything.

16 Q. And could something like that be explained by a different
17 diagnosis or anything else?

18 A. Yes.

19 Q. Okay. David Bruck asked you about whether you knew that
20 I had quit my job when he was asking you about me wearing
21 sweat pants, but -- so I think it's fair for me to ask you
22 were you aware that I went to work with my dad the previous
23 day?

24 A. I was unaware of that as well.

25 Q. Okay. You say that the strongest evidence of the autism

1 comes from when I was a child, right?

2 A. Yes.

3 Q. And you are aware of the power of suggestion, right?

4 A. Yes.

5 Q. And that when questions are asked, especially about
6 things from years ago, that it's possible that people's
7 memory might not be correct?

8 A. Yes, as well as influenced by the suggestive nature of
9 the questions.

10 Q. But my question for you is: The evidence from when I was
11 a child, is it possible that at least a good portion of that
12 could also be explained by other problems, like OCD?

13 A. Um, absolutely. And, in fact, I think that is part of
14 the difficulty in the -- in telling the difference between
15 things that you did because of OCD versus anything else.

16 Q. David also asked you about why my -- why I think that my
17 chances -- or if I gave you any reason that I think my
18 chances for receiving the death penalty or receiving a life
19 sentence have improved. And he says that before I said it
20 was an 85 percent chance that I would get the death penalty
21 and that now I've told you that it was a 50 percent chance,
22 but in your report you say, "He knows that he has a greater
23 than 50 percent chance," and that is what I told you. So a
24 greater than 50 percent chance could be anywhere above
25 50 percent, right?

1 A. That is true.

2 Q. Okay. You were saying during Mr. Bruck's examination
3 that if a person -- or at least I think this is what you were
4 saying, that a person, if they have autism, it would be hard,
5 or difficult for them to pretend like they didn't because of
6 the -- because it requires that person to put themselves in
7 the other person's shoes and because of the social cues
8 involved -- that would be involved in pretending that you
9 didn't have autism. Do you remember that?

10 A. I do. I remembered it a little differently.

11 Q. Um, I guess my question is, if someone presents as not
12 autistic, then is it fair to say that they probably aren't
13 autistic because they would have a difficult time pretending
14 that they weren't because of the autism?

15 A. I obviously didn't make that point very clear with
16 Mr. Bruck, but that was in part the point that I was trying
17 to make, that they wouldn't have the ability to fake it, that
18 to fake that they didn't have it because it would be hampered
19 in understanding social cues, putting themselves --

20 Q. That was started by Mr. Bruck implying that I was
21 pretending to not have it?

22 A. Or that I had missed it because you were trying to cover
23 it up.

24 Q. Is magical thinking the only differentiation between
25 personality schizoid disorder?

1 A. I doubt it.

2 Q. Is that the main differential?

3 A. I don't think so. There is a -- an oddness that -- there
4 are several different ways that people with schizoid
5 personality tend to have an odd presentation as a child
6 versus more purely avoiding people and things.

7 Q. Now, you said that the example you gave for magical
8 thinking was -- or that you could remember was believing that
9 you could -- that a person could tell when something was true
10 or not on the Internet?

11 A. Yes, that was my question.

12 Q. You heard this term "fake news"?

13 A. Yes.

14 Q. And is it safe to say that a lot of people are fooled by
15 fake news, and that if they are fooled, then they think that
16 that fake news is true? That is not magical thinking?

17 A. No, the magical thinking part -- no, maybe -- it would be
18 magical thinking if they thought that they had x-ray vision
19 and could see this was fake and this was not fake, something
20 like that. I'm not sure what your question is.

21 THE COURT: I get it. I think what he's saying,
22 Dr. Ballenger, is that not everybody who believes fake news
23 on the Internet has magical thinking.

24 THE WITNESS: Is that your question?

25

1 BY MR. ROOF:

2 Q. Yes.

3 A. I agree with you. No.

4 Q. I mean -- and some people would believe certain --

5 A. In fact, I would think the overwhelming percentage of
6 people who believe fake news are not involved in magical
7 thinking.

8 Q. Right. And I know David asked you, but can you think of
9 any -- can you try to remember what the other examples of
10 magical thinking were?

11 A. Well, my memory is not a whole lot better than it was a
12 few minutes ago. Do you remember what I asked you?

13 Q. Well, I don't think there is any magical thinking.

14 A. But the -- I think I did offer another possibility. I
15 don't think I stopped at one. What was the other one?

16 Q. I know we talked about the clouds moving fast, but that
17 was related to psychosis.

18 A. Yeah, that's right, I didn't think of that. See, your
19 memory is not as bad as mine.

20 Q. I guess my question, though, is you said that even that
21 example of magical thinking is only -- it's not -- it's
22 possible magical thinking, right?

23 A. Correct.

24 Q. And my question is, if the magical thinking is only a
25 possibility, then would -- wouldn't avoidant personality

1 disorder be a safer diagnosis?

2 A. Yes. I think you've got a good point, that of those two
3 possibilities -- remember I amended my report by saying "rule
4 out." Yes, you've raised a good point, that maybe avoidant
5 is better. I would have to go back and study between the
6 two. My point that I made right after that with Mr. Bruck is
7 that I don't think that differential has any importance in
8 the question of whether you are competent to stand trial.

9 Q. Earlier you said that I told you, um, what I was going to
10 talk about or what my defense would be, and that I was going
11 to talk about black-on-white crime and things like that. Do
12 you remember that?

13 A. I don't think I said that. I think what I said was -- or
14 meant to say, certainly, was that you didn't tell me what you
15 were going to put in your opening and closing arguments. You
16 only said they were going to be good and that at least the
17 closing was going to be dramatic.

18 Q. Um --

19 A. You did tell me that you were going to talk about hatred.

20 Q. Yes. You mentioned something that I don't think I really
21 understood when you were talking about two letters and ruled
22 out when we were talking about the schizoid personality
23 disorder, and you talked about how I noticed two letters in
24 your report?

25 A. Yes. That it was missing, that it should have said "rule

1 out."

2 THE COURT: R/O.

3 THE WITNESS: That's the way we do it. It's R/O,
4 rule out. That was missing in my original report because
5 that is what I -- that means I'm less sure of the schizoid
6 personality disorder, and we have to do continued work to get
7 the right diagnosis in that area.

8 BY MR. ROOF:

9 Q. Well, can I ask you if you remember that when we were
10 going over -- or when I was going over Maddox's report with
11 you, she mentions that Wagner ruled out the schizoid
12 personality disorder, and then I asked you, "Are you saying
13 you disagree with Wagner?" Because you had told me the
14 previous day that you did think I had schizoid personality
15 disorder, because that is how I remember that coming up.

16 A. Okay. Well, rule out means not yet certain. We need to
17 do more work to do that. Wagner is not saying, "I have ruled
18 it out. I have eliminated schizoid personality disorder."
19 He's not saying that. He's saying the same thing I'm saying
20 now. We need to rule this out with more work, more
21 information. Neither one of us are definitive about it.

22 THE COURT: And you are consistent.

23 THE WITNESS: Yes, and we are consistent.

24 BY MR. ROOF:

25 Q. That's all the questions I have. The last thing I would

1 just ask you is, um, a lot of the symptoms of autism are
2 interchangeable with social anxiety; is that right?

3 A. Some of them are. Some of them are also close to OCD.
4 Some of them are also close to schizoid personality. They
5 are different, but they share some characteristics.

6 Q. And is the defining characteristic of autism the lack of
7 recognition of social cues?

8 A. As has been pointed out, I'm not a world expert in that
9 area, but many people would agree that that is correct. A
10 difficulty recognizing accurately the social cues from others
11 and social conventions, yes.

12 Q. And the last question is throughout our -- the
13 evaluation, you -- would you say that the reasons I gave you
14 for why I don't believe that I have these things were logical
15 and made sense when I explained them?

16 A. Yes.

17 MR. ROOF: That's all.

18 THE COURT: Thank you, Mr. Roof.

19 Mr. Richardson? Cross-examination by the
20 Government.

21 MR. RICHARDSON: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. RICHARDSON:

24 Q. Thank you for coming back. I just want to ask you a
25 handful of questions that I think are relatively

1 straightforward.

2 In the course of your recent evaluation, the recent
3 work you've done, has your opinion remained the same, that
4 the defendant does not have any delusions?

5 A. Yes.

6 Q. That, in fact, instead they are not delusions; they are
7 actually just extreme racial views?

8 A. Yes. And they are all consistent, and they are all in
9 that tight area. There is no delusional material.

10 Q. And similarly in light of your recent work, do you
11 continue to have the view that he does not have any psychotic
12 processes?

13 A. I have found no evidence anywhere of any psychotic
14 process before and with this recent.

15 Q. You mentioned during the course of your testimony -- I
16 just want to go back through a few of the things that you
17 talked about -- that this most recent go-around, you have
18 become better acquainted with why the defendant is at such
19 loggerheads with his lawyers. Can you explain how you got
20 better acquainted with that in this more recent go-around?

21 A. Well, one of the experiences I've had is -- an examiner
22 in this case is that it's hard for the average person, even
23 me -- most people don't think psychiatrists are average, but
24 it's hard for us to get our head in the -- where his is. We
25 just -- it's a very difficult thing for us to do.

1 Q. That is because of the racial hatred? Is that the
2 part -- what is the part of it for us to get in our head?

3 A. There is several of them. One of them is the starkness
4 of the racial ideas. They are so clear and extreme and worse
5 than hardly anybody -- any of us have known. That -- that
6 that would then lead to what it led to, that is
7 incomprehensible to most people; that he would be, um -- to
8 have the attitudes about it, to not care about the feelings
9 of the victims and be proud of his act; and so, therefore, is
10 seemingly blasé about the death penalty and seeing really
11 little to no importance in kicking and scratching and
12 fighting with his attorneys. He's doing that against them
13 primarily. All of that is very hard for us to understand.

14 It became more clear to me, just by more exposure,
15 more work, more thinking about it, more explanation from him,
16 how it's largely accurate to say all of what we've seen is
17 simply related to his decision, careful, thought-out, planned
18 decision to do this act, and that he is proud that he
19 accomplished it. Not remorseful, proud that he accomplished
20 it. And although he knows the victims -- the direct victims,
21 the people who were killed were good people, that doesn't
22 matter to him, except that was the point. He carefully chose
23 the best people because that made it more outrageous;
24 therefore more newsworthy, more clear that it is just a
25 racial thing. Those people didn't do anything wrong. He's

1 trying to call attention to what other people he believes are
2 doing.

18 Now, that's a -- take that with a grain of salt.
19 But that is why he's so irritated, that he believes they are
20 doing it despite him saying, as he described Saturday, having
21 told them a hundred times when I just told you, ignoring him,
22 blowing him off. To him he doesn't understand -- he can't
23 get his head around that. Why would people who are here to
24 defend you, help you, not do it the way -- what you care
25 about? And his competency in other ways is demonstrated that

1 he understands they have the legal right to do that; they
2 have the ethical obligation to do that. But he doesn't
3 understand it, and it's making him mad, and he's getting -- a
4 part of it is he's getting to the final act, if you will, and
5 he wants it to be able to be done correctly, meaning his way.

6 Q. So a couple of things to pull out of that. As I
7 understand what you are saying, the difficulty that you, and
8 I think others you recognize have, is the incomprehensibility
9 of his racial views lead people to want to project mental
10 illness on him. Is that fair?

11 A. Yes. I put it in my report because it was so astounding.
12 In one of our last conversations, he said, "I think there is
13 a lot of projecting going on here." And he said, "Doctor, do
14 you know what projection is?"

15 Q. I picked the word intentionally. Because what we are
16 talking about is that people, you included before you got to
17 know him, who because they can't comprehend the depth of his
18 racist views, they project on him something else to try to
19 explain that, right? That is what you think is happening in
20 a number of these scenarios?

21 A. Yes, I agree with you.

22 Q. We talked a little bit about his plan and how he was
23 going to conduct himself. One of the things I meant to talk
24 about, a significant part of the Government's case is victim
25 impact testimony. And he gave a good explanation for why he

1 was not going to cross-examine the victim impact witnesses.
2 Can you tell us what that was and whether that was a logical,
3 rational choice that he is making in that regard?

4 A. On multiple occasions he's talked about the
5 inappropriateness for his team to directly question the
6 victims, to even look at them directly while they are in
7 distress testifying. He thinks it would be impolite. From
8 the very first, he described that he has a big problem with
9 being in a courtroom because his expression was that it is
10 messed up for him to be here defending himself with the
11 family members of people he killed.

12 So repeat your question.

13 Q. So I'll rephrase it, maybe get there. He indicated to
14 you that it didn't help him, as far as his defense goes, to
15 cross-examine the victim impact witnesses?

16 A. Yeah. I mean, what he said was -- he said it like his
17 defense team had already come to that conclusion, that you
18 would never cross-examine the victims of this type. And it
19 would -- if he's representing himself, it would be
20 unbelievably inappropriate for him to cross-examine the
21 victims.

22 Q. It's both inappropriate, it's not effective for his
23 defense, and might undermine his defense if he chose to
24 cross-examine some of these victims?

25 A. He just -- he didn't go there. He's not a lawyer. He

1 went there as a person who just said it's -- he wouldn't have
2 said -- he didn't repeat it -- it's so messed up that for the
3 killer to talk about -- because, you know, he's a killer who
4 says, "I did it."

5 Q. And proud of it?

6 A. "I'm proud of it. I did it, and I want you to know it
7 and go down in history to know it, but it would be impolite
8 and cruel to inflict that on the victim," which is, again,
9 very hard for people to get their heads around, that he could
10 have such an idea that he wants to protect the victims. Even
11 though he says another idea that nobody can get their head
12 around is he doesn't care. He doesn't care about them. He
13 didn't like -- and, again, I think the analogy of the
14 Palestinian; he didn't care about the Israelis he killed.
15 The example he used -- perhaps one of them was the boss he
16 worked for in the restaurant that he actually really liked,
17 and he was a friend, but he was just a member of a class that
18 he disagreed with. Palestinian had grown up his whole life
19 hating the idea of an Israeli state. And that, to me, it is
20 a good example to help understand how he could say such a
21 thing as, "I don't care about them. I'm not upset about it.
22 I'm not remorseful. They served my purpose in this, and I
23 don't want anybody to mistake that."

24 Q. In that context tell me -- for purposes of evaluating his
25 mental ability and the lack of any serious mental illness,

1 what does that tell us, that he's able to analogize what he
2 did to the terrorist activities in the Middle East?

3 A. He really believes that that is the nature of what he
4 did. That it is --

5 Q. That is the nature meaning it was a terrorist act?

6 A. It was a political act. I don't think he would agree
7 that it was a terrorist act. It was a political act, making
8 a political statement on purpose and being pleased that he
9 did it and that it worked out. Does that make sense?

10 Q. Yeah. You talked a little bit -- and I don't want to go
11 back through it -- in the conversations you had with him
12 recently how he does like to mess with people. He likes to
13 mess with you. He particularly likes to mess with his
14 lawyers, and he also -- you've seen through your
15 investigation, and most recently, he likes to mess with his
16 family as well?

17 A. Yes. He messed with his -- yes.

18 Q. Particularly he likes to mess with his family?

19 A. That could be true. I don't know that for sure.

20 Q. Are you aware -- and I just can't recall whether you were
21 in the courtroom or not. Are you aware that the defendant
22 has indicated in video visits that he messes with his family,
23 and he's not his true self because he knows it's likely to be
24 put up on a TV screen one day?

25 A. Yes.

1 Q. And have you had the chance to review some of those video
2 visits? Not all of them, I understand.

3 A. Yes, some of them, yeah.

4 Q. And do you find that his interactions are different and
5 distinct from the way you see him and you interact with him
6 when it's not being recorded?

7 A. Yes. One of the things I have struggled with as an
8 evaluator, and I think it's very appropriate for me to share
9 it with you, is exactly -- I have trouble with two things.
10 In particular, this round, in that the examples, particularly
11 in the written statements that I got late yesterday, the
12 examples that the -- that he has apparently said to his
13 standby attorneys that "I don't think I'll get the death
14 penalty because I'm so nice. I don't think I'll die in the
15 execution because I'll smile, and they'll stop." I have a
16 difficulty as an evaluator if he said that to them, which I
17 presume he did, that he's never said anything like that to me
18 and his presentation is straightforward and devoid of any of
19 that kind of crazy idea stuff.

20 I tumbled at the idea Saturday and yesterday to the
21 possibility. This is not my opinion, nor fact or anything,
22 but to the reasonable, maybe even likely, possibility that
23 those are examples where he's messing with his attorneys, to
24 mess -- to bother them. The word "abuse them" has been
25 thrown in lately. But for him to, you know, dangle a little

1 leg, saying, "You know, I have a crazy idea for this," but to
2 never do any of that with me, now, that's, I mean --

3 Q. And, in fact, consistent with the idea when he begins
4 talking to you, he believes that they are messing with and
5 abusing him, and he's responding in kind?

6 A. And I'm not. I'm here --

7 Q. As an honest broker?

8 A. As an honest broker. What he wants to get across is he's
9 competent, and he displayed it in five different interviews,
10 with not -- and the thing that I'm sure is hard for people
11 even in this courtroom to get their head around, with no
12 apparent guile attempt, he had some fun. But it was
13 acknowledged fun, enjoyment. It was amazing that that was
14 happening, but his messing was just that. But, otherwise, it
15 just seemed straightforward and correct.

16 Now, what I would say in my defense in saying such a
17 thing is I have practiced psychiatry for a long time. I have
18 diagnosed and had -- in the courtroom many times people are
19 malingering, of course, trying to put their case forward. I
20 didn't see any of that, nor did Dr. Wagner, my colleague, any
21 of that. It was amazing to us how straightforward. And so I
22 wonder whether or not it's -- he's putting out these
23 examples -- and it's always to his attorneys, these examples.
24 Now, that's as far as I've gotten. I can't get any further
25 in understanding.

1 Q. You weren't there when these conversations allegedly took
2 place --

3 A. That's right.

4 Q. -- right? And you weren't able to understand the manner
5 in which they were said or how they were conveyed or if they
6 were said at all?

7 A. Yes.

8 Q. You did mention, and I just wanted to give you the
9 opportunity -- this is the -- and I apologize. It's got some
10 markings on it, but this is the declaration of Mr. Bruck, et
11 al. You mentioned that you reviewed it yesterday, and I just
12 wanted to give you the opportunity, if you were so inclined,
13 to let me know whether there is anything about that --

14 A. Sorry.

15 Q. -- that --

16 MR. RICHARDSON: I apologize, Your Honor. It's
17 driving me crazy.

18 BY MR. RICHARDSON:

19 Q. -- if there is anything about that that you found
20 particularly noticeable that you wanted to convey to the
21 Court about this declaration.

22 A. Both that I found it useful, and that I wanted to convey
23 is what I just did, that there were all of those examples in
24 there. But the other thing that -- as I was trying to think
25 how could I explain the difference of opinion that I had, and

1 Mr. Bruck apparently has, and as I -- as I thought about the
2 whole thing, I mentioned earlier that if you have in your
3 head straight what he wants to do, then everything they said
4 in here makes sense. So that would be one thing I wanted to
5 point out.

6 Q. When you talk about what was in his head, you have
7 straight what was in his head, you are talking about these
8 seemingly incredulous racist ideas?

9 A. Well, what he wants to do in this trial, you have that in
10 your head, then all of these make sense. Now, the ones that
11 don't make sense to me are some of the examples in here of
12 what appear to be autistic traits or OCD issues. I mean, for
13 instance, it's very hard to know whether his idea that there
14 has to be a precise amount of detergent put in when you are
15 washing sweaters or otherwise they smell in a way he doesn't
16 like, whether that is an OCD thing or an autistic thing or a
17 mixture, it's very hard to tell. But those kinds of
18 examples, they jumped on them because they looked like
19 autism, and there is some of those in there.

20 If you understand what he wants to have happen in
21 the trial, and you understand that he is -- probably has
22 autistic traits and definitely has social anxiety concerns,
23 worried about how people will think about him, is watching
24 intently your face, everybody's face, to discern do you like
25 me or not more intensely than hardly anybody. If you like

1 him, that means you don't -- you are not judging him
2 negatively, and he can relax, and he doesn't have to be so
3 anxious. That's what social anxiety is about, hating being
4 the center of attention because you are fearing you are going
5 to be judged.

6 That, if you add that -- those considerations, so
7 that helps you with all of the photos, the worry about the
8 messy underwear in the back of the car, the Klan pillows, it
9 helps you understand the way he's trying to protect his
10 reputation, and in that regard, maybe you can call them
11 vanity issues. It's not entirely accurate to do that, but
12 those issues and wanting to protect the act and his
13 histories, the interpretation of the act, then everything in
14 their report makes sense.

15 Q. You talked a little bit about, with Mr. Bruck, the expert
16 reports. He tried to parse a sentence in your report. Let
17 me ask you first of all, the motion and the reports that were
18 attached to it, did you read all those?

19 A. Yes.

20 Q. Okay. And you are also aware, as you indicate in your
21 report, that in the previous hearing that there were
22 affidavits and reports that were submitted by those -- many
23 of those same individuals as part of that separate hearing?

