Tennessee Judicial Nominating Commission

Application for Nomination to Judicial Office

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Name: Sandra N. Craig Donaghy

Office Address: (including county) Office of the District Attorney General
101 South Main Street, Suite 300
Clinton, Anderson County, Tennessee 37716

Office Phone: (865) 457-5640 Facsimile: (865) 457-9352

Office Email Address:sndonaghy@tndagc.org

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INTRODUCTION

Tennessee Code Annotated section 17-4-101 charges the Judicial Nominating Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Commission needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website http://www.tncourts.gov). The Commission requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit the completed form to the Administrative Office of the Courts in paper format (with ink signature) ***and*** electronic format (either as an image or a word processing file and with electronic or scanned signature). Please submit fourteen (14) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to debra.hayes@tncourts.gov.

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I am presently employed by the State of Tennessee as the Deputy District Attorney General in the Seventh Judicial District, Anderson County, Tennessee. I prosecute criminal cases in all courts of the District and supervise the other attorneys and support staff. There are seven attorneys in the Office including the elected district attorney, General David S. Clark. The Office handles criminal prosecution.

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

I have been a practicing attorney for nearly thirty years, beginning with my admission to the Wisconsin Bar in 1984. I was licensed to practice law in Tennessee in 1992. My Tennessee Board of Professional Responsibility Number is 15743.

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

I was licensed to practice law in Wisconsin on June 19, 1984; my Member Number is 1006628. My license is active.

I was licensed to practice law in Tennessee on November 2, 1992; my Board of Professional Responsibilities Number is 15743. My license is active.

I was licensed to practice law in Illinois on July 9, 1996; my Attorney Registration and Disciplinary Commission Registration Number is 6231685. My license is active.

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any State? If so, explain. (This applies even if the denial was temporary).

No.

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

The following is a list of the professional or business employment and experience I have had since completion of my legal education, in reverse chronological order:

Protecting the public and the rights of the accused for over twenty years:
September 2006 to present: Assistant District Attorney General in the Seventh Judicial District of Tennessee. The Seventh Judicial District is comprised of Anderson County.

February 1997 to August 2006: Assistant District Attorney General in the Tenth Judicial District of Tennessee. The Tenth Judicial District is comprised of the Counties of Bradley, McMinn, Monroe, and Polk.

April 1996 to February 1997: Assistant Public Defender in Kane County, Illinois assigned to the Multiple Defenders Division, a sub-office within the Public Defender's Office. Kane County, Illinois has a population of 520,000 and is a suburb of Chicago, Illinois.

October 1992 to March 1996: Assistant District Attorney General in the Tenth Judicial District of Tennessee. The Tenth Judicial District is comprised of the Counties of Bradley, McMinn, Monroe, and Polk. During October 1992, my status was unpaid while I awaited Tennessee licensure.

June 1984 to September 1992: Private practice as a sole general practitioner, in Racine, Wisconsin. I handled both civil and criminal cases; was appointed as a Juvenile Court Commissioner; was named permanent guardian *ad litem*; and was hired on a limited basis as a special prosecutor by the District Attorney's Office to handle paternity, child support, and URISA cases.

The following is a list and description of occupations, business or professional work other than the practice of law, listed by category, in reverse chronological order:

Commitment to education:
Adjunct teacher:
1998 to present: I have been hired to teach substantive classes in criminal law at the Cleveland State Police Academy, Cleveland, Tennessee. Three police academies are held each year. I prepared lessons and presented 96 hours of instruction annually in the following areas: basic law, constitutional law, stops, arrest, search and seizure, statements, evidence, criminal procedure, and victims' rights. For the past several years, I have been the Lead Legal Instructor.

August 2002 to December 2002: I taught substantive criminal law at Cleveland State Community College in the Legal Assistant/Criminal Justice Department, Cleveland, Tennessee.

July 1985 to December 1996: While in private practice in Wisconsin, I taught Business Law at Gateway Technical College (formerly known as Gateway Technical Institute) in Racine, Wisconsin for at least three terms. I was certified in the instructional area of Business Administration by the Wisconsin Board of Vocational, Technical and Adult Education on June 26, 1985.

Extensive public service experience:
American Red Cross professional:
June 1976 to August 1981: I was the full-time Director of Safety Services for the Lakeshore Counties Chapter of the American Red Cross, 4521 Taylor Avenue, Racine, Wisconsin. I recruited, trained and supervised 700 volunteers to conduct classes in Racine and Kenosha Counties, in first aid, cardiopulmonary resuscitation (CPR), and water safety. When CPR first became available to the public, my Chapter trained more people by percentage of population than any other Chapter in the United States.

I prepared and presented the departmental budget to funding entities, prepared and presented statistical reports regarding program effectiveness, and personally taught many courses. I was certified as a trainer of instructors for almost all types of Red Cross instruction and was invited to serve on staff at two National Aquatic Schools.

Civic involvement from an early age:
Swim Instructor/Life Guard:
1965 to 1976: I volunteered at the Racine, Wisconsin YWCA as an assistant swim instructor when I was just 10 years old. When I became old enough to be certified, I was hired as a life guard and swim instructor. I taught swimming lessons to children and adults, part-time, through college. I directed swimming programs for the YWCA, the YMCA, and Memorial Pool. I directed adapted aquatics programs, cooperatively funded through United Way and private donations, in the evening and summers at Wadewitz School (Racine, WI) and Jane Vernon School (Kenosha, WI). These programs were designed to provide recreation and teach water safety to mentally and physically handicapped children. I recruited and trained assistants for these programs. I developed a report card to document and reward the progress made, which was published in national Red Cross literature and adopted by programs across the country. For the City of Racine Park and Recreation Department, I trained the life guards for the beaches on Lake Michigan, and was Captain of the life guards in 1982.

