

Mr. Coble's observation is also that Applicant is wholly lacking in "street smarts." As an example, Applicant does not understand how to buy items from the commissary, i.e., he does not understand what items cost and how much money he would have to have to purchase them. As another example, Mr. Coble has to constantly remind Applicant to wash himself, to shave, to clean his food container, and to clean his cell.

Mr. Coble also believes that Applicant has other mental problems that exacerbate his retardation. Applicant often appears "depressed" or "spaced out." Also, Applicant "watches" television by tuning his radio to the television band. During these times, Applicant will listen to the cartoons and "laugh just like a little kid would." Sometimes, Applicant talks back to the cartoons. Applicant describes this activity to Mr. Coble as "watching t.v." and says that he "can see the cartoons in his head."

Mr. Coble has also had the opportunity to observe that Applicant does not understand his case. For example, Applicant received notice that he was being sued civilly by the injured party's family. Applicant became very upset because he was afraid they were going to take him back to Fort Worth and that he would "get another death penalty." Mr. Coble does not try to explain the legal proceedings to Applicant as Mr. Coble sees that as the job of Applicant's attorneys.

Id. at 13-15.

(3) William S. Harris

Mr. Harris was one of Applicant's appointed attorneys at trial. Even prior to his appointment to represent Applicant, Mr. Harris was aware of Applicant's mental limitations. Based upon his meetings and conferences with Applicant, Mr. Harris "concluded that his [Applicant's] mental limitations were very severe." Mr. Harris obtained a professional opinion from Mark Cunningham, Ph.D., a forensic psychologist, who diagnosed Applicant as mentally

retarded. Based upon his observations of Applicant, Mr. Harris believes that Dr. Cunningham's diagnosis is accurate.

According to Mr. Harris, Applicant was unable to grasp the legal concepts applicable to his case (such as the law of parties or eligibility for probation) no matter how many times or how simply and clearly Mr. Harris explained them to him. However, demonstrating his desire to mask his mental retardation, Applicant would tell Mr. Harris that he understood and then immediately call and ask the same questions over and over again. Mr. Harris would again explain the situation to Applicant, who could never truly grasp what he was being told.

Mr. Harris also observed Mr. Hall's lack of functioning in regard to understanding how the world works. Mr. Hall would sincerely request that his case be moved to Hawaii, because he thought the food would be better. In another incident, Mr. Harris was having difficulty getting Applicant a new pair of glasses. Applicant asked if, since he could not get the glasses, he could have lasik surgery. It was obvious to Mr. Harris that Applicant neither understood the expense of such a surgery or that it would be more difficult to get the surgery than getting a new pair of glasses.

During jury selection, Applicant objected to being present, stating that he did not understand what the participants in the court room were saying and that he was "like a blind man in a room full of people who could see." Mr. Harris interprets this statement as follows: "Just as a blind person need never have had sight to understand that he is missing a sense most people have, so a retarded person does not have to have high intellect to know he does not understand what everybody else grasps."

While he does not remember every example of Applicant's obvious lack of intellectual ability and functioning, Mr. Harris knows that he "frequently made the comment to others during my dealings with

[Applicant] that the average person does not realize how breathtakingly profound the mental limitations of one who is, as [Applicant's] I.Q. test showed him to be, in the bottom 2 percentile of the population" Further, representing Applicant made Mr. Harris "profoundly aware of how limited his mental capacity is and how unjust it is to indulge in the fiction that he has an adult capacity to understand his actions or their consequences."

Id. at 15-17.

(4) Paul A. Conner

Mr. Conner was Applicant's other appointed attorney at trial. Upon his first meeting with Applicant, Mr. Conner was "struck by the low level of mental capability he exhibited." Mr. Conner's subsequent dealings with Applicant, "only enhanced [his] belief in [Applicant's] low I.Q."

During their first meeting, Applicant explained things to Mr. Conner in a manner that reminded Mr. Conner of a child. In response to Mr. Conner's questions, Applicant used his fingers to represent people and "walked" them to describe their actions.

Although Applicant would consistently accept explanations and instructions from Mr. Harris and Mr. Conner, the extent of his lack of understanding would be profoundly demonstrated by asking the same question within days, or sometimes within hours or minutes, of the explanation.