24 A. Yes. And I think I saw some, but not all.

25 Q. Right. Depending on the time in which they were

1 submitted?

2 A. Yeah. Right. I guess.

3 Q. And you indicate that wasn't the primary focus of what
4 you were doing, but it is also fair to say that you read them
5 and you considered them, and they helped inform the manner in
6 which you conducted the evaluation over the two days this
7 weekend?

8 A. Oh, yes.

9 Q. And indeed, as we can see through your report, you
10 discussed those reports and some details about those reports
11 with the defendant?

12 A. Yes.

13 Q. All right. So I want to turn -- I just didn't want there
14 to be a confusion about whether you had read and considered
15 those reports. I want to turn to --

16 A. I just didn't put the data I learned from those reports
17 in my last report.

18 Q. Right. It is part of what you considered, but you didn't
19 do a point-by-point rebuttal in your own report?

20 A. That is correct.

21 Q. Because that is beyond the scope of what you were asked
22 to do?

23 A. Exactly, and this distinction of staying just with what
24 recently happened. But I did read them. I did consider what
25 was in them as part of my evaluation.

1 Q. I want to talk to you a little bit about autism, just
2 briefly. You indicate that there is autism traits by
3 history, right? And that -- we talked a little about the
4 history is what you got from other individuals, and this is
5 what Mr. Roof asked you about, this idea that -- that
6 information has the power of suggestion behind it, right?

7 A. Yes.

8 Q. And that some of those individuals, be them family
9 members or defense lawyers, they have an inherent bias
10 themselves with respect to the recounting of that
11 information?

12 A. And the bias of -- you know, I'm here. I'm a world
13 famous expert on autism to talk about Dylann Roof's
14 characteristics, his autism. Did he ever do this? There is
15 a bias inherent in that examination.

16 Q. And then you indicated in the --

17 A. The bias that people will answer differently.
18 Dr. Loftin, I know, is well on top of that. But people will
19 remember, oh, yeah, he really did -- and they might remember
20 something he did one time 14 years ago, and maybe he didn't
21 actually really do it that way. It's that kind of an issue.

22 Q. And I don't want to focus on that side because that is
23 past. Really what I'm going to focus on is the more
24 specific, and based on your recent evaluation, what you --
25 what you indicated is he has a very few possible autism

1 traits. You talked about that with the defendant, right?

2 A. Yes.

3 Q. And -- but that it does not rise to the level of the
4 disorder. That's your opinion?

5 A. Yes, but it may get back into the -- you know, if you are
6 ever -- if you lose 96 percent of it --

7 Q. I'm not trying to rehash --

8 A. But in my opinion, it really is -- it doesn't rise to
9 influencing significantly his competence to stand trial or
10 represent himself. It may waste time.

11 Q. And it's also fair to say that lots of people have some
12 autism traits. That's not an unusual thing for people to
13 have?

14 A. No. One of the things that we have learned, particularly
15 in the last 10, 15 years, is that what you just said is
16 exactly right. There are people who have a very severe form,
17 but then there is now a spectrum of that, and there -- not
18 uncommon for people to have some -- some of them functioning
19 at very high levels in society, some where the trait helps
20 them, and --

21 Q. Let me ask with respect to the more recent meetings, the
22 two over the course of the weekend. Did he have the full
23 ability to engage in social communications with you?

24 A. Yes. That was one of the most surprising things to me,
25 and frankly to Dr. Wagner as well. And it was on display

1 here. He looked -- he looked me directly in the eye. He
2 used facial expressions to talk to me, the tone of his voice.
3 Yes. And that is part of --

4 Q. The same thing you saw here when he was asking you
5 questions?

6 A. That is what I was referring to. But when I'm examining
7 him in the comfort and just the two of us, very skilled
8 social interaction. Jocular, funny, enjoyable to be around,
9 you know, what the guy on the street would say somebody who
10 would be fun to have a beer with. Now, clearly he was not
11 that comfortable a year ago out in the world where he was
12 having lots of trouble. But in the structure of the jail, in
13 a structured situation, he displayed a lot of social skills.

14 Q. Just a few more, I'm getting close, I promise.

15 Mr. Bruck asked you about the defendant's
16 reputation. Did you have conversations with the defendant
17 about all the letters that he's receiving -- fan mail that
18 he's receiving in jail?

19 A. I only recently learned about that, and I saw one video;
20 but no, sir, I didn't make that a focus of any --

21 Q. But you are aware that he's gotten a lot of fan mail,
22 people who are writing to him now that he's in jail?

23 A. Somewhat, yes, I'm aware.

24 Q. You mentioned the video. You are also aware of at least
25 one young lady who has engaged him in somewhat of a romantic

1 way through video?

2 A. That is the one I think I was referring to.

3 Q. In the context, just to come back to this, this affidavit
4 or declaration from Mr. Bruck and his team, was this fairly
5 consistent with the hour-and-a-half-long conversation that
6 you had with them prior to the November competency hearing?

7 A. Very.

8 Q. And there is nothing in here that was surprising to you
9 in light of the extensive communications you had with them
10 about their perceptions prior to the competency hearing?

11 A. The answer is no, but let me expand just a little bit.
12 The only surprising thing was, again, these anecdotes now
13 about conversations long before about, you know, the "I won't
14 get executed because I'll cry, and the jury will like me and
15 vote for" -- there was more of that yesterday in this.

16 Q. That is consistent with the same types of anecdotes and
17 stories they provided you previously?

18 A. Yes, absolutely.

19 Q. We -- you talked with the defendant about how on the
20 morning of June the 17th, he had gone to work with his dad,
21 and that he had worn two pair of pants when he did that.
22 There is also -- you know, Mr. Bruck talked to you about how
23 he quit the different job earlier, but he went to work that
24 day, right?

25 A. I just learned that.

Q. Right. Let me ask you about -- so that is maybe one explanation. I'm not all that interested in that. But the other one I wanted to talk to you a second about is how that could well be explained by his social anxiety in so far as someone going to commit this type of attack, wanting to appear bigger, stronger, more imposing, and wearing clothes in order to convey that. Would that type of approach be consistent with social anxiety disorder, the concern for one's appearance?

A. Yes, it would be consistent. And it wouldn't just be pertinent necessarily at the time of going to an attack, but also just in general to be bigger, stronger looking. So those are all reasonable hypotheses both, but hypotheses.

MR. RICHARDSON: The Court's indulgence for just one moment.

BY MR. RICHARDSON:

Q. One of the things the defendant did talk to you about is that he does have some social anxiety. He agrees with that?

A. He readily admits that. He even sought treatment for that.

Q. We talked about how he -- based on your understanding of his belief system, it's understandable to you, if you accept who he is, the statements that he doesn't care about the victims?

A. Um, yes. It's internally very consistent and logical.

1 It took a stretch of talk to understand how he could -- to
2 get my head around how he could not care, and to hear the
3 victim impact statements that after the first four, even the
4 jurors are going to get tired of hearing that. And that I
5 asked him specifically, how hard is it going to be on him to
6 hear that. And to get my head around the answer of "Not hard
7 at all. I don't want to identify with these people. I know
8 it's real. I understand their pain. I don't share it" --

9 Q. Because he hates the group of people that they are a part
10 of?

11 A. Yes. Yes. Not them, or their grieving families.

12 Q. He hates the group of people that they are a part of. He
13 hates -- African-Americans is what he hates?

14 A. He hates what he believes African-Americans are doing.
15 Just like the Palestinian, hates what he
16 believes the Jewish state is doing. Kill a friend to make
17 that point.

18 Q. To make that political point?

19 A. Yes.

20 MR. RICHARDSON: Nothing further, Your Honor.

21 THE COURT: Mr. Bruck, anything?

22 MR. BRUCK: Bear with me for a moment.

23 No further questions.

24 THE COURT: Very good. Dr. Ballenger, again, thank
25 you from the Court for your service here. I appreciate it

1 very much. And you are free to leave. Thank you, sir.

2 THE WITNESS: Thank you.

3 THE COURT: Okay. Mr. Bruck, you have a copy of the
4 declaration. I would like to make it part of the record, if
5 you have not already done that.

6 MR. BRUCK: Our declaration?

7 THE COURT: Yes. Mark that as Defendant's Exhibit,
8 please, Ms. Ravenel.

9 THE CLERK: Yes, sir.

10 THE COURT: Okay. Now, Mr. Bruck, let's do it.

11 What other witnesses you wish to call? One by one, give me
12 the first name and let's talk about it.

13 MR. BRUCK: All right. We wish to call Dr. Loftin.

14 THE COURT: First of all, are you going to --
15 Dr. Loftin has not examined the defendant since
16 November 22nd?

17 MR. BRUCK: That's correct. She has considered
18 additional information not available since November 22nd.

19 THE COURT: And what information has she considered?

20 MR. BRUCK: Well, of course, she has reviewed the
21 declaration that --

22 THE COURT: Yes.

23 MR. BRUCK: -- that has just been admitted. She has
24 reviewed two videotapes of about a total of an hour and a
25 half length of visits that the defendant had, one on

November 18th with his father and stepsister, and the other on November -- I'm sorry -- excuse me -- December 18th. That is after the guilty verdict. And the second on December 27th with his mother and her -- his mother's boyfriend, Mr. Beard, at the jail.

She has also reviewed the reports of the other experts that have been filed. And if I may say a word about the timing of those reports because it has been implied that they were delayed in some way. Those reports originated as the mitigation evaluation --

THE COURT: I don't have a problem with that, Mr. Bruck. The point is -- is that the substance, you know -- let's just take Dr. Loftin. She offered a more abbreviated version of her opinion, the second autism expert at the competency hearing. I've ruled as to that. Now, having someone offer me opinions about what you told them is very odd to me. I don't consider it particularly reliable and professional to come in and give me that opinion. Now, she wants to talk about two videos she observed, okay, I'll hear her about the two videos. I want to see the videos. You haven't given them to me.

MR. RICHARDSON: No rush, Your Honor.

THE COURT: I'm glad to look at them. And perhaps over lunch, we could watch them. We haven't seen them. I'm not going to turn -- just have them come in and try to

1 describe something I haven't seen. You hand it to
2 Ms. Ravenel, please.

3 MR. BRUCK: Yes. We propose to have her comment in
4 particular on the second one, the December 27th.

5 THE COURT: Okay. I will make a special focus on
6 that.

7 And do you intend -- she has not previously offered
8 opinions as to the defendant's competency or his competency
9 to self-represent. Are you intending to offer her for that
10 purpose?

11 MR. BRUCK: Yes.

12 THE COURT: It's not in any of the reports. So what
13 is she going to say?

14 MR. BRUCK: She is going to say that his autism
15 spectrum disorder, which is her field of specialization,
16 would impair his capacity to stand trial.

17 THE COURT: Because?

18 MR. BRUCK: Because of the whole complex of deficits
19 involving the capacity to understand social interaction.

20 THE COURT: Everybody who is an autistic have no
21 responsibility, is that where we are heading?

22 MR. BRUCK: It does not go to criminal
23 responsibility. I'm not saying that she has a full-fledged
24 opinion with respect to competency to stand trial based only
25 on autism. She defers to Dr. Maddox for the overall

1 competency evaluation.

2 THE COURT: We are down to quadruple hearsay. You
3 know --

4 MR. BRUCK: If I may continue?

5 THE COURT: Yes.

6 MR. BRUCK: She has another opinion, which is that
7 he is -- by reason of his autism spectrum disorder alone that
8 he -- which is a severe mental illness, or at least mental
9 disorder within the meaning of *Indiana vs. Edwards* -- he
10 lacks the capacity to conduct the trial on his own, and that
11 is without respect to whether -- to other comorbid disorders
12 such as psychosis --

13 THE COURT: I've already ruled on that as of
14 November 22nd. If she wants to tell me based on those two
15 videos why he's not competent, I'm glad to hear from her,
16 based on those two videos. I'm not going to be relitigating
17 the period prior to that.

18 MR. BRUCK: I cannot represent to the Court that she
19 can pinpoint a fact in those videos alone in isolation from
20 everything else which --

21 THE COURT: Well, she didn't offer the opinion
22 before, Mr. Bruck. If -- she had every opportunity to, and
23 she did not. I have noted in my order she made no opinion
24 regarding competence. We are not coming in and
25 relitigating -- she had the opportunity to do that. She had

1 a prior opportunity to testify by -- on Skype. She elected
2 not to do that. That is okay. But don't come back and
3 relitigate the same issue with me. You know, one bite of the
4 apple here on this thing. We've got to move on.

5 MR. BRUCK: I mean, I don't think -- whether this
6 is -- whether I am to blame for this or not, I don't know. I
7 don't think the issue for competency to stand trial or
8 represent himself is waivable.

9 THE COURT: It's not waivable. Defaultable. We had
10 a two-day hearing. I delayed jury selection for three weeks.
11 We had an in-court examiner appointed. We have done this.
12 And to have her come back now and want to show up and
13 relitigate the issue that we have already decided is not what
14 I'm doing. The law of the case is that the defendant was
15 competent as of the end of his competency hearing. If she
16 has new information which she believes supports a
17 determination that he is incompetent, I am glad to hear her.
18 I'm not going to hear her again. I've heard her once. We've
19 heard her prior declaration. I'm not doing that again.

20 MR. BRUCK: We will call her to comment on the tape.

21 Now, I want to make clear her evaluation was the
22 basis of the competency evaluation of -- the competency
23 testimony or part of the basis of the competency testimony of
24 Dr. Maddox. It is all one testimony.

25 THE COURT: Dr. Maddox, I've already heard from

1 Dr. Maddox. You know, she had an hour and 45 minutes or
2 whatever it took in front of me. I've done that.

3 MR. BRUCK: If I can finish what I'm saying. I am
4 explaining why it was not necessary, and indeed perhaps not
5 even appropriate for Dr. Loftin who expressed an opinion on
6 competency back at that time. She did what we should have
7 had, or if it had been possible or what ideally we would have
8 had in this evaluation, which is an autism evaluation by
9 someone qualified to evaluate autism, which is not, with all
10 due respect, Dr. Ballenger. We did not have that problem on
11 our side. We had one of the most eminently qualified
12 evaluators for adults with autism we could have.

13 THE COURT: And I considered her opinions in the
14 competency hearing. I did. You had two experts on autism.
15 I considered those opinions. I also considered the opinion
16 that Dr. Ballenger had that he had autism -- that the
17 defendant had autism traits. We are just not going to
18 relitigate that issue. She had every opportunity to offer
19 whatever opinions she had on -- for the first part. She
20 offered no opinions. She gave me information about autism.
21 I considered it and weighed it.

22 Now, we are not -- as I mentioned in the prior
23 order, you know, and I've said to the defendant many times,
24 I'll say it again right now: I think the jury should hear
25 this information. I think that the -- that the jury should

1 hear all of it, including Mr. Roof wants to say it has no
2 merit. I just think the jury should get all the information.

3 But *Faretta vs. California* recognizes the right of a
4 competent defendant to self-represent and to make these
5 decisions. He's making these decisions. I had told him it
6 is unwise. I have the greatest respect for your abilities.
7 I think he should use you throughout. Mr. Roof is probably
8 tired of me telling him that. But I keep telling him that,
9 and I'm going to keep telling him that until we start the
10 trial of this thing because I think he should let you put
11 this evidence up. The question -- and Dr. Ballenger said --
12 potential mitigation evidence, everybody recognizes, but he
13 has the right to make these decisions. It's the foundation
14 of *Faretta*.

15 Now, we are now talking about what Dr. Loftin can
16 do. The train has left the station on what Dr. Loftin can
17 offer us. She had her chance just like everybody else did.
18 I carefully considered the ASD issues in determining
19 competence, and we are now having a follow-up review. It's
20 not an opportunity for a redo. I tried to say that as
21 clearly as I could, Mr. Bruck, and believe me, I'm giving you
22 a hard time, but I respect your passion. I really do. We
23 are going to do what she can tell us between November 22nd
24 and the present day, and that if she has an opinion, I'm glad
25 to hear it based on this new evidence.

1 Yes, Mr. Roof?

2 MR. ROOF: Mr. Bruck admitted that she would not be
3 able to pinpoint how these videos -- for what's in the
4 videos -- if she can't pinpoint it, then she shouldn't be
5 able to testify if that's all she's going to be able to be
6 doing.

7 THE COURT: I intend over lunch to watch the video,
8 okay? I'm going to watch it. And I saw the characterization
9 of the video with your parents that was made a big deal about
10 earlier, and I have reached the conclusion that you were
11 messing with your parents, and then a few minutes later, you
12 talk in very sophisticated terms about the proceedings. You
13 didn't know what a court was. I want to watch the video,
14 okay? And I have routinely been told that you mess with
15 people. You try to play with them. And I don't know what is
16 on the video. I haven't seen it, I want to see it. Let me
17 just say, that is what Dr. Loftin is going to testify about.
18 She's not testifying about her -- she now has opinions based
19 on something that was before November 22nd. I mean, that is
20 my ruling. That is the law of the case.

21 MR. BRUCK: I would like to say also that there is
22 new evidence that has come into existence today from
23 Dr. Ballenger. For example, his entire characterization, his
24 new description of the defendant's complete and total lack of
25 empathy.

1 THE COURT: I saw that in the first report. That is
2 not new. That is --

3 MR. RICHARDSON: He didn't say he has a lack of
4 empathy. He says he has a lack of empathy for this group of
5 people that he killed.

6 THE COURT: Here is the point: That is not new to
7 Dr. Ballenger. That is unfair. I read -- I have read both
8 of his reports. He said it in the first report. He has said
9 it in the second report. It's not new. Now what else have
10 you got?

11 MR. BRUCK: We think he was describing in a way here
12 that can be characterized as a classic symptom of autistic --

13 THE COURT: You are overstating what he stated. He
14 has repeatedly said that he has no remorse. He's proud of
15 what he did. That is what is going on here. You know,
16 Mr. Bruck, you are throwing everything you can at us, you
17 know, every moment, that's fine. But we are going to limit
18 this hearing to -- if you want to get her on the stand to
19 say, I heard he said something. I heard what Dr. Ballenger
20 said. I know the history, just like I'm watching Mr. Roof.
21 I have watched him through these proceedings. So you are not
22 talking about something I haven't seen myself.

23 Y'all are party to things that I don't see.
24 Frankly, Mr. Bruck, I see things you don't see because you
25 are not sitting there looking at everybody, okay? And I have

1 got to make a judgment in the end, and you know that is a
2 very important part of this determination is my own. If I
3 thought he wasn't competent, I wouldn't let him self
4 represent. I reached the conclusion carefully. I went
5 through a detailed *Faretta* hearing on whatever day I did
6 that, and I intend to have another one.

7 One reason I closed this hearing is I need to have a
8 very detailed discussion with him. The area I will tell you
9 I'm most focused on -- I want to be honest with you about
10 this -- is whether he takes seriously the death penalty risk.
11 That is the issue that I personally want to spend the most
12 time with, and the one that, frankly, is the reason your
13 statements about that caused me to schedule this hearing
14 because I want to question the defendant myself. I had
15 questioned him previously about it, Dr. Ballenger questioned
16 him previously. I specifically asked Dr. Ballenger to
17 question him carefully in the second evaluation on that
18 issue, and I intend to do it myself.

19 MR. BRUCK: In that connection, Your Honor, when you
20 review the video with the defendant's mother, there is some
21 background I think you should take into account.

22 THE COURT: I'm glad to hear that. We are now
23 talking -- you and I are on the same page now.

24 MR. BRUCK: Okay. The -- as will be revealed in the
25 video, I would like you to pay special attention to what goes

1 between minute 2:40 or 2:55 and 7:40. It is the first few
2 minutes of the video that -- to set the stage, and this is
3 the evidence is internal in the video, so I'm not creating
4 new evidence. That is not what we are now putting in. But I
5 think the Court may be aware that the defendant's mother was
6 here on the first day of the trial for opening statements and
7 suffered a heart attack in the courtroom, was hospitalized,
8 eventually went home. She's doing okay. This meeting on
9 December 27th was the first time that the defendant had seen
10 his mother since that event. The video --

11 MR. ROOF: I had talked to her on the phone, though.

12 MR. BRUCK: The video discloses that she had gotten
13 a message from another relative, I think from the
14 grandfather, Joe Roof, the day before that Mr. Roof -- that
15 Dylann Roof wanted -- needed to see her. And she describes
16 the emotional effect of that message. It was unlike anything
17 she had received in this year and a half, that she cried over
18 it, because of what it signified emotionally she thought.

19 She gets down there and discovers that the reason he
20 wanted to see her was to fuss at her for the fact that she
21 was allowing Dylann's lawyers to go shopping for his clothes
22 instead of continuing to try to find some particular pants
23 with different types of gray flecks that he wanted that she
24 had tried and been unsuccessful to find in the stores in
25 Columbia. And then you can observe the complete lack of

1 emotional perception on his part about her reaction.