Real world small business experience:
Manager/Employee in family owned business:
1965 to 1985: From about the age of ten until after law school, I helped my parents with the family-owned restaurant business, The Sunshine, at 1655 Taylor Avenue, Racine, Wisconsin. This business was started by my grandfather in 1932. My parents assumed management and control in 1956. Over the years, I washed dishes, cooked, waited tables, and handled light bookkeeping. In 1996 after my mother died and when my father became ill, I reviewed documentation of weekly income and expenses and worked with a local CPA to complete required tax filings for an orderly dissolution. I had relocated to Illinois at this time, and so I was able to travel to and from Wisconsin on weekends to check on my dad and help him handle the business until we were able to sell it

Property, probate and business experience:
Partnership: During calendar years 1999-2004, I was a partner in a business formed to manage the summer resort of my grandmother, known as Chapman Cove. Her estate, referenced in my response to Question 11, consisted entirely of land, a house, and two cottages. The house was

rented annually and the cottages were rented weekly during the summer months. Once the property was transferred to the heirs, the partnership was formed to manage the resort until the property was sold. My partners were my aunt and sister. The business was dissolved in 2003 and final tax matters were concluded in 2004. I managed all legal affairs to settle the estate.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six moths.

Not applicable

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

From 1992 to present, my practice has been entirely focused on criminal law. But for a brief period related to my husband's job transfer, I have been an Assistant District Attorney General in East Tennessee for the past 20 years. I have personally resolved more than 15,000 cases and tried nearly 200 jury trials. I am a very capable and experienced litigator.

Presently, I practice almost exclusively in the Circuit/Criminal Court, handling the most serious and most-complicated cases. I work closely with law enforcement officers and crime victims on cases including: domestic violence, murder, crimes against children, rapes and robberies, white collar crimes, property crimes, and some traffic offenses. We have limited support staff, so I do my own research and writing. I am knowledgeable in the law and a high energy worker.

As Deputy District Attorney, I have been a technical and procedural resource for my office. Our collective effectiveness has been quantified using statistics generated and reported by outside agencies. There has been a 27.5% reduction in crimes reported since 2006 when I was appointed: see Exhibit A, chart. This suggests tougher prosecution, targeting recidivists, and holding offenders accountable has a direct impact on the quality of life in our community. I have been an effective prosecutor.

I have tried two death penalty cases and one life without the possibility of parole case. My current caseload includes a child abuse/murder case for which the State is seeking the death penalty. These matters tend to be the most complicated and emotionally charged types of cases.

My practice is in the Circuit/Criminal Court because all appeals are handled by the Attorney General's Office in Nashville, Tennessee. However, I have handled many post-conviction matters and appeals from General Sessions and Juvenile Courts to the Circuit/Criminal Court, which most closely resemble appellate-type work.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about

whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Commission needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Commission. Please provide detailed information that will allow the Commission to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

Private Practice: From June 1984 to September 1992, I was in private practice in Racine, Wisconsin, population 200,000. My practice was general in nature and I handled cases from complicated divorce and child custody matters to minor traffic tickets. I practiced in the circuit courts, federal court, municipal courts, and before administrative law judges.

As a general practitioner, I took almost anything that came through my door. I drafted wills, handled real estate closings on behalf of buyers and sellers, prepared business agreements, and filed for bankruptcy relief under Chapters 7, 11, and 13. I was highly regarded for my ability to relate with people, my command of the law, and my attention to detail in the areas of family law, juvenile law, and criminal defense. I represented individuals and businesses/employers in administrative proceedings in the following areas: revocation of probation or parole, unemployment, social security, and worker's compensation. I also served as guardian *ad litem* to review placement of mentally disabled adults in state hospitals. My caseload was comprised of civil and criminal matters.

I was the first woman appointed as a court commissioner, assigned to handle pre-dispositional matters in Juvenile Court cases. I was selected by the nine sitting judges as one of five attorneys to handle all of the guardian *ad litem* appointments on a contractual basis. The District Attorney's Office hired me as a special prosecutor to handle paternity, child support, and URISA cases. I continued to receive appointments for indigent defense. I balanced these appointments while continuing to develop my private caseload. This speaks to the diversity of my practice and my ability to handle a fast-paced work schedule.

My clients came from all walks of life. At first, I paid my overhead expenses from appointed criminal cases and guardian *ad litem* appointments. As my reputation grew, I was able to focus my practice. I was retained to represent clients in both criminal and civil matters. I think my family law practice grew because I cared about my clients and have an appreciation for less fortunate socio-economic groups; probably due to my formative restaurant experiences. I listened to their concerns and feelings and tried to guide them through the process. I was not the best businesswoman as I charged much less than the work justified, allowed too many clients to make payments, and accepted more than my share of *pro bono* cases. With time, I learned to balance helping others with my need to make a living. By the time I married my husband and decided to close my practice, I fully supported an office of my own, paid off my student loans, employed four support staff, and paid myself a respectable wage.