Mr. Conner noticed that Applicant would attempt to "mask" his retardation by not asking questions. Mr. Conner states that Applicant "bitterly did not want people to think him 'dumb.'" Applicant would sometimes appear to be surprisingly well informed on a topic, but as the discussion would continue, it would become apparent to Mr. Conner that Applicant was "parroting" words and phrases that he had heard. In these situations, further inquiry would normally reveal that

Applicant had a complete lack of understanding of the words he was using or, at best, only a rudimentary grasp.

Mr. Conner describes Applicant as "child-like" in his understanding of his arrest and the ramifications of the charges against him. He continually asked why he could not go home, and did not appear to understand his attorneys' explanations of bail. Mr. Conner also remembers Applicant requesting to have the venue of his case changed to Hawaii so that "he could see it, since he had never been there."

Id. at 17-18.

(5) Joseph D. Ward

Mr. Ward is a private investigator who has been appointed to assist in the preparation of this Application. He has met with Applicant at the Polunsky Unit. Based on his conversations with Applicant, it is clear to Mr. Ward that Applicant did not understand anything about his appeal. Mr. Ward noticed that Applicant will "agree with or go along with whatever" Mr. Ward wanted Applicant to say. Further, Mr. Ward states that Applicant's ability to understand their discussions is significantly diminished from other people his age. Mr. Ward describes Applicant's demeanor as "childlike."

During one interview, for which another investigator, John Ladd, was present, Applicant was asked about the circumstances surrounding his arrest and the videotaped statement that he gave in Eagle Pass, Texas. Applicant was "completely unable to recall or relate those events in any meaningful way." Despite the fact that they had just identified themselves, Applicant could not remember Mr. Ladd's name or Mr. Ward's name.

Based on his discussions with Applicant, Mr. Ward notes that Applicant often uses words inappropriately and pronounces them incorrectly. Mr. Ward believes

that Applicant does this in an attempt to mask his mental retardation.

In conclusion, Mr. Ward does not feel that Applicant has the ability to assist with his defense in any meaningful way and does not see any evidence indicating that Applicant is able to take care of himself without the continual help of those around him. Accordingly, Mr. Ward questions whether Applicant fully understands the consequences of his actions or what it means to be executed.

Id. at 18-19.

(6) John Ladd

Mr. Ladd is a private investigator who has been appointed to assist in the preparation of this Application. He has conducted one interview of Applicant at the Polunsky Unit. During that interview, it became apparent to Mr. Ladd that Applicant "was not fully capable of understand[ing] what has happened to him or why." Applicant was unable to remember very much about the details of his arrest or the video taped statement that he gave in Eagle Pass, Texas. At one point during the conversation, Applicant believed that Mr. Ladd was one of the detectives who questioned him in Eagle Pass.

It was very clear to Mr. Ladd that Applicant has a very short attention span. Mr. Ladd describes talking to Applicant as "almost like talking to a 6 or 7 year old child." Further, Applicant "clearly did not understand most of the questions I asked him."

Applicant also showed his limited adaptive functioning when he described that he gets "extra food" by saving portions of his meals to eat late at night. According to Mr. Ladd, Applicant felt that he was very clever in getting this "extra" food, but failed to recognize that it was his own food that he was saving.

In conclusion, Mr. Ladd does not believe that Applicant was able to assist in his own defense or understand the nature of the charges against him.

Id. at 19-20.

As part of the evidence in support of his application, Hall incorporated by reference all of the testimony from his trial, during both the guilt/innocence phase and the punishment phase.