2 THE COURT: He told me that. I'm going -- I
3 appreciate you giving me the background.

4 MR. BRUCK: And I know that that should be read in
5 the context of Dr. Ballenger's report and his statement about
6 Dylann's self-perception about his emotional connection and
7 sensitivity to his own parents and how he can't be --

8 THE COURT: I'm sure Mr. Roof won't be the only
9 person who is not emotionally connected to his mother.

10 MR. BRUCK: Later on in the tape, there will also be
11 a very lighthearted discussion of his self-representation and
12 how he's not a lawyer, and I think the Court should take that
13 into account on the question about how seriously he takes
14 these proceedings.

15 THE COURT: Okay. I appreciate that. Is that all
16 regarding Ms. Loftin -- Dr. Loftin?

17 MR. BRUCK: Yes.

18 THE COURT: Okay. Let's go to Dr. Maddox.

19 MR. BRUCK: Dr. Maddox -- I'm sorry -- yeah,
20 Ms. Stevens will address that.

21 MS. STEVENS: May I approach the podium?

22 THE COURT: You may.

23 MS. STEVENS: Happy New Year, Your Honor.

24 THE COURT: Happy New Year to you.

25 MS. STEVENS: I was going to call Dr. Maddox, and if

1 the Court recalls you had two questions proposed for the
2 experts last time, and we started the inquiry with the two
3 competency questions. This time we have a proper copy of her
4 curriculum vitae that reflects her retirement. I was going
5 to introduce her new report into evidence. Would the Court
6 now receive her new report? She's here if the Government
7 wishes to cross-examine her.

8 THE COURT: I've read it. I've read it.

9 MS. STEVENS: So it's in evidence, then, Your Honor?

10 THE COURT: What we'll do is if you will just gather
11 all the reports, I'm going to let them in for whatever they
12 are worth. I think the appellate court will have them. A
13 part of your argument is going to be about whether the
14 mitigation evidence should be offered, and I don't think
15 there is any harm to have it in for that purpose.

16 MS. STEVENS: Then at this time, I move the
17 admission of the four new reports: Dr. Maddox, Dr. Loftin,
18 Dr. Moburg, and John Robison.

19 MR. ROOF: Objection. Why are they allowed to do
20 this? It's insane to me. I don't --

21 THE COURT: Mr. Roof, let me say this: Part of my
22 job is to make sure there is a full appellate record for
23 appeals. And I take it for whatever it's worth. I think
24 they are largely irrelevant to my determination here today
25 because I've already decided the issue of competency. But

1 the question is, I've got my colleagues up in the Fourth
2 Circuit who need to hear the appeal on these issues, and I
3 think the record ought to include it. It's no more than
4 that, Mr. Roof.

5 MS. STEVENS: Thank you, Your Honor.

6 MR. RICHARDSON: We similarly object. We laid out
7 our reasons earlier. I also think that it is also
8 appropriate if the Court is going to do that, that the Court
9 also unseal Dr. Dietz's report, make it a part of the record
10 today, because it was made in response to these experts. And
11 so what they are trying to do is put a one-side story on it.
12 It does not accurate --

13 THE COURT: Wait for a second. Does the defendant
14 object to Dr. Dietz's report being unsealed?

15 MS. STEVENS: Yes, Your Honor.

16 MR. RICHARDSON: I think the question was whether
17 the defendant objected.

18 MS. STEVENS: Your Honor, there are no mitigating
19 factors discussed in any of these reports. They all are
20 about competency. If you look carefully at Dr. Maddox's
21 report, the only conclusion is about competency.

22 THE COURT: Mr. Roof, do you mind -- do you object
23 to Dr. Dietz's report being part of the record?

24 MR. ROOF: I have never seen it, so, yes, I would
25 object.

1 THE COURT: Okay. Why don't you -- the problem is
2 nobody has seen it because only I've got it.

3 MS. STEVENS: It does not bear on competency, Your
4 Honor.

5 THE COURT: And I haven't seen it. It's sealed.

6 MR. RICHARDSON: I haven't seen it either. What I
7 believe it does do, and what they tried to do, is suggest
8 that he has a mental illness. That is the first question.
9 And that Dr. Dietz's report -- I anticipate, I have no
10 idea -- addresses that issue. And what they cannot do is try
11 to introduce this one-sided, unfair characterization without
12 getting the flip side.

13 THE COURT: Will the parties agree for me to unseal
14 the report sufficient for the parties, including Mr. Roof and
15 the Government and the standby counsel, to review it?

16 MS. STEVENS: We object.

17 THE COURT: And then let me address it.

18 MS. STEVENS: We object, Your Honor. Rule 12.2
19 prohibits this. We are not at that point yet. Mr. Roof has
20 declared his intent not to offer any mitigating evidence or
21 call any mental health experts, and it would be improper to
22 unseal that according to the strict limitations of 12.2.

23 THE COURT: Unless the defendant waived that right.

24 MS. STEVENS: As --

25 MR. RICHARDSON: If the defendant waived it, or if

1 they waived it by introducing these expert reports, which
2 were done for mitigation.

3 THE COURT: They are offered -- they may have been
4 done -- they are offered here for competency.

5 MS. STEVENS: We are here only on the competency
6 issue.

7 THE COURT: Would the parties object to me unsealing
8 the Dietz report for the limited purpose of allowing
9 Mr. Roof, standby counsel, and the Government to review the
10 Dietz report so that I can intelligently then respond to, and
11 hear from them? Let me say this: I'm not going to unseal it
12 unless Mr. Roof consents to it.

13 MS. STEVENS: We object. Rule 12 --

14 THE COURT: You are standby counsel. That is not
15 your role. He's self-representing. He has objected at this
16 point because he hasn't seen it.

17 MR. ROOF: I think, um, I think the prosecution made
18 a perfectly good point. I would object to all of the reports
19 because they were all -- none of them were done for
20 competency. They were done to present as mental health
21 evidence.

22 THE COURT: They may have been done for that, but
23 they are relevant to competency, and I think it's proper to
24 present. You wouldn't go hire new experts to do that. I
25 don't think there is anything wrong with that, Mr. Roof. The

1 question is do you want to see the Dietz report, or are you
2 just -- I'm going to let those other reports in for whatever
3 they are worth. The question is, do you want the Dietz
4 report to be considered as part of the record? It's your
5 right under the Federal Rules. I'm not going to do it unless
6 you agree to it.

7 MR. ROOF: No, I don't agree.

8 THE COURT: Very good. That is decided. Okay.

9 Dr. Maddox -- so you were offering -- I grant your
10 motion to have those four made part of the record. Yes?

11 MR. RICHARDSON: Can I make one additional point?

12 THE COURT: You may.

13 MR. RICHARDSON: I think the concern that Mr. Roof
14 has and the defense has, is he doesn't know what is in it.
15 The Government is certainly willing to allow him to review
16 his own report and make his own decision without it going to
17 us or anybody else.

18 THE COURT: Mr. Roof, do you want to see the Dietz
19 report if no one else saw it?

20 MR. ROOF: That means it's not in evidence?

21 THE COURT: Correct. Until you told me you wanted
22 it in evidence.

23 MR. ROOF: Yes, I would like to see it.

24 THE COURT: Okay. I'm going to -- the Government
25 consents to that?

1 MR. RICHARDSON: Yes, Your Honor.

2 THE COURT: Mr. Roof consents to it. We will
3 provide him a copy of the Dietz report to be examined in the
4 courthouse, not leaving, and he can make his determination of
5 whether he wishes to make that part of the record or waive
6 his right. Right now the view is he does not want it to be
7 part of the record, and I will honor that.

8 MS. STEVENS: May I note for the record that
9 Rule 12.2 and this Court's order provide that within 24 hours
10 of the defendant declaring a notice to introduce mental
11 health mitigation testimony, at that point he can see the
12 report. This is contrary to the Court's order and contrary
13 to Rule 12.2.

14 THE COURT: You know, whose right is it? It's the
15 defendant's right. He is self-representing. I agree with
16 you, those are the rules. That's why if he waives it, I'm
17 not going to rely on it. He has a right to
18 self-representation.

19 MS. STEVENS: He still would have to comply with
20 Rule 12.2.

21 THE COURT: He can waive his right to 12.2 not to
22 have it disclosed.

23 MS. STEVENS: He have first has to have contrary
24 mental health evidence.

25 THE COURT: I understand. It will remain sealed

1 otherwise, but that right to seal, the parties could agree
2 that notwithstanding the rules of 12.2, they would make it a
3 part of the record. They can agree to that. As standby
4 counsel, you object to that, but Mr. Roof has a right to do
5 it, and all we are talking about now at this point is having
6 him have a chance to look at it. Whether he wants it to be
7 part of the record --

8 MS. STEVENS: As Mr. Bruck --

9 THE COURT: Would you like to withdraw your effort
10 to get these four reports in?

11 MS. STEVENS: No, Your Honor. But I would like to
12 note that we are just --

13 THE COURT: You can't -- I just feel like I'm trying
14 to get a complete record for the appellate court. That's all
15 I'm trying to do. I don't think any of this stuff will make
16 any difference to me here. I've got to rule as to
17 competency. I've heard all the folks. I don't need it. All
18 I'm trying to do is have my colleagues when they eventually
19 review it to have a full record. There -- there is a full
20 psychiatric examination that has been done by the Government,
21 and Mr. Roof has the right under 12.2 to keep that sealed.
22 If he wishes to waive it and the Government wishes to waive
23 it, I'm going to allow it. But it's Mr. Roof's decision.

24 MS. STEVENS: Yes, Your Honor, but I am only noting
25 that he first has to declare an intent to use the evidence,

1 which he has withdrawn, and only then does he get to see the
2 Government's evaluating report. That is the --

3 THE COURT: That is the way the rule works. The
4 parties could agree to waive that right. We are not
5 prisoners of --

6 MR. ROOF: I think this whole conversation is
7 unnecessary because, like you said, all we are talking about
8 is me reading the report first.

9 THE COURT: Let's do this: Mr. Roof is going to
10 read the report. Everybody agrees to do that. It is an
11 evaluation of him. We'll make it available. And then -- I'm
12 not going to read it. I'm not going to read it right now.
13 And I'm going to let him decide whether he wants to waive his
14 right. The Government waives its right -- any right under
15 12.2; is that right?

16 MR. RICHARDSON: I don't think --

17 THE COURT: I think it's all the defendant.

18 MR. RICHARDSON: We think it is equitable that if
19 you are going to put in the defense's hired experts that you
20 put in the responsive experts.

21 THE COURT: They ignore what they want to ignore.
22 There is no harm in this.

23 MR. RICHARDSON: Absolutely.

24 THE COURT: I just -- you know, I would put
25 Dr. Dietz's report in the same category I would put all these

1 other reports, that it's about something I've already
2 decided. He evaluated him before I had the competency
3 evaluation. Am I right? Before that -- before?

4 MR. RICHARDSON: Yes, Your Honor.

5 THE COURT: So I mean, right now let's reserve the
6 fussing about whether it's in until Mr. Roof decides whether
7 Mr. Roof waives his right. If he doesn't waive his right,
8 it's --

9 MS. STEVENS: As the Court pointed out, we are
10 counsel for purposes of the competency proceeding, which is
11 the only purpose we have offered the four reports. We have
12 requested we see Dr. Dietz's report as well so we can assess
13 whether it has anything to do with competency.

14 THE COURT: I haven't seen it. Nobody is going to
15 see it but Mr. Roof initially, okay?

16 MS. STEVENS: Okay.

17 THE COURT: Then we'll figure out how to deal with
18 this. I think it's much ado about nothing. Now about
19 Maddox.

20 MS. STEVENS: I would like to address the *Indiana*
21 vs. *Edwards* question of this: Regardless of whether the
22 defendant does not have the sufficient present capacity to
23 understand the proceedings and/or to assist counsel, do you
24 have an opinion within a reasonable degree of medical
25 certainty that due to a severe mental illness, the defendant

1 is not competent to conduct the trial proceedings by himself.
2 And conducting it by himself is a different inquiry than
3 competence alone. And that question I was going to pose to
4 Dr. Maddox.

5 THE COURT: She exhaustively addressed competence
6 that overlaps this. You know, I just -- you know, I
7 considered her evidence. I went through -- and this is why I
8 had it separated. I went through and read it regarding my
9 own evidence on *Edwards*.

10 MS. STEVENS: I did, too, Your Honor, last night.
11 But I have new things. I have a list --

12 THE COURT: Well, she had her chance to testify
13 about competence. Listen, you know, there are -- *Indiana vs.*
14 *Edwards* talks about the gray things, right? The gray things
15 that are marginally -- severe histories of mental illness
16 that the defendant in that case -- you and I both know the
17 history in that case. This defendant doesn't remotely
18 represent someone like that. And she laid out to me in
19 detail all his deficiencies. I have ample information on
20 this. You are try to relitigate her testimony. I'm not
21 going to allow it.

22 MS. STEVENS: Your Honor, I have a list of new
23 evidence that factored into --

24 THE COURT: She can do the new evidence. That is
25 what I want from her. What new evidence does she have?

1 MS. STEVENS: She has looked at a video visit
2 between Amy and Benn Roof that occurred November 19th. It's
3 three days before the hearing, but we didn't have that tape
4 at that time.

5 THE COURT: No. We are doing -- we are not doing
6 that one. What else?

7 MS. STEVENS: The visit that the defendant has with
8 his father and his sister on December 18th, the visit with
9 his mother and with his mother's boyfriend on December 27th,
10 which the Court now has on a thumb drive. She was going to
11 assess the psychiatric conditions she sees evident and in
12 play in that video and the fact that he is not taking his
13 potential sentence appropriately.

14 THE COURT: How do you know that?

15 MS. STEVENS: His disabilities, you will see, but
16 she can explain from a psychiatrist standpoint.

17 THE COURT: She's going to say based on a video?

18 MS. STEVENS: That is an interaction between the
19 defendant --

20 THE COURT: That is all it is. It's a video.

21 MS. STEVENS: A video of a very significant
22 interaction.

23 THE COURT: That is fine, and Dr. Ballenger has had
24 interaction with the defendant. I intend to have an
25 interaction with the defendant today. I don't want to spend

1 so much time that -- we are not going to do that. We are
2 going to do this. And I'm going to talk to him about that.
3 So I'm glad she has an opinion about the video.

4 What else have you got? Because that's all you've
5 got right now that she's going to be able to testify about.

6 MS. STEVENS: The video and the recent family
7 interaction following the conviction, one of them. The four
8 new reports --

9 THE COURT: No. The four reports are from the past.
10 I'm not going through that again.

11 MS. STEVENS: Dylann Roof's statements to this Court
12 an December 28th, 2016.

13 THE COURT: What statements are we talking about?

14 MS. STEVENS: Where he said on the record that he
15 intends to present no evidence and call no witnesses.

16 Mr. Bruck referred earlier to the extensive evidence list and
17 witness list that we had filed with this Court and intended
18 to call.

19 THE COURT: So she -- yes, Mr. Richardson?

20 MR. RICHARDSON: Your Honor, that's exactly what he
21 told Your Honor previously.

22 THE COURT: November 7th he told me that.

23 MR. RICHARDSON: This is not anything new, right?
24 That is why --

25 THE COURT: That's why we had the competency

1 hearing.

2 MS. STEVENS: It would be nice if I could finish,
3 Your Honor.

4 THE COURT: Ms. Stevens, I know everybody is jumping
5 up and down like jack rabbits jumping up here. Let me say
6 this: I have known Mr. Roof's plan not to call witnesses
7 since November 7th. He told me that. That's why I ordered a
8 competency hearing. Okay? So to come in and say that this
9 is new information, not new to me. That's why the filing the
10 last workday before the New Year about claiming new
11 information, which I have had for weeks, if not over a month,
12 that he intended not to call witnesses. You know, there is a
13 strategy here, Ms. Stevens. You don't like the strategy.
14 His strategy is he's going to use this opportunity to --
15 self-representation to make an opening statement and closing
16 argument and not be subject to cross-examination. He doesn't
17 want to cross-examine people who would make him look very bad
18 if he tried to cross-examine the victims. He recognizes
19 that. Sounds like a strategy to me. You know, I --

20 MS. STEVENS: May I, Your Honor?

21 THE COURT: I'm just saying -- let me finish. So
22 the point is that is not a new statement, that he planned to
23 do that. That was known before the competency hearing. I
24 weighed that in the competency hearing.

25 What else about Dr. Maddox?

1 MS. STEVENS: What is new about that is the
2 statement comes after he has been convicted, and it is a very
3 real potential now that he faces the death penalty. It is
4 the timing.

5 THE COURT: You think he thought he was going to be
6 acquitted?

7 MS. STEVENS: It is that he still persists in this,
8 and she has expert statements to offer.

9 THE COURT: I feel like I heard all from Dr. Maddox.
10 She told me she thought he was competent until he wrote the
11 letter.

12 MS. STEVENS: There is the fact that yesterday he
13 refused to see her. She spoke with him briefly.

14 THE COURT: He feels like y'all are manipulating
15 him. Now, I frankly think that y'all have done everything
16 you possibly can to manage a difficult client, that I don't
17 share Mr. Roof's views that you have deceived him. I think
18 you are trying to help him and trying to manage a difficult
19 client. But as Dr. Ballenger said, his behavior is fully
20 understandable in light of his -- and the fact that he
21 hasn't -- I know that he did not -- he refused to see her.
22 So be it. So right now, she can talk about the videos, her
23 observation. I'm glad to hear from her on that.

24 MS. STEVENS: We further were going to discuss her
25 current diagnoses, which are the same as before, in light of

her final review of all of the materials and the complexity, specifically of defending oneself with no lawyers at the penalty phase of a capital case and the type of decision-making that takes, and how his mental illness -- his severe mental illnesses impact her specifically --

THE COURT: You know, I've already reached that he does not have severe mental illness that impacts him. She's relitigating. I'm looking at -- this went on Document 707 from page 17 to page 147, 140 pages of testimony. I've heard her. I've already ruled. She hasn't seen him since then. I'm going to let the video -- I'm going to hear from her about the video. I have a lot of respect for Dr. Maddox, I really do, but I've heard her. Okay? So she can talk about the video.

How about the next person?

MS. STEVENS: We also were going to call Dr. -- or Father John Parker.

THE COURT: And he has seen the defendant since the prior competency finding. Am I correct?

MS. STEVENS: He has.

THE COURT: I welcome what he has to say. Anyone else? Hold on just a second, Mr. Roof. How about Mr. Robison or Dr. Moburg?

MS. STEVENS: We are not going to offer either of them live in light of the Court's ruling on the reports.

1 We'll rest on the reports.

2 THE COURT: Okay. Mr. Roof, what you got?

3 MR. ROOF: I signed a waiver for the pastoral
4 privilege.

5 THE COURT: Yes.

6 MR. ROOF: Does that -- that applies here?

7 THE COURT: If you waive pastoral privilege, that
8 would apply here.

9 MR. ROOF: I would ask that they provide a copy of
10 that if they are going to call him.

11 THE COURT: Anybody got a copy of that?

12 MS. STEVENS: Yes, we do.

13 MR. ROOF: The videos, those are part of the
14 report -- the videos that you are going to watch are part of
15 the record?

16 THE COURT: They are going to be made part of the
17 record, yes.

18 MR. ROOF: I would like to try to clarify my
19 objection to the -- the objection is that not only does it
20 invade my privacy, which I understand I don't have a right
21 to, but it invades the rights of the privacy of the people
22 visiting me. You can say they don't have a reasonable
23 expectation of privacy when they are coming to visit you at
24 the jail, but that is for purposes of the security of the
25 jail. They have a reasonable expectation when they are

1 visiting at the jail that their visits won't be disseminated.
2 That is my objection.

3 THE COURT: I understand it. You know, I've got to
4 weigh -- you heard me earlier today. I have to weigh all
5 these rights of different people and different rights, and I
6 just -- you know, I'm not going to represent to you today.
7 I'm just reviewing them, and at some point I'm going to have
8 to make a determination about what is released, and I'm not
9 going to make that determination today.

10 But, Mr. Roof, I do think one thing is important,
11 and I'm going to -- this is a guess on my part -- that when
12 your lawyers went to speak to you that they were trying to
13 make a point to you that all this information is going to get
14 out anyway -- most of it, I mean, Dr. Ballenger's testimony.

15 Mr. Bruck, am I basically right about that?

16 MR. BRUCK: Yes.

17 THE COURT: I thought so. You need to understand
18 this isn't going to be a secret. That Dr. Ballenger's report
19 and testimony, the other experts -- the public's right to
20 know in this situation is a very powerful legal right. I'm
21 protecting the privacy of -- the confidentiality of the
22 record because of my jury. I don't want to taint my jury.
23 But once the jury has rendered a verdict, it's coming in, and
24 if you are not having counsel because you have some hope that
25 you can keep this a secret, I don't want -- one reason I made

1 that clear today, I wanted you to know that wasn't going to
2 happen. That -- you understand what I'm saying?

3 MR. ROOF: I completely understand, but now they are
4 standby counsel, and they are putting more videos in.

5 It's --

6 THE COURT: Let me say this: The one area where
7 standby counsel has a special duty is if they have reached a
8 conclusion that you are incompetent, they have to tell the
9 Court that. In fact, it would be unethical to keep it a
10 secret.