Assistant District Attorney General: In October 1992, I volunteered in the Office of the Tenth Judicial District Attorney until I was admitted to the Tennessee bar. Then, from November 1992 until March 1996, I was employed on a full-time basis as an Assistant District Attorney General. Based on my experience and the needs of the District, I was immediately assigned cases, misdemeanor and felony, in General Sessions and Criminal Courts. Within four months of my arrival, I was named North Team Leader, mentoring and supervising the attorneys on my team.

The Tenth Judicial District is a four-county District in southeast Tennessee, comprised of Bradley, McMinn, Monroe and Polk Counties. There were fourteen attorneys, one investigator, three victim-witness coordinators, and five administrative assistants on staff. As Team Leader, I was responsible for assuring that all courts were covered, and that cases were fairly allocated among the attorneys. I carried a full caseload, supervised the staff, and kept the District Attorney General informed of matters of importance. Although we generally followed a vertical prosecution model, I tended to take all of the child abuse cases (physical and sexual abuse) because one of the attorneys on my team did not relate to child victims as well as I. During this period of my career, I prosecuted murder cases, child abuse cases, burglaries, and DUIs. I assisted District Attorney General Jerry Estes with my first death penalty case. I prepared and examined the forensic scientists. This case was the first jury trial our office handled involving DNA evidence. The defendant was convicted and the jury imposed a sentence of death.

When my husband's career caused us to move to Illinois, I tearfully left this portion of my practice to move to Illinois.

Assistant Public Defender: From April 1996 through February 1997, I served as an attorney for indigent defendants in Kane County, Illinois, a western suburb of Chicago, Illinois. I was assigned to the Multiple Defenders Division, a sub-office within the Public Defender's Office, specifically created to act when appointed representation was required and a legal conflict existed within the office. Although physically within the same office and under the supervision of the elected public defender, the Unit had a separate office, separate entrance, and did not commingle files or pleadings.

During this phase of my career, I handled several murder cases, post-conviction relief cases, drug cases, robberies, burglaries, and other property crimes. I visited the jail on a daily basis to meet with my clients to prepare for pre-trial hearings by video conferencing. This accommodation to alleviate cross-county transportation of prisoners necessitated advance preparation for all hearings as there was neither time nor privacy to confer with clients in the courtroom. I represented two clients that were inmates in maximum security penitentiaries in Illinois at Pontiac and Joliet, prisons with "Alcatraz-type" legacies. They were difficult and demanding clients with their own training as "jail-house lawyers." To gain the respect of these clients, I was forced to research the issues they raised to convince them their claims lacked merit before moving on to issues with legal significance.

I am very proud of the rights guaranteed to our accused and felt comfortable as a defense attorney challenging the authority exercised by law enforcement in seeking evidence. Even

though frustrated by my clients' overall lack of concern for their circumstances, I spent much of my time encouraging them to take action, reminding them of their responsibilities and court dates, and coaching them to make positive life changes. I felt like a mother, a social worker, and a legal advocate, in that order.

My husband was not happy in the overall ethics of his corporate employment, and I was lukewarm with my position, so I contacted my former employer to see if there was an opportunity to return to Tennessee. General Estes indicated he had an opening, but that if I returned, I would be assigned to the Cleveland, Bradley County, Tennessee Office. My husband and I discussed the prospect of return and decided that since I had compromised my career twice for his career, this time he would follow me to Tennessee. He remained in Illinois to sell our home, and I found temporary housing and resumed my career as an Assistant District Attorney General.

Assistant District Attorney General: After the ten-month hiatus, I returned to Tennessee in February 1997. Within a month or two, I was named South Team Leader. In June 2004, following office reorganization I was named Chief Assistant District Attorney General.

As an experienced prosecutor in the Tenth District, I handled more of the problematic cases and matters of high visibility. I was a resource to the other attorneys and served as a sounding board on legal issues. Law enforcement officers frequently came to me to review their cases. During these years, I represented the Office on Child Abuse Investigative Teams, Child Fatality Review Teams, and managed the cases presented to the Grand Juries. I made charging recommendations and insured that case files were complete before the cases were presented for grand jury review.

General Estes and I jointly tried another death penalty case during this period, but I researched and drafted all of the pre-trial motion responses and arguments. In excess of 300 motions were filed by the defense team. Since the case was a cold case, evidence was particularly complicated. To assure admissibility, its handling and transfer had to be traced over a ten-year period to prove lack of degradation or contamination. The jury convicted and imposed a sentence of death.

During my career in the Tenth Judicial District, I tried in excess of 150 jury trials and handled more than 3,600 cases in Tennessee Courts of Record. I estimate that I handled more than 10,000 cases in the lower courts. When General Estes left office, I transferred to the Seventh Judicial District in Anderson County, Tennessee.

I began as an Assistant District Attorney with a newly elected District Attorney in Clinton, Anderson County, Tennessee in September 2006. This District is a one-county district, with seven attorneys, including the elected district attorney, General David S. Clark. The Office operates on a horizontal prosecution model with two attorneys assigned to the lower courts and three attorneys assigned to Circuit Court. I practice exclusively in Circuit/Criminal Court, handling the most serious and most-complicated of the cases. I was named Deputy District Attorney in 2013. For a period, I handled all of the cases in the Circuit Court, but presently the case load is divided and I mentor the younger attorneys, providing legal guidance and talking

through the issues they face. I share old pleadings or briefs for use as a template by my colleagues. I frequently am called upon by law enforcement for advice or case review and the elected district attorney seeks my opinion or advice on matters. Our work environment is collaborative and collegial.