Id. at 20.

b. Affidavits Filed by State in Reply

Before the State replied to Hall's state habeas application, the Supreme Court handed down its June 20, 2002, decision in Atkins v. Virginia, 536 U.S. 304 (2002). The reply filed by the State on July 16, 2002, took into account the Atkins decision. The State submitted with its reply affidavits of Dr. Price, Brandon Daniel, Julie Perego, Suzanne Prosperie, Todd Raymond Tatum, and Darrell J. White. A summary of pertinent information provided by those affiants follows:

(1) Dr. Price

Dr. Price repeated information he provided in his trial testimony. The definition he gave for mental retardation basically is the same as the one to which the parties stipulated in this action. Clerk's R., St. Habeas, Vol. 1 at 121, ¶ 3. He opined that "[w]hile there is no question that Michael Hall has

had learning problems throughout his life, his intelligence test results do not clearly place him in the range of mild mental retardation" and that "[i]t is very important to know that Michael Hall was placed in special education due to having been classified as having a learning disability--not mental retardation." Id. ¶ 4. He reiterated that his "review of this case does not clearly indicate that Michael Hall is mentally retarded." Id. Dr. Price added that based on his review of the records and the administration of tests related to Hall's knowledge of adaptive behavior, his opinion was that "Hall was a poor student but that he does not have significant adaptive deficits." Id. at 122, ¶ 6. Finally, Dr. Price explained that "the use of mental age to describe the functioning of an adult is not an accepted practice in psychology." Id. ¶ 7.

(2) Brandon Daniel

Mr. Daniel was employed as a prison guard at the prison unit where Hall had been confined since he was given the death penalty. He said that Hall acted as normal as anyone in his pod; he saw Hall talking to the other inmates and joking or having conversations with them; he had been around people who are slow mentally, but he had not seen that in Hall; he had not seen any unusual behavior on the part of Hall; he had observed Hall

playing basketball and talking with other inmates; he had heard Hall play rock and roll or heavy metal music on his radio; he had not had any indication that Hall did not understand how to obey orders and follow the rules; based on his observations, Hall was just a normal inmate. Id. at 123-24.

(3) Julie Perego

Ms. Perego was another prison guard at the prison facility at which Hall has been confined. She said that Hall became angry at times if they woke him too early; she had seen nothing unusual in Hall's conduct, different from the other inmates; Hall's behavior was normal, and he did what he was supposed to do; she never had to tell Hall what to do more than once; she had been in the unit where Hall is confined since June 2001, and had been around Hall at different times. She never saw anything that would make her think Hall was mentally retarded, and he seemed pretty normal to her. Id. at 125-26.

(4) Suzanne Prosperie

Ms. Prosperie was another guard employed at the prison facility where Hall has been confined. She said that she had been employed there a total of about four years; she saw Hall on the average of about two days a week; Hall was just a normal inmate to her; when Hall was angry he would complain about things

he did not like, and threatened to write grievances; Hall socialized with other inmates, and there was nothing unusual about Hall's conduct or attitude; based on her dealings with Hall, he clearly and definitely knew the difference between right and wrong; Hall complained and argued, but he obeyed the orders of the guards; Hall complained about being subjected to strip searches, and threatened to write a grievance; his cell was filthy, but by his choice; she did not see any sign of mental retardation or illness in Hall; Hall appeared at times to be depressed, as would be expected from a person on death row; she had experience with mental retardation because one of her neighbors has a mentally retarded daughter; Hall learned the system and understood the rules; Hall functioned and coped as well as the other inmates; she caught Hall trading property with another inmate, which was a violation of the rules, and Hall knew that it was wrong and stopped when ordered to stop; she never heard Hall referred to as "Half-Deck" by anyone; and, Hall managed very well in prison. Id. at 127-29.

(5) Todd Raymond Tatum

Mr. Tatum was another employee at the prison unit where Hall is confined. He was around Hall about three months, and saw him on a regular basis. He had the usual contacts and conversations

with Hall and observed nothing unusual; Hall was never belligerent, and was always obedient with him; Hall's hygiene was not the best; Hall understood what was right and wrong and should be held accountable for his conduct like any other inmate; Hall was kind of a loner, but he was not crazy or unusual as an inmate; Hall learned the system and understood what he was doing; Hall was very capable of functioning and coping like any inmate; he knew kids in school with Down's Syndrome, but he had not seen anything at all that indicated Hall was mentally retarded. Id. at 130, 188.