11 Mr. Bruck, would that be right?

12 MR. BRUCK: Yes.

13 THE COURT: Even though based on my direct order not
14 to file something, they have an ethical duty to do it. I
15 agree with that, I'm holding a hearing. I'm going to issue
16 an order at the end of all of this. And I said their role as
17 standby counsel is not otherwise modified. They can't file
18 anything else. You are representing yourself. As to this
19 one issue, I need a lawyer to advocate this position. And
20 I'm giving you a chance to represent yourself at the same
21 time. It's a little awkward to sit at the same table, but
22 we -- that's the way we are going to work it. I can handle
23 it.

24 I want to have everyone have their say so I can have
25 a final decision on competency. That is what we are here

1 about, not Dr. Dietz's report and all this other stuff. We
2 are about whether this defendant is, A, competent to stand
3 trial; and B, competent to self-represent.

4 Okay. I want to go take a break because I want to
5 watch the video. The total of the videos are an hour and a
6 half. Do I need to watch the whole hour and a half, or are
7 there certain things I need to be watching?

8 MR. BRUCK: We think it would be best to watch the
9 whole thing.

10 THE COURT: Okay. It's now 1:00. We'll come back
11 at between 2:30 and 2:45. I will give you a chance -- we
12 will watch it over lunch, and I will -- my staff will work
13 out to get to Mr. Roof a copy of the Dietz report for his
14 personal review. Okay? Hearing is adjourned until then.

15 (Thereupon, there was a lunch recess.)

16 THE COURT: I'm going to raise an issue that I
17 thought about more over lunch. When this issue came up about
18 these reports, I was thinking they are not in the record for
19 the appellate court to review if they feel it appropriate.
20 Of course it's part of the docket already. Those reports are
21 at ECF 832, 1234, and the Dietz report is part of the court
22 record, but not visually at this point. We have it sealed in
23 my chambers, but it's part of the court record.

24 I'm going to reconsider my decision, I'm not going
25 to allow those reports to be part of this record because they

1 are not relevant to this hearing. They are part of the -- on
2 the ECF. If the Fourth Circuit on review wishes to have
3 access to them, which I was trying to facilitate, they are
4 there at 832, 1, 2, 3, and 4. Ms. Ravenel will have -- the
5 court docket will include -- the record will include
6 Dr. Dietz's report, and thus it is unnecessary for any of
7 this to be part of this record on this competency hearing.

8 So I reconsider and I deny -- I sustain the
9 objection of the Government regarding the exhibits of the
10 reports of Loftin, Moburg, Robison, and Maddox being made
11 part of this record, and I need not look any further
12 regarding Dr. Dietz's report. We do not need to unseal it.
13 It will be available if the Fourth Circuit wishes to see it.

14 Now, let me raise an issue before we go into some of
15 the testimony about -- physically we have self-representation
16 here by Mr. Roof, and I want to define for security purposes
17 where everybody is going to be and what their limits are so
18 we don't have any confusion about this. All of the opening
19 and closing statements will be made from that podium which I
20 put right there. The podium will move and will be put there
21 for opening statements. The Government and Mr. Roof will be
22 making the opening and closing statements from behind that
23 podium.

24 I'm trying to have the marshals discreet, but I
25 don't want my jurors anxious about Mr. Roof being too close

1 to them. I want them to hear what he has to say, and I think
2 that's a good balance. The microphone will be right there,
3 and the Government will give its closing argument from the
4 same position.

5 MR. WILLIAMS: Your Honor, can we stand next to it
6 instead of having it directly in front of us?

7 THE COURT: You are going to stand behind it.

8 MR. WILLIAMS: Thank you.

9 THE COURT: Get used to it. In North Carolina they
10 make you cross-examine from a seated position. I found it
11 maddening.

12 The next issue is where the witnesses are going to
13 be examined. I want them examined from that podium in the
14 center there.

15 To the extent Mr. Roof wishes to offer an exhibit, I
16 want him to hand it to one of my court security officers, and
17 they will hand it to Ms. Ravenel. The Government does not
18 have that burden.

19 I think everybody kind of knows the limits. I'm
20 trying to be discreet to the jury about it, but I want
21 everyone to sort of be basically fed out of the same spoon.
22 I filed a brief order today laying out those basic rules, and
23 before the end of the day, I'm going to hand them out to
24 everyone. We filed it already.

25 Now let me look at this release. Does the

1 release -- Mr. Roof, you had a concern about the release.
2 Tell me what you understood the release to stand for
3 regarding the father who proposes to testify here? Did you
4 understand there was something to do with a signed release
5 Father John --

6 MR. ROOF: Oh, um, no. I was just wondering, does
7 that -- does -- did me signing that allow him to testify
8 here, that's all.

9 THE COURT: Let me read it real quick. You were
10 asking the question. Let me read it.

11 (Pause in proceedings.)

12 THE COURT: Mr. Bruck, I'm only reading this on the
13 fly here. Am I reading this -- it appears to recognize that
14 the communications between Father John and the defendant are
15 privileged.

16 MR. BRUCK: Well, they would have been privileged
17 but for the waiver.

18 THE COURT: And where is the waiver?

19 MR. BRUCK: "It is expressly understood that this
20 release" -- the second paragraph -- "should apply and
21 encompass any disclosure by Father John Parker." So it is in
22 the middle of the second paragraph.

23 MR. BURNS: Is it possible for the Government to get
24 a copy of it?

25 THE COURT: Absolutely. Please provide him a copy.

1 MR. BRUCK: As I understand the statute, the
2 privilege belongs to the priest.

3 THE COURT: Oh, not the defendant.

4 MR. BRUCK: Right. The question is whether the
5 priest may be compelled to testify. He is willing to
6 testify.

7 THE COURT: Mr. Roof, do you care whether the priest
8 testifies or not?

9 MR. ROOF: Yes. That is the whole reason I brought
10 this up because it's extremely confusing, this -- reading
11 this.

12 THE COURT: I find it confusing myself. I'm trying
13 to read it very fast, but it doesn't -- I'm used to a waiver
14 saying "I hereby waive my right to" -- that's not what it
15 says. It says, "I understand there is a privilege. It is
16 expressly understood and agreed that this release or
17 discharge shall apply and encompass my disclosure by Father
18 John Parker of any and all communications and exchanges of
19 any nature." But it doesn't really say the scope of what the
20 release -- that he can testify and all that. Where does that
21 say that here?

22 MS. STEVENS: If I may be heard on the context of
23 the signing of this document? At the time Father Parker
24 brought the release to -- we had requested that Father
25 Parker -- to testify, and then Dylann Roof himself wanted him

1 to testify. December 17th, Dylann was requesting that Father
2 Parker be allowed to give testimony.

3 THE COURT: Mr. Roof, is that correct? Did you want
4 the father to testify? I mean, he can't testify at the -- at
5 the sentencing phase unless you call him. But the question
6 is him testifying here in front of me.

7 MR. ROOF: Right.

8 THE COURT: That's what we are talking about right
9 now.

10 MR. ROOF: Yes, I understand.

11 THE COURT: Did you understand that when you signed
12 this, you were agreeing to let him testify?

13 MR. ROOF: During the penalty phase.

14 THE COURT: During the penalty phase or any -- it
15 doesn't say that. I mean, this is not a quality document.
16 This is a somewhat confusing document.

17 MR. ROOF: Even with -- even when I was first
18 reading this to sign it, I was confused by the -- by the
19 wording, especially the first part. It's so -- I mean, I was
20 considering calling him as a witness in the penalty phase.
21 He told me he needed me to sign this so he could tell his
22 parishioners that he had been talking to me.

23 THE COURT: Did you understand that you were
24 authorizing him to testify at a trial by signing this
25 document?

1 MR. ROOF: No.

2 THE COURT: Mr. Burns, are you looking at the
3 document?

4 MR. BURNS: I'm having a hard time understanding
5 that second paragraph.

6 THE COURT: The first paragraph says, "I recognize
7 it is a privilege," and the second paragraph says -- I'm not
8 sure what it says.

9 MR. BURNS: It doesn't talk about a waiver, and I
10 don't know.

11 THE COURT: It's titled "General Release, Liability
12 of Release Consent and Waiver." There is a thousand, you
13 know, waivers and rights in cases. I never read one like
14 this. This is a very ambiguous document.

15 MR. BRUCK: If I may, Your Honor? And to be clear,
16 I think we are having a problem with some representation
17 here. This is a competency hearing. I'm counsel, and
18 Ms. Stevens, for the competency hearing. We are offering --

19 THE COURT: I'm trying to understand what your
20 client -- what you believe to be your client -- and I think
21 what he understood this to mean, because I'm having trouble
22 understanding what it means.

23 MR. BRUCK: I think the legal issue is between the
24 client and the church and Father Parker. The legal issue
25 that involves the Court is simply whether or not Father

1 Parker can be required not to testify by privilege.

2 THE COURT: That's a different issue.

3 MR. BRUCK: And --

4 THE COURT: I'm not there yet. Because --

5 MR. BRUCK: He holds the privilege.

6 THE COURT: You know, the kind of rule of, that the
7 law of court is entitled to everyman's evidence. I'm not
8 there. Don't get too nervous yet. I'm trying to figure out
9 about this document. I'm a little narrower than you are
10 because it may well be that I want to hear him, and I'll call
11 him as a witness if I need to.

12 And -- but the question is I find this document
13 confusing and ambiguous.

14 MS. STEVENS: Your Honor --

15 THE COURT: I'm not sure what it does.

16 MS. STEVENS: The circumstances by which the
17 document was signed --

18 THE COURT: I think that is why I just asked
19 Mr. Roof whether he understood it, and he said he found it
20 confusing. It's an ambiguous document.

21 MS. STEVENS: But he was asking Father Parker to
22 testify for him. Father Parker brings him the document;
23 Dylann Roof signs it. It's entitled "a waiver."

24 THE COURT: It may be titled "waiver," but the
25 substance of the document doesn't say that. That's the

1 problem. But that doesn't mean that I shouldn't hear from
2 Father John, okay? I'm just saying I just think this waiver
3 is ambiguous. That is my concern. But so nobody else has
4 walked up here with a waiver, so I mean I don't need to have
5 a waiver to have someone testify.

6 Yes, Mr. Roof?

7 MR. ROOF: It's just -- my understanding is, so for
8 example, when he comes to visit me, unlike the other visits,
9 they aren't recorded because we have a --

10 THE COURT: Priest-penitent relationship.

11 MR. ROOF: So that is my understanding.

12 THE COURT: Hold on just one second. Let me -- we
13 are -- my capable law clerks here are citing me the South
14 Carolina Code Section 19-11-90, which provides that I cannot
15 compel a priest in South Carolina to testify regarding a
16 confidential communication. But if he elects to provide me
17 that information, there is no privilege to the penitents. I
18 think that is the law.

19 So I do find the waiver is of no legal effect. It's
20 an ambiguous document, but if he chooses to testify, I would
21 hear him. Is that fair enough? I mean, I think that is
22 what --

23 MS. STEVENS: Yes, thank you.

24 THE COURT: Now, folks, I listened to this video.
25 I've seen a number of these videos, obviously. It's not the

1 first one. How anybody could make a diagnosis off these
2 videos, I am highly, highly skeptical. They -- there were
3 other videos where he's playing with his parents. He has
4 this impish style of sort of joking with them, raising
5 things, what is a letter? I remember one he had, what is a
6 court? I kind of get Mr. Roof. Okay? So I mean I see it,
7 and I have listened to very carefully, Mr. Bruck, I listened
8 to the part you asked me. I listened to the whole tape. I
9 listened to all of it. I took notes on it.

10 He -- now he -- he has this fixation about clothes;
11 in both tapes he's talking about certain pants and so forth.
12 We are not going to say people are not competent because of
13 that. I think this has been accounted for. I think whether
14 it's OCD or an autism trait, I don't know. It's a -- it's
15 present. But if you want me to -- if you want to put these
16 people on the stand and say what -- how they interpret that
17 video, okay, I'll listen to them. But I want to express to
18 you my profound skepticism as a professional standard -- I
19 retained and called dozens of psychiatric experts in my
20 career. I never would have presumed to put anybody on this
21 stand with this thin a basis for an opinion. But if these
22 folks want to get on the stand and talk about what those two
23 videos mean, which I can watch, have at it. We are not doing
24 other stuff. We are not getting into other things, but get
25 on the stand, and they can tell me what they think they see

1 in those videos.

2 MR. BRUCK: I think Dr. Loftin's testimony about
3 several features of these videos will justify the few minutes
4 that it will take to hear it.

5 THE COURT: I'm going to let you do it. I'm just
6 expressing to you my skepticism about it, particularly in
7 light of the fact that I've already had her opinion. She did
8 not offer an opinion about competence, and I had a competency
9 hearing. I've already done that. So if she's going to tell
10 me something special about that video, maybe I don't see what
11 she does, I want to hear it. Okay? But I did listen to it.
12 I mean, you know, reminds me of the old joke, are you going
13 to believe me with those lying eyes of yours? You know. I
14 just -- you know, I can observe just like everybody else can,
15 and we have different perceptions of the same thing. It
16 doesn't mean that anybody is not telling the truth or being
17 dishonorable. They just have different perceptions,
18 sometimes where you sit and where you stand.

19 Now, Father John, I want to hear what Father John --
20 I frankly want to hear what he has to say from his
21 observations since November 22nd, and I don't have any
22 objection to hearing him out. I think he is exactly the kind
23 of witness that meets the standard I talked about, and I
24 presume that he has a sort of pastoral history, Mr. Bruck,
25 where he has a counseling background or -- as many ministers

1 do. I would welcome his thoughts.

2 MR. BRUCK: Very well. Well, we'll have at least
3 two witnesses then. We would like to start with Dr. Loftin
4 and then call Father John.

5 THE COURT: Very good.

6 MR. BRUCK: Make sure she's in the courtroom.

7 THE CLERK: Dr. Loftin, please come forward to be
8 sworn. Place your left hand on the Bible, state your full
9 name for the record, please.

10 THE WITNESS: Rachel Lynn Loftin.

11 THEREUPON:

12 RACHEL LYNN LOFTIN,
13 called in these proceedings and being first duly sworn
14 testifies as follows:

15 THE CLERK: You may be seated.

16 THE COURT: Mr. Bruck, before we spend a great deal
17 of time, I have read Dr. Loftin's resume, and she's
18 imminently qualified with autism, one of the experts in the
19 country on this subject, and I've read both her initial
20 report she gave and the more lengthy report. But I read
21 every line of it, and I do recognize her as an expert in
22 autism, so you need not go through her credentials. I
23 recognize her as an expert.

24 DIRECT EXAMINATION

25

1 BY MR. BRUCK:

2 Q. Your name for the record?

3 A. Rachel Loftin.

4 Q. L-o-f-t-i-n?

5 A. That's right.

6 Q. One or two details that aren't in your résumé or your
7 report, I understand you have had a promotion since you filed
8 your -- since your résumé was submitted. That would be
9 Defendant's Exhibit 12 of the competency hearing in November.

10 A. My promotion to associate professor just went through.

11 Q. You are now a tenured professor?

12 A. That's right.

13 Q. Your billing arrangement, of course, you have had a
14 somewhat reduced hourly rate --

15 THE COURT: I have approved -- I have approved all
16 her bills.

17 MR. BRUCK: Right.

18 BY MR. BRUCK:

19 Q. I think what the Court may not realize -- do you get any
20 money from the work you do in this case?

21 A. No, the payment for this case goes to Rush University
22 Medical Center.

23 Q. Thank you. So it would be fair to say that you would be
24 making exactly the same amount of money if you were at home
25 on this holiday, New Year's Monday, in Chicago as if you were

1 here today?

2 A. Not quite. It doesn't factor into my bonus structure,
3 but I always meet --

4 THE COURT: You asked one question too many,
5 Mr. Bruck.

6 THE WITNESS: I always meet my bonus. I always
7 exceed the maximums.

8 THE COURT: The danger of that is, I've had lawyers
9 ask the expert, aren't you getting paid, and they turn back
10 and just like you --

11 BY MR. BRUCK:

12 Q. As a practical matter, despite the bonus structure, this
13 particular appointment has not increased your remuneration?

14 A. Not at all.

15 Q. I was right the first time?

16 A. You were right.

17 Q. Thank you very much. Now, I've explained to you, as the
18 Judge -- your report has been reviewed, and he is aware of
19 it. We want to focus on some information that you have
20 reviewed since November 22nd, specifically two videos which
21 have been of family visits on the -- on December the 18th, I
22 believe, and in particular on December the 27th, involving
23 the defendant and the rest of his family.

24 A. That's right.

25 Q. I would like to ask you what about -- and I'm going to

1 ask you primarily -- if you refer to both videos, I'm going
2 to ask you to focus especially on the December 27th video.
3 What, if anything, in these videos contributes to or is in
4 your expert opinion relevant to the question of whether the
5 defendant -- a defendant's mental conditions, specifically
6 autism spectrum disorder, which you diagnosed, as it relates
7 to his competency to stand trial or to his competency to
8 waive counsel and be his own lawyer. If you could just go
9 through those with us.

10 A. Sure. There are three themes that come out in his video
11 samples and also came out in a recent communication I had
12 with Father John.

13 THE COURT: I don't want to hear about your
14 communication with Father John.

15 THE WITNESS: Three things that came out from the
16 videos: a detailed focus to the exclusion of seeing the
17 bigger picture; rigidity and difficulty with perspective,
18 taking -- understanding other person's point of view. I
19 think that detail focus is really important --

20 Q. Let me stop you right there. These three
21 characteristics, how, if at all, do they relate to any mental
22 disorder and to which medical disorder?

23 A. They are all commonly observed in autism --

24 Q. Okay.

25 A. -- and others.

1 Q. So the first --

2 THE COURT: And other?

3 THE WITNESS: And other psychiatric disorders.

4 THE COURT: Such as?

5 THE WITNESS: Psychosis.

6 THE COURT: Such as?

7 THE WITNESS: Psychosis.

8 THE COURT: Anything else?

9 THE WITNESS: Not that I'm aware of, no.

10 THE COURT: Are you diagnosing psychosis?

11 THE WITNESS: I am diagnosing autism.

12 THE COURT: You don't have an opinion within a
13 reasonable degree of medical certainty as to that.

14 THE WITNESS: I believe attenuated psychosis is
15 appropriate as a diagnosis.

16 THE COURT: Have you made that in your report, or
17 are you making it for the first time today?

18 THE WITNESS: I talk about the symptoms of it in my
19 report. I'm not specific as to it in my report.

20 THE COURT: Okay.

21 BY MR. BRUCK:

22 Q. So the first item was focus on detail, or I can -- you
23 described it as a bias for detail. Can you tell us what that
24 means and what you observed through this video?

25 A. This is a well-documented, very common feature in autism

1 spectrum disorder that has a neurochemical basis. So the
2 chemicals in the brain are affecting how the brain works,
3 causes the individual to be very focused on particular
4 details and to lose salient information in the process. So
5 because an individual is so fixated on particular scales,
6 they are failing to see the bigger picture, maybe some of the
7 most important features of the larger situation.

8 Q. And how would you -- based on this observation, would you
9 rate this bias for detail as mild, moderate, severe?

10 A. There are portions of this video where it's very severe.
11 In the history it's well-documented. I agree with the Judge:
12 Some of these things are only observed one time in isolation;
13 it might be a red flag, but you won't base a whole diagnosis
14 on it. We have a very long history of these exact things
15 happening over and over and over and reported by a number of
16 people and then showing up again in the video. And that is
17 what I think is remarkable.

18 Q. Okay. And can you give us the examples of what you are
19 talking about?

20 A. Sure. I think most clearly demonstrated in about a
21 five-minute sample of the video when Mr. Roof's mother comes
22 to visit and he's fixated on talking about particular details
23 of his clothing. Not just pants, but gray-flecked pants with
24 a 29-inch inseam. So highly specific, not just gray pants,
25 gray-flecked pants. Not just a sweater, a ribbed sweater of

1 a particular color with a crew neck. There is a level of
2 detail in that that shows he's missing the main point. He's
3 missing the bigger picture of what is important in the
4 courtroom. He's focused on irrelevant details. Certainly we
5 all care about our appearance. He's going into it to a level
6 that is causing him to miss the bigger picture.

7 Q. Anything -- anything else -- any other items of excessive
8 attention to detail during that one visit?

9 A. Well, another point I would like to make related to that,
10 when an individual has this cognitive style, and they tend to
11 be so fixated on these details, they have difficulty
12 multitasking. The brain is thinking about gray-flecked
13 pants, the brain isn't noticing other people's expressions
14 and movements and communications. So I'm concerned -- when
15 we are talking about competence, I'm concerned in a courtroom
16 what else might be happening that Mr. Roof would miss.

17 Q. And is that a concern for his self-representation as well
18 as his competency to stand trial?

19 A. That would concern me for both.

20 Q. Anything else other than the clothes fixation? Any other
21 examples of excessive attention to detail before we move on
22 to some of the other --

23 A. There's several from Father John that I know I shouldn't
24 go into that.

25 Q. And I'm not going to ask you about them. But have you

1 also noted in your report numerous other examples of
2 excessive attention to detail of this autistic type?