In conjunction with my duties, I have represented the Office at: Child Protective Investigative Team Meetings where reported cases of child physical and sex abuse are reviewed, attended Community Corrections Board meetings, given input to the Domestic Violence Task Force, and collaborated with law enforcement and representatives of the mental health community to develop protocols for a Crisis Intervention Team. I helped plan celebrations during Victim's Rights Week and walked in support of the Child Advocacy Center. I have presented in-service training for law enforcement toward annual Peace Officer Standards and Training (POST) continuing education requirements. Because I believe hands-on training to be crucial to my relationship with law enforcement, I trained with the officers in areas of defensive tactics and firearms, actually meeting the qualification requirement with a handgun in February, 2008.

General Clark has been willing to allow me to take annual leave to teach at the Cleveland State Police Academy and to serve as Magistrate for the Bradley County Juvenile Drug Court. My teaching is more fully described in the response to Question 31. My judicial experience is more fully discussed in the response to Question 10.

I have kept current on legal issues through continuing education including annual attendance at the District Attorney's Annual Training Conference, and I attended three Drug Court Conferences.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

Since being admitted to practice, I have tried nearly 200 jury trials. In addition, I have litigated hundreds of contested violations of probation and petitions for post-conviction relief. In General Sessions Court, I have disposed of many misdemeanors by bench trial, but did not attempt to keep track or document these cases.

Particularly with respect to jury trials, I feel that each held significance. However, I have identified a few cases which were of particular significance to me. They are summarized below; not in any order of significance:

State of Wisconsin v. Jaime Lee Kennedy
(1) Period of proceedings: 1984 - 1985
(2) Name of the Court: Racine County Circuit Branch V, Judge Dennis Barry
(3) Substance of the case: Juvenile Jury Trial on charges of First Degree Sexual Assault (forcible rape)
(4) Significance of the case: I was appointed to represent the defendant, a 17 year-old, who had been transferred to adult court and accused of raping a ten year old female, family friend. In addition to the rape case, my client had a pending drug charge which was ruled inadmissible

in a pre-trial hearing. During the testimony of the prosecuting officer, testimony was elicited by the prosecution concerning the unrelated drug charge. My motion for mistrial was granted. When the matter was re-tried, I cross examined the State's forensic scientist with a biology text I borrowed from a former professor. The witness admitted the stain in the child's panties contained the same materials also found in some vaginal secretions. The jury acquitted.

This case was significant for me because it was my very first trial, and I was able to use the rules of evidence to keep out certain damaging information and to bring in aspects of doubt.

State of Wisconsin v. Claude Hamilton
(1) Period of proceedings: 1988 - 1989
(2) Name of the Court: Racine County Circuit Branch II, Judge Stephen Simanek
(3) Substance of the case: Jury Trial on Possession of Cocaine with Intent to Deliver
(4) Significance of the case: My client, the defendant, owned and resided in an apartment. He allowed his son to reside in one of the bedrooms. Police executed a search warrant and found cocaine hidden in the son's room. My client was in the son's room when the police came to execute the warrant. Through careful questioning of the detective, I was able to argue that the drugs were present in the room, but without my client's knowledge. The jury acquitted.

This case had particular significance for me because, from my review of the evidence, I had come to the conclusion that my client was guilty. I had to set aside my personal impressions and advocate for his acquittal.

Later, when interviewing for the position of Assistant District Attorney General, I was asked if I could follow Tennessee law and impose the death penalty. Since Wisconsin did not have the death penalty, I had not really considered the issue. I likened the dilemma to the issues I had with Mr. Hamilton's case and replied that I felt I could follow the law so long as there was sufficient and credible evidence. Since then, I have been involved in two death penalty cases.

State of Tennessee v. Dankworth, Terry, and Terry
(1) Period of proceedings: 1993 - 1995
(2) Name of the Court: McMinn County Criminal Court, Judge Mayo Mashburn
(3) Substance of the case: Three-defendant, Rape of a Child case
(4) Significance of the case: Three co-defendants, the mother and her two adult sons, were accused of digitally penetrating a 5-year-old female child. They had access to the child as they were friends of the child's mother.

The case was tried to a jury and convictions returned on all counts. The Judge denied the defense motion for Judgment of Acquittal notwithstanding the verdict. Then, about three weeks later, *sua sponte* and sitting as 13th juror, the judge set aside the verdict as contrary to the weight of the evidence. He articulated his reasoning by explaining that an in camera inspection of material caused him to question the child's credibility.

On my urging, the State appealed. His actions were affirmed, but the case was remanded for retrial before a different judge. The appeal case is reported at *State v. Dankworth*, 919 S.W.2d

52 (Tenn. Crim. App. 1996).

State of Tennessee v. Rex Jones
(1) Period of proceedings: 1995 – 1996
(2) Name of the Court: McMinn County Criminal Court, Judge R. Steven Bebb
(3) Substance of the case: Jury trial on 33 counts of Aggravated Child Abuse, Rape, Child Abuse, Child Neglect and Failure to Send Children to School
(4) Significance of the case: This case was very complicated in that there were many crimes and many victims.

There were 8 or 10 children born of the co-defendants in the case. The children were neglected and abused for most of their lives. Only two of the children had ever been to school. They were living in two adjoining hotel rooms. The situation was discovered when two of the youngest children ran away and told the police that "[they] ran away because [they] wanted to go to school." Two of the daughters were raped, and all of the children were physically abused and neglected.