(6) Darrell J. White

Mr. White was another employee in the prison unit where Hall is confined. He said that he had worked around Hall for about three months; in a normal workday, he checked the inmates every thirty minutes, and Hall would be doing normal things that inmates do in their cell; he did not observe any unusual conduct on the part of Hall; Hall obeyed orders and followed rules; Hall was just a normal inmate; he did not have problems with Hall failing to understand anything that he told him to do; Hall showered, brushed his teeth, and did the normal things; Hall played basketball and got along with other inmates at recreation. Id. at 132. He had experience with an uncle who was mentally

retarded, and Hall was nothing like his uncle, who he repeatedly would have to tell what to do; he had seen nothing about Hall to cause him to think that Hall was mentally retarded. Other than being very quiet, Hall was like any other inmate. Id. at 193.

c. The Report of Dr. Cannon

The record of the habeas proceeding contains a December 20, 1999, letter from Mary L. Cannon, M.D., a forensic psychiatrist, to the judge presiding over Hall's criminal trial advising that on December 17, 1999, she completed a psychiatric evaluation of Hall to determine his competency to stand trial. Clerk's R., St. Habeas, Vol. 2 at 322-23. Based on her review of Hall's past history, his medical history, and a mental status examination, her opinion was that Hall has a factual as well as a rational understanding of the charge against him and sufficient mental ability to consult with his attorney with a reasonable degree of rational understanding.

She described Hall as neat, clean, and dressed in jail clothes when she saw him on December 20, 1999, and said that he was pleasant and cooperative, made good eye contact, and appeared to be alert. Hall was able to tell her his charge, details of the event related to his charge, and the circumstances of his arrest. His mood was slightly depressed, and his affect was

appropriate to his mood. While his thought productions were slow at times, they were simple but logical and goal-oriented. She found no evidence of delusions or auditory hallucinations.

Hall did very well on the Proverbs and Similarities tests. His memory appeared to be only fair. He could perform only two of the four basic elementary mathematical functions. On theoretical questions, Hall's judgments were good, and his general fund of information was fairly good. He was oriented as to time, place, person, and circumstances.

Dr. Cannon concluded her letter by saying "[w]hile there is no doubt that Mr. Hall may have a learning disability, he did surprisingly well on the mental status examination and presented his case regarding his charge very well." Id.

d. Affidavits Filed by Hall on September 20, 2002

On September 20, 2002, Hall filed more affidavits in his habeas action responding to the State's reply affidavits. The following is a brief description of the contents of Hall's newly filed affidavits:

(1) George Carl Denkowski, Ph.D.

Dr. Denkowski is a psychologist who practices his profession in Fort Worth. He has been working with the mentally retarded

since 1975. He often conducted evaluations of adults thought to be mentally retarded. Hall's case was Dr. Denkowski's second case involving an appeal of a death penalty on the basis of mental retardation. He found in the other case that the defendant was not mentally retarded. He was retained by Hall's counsel to determine if Hall is mentally retarded under applicable standards. His opinions were based on a review of records provided to him by Hall's counsel.

His opinion was that Hall is a mentally retarded person. He explained the bases of his opinion in a general way as follows:

His Wechsler Full Scale IQ has consistently fallen below 75, and his adaptive behavior has been significantly deficient across his life-span. It is therefore apparent that this disabling syndrome originated in the developmental period of life. Within the context of the standards of professional practice applicable in Texas, it is therefore clear that Mr. Hall meets diagnostic criteria for mental retardation.

Clerk's R., St. Habeas, Vol. 3 at 605.

Dr. Denkowski's affidavit is nineteen pages long. In much the same way that a lawyer would present a case in a brief, Dr. Denkowski presented, based on the contents of the records he had reviewed, his arguments as to why his conclusions were correct. He expressed his understanding of the standard to be applied in

Texas for determining whether a person is mentally retarded to be the following:

1. The WAIS-III full scale IQ must be below 75;
2. Significant adaptive behavior deficits must exist in three skills areas and the measurement error adjusted standard score for the overall instrument must be below 71; and
3. These impairments must have originated prior to the 18-22 age range.

Id. at 610.