3 A. Absolutely.

4 Q. Okay. All right. You mentioned attention to detail, and
5 then you mentioned -- can you give us any examples for -- for
6 rigidity from those videos?

7 A. Sure. I really like focusing on that same five-minute
8 sample because I think it's hitting on my main area. In that
9 same five-minute sample --

10 Q. This is -- just to be clear for the record, it starts at
11 about 2 minutes 40 seconds and goes to about 7 minutes and
12 57 seconds?

13 A. Something like that. That's right. This is -- this is
14 related to being detail-focused. When an individual is
15 detail-focused, they can sometimes get very stuck. So when I
16 write reports, I use that word "stuck" a lot to indicate this
17 rigid way of thinking and not being able to move on. And so
18 there is evidence, I think, that Mr. Roof is getting really
19 caught up on some of these details that don't have that much
20 relevance to the bigger picture.

21 So in the video sample we are talking about, his mom
22 is trying very hard to move along to other topics, discuss
23 other things, and he's stuck. He's continually coming back.
24 So there is that rigidity. I think, you know, in the
25 history, it's clear that he has a lot of arbitrary rules for

1 things and gets really stuck on things following the rules.
2 And I do think a lot of these fashion requests got back to
3 some rules he has for himself and some rules for how to dress
4 and rules for what clothes should look like.

5 Q. All right. And then you finally listed perspectives in
6 deficit -- deficits in perspective. Can you explain what you
7 meant by that and give examples?

8 A. I think this one is the most important. This is kind of
9 a key deficit when we are talking about autism spectrum
10 disorder. This is the most important one to really
11 understand. And difficulty taking another person's point of
12 view means that the individual cannot suppress his own
13 thinking, his own point of view, his own concerns long enough
14 to put himself in another persons' shoes, think from other
15 person's perspective, think what that person might be
16 thinking or feeling, and do that in a way that is reasonably
17 accurate. None of us is 100 percent, but --

18 Q. And what was the example that you noticed in this video?

19 A. It's very striking in this video and actually hard to
20 watch. You know, in this video, it's the first time Mr. Roof
21 has seen his mother since she had a heart attack in the
22 courtroom. And she's coming in and, finally, you know, there
23 they are alone, and she says, you know, "Why did you bring me
24 here?" You know, "What do you need?" And you -- you can
25 tell from her perspective, she thinks he's summoned her. He

1 needs something from his mother. She looks very expectant.

2 And he says, you know, "Did you find the sweater,"
3 and he goes on to talk about the ribbed pants. He's missing
4 all these emotional cues in the situation, and he's focusing
5 on those aspects that he's concerned about.

6 I also would like to talk for a second about the
7 joking aspect because it's come up so many times. Certainly,
8 I love the word "impish," Judge. I think that was the
9 perfect way to describe the way Mr. Roof can present
10 sometimes. And I think his use of joking is different than
11 what it looks like on the surface. I think he uses joking
12 oftentimes to compensate for a lack of social skills and a
13 lack of a breadth of social skills. His repertory is
14 limited. So I think --

15 Q. Limited for what reason? Is this relevant to your
16 diagnosis of autism?

17 A. It's limited because of the autism. Absolutely. That is
18 causal. And I think Mr. Roof is smart. He can learn, and
19 he's figured out over time that if he says something and it's
20 a little outrageous or it makes people angry or it offends
21 someone or hurts someone's feelings, he can always do that
22 impish smile and say it was a joke, and that gets him through
23 the situation. And so he makes a lot of outrageous comments
24 and kind of reverts to that style of interaction almost to
25 the exclusion of other modes of social interaction. That is

1 his default way of interacting with people.

2 Q. Has Mr. Roof explained to you his concept of a joke and
3 why he makes jokes?

4 A. Absolutely. And it really does --

5 MR. CURRAN: Objection, Your Honor. We are getting
6 into the interpretation of the video.

7 THE COURT: Well, she's -- you are objecting because
8 this comes from a prior evaluator?

9 MR. CURRAN: Exactly.

10 THE COURT: Sustained.

11 BY MR. BRUCK:

12 Q. You talk about Mr. Roof's reaction -- Mr. Roof's
13 presentation during the -- when he tells his mother why he
14 wanted her to come. Did you make any observations about his
15 mother's reaction and his response or lack of response to his
16 mom?

17 A. She's visibly distraught, and this is a woman -- I
18 watched many hours of footage, unfortunately, and I have
19 heard him tell her several times "I love you." I think this
20 is a woman he does care for. But she's in front of him
21 visibly distraught, crying, upset, and he smiles. He doesn't
22 look upset. He doesn't mirror her affect the way that most
23 of us would automatically mirror that affect, even without
24 thinking. It's just like a reaction in us, and he doesn't
25 have that reaction, doesn't show that emotional reaction to

1 her.

2 Q. And why, in your expert opinion, is that given his
3 condition?

4 A. I think that is a social cognitive deficit of autism.
5 There is neurological research that shows differences in
6 brain function and difference within the way that mirror
7 neurons function, and I think it's a product of that.

8 Q. If one was not aware of this, if a person simply viewed
9 this video without knowing anything about Mr. Roof, what in
10 your expert professional experience would someone naturally
11 conclude?

12 A. I think a naive person who didn't understand autism would
13 think that he's being cold or distant toward his mother, or
14 maybe that he didn't care.

Q. What you are seeing here is a symptom of autism?

16 A. Absolutely. But I do think it's important to have that
17 whole developmental history in order to put that observation
18 into context.

19 Q. Very well. If -- and, of course, a jury would need to
20 have the same context in order to understand the
21 presentation?

22 A. Absolutely.

23 Q. Now, these -- these observations that you have made,
24 this, of course, didn't come from you having a one-on-one
25 evaluation interview with Mr. Roof, correct?

1 A. The observations I just made were from the video. Is
2 that what you are referring to?

3 Q. And, of course, you tried to see Mr. Roof yesterday, and
4 he refused to see you?

5 A. That's correct.

6 Q. But what, if anything, does this interpretation of the
7 video tell you or tell us about the limitations of a clinical
8 interview as a way of assessing autistic symptoms?

9 A. A clinical interview alone is very insufficient for
10 making an autism diagnosis in someone who has a strong
11 motivation to be found free of any mental defects or
12 disabilities.

13 Q. And is Mr. Roof such a person?

14 A. It's my understanding that he is.

15 Q. And can you -- can you explain that a little more. Why
16 is a clinical interview so insufficient?

17 MR. CURRAN: This has all been raised previously in
18 the context of the earlier competency hearing.

19 THE COURT: We've had these issues explored. I
20 sustain the objection. You can ask, Mr. Bruck, about based
21 on the video, but --

22 MR. BRUCK: Here we are in the problem of we've had
23 these issues explored by the -- by Dr. Ballenger at great
24 length. Why he relied -- his report and his testimony talks
25 about how he couldn't be -- they love him, couldn't be rude

1 to his family, they love him, and so on. He completely
2 misjudges --

3 THE COURT: That's your opinion that he misjudges.

4 That is your opinion that Dr. Ballenger misjudges.

5 MR. BRUCK: No, that Mr. Roof misjudges, and he --

6 Dr. Ballenger, it really recounted at face value

7 Mr. Roof's -- I mean that is what his report says. He just
8 recites what Mr. Roof said about that, and this is responsive
9 to that.

10 THE COURT: I'm listening to what Mr. --

11 MR. CURRAN: I was going to say, Your Honor, she's
12 already expressed an opinion that a clinical interview was
13 insufficient.

14 THE COURT: I think that is sufficient.

15 MR. CURRAN: That was raised in the affidavit --
16 raised by Dr. Carpenter when she testified.

17 THE COURT: Yes. We have exhaustively explored
18 these issues. I read Dr. Loftin's initial report as well.

19 THE WITNESS: May I make one point, Your Honor?

20 THE COURT: Please.

21 THE WITNESS: I do think in the reading -- I haven't
22 seen the exhibits, so excuse me if I'm being redundant.
23 Mr. Roof has had the benefit of feedback with me, feedback
24 with Dr. Maddox, discussion with his defense attorneys, and
25 is aware of all of our major points and all of our major

1 symptoms and signs that we are worried about. Someone of his
2 intelligence would not have difficulty coming up with
3 alternate explanations for those things, and I think he's
4 been able to do that, and when interviewed directly by a
5 clinician is able to give acceptable responses.

6 THE COURT: That's one theory about what is going
7 on, right?

8 THE WITNESS: That is my opinion about it.

9 THE COURT: Okay. I want to make clear that sort of
10 suggested by Mr. Bruck that you did interview him at an
11 earlier date. Did you not?

12 THE WITNESS: I spent many hours with him.

13 THE COURT: I just want to make sure that was clear.

14 THE WITNESS: When I went in this week -- when I
15 went yesterday --

16 THE COURT: I understand.

17 THE WITNESS: Yeah.

18 MR. BRUCK: Bear with me just a moment. I'm having
19 to navigate some fairly narrow constraints.

20 THE COURT: I wonder who would put those on you.

21 MR. BRUCK: Somebody did. Bear with me just a
22 moment.

23 BY MR. BRUCK:

24 Q. You've talked -- I want you to be a little more specific
25 about what you observed of significance, if anything, about

1 Mr. Roof's affect during these interactions, including the
2 interaction with his mother, and also his affect during the
3 discussions, I think that -- about lethal injection and
4 execution.

5 A. Yes. Absolutely. In the video with his father and his
6 younger sister, I think that was -- clearly illustrates the
7 unusual affect that I observed.

8 THE COURT: All of them were laughing about it.

9 THE WITNESS: Absolutely. All of them were laughing
10 about it. He's talking about getting the lethal injection.

11 THE COURT: They are all laughing about it. All
12 the -- it seems -- actually, goes to another issue that he
13 didn't really believe that he would get executed, seems to be
14 the thinking. He was talking about who might attend his
15 execution. All of them were making light of it. Are you
16 diagnosing them all with ASD? I mean, they all are laughing,
17 joking about this very serious matter. I took it, naive as I
18 am about such matters, they were all trying to sort of avoid
19 the sort of reality of it, and they were trying to all deal
20 with it, make light of it. His dad, his 17-year-old sister,
21 and he, all three of them were doing that.

22 And there might be -- he's very self conscious of
23 this, and many times during those videos, he says, "We can't
24 talk about this." He's very conscious of this. And so I was
25 actually listening to the issue that I'm very concerned about

1 that Mr. Bruck has raised of does he think this is for real,
2 okay? Is this just play?

3 THE WITNESS: Sure.

4 THE COURT: And that I have a different reaction,
5 which was he does recognize this is serious business, that he
6 could be facing execution.

7 THE WITNESS: So one of the first points you were
8 making, I think facetiously, of asking whether they all have
9 autism, and I certainly don't have any basis --

10 THE COURT: No.

11 THE WITNESS: I feel confident they all have
12 extremely inappropriate affect to that situation.

13 THE COURT: It's an odd situation.

14 THE WITNESS: Very odd and very surprising, and I
15 will say that social communication traits are hereditary.

16 And I will say that several family members have told me that

17 [REDACTED] reminds them a lot of Mr. Roof.

18 THE COURT: Well, I'll just say there, there is a
19 lot of emotional avoidance going on here. This is like a
20 pretty powerful thing. They are trying to persuade him, as I
21 have, to try to get him to not allow him to continue to
22 represent himself. Both mom and dad, it seems to me, a major
23 part of that mission is to get them -- get him not to
24 continue with his decision to self-represent. But they are
25 all nervous. They are all upset. They are all -- I mean,

1 I'm not quite sure, you know -- so I was asking a little
2 facetiously if they all have ASD, can -- and you are saying
3 maybe they do.

4 THE WITNESS: I'm not saying -- they all have
5 inappropriate --

6 THE COURT: It's a very stressful subject, and they
7 are trying to make light of it because the gravity of it is
8 so serious.

9 THE WITNESS: I don't know that I'm confident from
10 that video sample that his younger sister is kidding. I
11 think her affect is rather straightforward. She's very
12 matter of fact when she makes that request. And that is a
13 joking style that the family tends to use, and certainly
14 Mr. Roof overuses.

15 THE COURT: And Benn Roof uses. I've seen him in
16 his multiple videos. He'll laugh about things, and then
17 he'll come and -- and say, "You need to listen to your
18 granddaddy."

19 THE WITNESS: If that were the only instant of -- of
20 inappropriate affect, I would agree with you, but even in
21 that video sample, there is some instances of inappropriate
22 affect. There is some grimacing, and he catches himself, and
23 it turns into a smile. There is some very unusual affect.
24 If you don't have training to look for that kind of nonverbal
25 communication, it's difficult to spot, and you look right

1 past it, but it's very concerning to me as an autism
2 specialist.

3 THE COURT: Thank you.

4 BY MR. BRUCK:

5 Q. And I wanted to draw your attention, also, to the
6 discussion of his self-representation with his mother.
7 Anything noteworthy along the lines we have been discussing
8 in that?

9 A. Certainly my three main points of being detail-focused,
10 being rigid, and having difficulty taking other people's
11 points of view all apply in this instance. I think one of
12 the things I haven't said expressly yet that concerns me
13 greatly is how much perspective-taking is required to be
14 effective in the courtroom: How much you have to be aware of
15 how other people are hearing the words you say; how other
16 people will interpret your facial expressions; what these
17 things mean to the jury; what they mean to the Judge. That
18 is of great concern to me.

19 I think that, as I mentioned, with a rigid cognitive
20 style, it can be difficult to multitask. I think
21 multitasking can be essential in the courtroom. If you are
22 preoccupied at looking at the gray flecks in your pants or
23 looking at the lawyer's pants, that is going to interfere
24 with your attention to other relevant and important aspects
25 in the courtroom. You are likely to miss the salient

1 information that you need to run your case.

2 MR. BRUCK: Bear with me one moment.

3 That's all. Thank you.

4 THE COURT: Mr. Roof, do you have a question for
5 this witness?

6 CROSS-EXAMINATION

7 BY MR. ROOF:

8 Q. I didn't catch what -- you said there was something that
9 I was doing that I would catch myself. I didn't hear what
10 you said.

11 A. I'm not sure what you are referring to.

12 Q. On the video, sometimes I would --

13 THE COURT: She said you were grimacing. You would
14 catch yourself. Can you explain that to him?

15 THE WITNESS: So there's some facial expressions
16 that happened a couple of times in the videos. I don't have
17 it written right here what the time points were, but some
18 facial expressions, and it's hard -- I could show you. Kind
19 of like -- like that. There are a couple of times where
20 either maybe you are stopping yourself from crying or having
21 a more upset facial expression. It's not clear. But that --
22 it's almost as if you kind of take a second, pull it together
23 and switch back to the smiling.

24 Q. Okay. Um, this video visit with my mom that we are
25 talking about --

1 A. Um-hum.

2 Q. -- you say that I was failing to see the bigger picture,
3 right? And that I was missing the main point. This is what
4 you said. I wrote it down.

5 A. Um-hum.

6 Q. What is the bigger picture? If it's a video visit with
7 my -- what is the bigger picture of the visit? And why do I
8 necessarily have to be talking about the bigger picture of
9 the case in a particular visit?

10 A. The bigger picture is your mother, who you hadn't seen
11 for a couple of weeks, had had a heart attack, and this is
12 the first time you have seen her. You don't ask after her
13 health, but rather you spend several minutes asking detailed
14 questions about your clothing for court and her -- what
15 stores she went to, whether she saw regular gray pants or
16 whether the gray pants had flecks. Those are details that
17 kept you from talking about what other people would say would
18 be the most important communication to have in that moment.

19 Q. And how long was the video altogether?

20 A. I don't recall off the top of my head, maybe half an
21 hour.

22 Q. There were two of them. There were two visits back to
23 back, so it was actually an hour.

24 THE COURT: About 45 minutes.

25

THE WITNESS: 45 minutes.

Q. And how many minutes did I spend talking about clothes?

A. I haven't timed it. I would guesstimate maybe 20 percent, 25 percent.

Q. Okay. Have you met my family?

A. I have.

Q. What members of my family have you met?

A. I've met your mother, your father, your paternal grandparents, your uncle Joe, your aunt Erin, and I haven't met Amber in person, but I talked to her on the phone. We talked about this.

Q. Okay. And how much time have you spent with my mom altogether?

A. I think I can check. Somewhere around maybe three hours total, if you include the phone time as well.

Q. And my dad?

A. Maybe somewhere between one and two hours.

Q. So three hours and one and two hours. Would you say that you know them better than I do?

A. No, of course not.

Q. Okay.

A. I would say that I have special training as a psychologist that might enable me to understand certain things about them in a different way than their own child would.

1 Q. Were you aware that I had had a conversation with my mom
2 on the telephone before that video visit where I did ask her
3 about her heart attack?

4 A. No, but that is your first time seeing her in person is
5 my understanding.

6 Q. Don't you think that the lawyers might have provided you
7 the phone call? Don't you think they should have?

8 A. Maybe. I don't know. I can't review every piece of
9 information.

10 Q. One of the allegations you are making is that I don't
11 recognize the other person's affect. Is that right? But is
12 there any way to say with certainty that I don't -- in other
13 words, how can you say that somebody else doesn't recognize
14 the affect? In other words, there is no actual way to say
15 that. You are just saying that I have the wrong reaction to
16 the affect?

17 A. You have been administered several standardized
18 assessments of social cognition and social communication
19 behavior, so my observations are based on what a lot of your
20 family has reported and then also on the scores on the
21 standardized assessments.

22 Q. Right. But you said I display an improper affect during
23 the video visits, right?

24 A. Yes.

25 Q. In response to the other people's affects, especially my

1 mom's?

2 A. Yes.

3 Q. Okay. And is it possible -- and you said that it could
4 be taken as being cold, right? -- if you didn't know about
5 autism?

6 A. Sure.

7 Q. But isn't it possible that I was being cold? I mean, I'm
8 saying isn't that a possibility?

9 A. It's possible for an autistic person to be cold in a
10 moment, sure.

11 Q. Right. And if somebody is on a recorded video visit, is
12 it possible that they might not want to look like a sap on a
13 recorded video visit?

14 A. Sure.

15 Q. Okay. Last thing, just so I'm sure, are you diagnosing
16 and you say with psychosis?

17 A. I did not make a formal diagnosis. I talked about
18 attenuated psychosis, and I do believe that is an appropriate
19 diagnosis.

20 MR. ROOF: If I could -- I don't know if you will
21 allow me, but there is just one -- just one thing about the
22 report that I wanted to point out.

23 THE COURT: Why don't you give her the page number.
24 You want to ask her or point it out to me, Mr. Roof?

25 MR. ROOF: I wanted to ask her about it because I

1 think it's a --

2 THE COURT: Why don't you just tell her. She's got
3 her report there as well.

4 BY MR. ROOF:

5 Q. On page 47 --

6 A. Um-hum.

7 Q. -- under "Unusual Thinking" --

8 A. Um-hum.

9 Q. I'm guessing that is related to psychosis, correct?

10 A. Yes.

11 Q. Okay. You see what that is about, right?

12 A. I do. I see that paragraph you are referring to.

13 MR. ROOF: And you say that -- can I read this?

14 THE COURT: Sure, you can.

15 BY MR. ROOF:

16 Q. It says, "Dylann's thinking seems confused in the most
17 striking instance of this during" --

18 A. There is a period missing after "confused." Sorry. That
19 is why it's confusing you.

20 Q. It says, "During the evaluation, Dylann claimed that he
21 once ran a website, was interviewed by someone from the Daily
22 Stormer. He said that the Daily Stormer ran an article and
23 quoted Dylann as saying white people are responsible for all
24 the ills in the world." Then you say, "Dylann said that he
25 does not want people to know that he made that statement in

1 the interview. He then said, maybe it wasn't really me, but
2 it sounded like my voice. Not only Dylann's confusion about
3 whether his interview was notable, but he referenced a piece
4 on the Daily Stormer as an article, and they went on to say
5 it sounded" -- "and then went on to say that it sounded like
6 my voice as if he could hear it."

7 Now, is it true that you've told me, I think every
8 time that I have met with you, that you have not such a great
9 memory?

10 A. This particular instance I recorded, I wrote it down very
11 carefully because it was very notable to me.

12 Q. Tell me if this reminds you of anything. What I actually
13 said was that the guy who runs the Daily Stormer previously
14 is on audio saying that white people are responsible for all
15 the ills in the world. Okay? He's tried -- as when this is
16 posted online, he tries to get it taken down for obvious
17 reasons because now he runs a white nationalist website, and
18 he wouldn't want people to know about that for obvious
19 reasons. That's what I was talking about.

20 A. So you are saying I misheard, I misunderstood, and that
21 may certainly be, but that is a couple of lines in an 87-page
22 report.

23 Q. Okay. That's all.

24 THE COURT: Mr. Curran?

25 MR. CURRAN: No questions from the Government, Your

1 Honor.

2 THE COURT: You may step down. Thank you,
3 Dr. Loftin. You may be excused.

4 MS. STEVENS: Call Father Parker.

5 Your Honor, both Father Parker and I could use a
6 restroom break.

7 THE COURT: Take one then.

8 MS. STEVENS: Three minutes.

9 THE COURT: Absolutely. We'll wait for you. Thank
10 you.

11 (Thereupon, there was a brief recess.)