A jury convicted on all counts. The court set aside two of the rape convictions because the proof was at variance with surplusage in the indictment. The defendant appealed his convictions and sentence. The State cross appealed on the rape charges. The Court of Appeals affirmed all of the convictions and reinstated the rape convictions.

This case was significant to me because the evidentiary issues were complex and the case involved many victims. During the proceeding, the eldest daughter recanted her testimony and fled the state. Following her lead, the other children became reluctant to testify against their parents. At trial, the children testified to many acts which occurred while they lived within our jurisdiction. I had to elect specific acts within the period of the indictment to assure a unanimous verdict. Appellate review is reported at *State v. Jones*, 953 S.W.2d 695 (Tenn. Crim. App. 1996).

This case has continuing significance for me. Our office has had to prosecute four of the older children for drug offenses, theft, and assault. The eldest daughter, impregnated by her father, tried to raise the child but about a year later, committed suicide. The status of the youngest children is unknown to me. I am hoping they were able to find their way in spite of very difficult experiences.

State of Tennessee v. Charles Overby
(1) Period of proceedings: 1998-2005
(2) Name of the Court: Bradley County Criminal Court, Judge Carroll Ross
(3) Substance of the case: Second Degree Murder and other related charges
(4) Significance of the case: This case is significant to me for three reasons: it was an early methamphetamine-related death case; the defense used lay and expert witnesses to try to prove insanity; and my appreciation for victims' rights grew exponentially.

According to the testimony of the defendant, he used methamphetamines for 18 days, stole a law

enforcement vehicle, and drove it to Tennessee looking for his children. He happened upon the home of the victim, looking for his children. When advised there were no children at that home, he shot and killed the victim using a weapon from the officer's vehicle. The defendant had some mental health issues and during trial, he called 6 or 8 doctors to testify on his mental state. Although he had mental infirmities, the proof showed he was competent to stand trial and was not insane at the time he committed the crimes.

A significant aspect of this case relates to a relationship I formed with the victim. The decedent's mother is a good, caring woman. She suffered through the entire process: faced her son's killer only one week after his death; attended every hearing; listened to the entire trial and spoke at sentencing. Through her, I gained insight into the many stages one must pass to survive the loss of a loved one under violent circumstances. I have seen her at very difficult times in her life and I have witnessed her help others. She has supported other victims with the empathy that only one who has survived such an ordeal could muster. At my invitation, she has been a guest speaker at training for officers to speak to the affect their actions have on victims. I respect and appreciate her personal determination and her friendship.

State v. Robert Fritts
(1) Period of proceedings: 2008-2010
(2) Name of the Court: Anderson County Criminal Court, Judge Donald R. Elledge
(3) Substance of the case: First Degree Murder
(4) Significance of the case: This case has significance for me because the murder was borne of domestic violence, the crime scene was gruesome, the forensic evidence was complicated and voluminous, and the other evidence was circumstantial. During the preparation and trial of this matter, I coached another attorney; we divided the pre-trial research and witness preparation. The trial was seven days in duration. The jury returned a verdict of guilt and imposed a sentence of life without the possibility of parole.

This case has personal significance because I was responsible for presenting all of the proof and arguments while guiding another through the process, sharing thoughts and reasoning. It required strict time management.

State of Tennessee v. Phillip Douglas Seals
(1) Period of proceedings: 2006-2008
(2) Name of the Court: Anderson County Criminal Court, Judge Donald R. Elledge
(3) Substance of the case: Two counts First Degree Murder and two counts of Felony Murder
(4) Significance of the case: This case is significant to me because I was not involved in original trial of the matter. However, I argued against the motion for new trial and a subsequent petition for post-conviction relief.

This case was tried to a jury in June 2006. At the time of the motion for new trial, there had been an election of a new district attorney and office personnel had changed. I had to thoroughly review the transcripts, exhibits, and jury instructions to respond to the claims of the defendant.

This case is significant for me because my knowledge about the facts of the case and the

proceedings derived from review of the record. The process I used to respond to the allegations of error was similar to the process used in appellate review. The claims raised grounds of sufficiency of the evidence, concerns over jury instructions used, denial of proffered expert testimony, and allegations of newly discovered evidence. The case is reported at *State v. Seals*, No. E2007-02332-CCA-R3-CD (Tenn. Crim. App. 2009).

In summation, I chose these cases because they hold personal significance for me. In addition, this is a sampling of cases I litigated over the years, which represent the depth and breadth of my experience. They collectively illustrate the nature of the practice, the complexity of the issues, and the nuances that come with trial practice. Each case was a learning experience – complex, and emotional. This type of grooming and preparation cannot be learned from a textbook; it only comes with solid experience and baptism by fire. I believe the nature of my practice and the work I do best has given me the breadth and depth of knowledge to thoroughly and effectively address the matters and issues that will face the Court of Criminal Appeals in the future.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

Law Clerk:
Between my first and second years of law school (summer 1982), I served as a law clerk to the Honorable Dennis J. Flynn, Racine County Circuit Court Branch 8. I researched pertinent issues and wrote opinions on large claim civil disputes. I really enjoyed the writing.

Court Commissioner:
In 1988, Judge Dennis J. Flynn appointed me as a Juvenile Court Commissioner. I presided at detention hearings, truancy hearings, pre-trial conferences, and entered temporary orders on matters pre-adjudication. I had dispositional authority on consent decrees. These cases carry no legal or personal significance for me. I enjoyed exercising judgment and procedurally posturing the cases for disposition.