Dr. Denkowski took issue with virtually all of the evidence that had been presented by the State in support of its contention that Hall was not mentally retarded. He concluded his affidavit with the following explanations:

Analysis of the intellectual and adaptive behavior functioning data available on Mr. Hall, including proper accounting for measurement error and for the measurement quality of applied instruments, compels the conclusion that he is a mildly mentally retarded person. His Wechsler IQ has been under 75 from at least early adolescence, and he has manifested serious deficits in adaptive behavior since at least late adolescence. Relatedly, there exists no realistic basis for believing that these serious functional impairments do not persist to this day -- they may not be evident to the casual observer since Mr. Hall is being maintained in an extremely structured environment. And finally, it seems plain that this cumulative disability originated in the developmental period of life. Accordingly, it is clear that Mr. Hall meets the diagnostic criteria for mental retardation in

accord with applicable standards of practice that apply in Texas.

Id. at 621.

(2) William S. Harris

Mr. Harris, one of Hall's trial counsel, became convinced during his representation of Hall that Hall was mentally retarded. He supplemented his January 2002 affidavit with discussions of events during Hall's trial related to the defense efforts to establish that Hall was mentally retarded and of the difficulty he had working with Hall because of Hall's mental limitations. The affidavit is in the nature of legal arguments by counsel. Id. at 635-37.

(3) Stephen Dollar

Mr. Dollar was an attorney practicing with a law firm in Dallas. Before he became a lawyer he was a school teacher. He taught Hall world history in the 1995-96 school year at North Garland High School. Hall was enrolled in the special education program, and was authorized to go to an alternative classroom setting for his testing and assignments; however, Hall chose not to take advantage of that opportunity. He rarely left Mr. Dollar's classroom. Hall was unable to follow Mr. Dollar's daily instructions or complete the assignments. Mr. Dollar said that

Hall displayed no cognitive ability in his classroom, and, in Mr. Dollar's opinion, demonstrated behaviors similar to those of a child with a diagnosis of mental retardation. He gave examples of conduct of Hall that caused him to have that opinion.

Hall would not respond to his own name when called upon, he would sit in the back of the classroom, stare out the window, and drool from his mouth for most of the class hour; he could not read; he could not accomplish even the most menial of tasks, even when they were simplified to accommodate his special education needs; he could not spell his own name; he demonstrated extreme difficulty speaking complete sentences; he had to be woken frequently due to his tendency to fall asleep at his desk during the classroom hour; he was unable to identify his history book from his math book.

Hall had minimal family support. Mr. Dollar spoke to Hall's female caregiver on one occasion. When he told her of his concerns regarding Hall's lack of cognitive skills, her response was to "just hit him a few times as that was how she controlled his behavior." Id. at 638. Hall seemed to have no friends and often was the object of ridicule by his fellow students. He believed that Hall was absent of emotion and definitely was a follower. When other children in the class would act out, Hall

would mimic them. Nevertheless, Hall was neither disruptive to his classroom, nor did he exhibit any physical or verbally aggressive behavior. Mr. Dollar said that he did not feel that Hall was capable of improving or learning at a normal level due to his obvious mental impairment.

(4) Lilli C. Hallam

Ms. Hallam was a Project Coordinator for the ARC of Dallas's Mental Retardation and Justice Information Initiative. She has a master's degree in counseling. She discussed mental retardation in a general way. According to her, it would be difficult, if not impossible, to fake mental retardation. Eighty-seven percent of the persons considered to be mentally retarded have mild mental retardation. Their IQ scores fall in the range of 50-70. Persons with mild mental retardation often live in the community and attend school, and, with support, are able to hold jobs and manage their finances. Ms. Hallam described the challenges experienced by persons with mild mental retardation. They are not always easily recognized because they have learned to "blend" or "pass" as non-disabled. She provided with her affidavit the American Association of Mental Retardation's tenth edition of Mental Retardation Definition, Classification, and Systems of Support. Clerk's R., St. Habeas, Vol. 3 at 640-42.

- (5) Judith Bristow (Custodian of Records of Baylor Medical Center at Garland)

Ms. Bristow authenticated with her affidavit twenty-six pages of records of Memorial Hospital of Garland pertaining to Hall's birth there in April 1979 and treatment he received there in September 1995 as a result of an abrasion to his mouth and lip when he fell on the sidewalk from his bike. Clerk's R., St. Habeas, Vol. 4 at 883-909.