12 THE COURT: Let me add one other matter to the
13 instructions regarding -- I realize I did not mention.

14 Mr. Roof, I want you to sit in that seat during the
15 trial where you are sitting now. I just want to avoid any
16 direct contact between witnesses coming down the aisle.

17 Mr. Bruck, will you stay in that seat there? Thank
18 you. Mentioned that as well.

19 THE CLERK: Father Parker, come forward to be sworn,
20 please. Please place your left hand on the Bible, raise your
21 right. State your full name for the record, please.

22 THE WITNESS: John Edgar Parker III.

23

24

25

1 THEREUPON:

2 JOHN EDGAR PARKER III,

3 called in these proceedings and being first duly sworn
4 testifies as follows:

5 THE CLERK: Thank you. You may be seated at the
6 witness stand over there.

7 DIRECT EXAMINATION

8 BY MS. STEVENS:

9 Q. Good afternoon, Father Parker.

10 A. Good afternoon.

11 Q. Please tell us your full name.

12 A. John Edgar Parker III.

13 Q. What do you do, sir?

14 A. I'm an Orthodox Christian priest.

15 Q. Can you tell us how you became an Orthodox Christian
16 priest?

17 A. Meaning did I go to -- I went to seminary.

18 Q. Let's start with the seminary. Please describe your
19 background for us.

20 A. Okay. I was raised in the Episcopal Church. I thought I
21 would be a priest when I grew up. One day after some time in
22 college away from the church, I returned to the church after
23 college, and eventually became a youth pastor. From there I
24 went to the Episcopal seminary in Ambridge, Pennsylvania, to
25 become an Episcopal priest. I served on Sullivan's Island

1 for a year and a half. I -- then, my family and I were
2 received into the Orthodox Church, and I and my family moved
3 to New York where I went to seminary for a second time for a
4 second master's degree in theology, and then returned here in
5 June 2003.

6 Q. If I may back you up just a bit. Where did you get your
7 undergraduate degree?

8 A. College of William and Mary in Williamsburg, Virginia.

9 Q. You mentioned a first master's. What was your first
10 master's in?

11 A. Master's of divinity.

12 Q. And your second master's in theology?

13 A. Yes, ma'am.

14 Q. And where did you go from there?

15 A. I have been a pastor here at Holy Ascension Orthodox
16 Church in Mount Pleasant since returning from the seminary in
17 New York.

18 Q. What does training at the seminary involve?

19 A. For the master's of divinity, a variety of coursework and
20 church history, the Scriptures, theology, and so forth. Part
21 of my studies there for the master's of divinity also
22 included clinical pastoral education, which is 400 hours in a
23 hospital setting.

24 Q. Which hospital was that?

25 A. I worked at the veterans hospital in Pittsburgh in the

1 psychiatric hospital.

2 Q. How long did you spend in the psychiatric hospital?

3 A. 400 hours.

4 Q. What were your duties there?

5 A. We were responsible -- we had two -- a day was broken
6 into two parts. One part was a meeting with all of the rest
7 of the students, and the -- and the CPE supervisor -- CPE is
8 clinical pastoral education -- where we would discuss what we
9 did in the other half of the day. And the other half of the
10 day, we were responsible to visit newly-admitted patients to
11 the hospital, and we had to do spiritual assessments on those
12 patients, and we wrote many verbatims as a part of that. We
13 had to write down to the best of our ability the entire
14 conversations that we had with those patients and then
15 analyze both what we remembered and why, and how it related
16 to us in our pastoral ministry.

17 Q. Half your 400 hours were spent there. Where did you go
18 next?

19 A. That was the summer of -- I can't remember which year,
20 honestly. It was the summertime that I did that in one
21 summer. So it must have been the summer after my first year,
22 and then I had another year of seminary. I spent the
23 following summer in Spain, and then the following year, I was
24 ordained and came to Charleston.

25 Q. And you have been to Charleston or in Charleston since

1 which year?

2 A. I spent the summer of -- I spent the summer of 2000 at an
3 internship here the second half of that summer, and then
4 returned in March of 2001, and I have been here since from
5 March 2001 until the present with the exception of one
6 academic year which was 2002 to 2003.

7 Q. And you now serve as a priest at Holy Ascension?

8 A. Yes, ma'am.

9 Q. People were talking.

10 A. I'm sorry.

11 Q. Please describe for us your duties.

12 THE COURT: We are doing a competency hearing.

13 Let's get to the issues of the pastoral counseling and so
14 forth. We don't need to -- I am sure he's well qualified.

15 BY MS. STEVENS:

16 Q. Do you engage in pastoral counseling at Holy Ascension?

17 A. Yes, ma'am.

18 Q. How did you come to know Dylann Roof?

19 A. I'm sorry. On the following week after the shootings --
20 let me back up a half a sentence. In the weeks that led up
21 to the shootings in -- our lectionary readings, what we read
22 in the church services, are prescribed each year. Many of
23 those readings in the weeks leading up to the shootings were
24 related to if you love those who love you, what credit is
25 that to you. These are Jesus's words: If someone strikes

1 you on one cheek, turn to the other. Do good to those who
2 persecute you, etcetera. We had heard those readings in the
3 two weeks prior.

4 When the news came, I -- I asked myself who -- I was
5 certain that the -- that the families of the victims would be
6 surrounded very quickly and in overflowing abundance, and I
7 wondered to myself, who will visit Dylann? So I believe it
8 was maybe the Monday or Tuesday of the next week I went to
9 the jail to visit him. I had been there any number of times
10 to visit parishioners and others. I didn't realize that it
11 would be any different. I was told I couldn't visit without
12 an attorney's approval. So I called -- I contacted Ashley
13 Pennington, and after a long conversation, he allowed me to
14 go visit Dylann, which I believe was the Wednesday. It would
15 be maybe exactly one week after the shootings.

16 Q. Approximately June 24th or so of 2015?

17 A. If that is a Tuesday or Wednesday after, yes, ma'am.

18 Q. What did you find in your first meeting with Dylann Roof?

19 MR. WILLIAMS: I'm going to object to anything
20 outside the scope of post November 22nd.

21 THE COURT: Father, I don't know if counsel had made
22 you aware of this. I had a lengthy competency hearing in
23 November of 2016, and I found the defendant competent.

24 THE WITNESS: Yes, sir.

25 THE COURT: And subsequent to that, standby counsel

1 filed a second motion regarding competency relating to events
2 which occurred after November 22nd.

3 THE WITNESS: Yes, sir.

4 THE COURT: And I was told that you had the benefit
5 of visits since November 22nd.

6 THE WITNESS: Yes, sir.

7 THE COURT: And I found that valuable because I
8 wanted to hear your thoughts. My findings as to competency
9 as of November 22nd, 2016, and his competency to
10 self-represent as of November 29, 2016, are the law of the
11 case.

12 THE WITNESS: Yes, sir.

13 THE COURT: So I am interested in what you may have
14 known, seen, and observed since November 22nd, so I'm going
15 to direct counsel to bring to your attention to those
16 matters. And I would welcome to hear what you have to say.

17 MS. STEVENS: If I may just lay a brief foundation
18 of --

19 BY MS. STEVENS:

20 Q. How often have you seen him since June 24th of 2015?

21 A. How often have I seen him? I visited Dylann, I think I
22 calculated 100 times for a total of 100 hours or more. I
23 visited him basically once a week every week since the first
24 visit with two or three visits a week in the first month or
25 so, six weeks.

1 THE COURT: I commend you for that. That is very
2 touching that you've done that.

3 THE WITNESS: Thank you, Your Honor.

4 BY MS. STEVENS:

5 Q. And please tell the Court, then, your encounter with
6 Dylann Roof after November the 22nd of 2015. Describe for us
7 the Dylann Roof you found at that later point in time.

8 A. By contrast to all of the many months before? Please
9 forgive me. I'm trying to understand your question.

10 Q. Why were you there to see him after November the 22nd of
11 2016?

12 A. I just continued to visit him.

13 THE COURT: Why don't you share with us, Father,
14 what your observation is on November 22nd in terms of his
15 mental status, his ability to -- his competency to stand
16 trial, his ability to self-represent. What did you observe
17 that might give me some insight on that issue?

18 THE WITNESS: Okay. I had -- I -- Dylann and I
19 spoke about what I might be asked here, for example, at that
20 time. Your Honor, I have had some conversation with David
21 Bruck concerning what questions I might be asked. I have
22 never done this before, so --

23 THE COURT: You are doing a great job.

24 THE WITNESS: Thank you.

25 Dylann -- Dylann thought there were too many

1 questions that were prepped to be asked and -- though we went
2 through some of those.

3 THE COURT: Were they your questions you were asking
4 him or --

5 THE WITNESS: Your Honor, that happened in a number
6 of different ways. In conversation with his counsel, a list
7 of suggested questions were given.

8 THE COURT: His counsel gave you questions to ask
9 Mr. Roof?

10 THE WITNESS: No, sir. His counsel gave me
11 questions that I might be asked.

12 THE COURT: You might be asked at trial?

13 THE WITNESS: Yes, sir.

14 THE COURT: I got you. Okay.

15 THE WITNESS: And I went to meet with Dylann, and he
16 asked me, "What shall I ask you?" And I shared with him -- I
17 brought the list of questions -- I have it here too. I
18 brought that list of questions, and we went through those.
19 He found there were too many questions.

20 THE COURT: Okay. I got that.

21 THE WITNESS: We reviewed some of them, and,
22 honestly, I can't recall if it was in that meeting -- I'm
23 pretty sure it was in the next meeting that he had prepared
24 his own questions which were the same questions, basically.
25 They had been reduced by two or three, and a couple of

1 questions were inserted into the center related to "At any
2 time have you seen signs of mental illness in me" -- and I'm
3 trying to think of how he phrased it. "At any time have you
4 seen mental illness in me prior to when my -- when my
5 attorneys poisoned your mind," or something like that. So
6 that was certainly -- that was an interesting moment.

7 THE COURT: What was your answer to the question
8 using mental illness?

9 THE WITNESS: I said to Dylann, as I have said to
10 him on a number of occasions, "First, I'm not a mental health
11 expert. However, I have" -- this is my answer to him -- "I
12 have served 400 hours in a psychiatric hospital. I have been
13 pastor of a church for 15 years, and I have some severely --
14 some parishioners who suffer some pretty severe mental
15 illnesses, including untreatable ones. And so my answer to
16 that is I can't say I haven't seen that in you." And, you
17 know --

18 THE COURT: And what was his response to that?

19 THE WITNESS: His response is, "Can't you just say
20 no?"

21 And I told him, "It's -- it's too complex to say
22 no." And --

23 THE COURT: I want you to explain to me that answer
24 to the question. Why is it too complex to say no? What
25 would be the more accurate answer?

1 THE WITNESS: Your Honor, please don't ask me that
2 one --

3 THE COURT: You know, we are all dancing around the
4 question. I would like to hear. You spent a lot of time
5 with this man, and --

6 THE WITNESS: Yes.

7 THE COURT: -- and recently you spent time with him.

8 THE WITNESS: Yes, sir.

9 THE COURT: Do you observe aspects of his mental
10 status that would make him not competent for trial, to go to
11 trial? I don't know if you feel comfortable offering an
12 opinion on that, or whether he would be competent to
13 self-represent. If you don't have an opinion, that is fine
14 too.

15 THE WITNESS: I have my opinion. I'm hesitant
16 because -- because I recognize that I'm a priest and not a
17 lawyer or a judge.

18 THE COURT: By the way, they don't mind telling me
19 what to do, so don't hesitate.

20 THE WITNESS: Your Honor, in my opinion, having
21 spent many, many hours with Dylann, the kinds of questions
22 that he has raised to me, um, with respect to -- even my
23 court appearance, for example, it was -- it was a few days
24 before Christmas -- please forgive me, I don't remember the
25 times exactly -- when the question formally came up would I

1 come here to be a witness sometime later this week after
2 tomorrow, one of -- well, perhaps his main concern was which
3 cross would I wear and what color shoes would I wear. And
4 maybe that says enough. I mean, I --

5 THE COURT: There is no question, we've heard a
6 great deal of evidence about fixation with clothes.

7 THE WITNESS: Yes, sir.

8 THE COURT: All the evaluators have identified this.

9 THE WITNESS: Okay.

10 THE COURT: And -- but that would not necessarily
11 render him incompetent to go to trial. Do you understand
12 what I'm saying?

13 THE WITNESS: I do.

14 THE COURT: What else other than the fixation with
15 clothes would you point to? Have you talked about the
16 incident of June 17th, 2015 with him?

17 THE WITNESS: Yes, sir.

18 THE COURT: I mean, I would think -- and did he
19 share with you his views about why he did what he did?

20 THE WITNESS: Many times, yes, sir.

21 THE COURT: I figure this is a subject that you
22 have, I presume, tried to counsel him that there was a better
23 way to view all this?

24 THE WITNESS: I have a number of times on that, yes,
25 sir.

1 THE COURT: And that is, I presume part of your
2 pastoral counseling is to try to move him from those views.

3 THE WITNESS: Sure.

4 THE COURT: To this day he hasn't moved?

5 THE WITNESS: No.

6 THE COURT: He continues to believe this ideology
7 that motivated his crime?

8 THE WITNESS: If I may say as a pastor, um, and I --
9 I can't imagine how strange it would be to hear this, so I
10 need to acknowledge that up front, I -- I have a hard time
11 labeling that an ideology in him. I have told that to him.
12 I mean, I said it point blank to him. For example, I said to
13 him, "Dylann, you are no white nationalist." And I've said
14 that to him many times. We've had many conversations about
15 that. So with respect to your question, Your Honor, I -- I
16 in my time with him in these many hours, though the externals
17 of it all point to ideology, I personally have not seen that.
18 And --

19 THE COURT: What did you see?

20 THE WITNESS: I have seen -- I have seen a
21 remarkably intelligent young man. When I say "remarkably
22 intelligent," please understand what I mean by that is here
23 is a young man who can tell you go to such and such a site,
24 click on such and such a button. When you get to the third
25 page and at the bottom of that and read four paragraphs down.

1 He can cite -- he can cite information on all kinds of things
2 that he hasn't seen in more than two years. A remarkably
3 intelligent person who is like a broken record.

4 Dylann said to me recently -- for example, he said,
5 "I don't hate black people. I hate the things that they do."
6 For me as a pastor, my experience with him from the
7 beginning, it's the same experience in the day since which
8 I -- November 20th or so that you are asking about, Your
9 Honor. It just doesn't compute.

10 One way that I have put this is, I have not seen in
11 him -- and I personally have never seen him angry in
12 100 hours of visitations over 100 visits. I have never seen
13 him in a rage. Honestly, I've never seen him do much but
14 smile. And --

15 THE COURT: Have you seen the video of him using the
16 weapon -- shooting the weapon?

17 THE WITNESS: I did not see that video, no. No,
18 Your Honor. I think I'm rambling.

19 THE COURT: No, you were actually -- I know that one
20 of the principles of a christian theology is that you may
21 hate the sin, but not the sinner.

22 THE WITNESS: Yes.

23 THE COURT: And --

24 THE WITNESS: That's reasonable.

25 THE COURT: And I take it that is your feeling about

1 Dylann Roof.

2 THE WITNESS: Sure.

3 THE COURT: And you have not come to understand how
4 he could do such an act with the person who you encountered
5 in that hundred hours.

6 THE WITNESS: My -- my only experience with killings
7 is having visited one fellow who is now in prison for murder,
8 and then every Hollywood movie that I've seen, and --

9 THE COURT: Well, the description in this case is
10 that a group of most noble human beings of the world were
11 sitting in a Bible study. They finished the Bible study, to
12 which they had welcomed him. They held hands and closed
13 their eyes for a benediction, and he shot them --

14 THE WITNESS: Yes, sir.

15 THE COURT: -- with their eyes closed.

16 THE WITNESS: Yes, sir. Please understand -- allow
17 me just one further sentence. The point that I was trying to
18 make with that is what I would have pictured in my mind about
19 a person who was capable of doing -- not only capable, but
20 having done such a thing, would not be the person -- would
21 not be a person like Dylann as I have experienced my
22 visitations with him over this time period. Cold-hearted,
23 angry, I don't -- I don't know what other words to say about
24 that.

25 Please understand what Dylann did was heinous. I

1 have expressed that to him many, many times, and I'm not
2 trying to defend that at all. I'm simply saying that my
3 pastoral relationship to him has involved -- I can't
4 understand how A connects to B. He did it, but --

5 THE COURT: You can't understand how it happened.

6 THE WITNESS: The only way I can explain it is
7 mental illness.

8 THE COURT: But what mental illness and all that is
9 beyond your expertise.

10 THE WITNESS: It is certainly beyond my expertise,
11 yes.

12 THE COURT: Okay. Ms. Stevens, I interrupted your
13 questioning. I do that every time. You are so agreeable, I
14 always do that. I apologize.

15 BY MS. STEVENS:

16 Q. Father Parker, let me back up to the meeting -- the most
17 recent meeting that you've had with Dylann Roof, and you said
18 you went in with a list of questions.

19 MS. STEVENS: May I approach the witness, Your
20 Honor?

21 THE COURT: You may. The rule that I have did not
22 apply to you, Ms. Stevens.

23 MS. STEVENS: Thank you.

24 BY MS. STEVENS:

25 Q. Is this the list of questions, Father Parker?

1 A. Yes, I believe so.

2 Q. A rather simple list of 14 straightforward items?

3 A. Yes, ma'am.

4 Q. In plain English?

5 A. Yes, ma'am.

6 Q. And he said that is too many?

7 A. Yes, ma'am.

8 Q. The last question, "Based on what you know about me from
9 all of the time that we have spent together, do you have any
10 hope for me?"

11 A. Okay.

12 Q. And how would you have answered that question at the
13 penalty phase of his capital trial?

14 A. Well, in a sentence I would say, "Dum spiro spero, while
15 I breathe, I hope."

16 THE COURT: South Carolina motto.

17 BY MS. STEVENS:

18 Q. And, Father, rather than ask these simple 14 questions,
19 he said, "That is too many." He narrowed it down to one
20 question, which is -- or it may have been over two meetings,
21 but he ultimately settled on "What would your answer be if I
22 asked you if I have mental illness?"

23 A. Well, Dylann reduced the questions to some number, maybe
24 it's ten. I would have to look and see. The majority
25 overlapping questions are who are you, how did you become a

1 priest, etcetera, but he had the question -- one or two
2 questions related to "Have you seen mental illness in me,"
3 and something about with respect to "the poisoning of your
4 mind with my lawyers" or something like that.

5 Q. And when --

6 A. I could cite it directly if I need to. I wrote it down.

7 Q. It's all right, Father. But when your answer back to a
8 question along those lines was, "I can't say that." What is
9 your understanding of what happened next? Is he intending --
10 or has he announced an intent to call you at the penalty
11 phase of this trial?

12 A. The last time I visited with Dylann personally was on the
13 morning of Christmas Eve, and it was at that time, if I
14 recall correctly, that we reviewed the questions. And he
15 gave me his list of narrowed questions, and then after
16 Christmas on Monday, I went to Virginia to be with my family,
17 and I got a call from David Bruck on Tuesday. Dylann had
18 asked him -- I am just relating the conversation. Dylann had
19 remembered that I would come to visit him that night, but I
20 wasn't intending to come to visit him. I was coming to visit
21 him tonight as in today.

22 Q. He had the nights wrong?

23 A. He was off by a week minus a day, and David said that
24 Dylann remembered very strongly. "No, he's coming tonight.
25 Please call him and tell him not to come because I won't be

1 calling him as a witness." So --

2 THE COURT: Father, let me ask you this question:
3 If Mr. Roof wanted to ask you questions at the trial and stay
4 away from the mental illness issue since that's beyond your
5 expertise, and simply to address that last question
6 Ms. Stevens just asked you about redemption -- hope for
7 redemption, you are available to do that, I take it? You are
8 available if asked by Mr. Roof to do that?

9 THE WITNESS: Yes, sir.

10 MS. STEVENS: May I approach and introduce this into
11 evidence?

12 THE COURT: That would be fine. Any objection from
13 the Government?

14 MR. WILLIAMS: No, Your Honor.

15 THE COURT: Very good. What number is that,
16 Ms. Ravenel?

17 THE CLERK: 3, Defense 3.

18 THE COURT: Defense 3 without objection admitted.

19 (Thereupon, Defendant's Exhibit 3 introduced into
20 evidence.)

21 MS. STEVENS: Thank you, Your Honor.

22 BY MS. STEVENS:

23 Q. Father Parker, earlier you said that you didn't see the
24 cold, angry qualities you would have expected. Can you tell
25 us what you did see?

1 A. Well, I suspect it would be important to say that I
2 saw -- Dylann has repeated on many times, on many occasions
3 his rationale for doing what he did, so I did see those
4 things, and we did speak about them. But I also saw the
5 following things, all of which were intriguing to me: One, a
6 young man who when it was -- am I able to speak about May?