Bradley County Juvenile Drug Court Magistrate:
The Tenth Judicial District had a successful drug court for adults where I participated as a practicing assistant district attorney. I had occasion to attend some drug court training and observed graduation at the Drug Court in Buffalo, New York. This experience moved me and created an impression of an alternative method to handle select cases.

In October, 2006, the newly elected General Sessions Judge in Bradley County, Tennessee, Judge Daniel Swafford, asked me to develop a juvenile drug court for Bradley County. His predecessor and a team had attended training to form the specialty court, but no action had been taken. I reviewed all of the materials and met with the team to draft our protocols and to define measureable goals and objectives. My new employer, General Clark, allowed me to return to

Cleveland, Tennessee each Monday afternoon to preside over this court on Monday evenings.

The Bradley County Juvenile Drug Court officially began November 2006. A steering committee, to which I presented our progress and issues and from which I sought support and input, was created and met quarterly. Agencies participating on the steering committee included representatives from the city and county schools systems, treatment providers, businessmen and women, the YMCA, and an elected official. On a weekly basis, I met with the team to staff each case. The team was comprised of representatives from: the Public Defender's Office, the District Attorney's Office, the literacy center, treatment providers, probation officers, the Clerk of Court's Office, law enforcement, and the Drug Court Coordinator.

Each week, I formally reviewed each participant's treatment progress, compliance with terms of supervision, educational goals, and behaviors within her or his family home. I exercised this judicial function from October 2006 to July 2010. Positive behaviors were recognized through open praise or with a small incentive, which others donated to the program. Negative behaviors were sanctioned on a graded system, up to and including a sentence to the detention center.

Our approach caused lives to change and our Drug Court graduated twenty-six participants. As of 2010, we had only a four percent rate of recidivism among our graduates. Although it was called a "juvenile drug court," it was operated more like a "family drug court;" the parents were required to attend Court each week with their child. So, by default, all were accountable to the overall treatment scheme and the monitoring of weekly objectives. I developed reporting forms to track the participant's weekly progress and to document movement of the case through the defined process.

Graduations were held as needed and occurred three or four times per year. The ceremony included those eligible for phase advancement. At the graduations, I recognized the accomplishments of each child and family.

Because of my full-time employment as an assistant district attorney, I disclosed in open court to each participant my position and gave each family the opportunity to opt out of the program if they felt I had a conflict of interest. Since Anderson County is 88 miles from Bradley County, and I had not worked with the assistant district attorneys assigned to the Drug Court Team, I perceived no conflict on any of the cases. My duties were assumed by a full-time magistrate in 2010.

All of the cases were noteworthy in their own right. Our approach, by design, included: close supervision; frequent drug testing; weekly monitoring by probation, treatment providers, and the Court; and recognition of gains made or sanctions for poor choices. A child was in the drug court for twelve to twenty-four months, depending on individual progress. Lives were changed. We were able to assist the children with educational objectives, to maintain abstinence, and to stabilize their family situations. Attitudes improved as they found self-esteem.

We referred to the children by their first names only and to their parents as "Mom" or "Dad." These records are no longer available to me and so I have no specifics from which I can make

reference.

11. Describe generally any experience you have of serving in a fiduciary capacity such as guardian *ad litem*, conservator, or trustee other than as a lawyer representing clients.

I served as Special Administrator of my grandmother's estate, probated about 15-20 years after her death. There were no liquid assets to manage until the home was sold and proceeds were distributed among the surviving heirs.

I am currently the Administrator of my father's estate, an open/inactive case in Bradley County, Tennessee. The administration is essentially finished except for recovering a few shares of stock that I discovered as unclaimed or abandoned property. The transfer is cumbersome and has involved petitioning the court in Wisconsin to re-open my paternal grandmother's estate (probated in 1964) and terminating joint tenancy with my mother who died in 1993. The value is de minimis but is a matter of principle.

I served my church as a Trustee during the time the Christian Life Center was built. On behalf of the church, I reviewed and signed documents to borrow funds and to deed the new building to the church Conference.

As addressed in my response to Question 8, I was appointed numerous times to serve as guardian *ad litem* on the following types of cases: divorce cases involving children, paternity cases, dependency and neglect matters, terminations of parental rights, and mental commitments. I was selected based upon my expertise in the area and my ability to relate well to the litigants and wards. I was one of five attorneys selected to act in this capacity. My investigation, advocacy, and writings were highly regarded by the attorneys and the court. My judgment was respected and frequently adopted by the court. This was some of the work I was most proud of because I was an advocate for people who were unable to help themselves.

I enjoyed my role in each of these matters. I managed the decisions made and funds controlled as if the assets were my own and the consequences personal. This conscientious and protective management style will serve me well on the bench.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Commission.

Mentoring: Throughout my legal career, but especially in the supervisory roles I held in the District Attorney General's Office, I tried to mentor and encourage new attorneys or those interested in the profession. I have cultivated relationships with Cleveland State, Lee University and the University of Tennessee College of Law for student interns. The interns have been exposed to meaningful assignments. This relationship gives the office some no or low cost manpower and gives the intern experiences they could never get in the classroom. Several of our interns have gone to law school or secretarial positions within the legal community. Others have become career prosecutors or taken the bench.

When working with the new attorneys in our office, I make myself available to them and coach them through issues and in problem-solving. I always try to lead by example. Through consistent and dedicated supervision, I encourage them to grow and improve. Over the years, many have voiced appreciation for the guidance I gave as they started their careers. I try to have an "open door" relationship and encourage their questions, even if it means interrupting my work. I encourage them to learn from their mistakes, taking time to explain the issues, and offer constructive criticism.