- (6) Alicia Richards (Custodian of Records of Benjamin Franklin Middle School, Dallas Independent School District)

Ms. Richards authenticated by her affidavit two pages of records pertaining to Hall's attendance at Benjamin Franklin Middle School of Dallas Independent School District during the 1993-94 school year. Id. at 910-12. They appear to show that he was withdrawn from the school on January 31, 1994, with a zero grade-point average and no credits.

- (7) Betty Pratt (Custodian of Records for Arlington Independent School District)

Ms. Pratt authenticated six pages of records of Nichols Junior High School of Arlington Independent School District. Id. at 913-18. They show that Hall attended school there for a period of time starting in December 1994. He received three credits for

his studies. Apparently he was withdrawn from the school on February 21, 1995, while he was in the ninth grade.

(8) Annette Ervin (Custodian of Records for Mental Health Mental Retardation of Tarrant County)

Ms. Ervin authenticated records of Mental Health Mental Retardation of Tarrant County, Texas, pertaining to Hall. Id. at 920-37. The records show services rendered to Hall while he was an inmate in Tarrant County Jail prior to his criminal trial. The final entry in the record, dated February 17, 2000, indicates that Hall's problems were related more to being in administrative segregation than issues of chronic severe mental illness.

(9) Sally Church, Bill Coble, Paul A. Conner, William S. Harris, John Ladd, and Joseph Ward

The affidavits of Dr. Church, Mr. Coble, Mr. Conner, Mr. Ladd, and Mr. Ward and one of the affidavits of Mr. Harris that were filed on September 20, 2002, are copies of affidavits that accompanied Hall's January 17, 2002, habeas application.

(10) Miguel A. Omana, Jr. (Custodian of Records for Maverick County Sheriff Department)

Mr. Omana authenticated the records of the Maverick County Sheriff Department pertaining to Hall's stay there commencing March 4, 1998, following his arrest. Id. at 954-82.

(11) James R. Zeller

Mr. Zeller, the senior warden in the prison unit where Hall has been confined, authenticated records of that unit pertaining to Hall. Clerk's R., St. Habeas, Vol. 4 at 983-1075.

(12) Joyce Parmenter (Custodian of Records of Health Records Maintained at the Prison Unit Where Hall is Confined)

Ms. Parmenter authenticated by her affidavit the health records of the prison unit where Hall has been confined. Id. at 1075-113. A Mental Health Assessment form dated July 29, 2002, did not indicate that the evaluator observed anything inappropriate about Hall's conduct. Id. at 1081. Hall's personal hygiene was observed to be neat and clean; his cell hygiene was observed to be neat and orderly; he was shown to be oriented as to date, time, and place; his thought process was shown to be coherent; his thought content, speech rate, speech volume, and mood were shown to be normal; his attitude was shown to be cooperative; and, his behavior and attention span were shown to be normal. Basically the same findings were noted in a Mental Health Assessment form completed on May 2, 2002. Id. at 1082.

Hall was given a TONI-III test of nonverbal intelligence in March 2000, which resulted in a score of 77. Id. at 1086.

(13) Jerry W. Halpin (Custodian of Records for Garland Independent School District)

Mr. Halpin authenticated by his affidavit Garland Independent School District's records pertaining to Hall. Id. Vol. 5 at 1114-1479.

The records show that a WISC-R intelligence test performed on Hall in October 1991 determined that his intellectual functioning was in the borderline range of ability, with a full scale IQ score of 71. Id. at 1436. An individual assessment dated October 29, 1991, said that Hall's "performance on the WISC-R [performed 10/8/91] indicates that his/her assessed intellectual ability is above the mentally retarded range." Id. at 1440. As a result of an evaluation of Hall made in 1994, his TONI-2 Quotient was 84 and his adaptive behavior was described as follows:

The student's adaptive behavior was assessed using informal measures. Results showed that the student's level of intellectual functioning is consistent with his/her adaptive behavior, with no significant deficits in either area.

Id. at 1332. A form dated November 30, 1994, states that "[Hall's] performance on the standardized intelligence test indicates that [his] assessed intellectual ability is above the mentally retarded range." Id. at 1463.