7 THE COURT: Go ahead, Father. Let me hear what
8 you've got to say.

9 THE WITNESS: Yes, sir. In around Mother's Day, I
10 went to speak to Dylann -- went to visit with him, and I was
11 considering -- I have not met any of his family members even
12 to this day, but I wondered, I don't know, would his mother
13 come here for Mother's Day? What would happen to a person
14 who is in jail for this crime with respect to his mom? Would
15 I -- would he like me to call her and tell her happy Mother's
16 Day, send her a card? I don't know. And Dylann told me
17 that, no, and I asked him, "Do you think about your mom?"

18 "No."

19 "Do you think about your family members?"

20 "No." So I was surprised that with all the time
21 there, those things wouldn't cross his mind.

22 I also found a young man who is -- loves geography,
23 fine art. I sent him a card about once a week. I -- maybe
24 two months now, but in the first 16, 14, 15 months, I sent a
25 card every week that I printed on my computer with a

1 different picture every week. Sometimes it was a place that
2 he wants to see. He has a tiny little spot he could look
3 out, so he could see someplace in Australia that he wanted to
4 see. Other times Picasso. When it was his birthday, I
5 visited him and played him his favorite classical music. He
6 likes classical music. I learned this is a boy who, despite
7 all evidence to the contrary, can't stand excessive vulgarity
8 and violence in movies.

9 BY MS. STEVENS:

10 Q. Father, you mentioned, "I have no explanation but mental
11 illness." What makes you think you might be seeing signs of
12 mental illness?

13 A. I think that maybe it's only fair for me to comment on
14 the fact that it's his central question to me. When we were
15 reviewing his questions a week or so ago -- Christmas Eve or
16 the day or two before that, whenever I visited, his -- his
17 main questions were related to that. And in my conversations
18 with him, if I recall correctly, I even said to him, "Dylann,
19 if you would rather the question of mental illness not come
20 into play, why don't you not ask me about that?" But that
21 question -- and that question in the center of his list, it
22 seems to me -- I can only deduce is the reason why he
23 announced through David to me that I wouldn't come as a
24 witness.

25 So without commenting directly on specific

questions, I guess I could try if you asked me another question. But to me that seems interesting that, as I understand it, I may be the only person who has visited him who is not hired to do so with that amount of consistency over that amount of time, and it was that question that caused this change of course.

Q. And your apparent inability to answer the question -- "I can say that you do not have mental illness," you couldn't tell him that, could you?

A. I said that specifically to him.

Q. Father Parker, in conversations with us, you have mentioned other parishioners with autism and perhaps a correlation that you've seen with some of Dylann Roof's qualities?

THE COURT: I don't think he's qualified for that.

MS. STEVENS: All right, Your Honor. Can he in a
lay sense describe --

THE COURT: No. I've had all the autism. He doesn't have the expertise to do it. He's got a valuable insight that he's offered.

MS. STEVENS: I believe that is all I have.

THE COURT: Mr. Roof, cross-examination.

CROSS-EXAMINATION

BY MR. ROOF:

Q. My only question is, is it possible for you to try to

1 give some examples of the signs of mental illness that you
2 notice?

3 THE COURT: He asked you a question.

4 Q. Well, maybe I could start to ask you, when I -- when I
5 first brought that question up to you, when I had my list of
6 questions, you said that -- when you told me that you
7 couldn't -- you couldn't say that you hadn't seen signs, and
8 then you said that my response was, um, "Well, can't you just
9 say no," didn't -- before I said that, didn't I ask you the
10 same question that I just asked you, to try to give me some
11 examples, and you were unable to then? So I'm asking you can
12 you give me some now?

13 A. Yes, Dylann, you did ask me about it, and I did -- and I
14 was not unable at that time to give you answers. I did not
15 give you answers. I did say at that time that I would like
16 some time to think about that, to phrase how I would. I --
17 perhaps I could begin this way: In --

18 THE WITNESS: Is it okay if I speak in personal
19 ways?

20 THE COURT: Go right ahead.

21 THE WITNESS: I don't know if I'm supposed to say
22 "Mr. Roof."

23 THE COURT: Whatever would be natural to you.

24 THE WITNESS: Dylann, in the many, many months that
25 we have had conversations, you have demonstrated to me a

1 remarkable capacity to remember and recite many things, and
2 I'm speaking equally about things that I have shared with
3 you, books that I've sent you to read that you've read, and
4 so forth, as I am about your own reported views on life and
5 the world. And while -- while you have an incredible talent
6 to repeat what I've shared with you on any particular topic,
7 it seems to me that you have not been able to argue another
8 position for even for the sake of argument.

9 What I mean by that, what mental illness might it
10 be? I couldn't begin to venture to say, but in all of my
11 experience, even with young adults, every young adult has
12 strong opinions. I was once a young adult myself a thousand
13 years ago. I have two young adult sons who have strong
14 opinions about all kinds of things, and if I asked them to
15 take an alternative view for the sake of argument, they might
16 take it for the sake of argument. At the end of the day, we
17 go and have a meal and call it a game. And in my experience
18 with you, when it would come back to the questions of your
19 views on white nationalism, or related topics, just
20 completely stuck like a record.

21 And please don't misunderstand me. You express
22 them -- you express your views very articulately, and
23 thoughtfully, but the -- but to come from a different point
24 of view seems to be impossible for you.

25

1 BY MR. ROOF:

2 Q. Okay. So one thing that you noticed is that I can't take
3 another point of view. Is that what you are saying?

4 A. That is one thing, yes.

5 Q. Anything else?

6 A. Allow me just a minute to think about that, okay? I
7 would like to phrase my answer. I don't -- I don't know once
8 again what to call this, Dylann; however, in a recent
9 conversation that we had, you -- you told me -- I'm going to
10 quote it, and I hope it's an accurate one -- you could
11 correct me, I suspect, um, "I don't hate black people, but I
12 do hate things that they do. I could even sit down and have
13 a meal with families of the surviving family members." For
14 me as a pastor and a human being, there are only -- in my
15 mind, there are only two ways that that can be true: On the
16 one hand there has to be some unexplainable mental condition
17 that I'm not qualified to name, but -- but I can't put my
18 finger on it, or you are an irredeemable monster. As a
19 pastor who lives in many gray areas, because the world is a
20 gigantic gray area, and dwells very rarely in those extremes,
21 as a pastor who has counseled many people for 15 years, I can
22 only explain those particular sentences, those particular
23 claims about what you hate and don't hate or who you hate and
24 don't hate and with whom you could eat, given what you have
25 been convicted of, I can only explain that in my mind by

1 mental illness on the one hand or monster on the other, and
2 my over a hundred hours of time with you, I've never seen
3 monster. Not one time.

4 Q. Okay. And so the question -- the question that I'm
5 trying to ask is really what you are saying is your inability
6 to understand it is what would make you think that I -- is
7 really what would make you think I had a mental illness
8 rather than you seeing visible signs of it when we interact?

9 A. Um, it's well established that I can quote from the DSM
10 about what you may or may not struggle with. However, as a
11 pastor who hears -- Dylann, I hear, I don't know, 500
12 confessions a year. That means I've heard 5,000 confessions
13 in my pastoral ministry, maybe 7,000. I've counseled
14 couples, individuals, young people, old people, who suffered
15 through all kinds of terrible tragedies, joys, and sorrows,
16 and my experience with my -- with you in our conversations
17 over this long period of time with respect to this question,
18 the one of mental illness, I can't come to one of two
19 conclusions.

20 When I factor in all the people that I have met and
21 spoken to at the jail, not at the jail, and other places, I
22 can't bring myself to say after all those many hours with you
23 Dylann Roof is an ideological monster. What you did was
24 monstrous; but therefore, I can only come to the other side
25 of the question, which is the missing piece. And I have

1 danced around it many times with you in the detention center
2 for the sake of trying to -- for the sake of the passing of
3 time to allow time to work. But if that is right now, that
4 is all I have to answer that question, Dylann.

5 Q. So you say that the two things it could be is I either
6 have some kind of mental illness or what you said before, was
7 an irredeemable monster, right?

8 A. Pardon?

9 Q. An irredeemable monster, that is the two with what it
10 could be. So what you are saying is it is possible that I am
11 an irredeemable monster, right? And that -- and what
12 somebody would consider a monster is subjective, right?

13 A. Dylann, I'm sure that is a subjective point. When I --
14 when I am -- when I am observing the time that we have spent
15 together -- maybe I could put it this way: If I -- if I
16 asked my own mother to come sit with you for a hundred hours
17 on a hundred visits, she would come to the conclusion that
18 you are not a monster. If I asked an 18 -year-old kid from
19 my parish to come sit you with for a hundred hours and have
20 conversations like we've had, they are going to -- they are
21 going to say, "He's not a monster. What he did was
22 monstrous." It's not defensible what you did, but their
23 experience of you would be completely disconnected from the
24 mind's eye picture of monster.

25 Q. Okay. My last question --

1 A. Therefore, I came to the other conclusion.

2 Q. And my last question is, you say that I -- I was worried
3 about what you would wear in court. What color necklace you
4 would have on, for example?

5 A. Yes.

6 Q. And did I explain to you why? Did I explain to you why I
7 was worried or why I was concerned about what color chain you
8 would be wearing?

9 A. I remember an answer or two to that. I'm not sure what
10 you are asking, though.

11 Q. Well, I mean, when I -- when I said it, I mean, did I
12 explain to you -- in other words, what was the reason that I
13 was concerned with the way you would look?

14 A. I remember two answers to that, Dylann. So I'll tell you
15 both, and I hope you will remember the same two answers. One
16 of the answers is a fashion answer, and that answer is "Blue
17 cassock, black vest, who gave you the idea that blue and
18 black go together, Father John?" That is not a direct quote,
19 but we've had that conversation many times, and I think that
20 the smile on your face tells me that's true.

21 And, honestly, I don't remember why you told me not
22 to wear the wooden cross, but I remember you telling me to
23 wear the brown shoes, which I did for your benefit today.

24 THE WITNESS: May I show him?

25 THE COURT: Sure. Go right ahead.

1 THE WITNESS: I never wear brown and black, but I
2 did it for you. So one was a fashion answer, which I found
3 strange. Another answer you gave me is I think strictly
4 related to an Orthodox priest coming to visit you. Is that
5 what you are talking about?

6 Q. What I remember telling you is that -- it's not
7 important. That's all I have.

8 THE COURT: Very good. You may sit down.

9 The Government have any other questions?

10 MR. WILLIAMS: Briefly, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. WILLIAMS:

13 Q. I want to ask you briefly about your experience with
14 other people who may or may not be similar to the defendant.
15 Have you ever counseled someone who was a mass shooter who
16 killed several people?

17 A. No.

18 Q. And I guess what I'm getting at with that is you had said
19 that it didn't compute, and I guess I want to ask you if you
20 have ever seen somebody like him before.

21 A. Well, I think it's certainly fair to say I've never seen
22 somebody like him before.

23 Q. It's fair to say it's a tremendous challenge to you
24 professionally and probably personally?

25 A. I, um, I spent a number of hours -- I would have to call

the detention center to tell me how many hours it was, but I visited a Mexican man who was accused and found guilty of murdering a prostitute by strangulation. I spent countless hours visiting him in the detention center and likewise at the prison outside of Summerville.

Q. How about -- sorry. Go ahead. I didn't mean --

A. Forgive me. I'm not sure if that helps at all.

Q. I'm trying to see if you have any experience dealing with someone who committed multiple murders or for political reason, but more of a political reason than maybe a personal strangulation of a person, and I ask that because I'm trying to determine whether you are forcing yourself into maybe some false alternatives, if that makes sense.

A. Will you please ask me your question one more time?

Q. You had said in your direct testimony that you thought there were two options, mental illness or -- and irredeemable monster. I'm trying to determine whether there would be a third option which is this defendant, who you've never seen somebody like before, and maybe you just don't have a descriptor for it.

A. I see. Forgive me because I'm having a hard time right now. Ask me the question part.

Q. You gave two options to categorize the defendant, irredeemable monster or a mental illness situation, and my question, maybe is there a third option that isn't one of

1 those, which is just who he is, and you've never seen
2 something like that before, so you just don't know the label
3 to put on it?

4 A. Well, that may -- that may indeed be the case. But one
5 could say that my task as a pastor is people. In fact, when
6 people say to me, "Father John, I know you are very busy, and
7 I don't want to take up too much of your time," my answer to
8 them is, "You are my time. My business is you." So while it
9 is true that I have not -- I have not any personal contact
10 with someone apart from Dylann who shot and killed nine
11 people in a church, I have -- I have worked with and
12 counseled and pastored and heard the confessions of hundreds
13 and hundreds and hundreds of people, including people that I
14 had to take to mental institutions for commitment, including
15 others who have committed themselves to mental institutions.

16 And so, yes, there may be another -- there may
17 indeed be another definition, but in my pastoral observation,
18 after racking my brain for 19 months consecutively, I have
19 not been able to discern any other thing. I am a layman when
20 it comes to mental illness. I admit that. However, I'm a
21 pretty intelligent fellow. I have two master's degrees. I'm
22 studying for a doctoral degree right now. I read the DSM. I
23 read all that kind of stuff, and so it's also not the same as
24 a person who just sits around and thinks that the world is
25 black and white.

1 MR. WILLIAMS: Thank you. Nothing else, Your Honor.

2 MS. STEVENS: No further questions. Thank you,
3 Father.

4 THE COURT: Any further witness -- witnesses from
5 counsel? Any further witnesses?

6 MR. BRUCK: Not from us, Your Honor.

7 THE COURT: Very good. Does the Government wish to
8 offer any witnesses? I want to question Mr. Roof.

9 MR. WILLIAMS: We do not, Your Honor.

10 THE COURT: The way we did this before at the first
11 competency hearing, I want to see if there is any objection,
12 I would like to do the questioning of Mr. Roof and not have
13 counsel question. Is there any objection from Mr. Bruck to
14 me doing that?

15 MR. BRUCK: No, Your Honor.

16 THE COURT: From the Government?

17 MR. BURNS: No, Your Honor.

18 THE COURT: Very good.

19 Mr. Roof, why don't you come to the podium if you
20 might.

21 MR. BRUCK: Would the Court mind if I stand next to
22 Mr. Roof? I have a little trouble hearing him.

23 THE COURT: Absolutely. No problem.

24 Mr. Roof, you and I -- I end up asking you a lot of
25 questions. Some of these you may have heard before. But I

1 think it's important to establish your understanding of
2 things. Let's -- one of the issues here is are you competent
3 to stand trial, and there is another issue of whether you are
4 competent to self-represent. Even though you are, you
5 understand you have a choice. Even if you are competent to
6 self-represent, you recognize you have the right to have
7 counsel. You understand that, don't you?

8 THE DEFENDANT: Yes.

9 THE COURT: And I know from listening to those
10 videotapes that your grandfather and your parents, both of
11 them have urged you to allow Mr. Bruck to continue to
12 represent you, correct?

13 THE DEFENDANT: Yes.

14 THE COURT: And how many times have I told you that?
15 Too many to count, huh?

16 THE DEFENDANT: Yes.

17 THE COURT: But I've also told you that I respect
18 your constitutional right to self-represent if that is what
19 you want to do, and I view it, as I've said many times, as a
20 bad decision, but a bad decision you have a right to make.
21 You do understand you have a right to counsel, do you not,
22 sir?

23 THE DEFENDANT: Yes, I understand.

24 THE COURT: And you understand that if you changed
25 your mind, Mr. Bruck is in a position to immediately resume

1 representing you. You understand that, don't you?

2 THE DEFENDANT: Yes.

3 THE COURT: And I've told you many times that though
4 I know you have differences with Mr. Bruck because you have
5 goals different than him in some ways -- Dr. Ballenger
6 described those, I think, very ably. There is no doubt -- I
7 just want to share my view -- there is no doubt that he wants
8 to help you. It is very clear to me he wants to help you.
9 And it is also clear to me that you are better served with
10 the jury hearing all the evidence. And that evidence is not
11 just the mental health evidence, but the -- for instance, the
12 evidence of Father John, who has met with you 100 hours, who
13 says why you have hope. That is one of the mitigating
14 factors that has been asserted that you may change your
15 views. That's your decision. I just was very moved by
16 Father John and his devotion to come see you for all those
17 hours; and, you know, I can't make you call him as a witness,
18 but perhaps you could work out something where he could
19 testify in areas even if you self-represent that might allow
20 the jury to hear from him.

21 Do you continue to have your view that you wish to
22 waive your right to counsel and to self-represent? Does that
23 continue to be your view?

24 THE DEFENDANT: Yes.

25 THE COURT: And today is the 2nd, so we are running

1 out of time here. You are confident that is your view that
2 you wish to self-represent?

3 THE DEFENDANT: Yes.

4 THE COURT: And you clearly are asking me to allow
5 you to continue your self-representation; is that right?

6 THE DEFENDANT: Yes.

7 THE COURT: You understand, of course, as we have
8 talked about before, that Mr. Bruck has a great deal more
9 experience than you do in handling capital cases. You
10 understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: And he has been highly successful in
13 saving defendants from the death penalty. You understand
14 that?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, I know you have talked to your
17 family. You talked to Mr. Bruck and others. You've gotten
18 the -- the advice from me. Have you weighed all that advice
19 very carefully?

20 THE DEFENDANT: Yes.

21 THE COURT: You have thought about it hard?

22 THE DEFENDANT: Yes.

23 THE COURT: This is not a rash decision on your
24 part, is it?

25 THE DEFENDANT: No.

1 THE COURT: But you wish to waive your right to
2 counsel and to self-represent, no ifs, ands, or buts; is that
3 right?

4 THE DEFENDANT: That's right.

5 THE COURT: Okay. Now I want to talk to you about
6 this issue of recognizing your potential exposure to the
7 death penalty. When I originally asked you that question,
8 you were charged with 33 counts, 18 of which potentially
9 exposed you to the death penalty, correct?

10 THE DEFENDANT: Correct.

11 THE COURT: And you had not yet been convicted,
12 correct?

13 THE DEFENDANT: Correct.

14 THE COURT: And I said to you, "Mr. Roof, do you
15 recognize you could get the death penalty?" You told me you
16 did, correct?

17 THE DEFENDANT: Correct.

18 THE COURT: And I asked you then, "Do you think that
19 white nationalists can save you?" What did you tell me? Is
20 that real? Do you really believe that you can be saved by
21 white nationalists if you are convicted and got the death
22 penalty?

23 THE DEFENDANT: No.

24 THE COURT: And do you believe that if you smile at
25 the jury, you will not get the death penalty?

1 THE DEFENDANT: No.

2 THE COURT: Do you believe if you cry right before
3 they give you that lethal injection, you will not get the
4 death penalty?

5 THE DEFENDANT: No.

6 THE COURT: Do you recognize that you are at high
7 risk for getting the death penalty if the jury imposes it?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you recognize that you are at high
10 risk of getting the death penalty if you offer no mitigation
11 witnesses? Do you recognize that?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you recognize -- nobody knows with
14 certainty. This is not like a cookbook. There are no
15 guarantees, but you recognize you may be giving up, by not
16 calling these mental health witnesses, the best chance you
17 have for avoiding the death penalty? Do you understand that?

18 THE DEFENDANT: Yes, I understand.

19 THE COURT: But notwithstanding that, you still do
20 not wish to call them?

21 THE DEFENDANT: That's right.

22 THE COURT: Understanding, knowing the risk with
23 your eyes open, you are making that decision; is that right?

24 THE DEFENDANT: That's right.

25 THE COURT: Dr. Ballenger described that your

1 primary goal was not surviving the death penalty itself, but
2 to preserve your own view regarding why you committed these
3 crimes. Did he get that right?

4 THE DEFENDANT: Yes, he got that part right. And he
5 also talked about preserving a reputation.

6 THE COURT: Yes.

7 THE DEFENDANT: And I would like to comment on that
8 if I could.

9 THE COURT: Please do.

10 THE DEFENDANT: I told you I think at the last
11 competency hearing that I don't actually have a reputation to
12 preserve because nobody likes me, including other white
13 nationalists, but in my view, what my lawyers wanted to do
14 is -- I have like a corpse of a reputation, and they want to
15 burn it. You see, they just want to -- I already don't have
16 a reputation, and then they just want to make it worse. So
17 it's not really about preserving a reputation.

18 THE COURT: But you understand -- and I know because
19 I recognize -- I did this intentionally this morning. I want
20 to make it clear to you the content of this hearing is going
21 to be made public. I mean, I don't want you to think, "Oh,
22 if I just don't have a lawyer, it will all be kept a secret."
23 It won't be kept a secret because the interest of keeping it
24 private is not preserving your privacy, but to protect the
25 jury from being tainted. I have no idea what you are going

1 to say tomorrow or in closing argument. That's your right to
2 do that. You don't need to tell me that. I'm not going to
3 ask you to do it. I don't know what is going to come out,
4 and I didn't want this to come out, whatever Dr. Ballenger
5 would say or our exchange here today. I wanted you to have a
6 chance to tell the jury what you wish and not to hear it
7 secondhand. You understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: But they are going to hear it. The
10 public will hear this. You know that, right?