Advisory/Policymaking: Over the years, policy-making authority has been delegated to me. In that capacity, I have worked with many agencies through multi-disciplinary working groups to address issues of mutual concern. More specifically, in 2000/2001, I worked with the Department of Children's Services, law enforcement, juvenile court, mental health representatives and the Child Advocacy Center to develop protocols for the investigation of sexual abuse and severe child abuse cases. These protocols were accepted and adopted in all four counties of the Tenth Judicial District. They govern the relative responsibilities each member of the Child Protective Investigative Team has in the investigation and prosecution of these cases. I later modified our protocol to include protocol for drug endangered children from exposure to clandestine methamphetamine labs. Similarly, I worked with local law enforcement and the medical examiners to develop protocol for respecting others' roles and responding to suspicious death investigations. In 2010-2011, I completed a similar function in establishing training for the community's response to reports of crime by the mentally ill (Crisis Intervention Training). I represented the District Attorneys General Conference at a working group established by the State Medical Examiner in Nashville, in 2002. While in Wisconsin, I served on the Legislative Advocacy Committee of Racine County's Drug Task Force. In 2006-2010, I worked with others to establish the Bradley County Juvenile Drug Court Program. This program is discussed in response to Question 10.

I have actively represented the Office at meetings of the Child Protective Investigation Team, on the Child Fatality Review Board, and at Court Security meetings. I was involved in the planning session for Help for Kids and served on the Public and Government Services Advisory Council at Cleveland State Community College. I was appointed by the Bradley County Commission as the DA's representative on the Bradley County Justice System Coordination Committee in 1998 which was the forerunner to the Bradley County Misdemeanor Probation Advisory Group. I have presented awards at local DARE graduations and represented the office at several annual victims' rights events.

13. List all prior occasions on which you have submitted an application for judgeship to the Judicial Nominating Commission or any predecessor commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

On March 23, 1992, I submitted an application to the Wisconsin Governor's Advisory Council on Judicial Selection to apply for a gubernatorial appointment to fill the judicial vacancy in Racine County, Wisconsin Circuit Court Branch 3. This Judicial Selection Committee met in

April, 1992. My application was one of twelve and my name was not submitted to the Governor as a nominee.

On November 30, 2005, I submitted an application to the Tennessee Judicial Selection Committee to apply for a gubernatorial appointment to fill a judicial vacancy in the Criminal Court for the Tenth Judicial District. This Judicial Selection Committee met in December, 2005. My application was one of three. I completed the panel review process, and my name was submitted to the Governor as a nominee.

EDUCATION

14. List each college, law school, and other graduate school which you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

Law Schools:

University of Wisconsin Law School, Madison, Wisconsin

Dates of attendance:	Fall 1982 to Spring 1984
Degree Awarded:	Juris Doctorate
Major:	Law
Reason for Leaving:	Graduated; Degree Awarded

While my precise class ranking is not available, I graduated within the top one-third of the class. The Law School courses were graded on a numerical scale from 65 to 95. My weighted average was 82, which equates to a letter grade of B. In school year 1982 – 1983, I argued on the International Law Moot Court Team, writing one-third of the brief submitted in competition. I completed an extensive practical course for students intending to go into private practice. I participated in the Community Law Office, where I represented indigent clients on small claims matters and landlord/tenant disputes under the direct supervision of a practicing attorney. In my third year, I performed an internship program for one semester with the Wisconsin Court of Appeals in Madison, Wisconsin. During the program, I reviewed appellate briefs submitted by litigants, analyzed the law, and drafted opinions for the assigned Judge.

John Marshall School of Law, Chicago, Illinois

Dates of attendance:	Fall 1981 to Spring 1982
Degree Awarded:	none
Major:	Law
Reason for Leaving:	Transferred to the University of Wisconsin Law School to attend a higher ranked law school at a major state university

GPA 3.07/4.00. I estimate there were about 400 students in the first year class.
I was recognized as being within the top ten percent of my class after the first year. I was invited to enroll in the Honors Writing and Research Class, a precursor to law review. I was selected

from among my classmates to serve as Chairman of the Freshman Orientation for incoming law students.

Colleges/Universities:

Gateway Technical College, Racine, Wisconsin
Dates of attendance: Spring 1981
Degree Awarded: none
Major: undeclared
Reason for Leaving: Enrolled in one public speaking course for personal enrichment

University of Wisconsin – Parkside, Kenosha, Wisconsin
Dates of attendance: approximately 1978 - 1980
Degree Awarded: none
Major: undeclared
Reason for Leaving: Enrolled in a Business Law course and an Ecology course for personal enrichment

Carthage College, Kenosha, Wisconsin
Dates of attendance: Fall 1976
Degree Awarded: none
Major: undeclared
Reason for Leaving: Enrolled in three masters' level courses in education, for personal enrichment

University of Wisconsin – Parkside, Kenosha, Wisconsin
Dates of attendance: Fall 1975 to Spring 1976
Degree Awarded: Bachelor of Science
Major: Chemistry
Reason for Leaving: Graduated; Degree Awarded

Marquette University, Milwaukee, Wisconsin
Dates of attendance: Fall 1974 to Spring 1975
Degree Awarded: none
Major: Chemistry
Reason for Leaving: Transferred back to the University of Wisconsin Parkside for financial reasons

University of Wisconsin – Parkside, Kenosha, Wisconsin
Dates of attendance: Fall 1972 to Spring 1974
Degree Awarded: none
Major: Chemistry and Mathematics
Reason for Leaving: Transferred to Marquette University so my sister and I could be at the same college

Gateway Technical College, Racine, Wisconsin	
Dates of attendance:	Spring 1972
Degree Awarded:	none
Major:	undeclared
Reason for Leaving:	Enrolled in one psychology course, while a high school senior, for college credit

PERSONAL INFORMATION

15. State your age and date of birth.

I am 58 years old. My date of birth is December 24, 1954.