An observation record dated November 30, 1994, when Hall was in the ninth grade, noted that Hall is poorly motivated, did not complete tasks, was easily distracted, and attempted but failed tasks; that frequently Hall was easily frustrated, slow to start assignments, could not remember directions or facts, had difficulty making friends, had difficulty in understanding spoken language, and that occasionally he was excessively shy. Id. at 1239. Similar observations are noted throughout the school records. As examples, a report dated May 5, 1994, indicated that Hall's failing grades in English resulted from tutorial non-attendance, non-completion of assignments, inattentiveness, student apathy, and low test grades; a December 7, 1995, report showed that Hall's failing grades in Spanish appeared to be the result of non-completion of assignments, inattentiveness, student apathy, and low test scores; the report of Hall's 1994 evaluation said that based on assessment data, Hall "demonstrates significant academic or developmental deficits in the area(s) of: reading, spelling, and math," id. at 1333, and stated that Hall appears to meet specific eligibility criteria for a learning disability, id., and that Hall "can be expected to meet the district's regular criteria for receiving passing grades and maintaining extracurricular activities," id. at 1336.

Interspersed throughout the school records are comments from teachers suggesting that lack of attention, sleeping in class, and simply refusing to do his work were significant parts of Hall's problem. An exception is a report by Ms. Conner, made at the tenth-grade level, which she concluded with the statement that "[f]or some reason (unknown to me) [Hall] is working well this semester and is doing good work on equal level with the other students in class." Id. at 1427.

(14) S. Buentello

Mr. Buentello was the chairman of the State Classification Committee of the Texas Department of Criminal Justice-Operations Division. In that capacity, he gave an affidavit stating that Hall's records at the prison indicated that Hall had not had disciplinary problems and had maintained a clear conduct record while confined in the prison. Mr. Buentello also served as record clerk of the Texas prison system. In that capacity, he authenticated copies of Hall's photograph, fingerprints, and commitment documents. Clerk's R., St. Habeas, Vol. 6 at 1481-92.

e. Dr. Price's Affidavit Filed by State in Reply

The State responded to the affidavits Hall filed on September 20, 2002, by the filing of another affidavit of Dr.

Price, with supporting documents. Id. at 1496-568. The affidavit was signed October 5, 2002, and filed October 7, 2002.

Dr. Price again provided, and elaborated on, his qualifications to speak on the subject of mental disorders. He provided more detail concerning his examination and evaluation of Hall's mental capabilities. His affidavit listed the sources of information upon which he relied in giving the affidavit, which included a review of the affidavits Hall had filed in support of his habeas application.

In Dr. Price's affidavit he focused on Dr. Denkowski's affidavit, pointing out the inappropriateness of Dr. Denkowski rendering an opinion concerning Hall's mental status without having conducted any kind of examination of Hall. Dr. Price stated that "the issue of the diagnosis of mild mental retardation is controversial and determining whether or not someone receives that diagnosis can literally turn on a word or a number." Id. at 1501. He discussed the misleading nature of the tendency of the advocates in favor of persons claiming mental retardation to raise the dividing point IQ to 75, id. at 1501-02; and, he explained that "[t]here is no consensus in the scientific literature about the structure or the measurement of adaptive behaviors," id. at 1502. Dr. Price explained that none of the

specific adaptive skills that are to be considered can be reliably and validly measured with any existing instrument. Id. at 1503.

Dr. Price attached to his affidavit his initial report of his psychological evaluation of Hall over a period of three days in early February 2000. Id. at 1540-64. The information contained in that report supplemented information Dr. Price previously had provided concerning Hall's mental status. For example, Dr. Price reported that "[Hall's] thought processes were goal directed and logical," "[h]is thought content was generally focused on religion, jury selection, and the trial," and "[h]is effort was good, and he showed no signs of problems related to attention or concentration." Id. at 1540.

Included in Dr. Price's report was a detailed discussion, on a day-by-day basis, of his interviews with Hall in early February 2000. Id. at 1552-62. The question and answer format used by Dr. Price demonstrated the extent to which Hall had the ability to reason and to conduct an intelligent conversation. Hall's response to one of Dr. Price's questions indicated that he understood the "law of parties"--that he could be held accountable for Neville's conduct in firing the shots that killed Amy Robinson. Id. at 1554. However, he expressed disagreement