11 THE DEFENDANT: Yes, I understand.

12 THE COURT: I know you have mentioned to me before
13 you have some hope that perhaps in the future the death
14 penalty might be overturned in this country, correct?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, I take it you are going to want to
17 appeal -- if the death penalty were to be imposed, I take it
18 you would probably want to appeal. Is that fair?

19 THE DEFENDANT: That's right.

20 THE COURT: Okay. But do you recognize that your
21 risk of getting death is real? It's not a fantasy. Do you
22 recognize it's a real risk here?

23 THE DEFENDANT: Yes.

24 THE COURT: You have been convicted of 18 counts
25 which are capital offenses, correct?

1 THE DEFENDANT: Correct.

2 THE COURT: You heard the testimony. You were
3 there. These were, you know, described by everyone as
4 heinous acts. Did Dr. Ballenger get it right that you were
5 trying to commit the most outrageous crime you could?

6 THE DEFENDANT: Yes, that's right.

9 THE DEFENDANT: Yes, I can see it.

21 THE COURT: Ms. Eunice, can we communicate to the
22 jury to report on Wednesday?

23 THE CLERK: Yes, sir.

24 THE COURT: Okay. I think I'm going to -- I want to
25 hear from the Government before I make that decision, but

1 I'll consider that. Okay?

2 But would you consider meeting with Father John
3 again and talking to him?

4 THE DEFENDANT: Yes.

5 THE COURT: I do think the testimony about
6 redemption and so forth is something that the jury ought to
7 hear.

8 Mr. Bruck, you agree with that?

9 MR. BRUCK: Yes, sir, Your Honor.

10 THE COURT: Okay. I just think it should not --
11 notwithstanding your differences on other issues -- that is not
12 a mental health issue, you know. It's a different issue.

13 You -- and the issue of whether you are going to
14 examine or cross-examine witnesses, you know you have the
15 right to do that, correct?

16 THE DEFENDANT: Right. And I -- I intend to
17 cross-examine the witnesses from the jail, but not the victim
18 impact witnesses. That's my --

19 THE COURT: Because you think that would be
20 counterproductive?

21 THE DEFENDANT: Yes, and I just couldn't do it.

22 THE COURT: But in terms of -- for instance, Agent
23 Hamski might testify. Is it possible you would cross-examine
24 him?

25 THE DEFENDANT: It would depend on what he said.

1 THE COURT: You are not eliminating other witnesses
2 who may testify other than the victim witnesses?

3 THE DEFENDANT: No.

4 THE COURT: And your present plan, though you can
5 change, is to make an opening and closing statement?

6 THE DEFENDANT: (Nodding.)

7 THE COURT: Is that correct?

8 THE DEFENDANT: That's right.

9 THE COURT: Standby counsel had also thought about
10 having family members testify. You don't wish to have any
11 family members testify?

12 THE DEFENDANT: Absolutely not.

13 THE COURT: How about prison officials to talk about
14 good behavior in the jail?

15 THE DEFENDANT: No.

16 THE COURT: You don't want them?

17 THE DEFENDANT: No.

18 THE COURT: You recognize that in a death penalty
19 case one advantage the defendant has is he only needs one
20 juror not to vote for death. Do you understand that?

21 THE DEFENDANT: Yes, I understand.

22 THE COURT: And that is why usually defendants defer
23 to their lawyers who look for opportunities to persuade one
24 or more jurors, and you recognize, Mr. Roof, I take it, that
25 by eliminating certain witnesses, you may be reducing the

1 risk you could get that one vote. Do you understand that?

2 THE DEFENDANT: Yes, I understand.

3 THE COURT: And though you understand that, why do
4 you insist on not offering that mental health evidence?

5 THE DEFENDANT: Because it's all a bunch of lies,
6 and just like I refuted everything to Dr. Ballenger, I could
7 pick those reports apart all day long. It's just the basic
8 issues that it's not true other than the ones that I agreed
9 to, social anxiety, and like I said, I think -- I read the
10 DSM avoidant personality disorder. I think I absolutely have
11 that. My point is I am not opposed to a diagnosis if it's
12 true. I'm opposed to an untrue diagnosis.

13 THE COURT: Dr. Ballenger describes you as -- a
14 predominant explanation for your difficulties with your
15 lawyers and your view about not offering mental health
16 evidence is that you really are not ashamed of what you did.
17 You are proud of what you did.

18 THE DEFENDANT: Right. And that was putting words
19 in my mouth. I think that is a little bit --

20 THE COURT: You tell me the proper words.

21 THE DEFENDANT: Well, I mean I'm not going to say
22 that is necessarily wrong. I just think it's a little bit
23 strong. To say "proud" is a little bit --

24 THE COURT: You don't deny it?

25 THE DEFENDANT: Right.

1 THE COURT: You are not ashamed of it?

2 THE DEFENDANT: Right.

3 THE COURT: You are not remorseful about it?

4 THE DEFENDANT: Right.

5 THE COURT: You avow yourself to a political
6 prisoner like a Muslim Jihadist in Israel. Is that a fair
7 analogy?

8 THE DEFENDANT: Or anywhere.

9 THE COURT: Or anywhere. Is that a fair analogy?

10 THE DEFENDANT: Yes, that is fair.

11 THE COURT: And because your lawyers don't wish to
12 offer that view, and you do, is that a major point of your
13 differences with your counsel?

14 THE DEFENDANT: Well, see, that is the thing. It's
15 not -- I'm not necessarily intending to offer that view.
16 It's just -- I'm not sure. It's just -- I'm not planning on
17 saying that. That's what I'm saying.

18 THE COURT: Okay. But in terms of the differences
19 with your lawyers, you don't want the explanation of why you
20 went into the Emanuel Church to be that you were mentally
21 ill?

22 THE DEFENDANT: That's right.

23 MR. BRUCK: If Your Honor please, I would ask the
24 defendant's answers to the questions, the affirmative answers
25 about being proud or not having remorse, those be stricken on

1 the grounds of they are beyond the scope of the competency
2 evaluation. I understand why the Court asked them.

3 THE COURT: I'm asking because they could go to
4 competency issues, because what you have attributed,
5 Mr. Bruck, to be signs of mental illness, Dr. Ballenger, the
6 Court's examiner, has expressed they are based upon
7 Mr. Roof's political views, and I sought to confirm those.
8 Because they are not what I would normally encounter or you,
9 I needed to confirm that. I respectfully deny your request
10 to strike those. I think they are appropriate to ask.

11 MR. BRUCK: If I may place on the record part of the
12 basis of my objection is that there is no Fifth Amendment
13 protection at a competency hearing; and therefore, the
14 protection is limited.

15 THE COURT: You see, you make it difficult. You
16 bring a competency challenge, and I have to address it. And
17 I can't take this with one arm tied behind my back. I've got
18 to hear -- I have appointed a court examiner who says, "No,
19 it's not mental illness. It is a deep, almost pathological
20 feelings about a certain race of people." And I need to
21 confirm that. And that is what I have just done.

22 MR. BRUCK: I wish to note the objection.

23 THE COURT: Your objection is noted. I do it with
24 no pleasure.

25 THE DEFENDANT: Your Honor, I think it was very

1 interesting that Father Parker pretty much confirmed exactly
2 what Dr. Ballenger had said, that if you are unable to
3 understand, then you assume I have a mental illness, and I
4 think --

5 THE COURT: I caught that myself, Mr. Roof.

6 You know, there was a discussion about you wanting
7 to terminate your standby counsel. I will not allow you to
8 do that. I can't make you listen to them. I'm going to urge
9 you to listen to them, but I'm not going to honor your
10 request to discontinue their services. You are in control,
11 Mr. Roof. You are self-representing. I found standby
12 counsel's assistance in the opening charge helpful to me, and
13 I will have a closing charge. I would urge you to include
14 them in your response to that. Those are important for your
15 appeal, and you need to preserve certain issues, and I would
16 urge you to call upon them.

17 And, you know, you don't have to listen to every
18 note they give you or respond to every one, but you've got
19 about a hundred years of experience sitting at that table
20 between all those lawyers. They are pretty capable people.
21 And I know they might have a different view of things than
22 you do, but they have -- they may have something to offer
23 you. So I'm going to decline your request that you -- that I
24 terminate them. But it's up to you on how you use them. I
25 think they are a richer resource for you than perhaps you

1 find -- you will appreciate right at this moment.

2 Let me make sure that you understand the proceedings
3 because a sentencing proceeding for any person is a challenge
4 because it's not done very often -- at least this Court has
5 never been involved in one, and neither of us have been to a
6 sentencing hearing. So let's talk about it. It will begin
7 with an opening charge by me -- I will give you -- you have
8 read that -- and sort of basic introduction to the law. Then
9 there will be an opening statement first by the Government,
10 and then by you, if you wish to make it. I won't require you
11 to make it.

12 The Government will then call witnesses. You will
13 have the right to cross-examine those witnesses. When the
14 Government rests its case, you have a right to call witnesses
15 and present them. That is entirely -- you have no burden of
16 proof -- in terms of any mitigation, you have the burden to
17 carry proving by a preponderance of the evidence, but you
18 have no obligation to call witnesses if you do not wish to do
19 so.

20 After you -- your case rests, there will be closing
21 argument of counsel. First the Government will have a right
22 to counsel -- I mean a right to make a closing argument, and
23 then you will have a right to make a closing argument, and
24 then the Government will have a right to reply.

25 Now, do you understand those proceedings?

1 THE DEFENDANT: Yes.

2 THE COURT: You are confident you understand them?

3 THE DEFENDANT: Yes.

4 THE COURT: Are you confident in your ability to
5 self-represent?

6 THE DEFENDANT: Yes.

7 THE COURT: After the closing argument, there will
8 be a closing charge by the Court, and I will submit before
9 the end of the case a proposed closing charge, and I will
10 again mention as I did at the opening charge that you can
11 meet with standby counsel, that they will have a right to
12 prepare documents in response as long as you sign it just
13 like you did before.

14 After the closing charge, the jury will deliberate
15 and reach a verdict on the death penalty issue. And as we
16 discussed, one of the potential verdicts you understand is
17 death?

18 THE DEFENDANT: Yes, I understand.

19 THE COURT: And you understand the dangers and
20 consequences of self-representation?

21 THE DEFENDANT: Yes, I understand.

22 THE COURT: And notwithstanding that, you continue
23 to express to this Court your desire to waive counsel and to
24 represent yourself through the balance of this case; is that
25 correct?

1 THE DEFENDANT: That's correct.

2 THE COURT: Okay. You may return to your seat.

3 Do you have something you want to say to me first?

4 THE DEFENDANT: I wanted to ask you about the
5 release of the competency hearing.

6 THE COURT: Yes, sir.

10 THE COURT: Judge Nicholson, yes.

11 THE DEFENDANT: I got it mixed up. But --

22 That, and I would estimate it will be in a matter of
23 days following a verdict I would release, not just the
24 competency hearing, but I mean, all the motions we've sealed
25 in this case. Our staff is going through and looking at

1 those, and I would probably unseal them, if not all at once,
2 within a few days of each other.

3 THE DEFENDANT: My only worry with that is there are
4 things that I have said here, and I absolutely wouldn't say
5 in front of a jury, you see? And that is what makes it
6 complicated for me, and the things that the -- that I said
7 to --

8 THE COURT: I think what we may do is go through --
9 we are going to -- there will be things that are redacted
10 from any released -- there are issues I need to think about
11 about redaction. And what I might do, I may think about
12 this, is I may bring you over here, and we may actually show
13 both sides what we are thinking about and let me hear from
14 everyone about whether further redaction might be necessary.

15 I think there's some questions here. Mr. Bruck
16 raised the Fifth Amendment issue, and there may be that there
17 be questions here that may be substantial to redaction.

18 MR. BRUCK: I think there are substantial privacy
19 interests, particularly the mental health reports involving
20 third and fourth and fifth parties.

21 THE COURT: That's right. One of the things we
22 were -- Mr. Roof raised the issue about his mom, the
23 allegation about your mom, and that would be the kind of
24 issue that I think I would be -- give very serious
25 consideration about redaction. It's never been an issue. No

1 one has attributed it to be a factor in any of this, and --

2 MR. BRUCK: A great deal of that nature, not all of
3 it quite as --

4 THE DEFENDANT: That is David Bruck's fault because
5 in Loftin's report, she had almost three pages of nothing but
6 things about my mom that had nothing to do with anything, and
7 that is the kind of thing that makes me have a problem, you
8 know.

9 THE COURT: Well, you know, I've got to -- you know,
10 I have been so focused on trying to give you a fair trial and
11 these competency issues, and what we will redact, I think
12 this discussion helps me with focusing that we need to have
13 some process where we can sit down and say, "Here are the
14 documents we are getting ready to release; here are proposed
15 redactions. What do y'all recommend? What does the
16 Government recommend? What do y'all recommend?"

17 But the bulk of this is coming in. I'm less
18 concerned, frankly, with getting what you've just told me in
19 the public record. There has been a lot of public discussion
20 about your mental status. The public has a right to know
21 that Dr. Ballenger evaluated you and found you competent.
22 There are a lot of people in the newspaper that made a
23 diagnosis of you that have never seen you. Some did, you
24 know, but -- and I think they are also entitled to know that
25 the defense had mitigation evidence. I think that is fair

1 public knowledge.

2 THE DEFENDANT: And, um, just, this is the last
3 thing I have to say; it's just in my mind. It just seems the
4 idea that someone has no other way to visit their family
5 members and that could be uploaded to the court website, for
6 example, from this competency hearing, and then put on *The*
7 *Post and Courier's* website, like they did with my confession.
8 It just seems unprecedented. I've never seen the online
9 video.

10 THE COURT: We all need to have a discussion about
11 the family videos. We've got to have a talk. I want to hear
12 from the Government about this as well. There is
13 substantial -- here is the problem: We are doing the
14 public's business here, Mr. Roof. That's the problem. It's
15 not a private matter. It's the public's business. The
16 public has a right to know. The crime for which you have
17 been convicted has scarred this community, I'm just going to
18 tell you. I'm out there. It is a deep wound on this
19 community. And it's an understandable desire that the public
20 has a right to know things I have kept confidential. There
21 are things that should not be made public, I see that, and we
22 are going to continue to redact -- do redactions. I will
23 hear from y'all. I think this has been a helpful discussion
24 to me.

25 So after the -- let me say to you, you know, the --

1 after the jury makes whatever decision it makes, I will
2 sentence you. There is another proceeding. It would not be
3 the same day. And after I do that, whatever the sentence is,
4 I will schedule a hearing. I'll talk to standby counsel and
5 to the Government to work out some process -- some formal
6 process in which we look at redaction, okay?

7 THE DEFENDANT: Thank you.

8 THE COURT: Balancing all those interests.

9 THE DEFENDANT: Can I ask you one question about
10 this, um --

11 THE COURT: Yes.

12 THE DEFENDANT: It says if the defendant needs to
13 give a document to a witness or the Court, it will alert the
14 Court and transfer the document from the lectern to the
15 witness stand.

16 THE COURT: One of these court security officers
17 sitting right here, you just hand it to him, and he will walk
18 it -- he will hand it to you.

19 THE DEFENDANT: And I would have to have copies for
20 the Government, though, wouldn't I?

21 THE COURT: Talk to standby counsel. If you want to
22 offer a document, they'll get copies for you.

23 THE DEFENDANT: Okay. Thank you.

24 THE COURT: Y'all assist him in that, okay?

25 What is the Government's response to the defendant's

1 request to start Wednesday instead of Tuesday?

2 MR. BURNS: The primary consideration, of course,
3 Your Honor, is the availability of the victims' family and
4 those witnesses that are scheduled. But I understand the
5 Court's position, and the --

6 THE COURT: We have tied them up for three days,
7 right? Dr. Ballenger has spent an enormous amount of time.

8 MR. BURNS: And for that reason, I believe that we
9 would be able to work with our witnesses to ensure that they
10 will be available to testify starting on Wednesday.

11 THE COURT: It's not a perfect situation, but I
12 think under the lateness of the hour, I think it's
13 appropriate. I have considered carefully the evidence
14 offered here today, the filings made, I find --

15 MR. BRUCK: If Your Honor please, I'm sorry to
16 interrupt, before you issue your ruling from the bench, may I
17 place on the record a procedural issue: We think we were
18 unduly limited at today's hearing by the exclusion of not
19 only all events that were not newly occurring, but any
20 assessment by experts that did not actually occur after the
21 prior competency ruling, but also by the limitation on almost
22 any reference to evidence that predated the competency
23 finding.

24 We submit that there is no way of responding to
25 the -- Dr. Ballenger's testimony except holistically by

1 calling witnesses or by examining witnesses, the few
2 witnesses that we did call, about the entire clinical
3 picture, including all of the sources of data in order to
4 understand the new evidence that is before the Court; and in
5 particular, the new evidence that we as counsel submitted.

6 To give an example, Dr. Ballenger essentially
7 discounted example after example after example from defense
8 counsel about unrealistic, and we think actually psychotic,
9 misunderstandings or false ideas that the defendant expressed
10 to us in various ways over the last few weeks by saying that
11 he had determined on the basis of his total of less than a
12 dozen hours with Mr. Roof that he was gaming us or teasing us
13 or stringing us along, and that he had seen through all of
14 that, and that Mr. Roof did not do that with him, but gave
15 him the straight proof.

16 Now, the trouble with that is that there is a long,
17 long history of Mr. Roof expressing these similarly extremely
18 unrealistic and counterfactual ideas, not only to us, but to
19 all of the mental health experts beginning back in -- in this
20 record, back in February with Dr. Moburg, including the
21 delusion of rescue that he now completely denies most
22 recently just a few moments ago. So there is no way to
23 assess Dr. Ballenger's testimony and his dismissal of the
24 seriousness of the concerns that we have raised to trigger
25 this competency hearing without looking at the entire record.

1 And we think in effect that we were denied our ability to
2 present our side of the case today.

3 I understand the Court's rulings. I'm not here to
4 just go on and on about them, but I do think the record has
5 to reflect that we think our client's right to due process in
6 this hearing were denied by the extremely restrictive nature
7 of the Court's grounds for this hearing.

8 THE COURT: Mr. Bruck, here is the problem: You
9 have just had a competency hearing, two days long, less than
10 five weeks ago. These were exhaustively addressed, these
11 same issues. I had a real debate whether the new -- the new
12 matters you listed weren't merely an echo of what I had
13 already addressed previously. Frankly, the one issue that
14 troubled me was your repeated statement he doesn't really
15 believe he could face the death penalty. I had a real debate
16 whether I should do anything other than just deny it. But I
17 went -- the man is on trial for his life; I take it very
18 seriously.

19 I dragged Dr. Ballenger back from Virginia -- or
20 North Carolina where he was with his family on vacation, and
21 I had him reassess. And he had found that the defendant
22 previously was not delusional, was not -- these words are
23 tossed around like they are Chiclets -- and that this is
24 primarily a view of -- a political view, a racial view of the
25 defendant, which he basically voices. And now you want to go

1 back and basically bring the same evidence we already
2 considered once, and I just said, "I'm not doing this." It's
3 a waste of time. It's an abuse in my view to try to make me
4 do it twice because -- and it's not necessary. It's not in
5 the interest of justice. It doesn't serve any purpose.

6 Is there new evidence that's material? Because the
7 law of the case is -- as of late November was the man was
8 competent. I continue to find him competent. I don't think
9 anybody can sit here and watch him question the witnesses to
10 doubt for a moment he's competent to self-represent and
11 competent in this case. He understands these proceedings.
12 He has the ability, perhaps not the willingness, to
13 communicate with counsel. He understands the consequences of
14 the proceedings, and he has the capacity to self-represent.

15 I think I've given you more than most would have. I
16 think you have been given a lot. You have been given a third
17 day of competency hearings and another evaluation by the
18 Court examiner. More than most would have given. I feel
19 like it's adequate, and I overrule your objection.

20 So let me proceed back to where I was. I do find
21 that the Court's original decision regarding competency is
22 unchanged, that the defendant does understand the nature of
23 the proceedings and the consequences of the proceedings, and
24 has the capacity to self-represent. He does not fall within
25 that narrow exception *Indiana vs. Edwards*. He is not in that

1 gray defendant area where he has profound mental illness that
2 he may just be insane or just be competent. He is -- he is
3 not in that category. I -- so I reaffirm my decision of
4 November 25th that the defendant is competent and reaffirm my
5 decision of November 29th that he is competent to
6 self-represent.

7 I will issue an order to follow probably tomorrow or
8 Wednesday -- actually, I think I will do it after I bring my
9 jury back. I don't want to do -- I want to admonish the jury
10 not to pay attention to anything. And the order may be a
11 redacted version. I've got to sort that out, a public and a
12 private.

13 As to the defendant's request to continue the case
14 one day to allow him more preparation, I grant that motion.
15 We will convene on Wednesday morning at 9:30. Ms. Ravenel,
16 would you communicate with the jury, please. Thank you.

17 The hearing is adjourned. The revised opening
18 charge I will provide the parties.

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20 ***** ***** *****

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23 I certify that the foregoing is a correct transcript
24 from the record of proceedings in the above-titled matter.
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3 Amy C. Diaz, RPR, CRR

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January 17, 2017

/S Amy Diaz