16. How long have you lived continuously in the State of Tennessee?

I have lived continuously in the State of Tennessee for 16 years and 4 months.

17. How long have you lived continuously in the county where you are now living?

I have continuously lived in Bradley County, Tennessee for 16 years and 4 months.

18. State the county in which you are registered to vote.

I am registered to vote in Bradley County, Tennessee.

19. Describe your military Service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

I took Reserve Officer Training Corps (ROTC) classes while in college but have never served in an active capacity. My husband retired in 2001 after serving for over 28 combined years in the United States Army and the Tennessee National Guard. Military service is a family commitment and affects family dynamics. For the support I gave to my husband and his unit, I claim affiliation. My husband retired from the United States Army Reserve with a rank of Major. His discharge from active duty was honorable.

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

No.

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No.

22. If you have been disciplined or cited for breach of ethics or unprofessional conduct by any court, administrative agency, bar association, disciplinary committee, or other professional group, give details.

Not applicable.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No.

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No.

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

Yes. I have been a party to three legal proceedings as follows:

Legal Change of Name: My paternal grandparents immigrated to this country in the early 1900s, met and married in Wisconsin, and began a business. My grandfather's Lithuanian surname was anglicized to "Krakis," usually mispronounced. After the marriage of my parents, they decided to legally change our name to something that was short and easy to remember because they were in the business of binding and selling children's books. Our last name was legally changed in the 1950s, in Racine County, Wisconsin to "Craig." I do not know which court handled it, nor the case number.

Possible Personal Injury Claim: In 1973 or 1974, a claim was filed with my insurance company when I had the unfortunate experience of driving when a teenage boy was chased by others into the street and ran into the side of my car. I was not cited. I was just over the age of majority and my parents and our insurance company dealt with everything. I am not certain a cause of action was filed or if the case settled out of court. I never went to court. I disclose this out of an abundance of caution.

Minor traffic violation: In 1985 or 1986, I was cited by a City of Racine Police Officer for driving on an expired tag. This matter was brought to the City of Racine Municipal Court. Before the court date, I re-registered the vehicle. The Judge dismissed the case.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices which you have held in such organizations.

First United Methodist Church, Cleveland, Tennessee
Member 1997 to present
Sunday School Teacher for the new member class, 1999
Board of Trustee, 2002-2004
Staff-Parish Relations Committee, 2003 to 2008
Chancel Choir, 2003 to present
Chairman, Administrative Board, 2006-2009
Lay Delegate to Annual Conference, 2006 to present, which also entails serving ex office on the Staff-Parish Relations Committee and on the Administrative Board
Certified Lay Speaker, leading Sunday Church Services within the Cleveland District, 2011 to present
United Methodist Women, 2004 to present
Seekers Circle of the United Methodist Women, 2004 to present

American Red Cross, Hiwassee Chapter, Cleveland, Tennessee
Board of Directors, 2004 to 2007
Chairman of Disaster Services Committee, 2005 to 2006
Volunteer, 2004 to present

Phi Alpha Delta Law Fraternity, Edward G. Ryan Chapter

Bradley County Republican Party
Tennessee Republican Party
Republican National Committee

Mary Diana Samuel Corporation, Cleveland, TN, 2011 to present
Board member of a Tennessee non-profit corporation having responsibilities for fundraising and management of a home for 60 orphaned children in Tiruvalur, India. Served on the church task force and advisory committee since 2005. Have assisted in raising of over $80,000 to date in local church support for this important mission project.

Habitat for Humanity, Bike to Build, Cleveland, Tennessee
Bicycle Rider, 2010 to present

27. Have you ever belonged to any organization, association, club or society which limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.

a. If so, list such organizations and describe the basis of the membership limitation.

b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No.

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices which you have held in such groups. List memberships and responsibilities on any committee of professional associations which you consider significant.

National:	National Association of District Attorneys, 2003 to 2006 (unsure)
State:	Tennessee Bar Association, 2002 to 2007, 2013
	Wisconsin Bar Association, 1984 to present
Local:	Anderson County Bar Association, 2006 and 2012 to present
	Bradley County Bar Association, 2002 to 2006

I held no offices and did not serve on any substantive committees. I may have served on social planning committees.

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school which are directly related to professional accomplishments.

President's Award: I was the Tennessee prosecutor for the year 2005, recognized by the Tennessee District Attorneys' Conference for exceptional service to the criminal justice system of the State of Tennessee, the Tennessee District Attorneys' Conference, and the citizens served. This award was presented by General Elizabeth Rice, President of the District Attorneys' Conference.

V.T.A.E. Certified: On June 26, 1985, the Wisconsin Board of Vocational, Technical and Adult Education certified my competence as a teacher in the instructional area of Business Administration.

Award: In 1987 and 1981, I was designated as an, and listed in, "Outstanding Young Women of America."

Recognition: On March 24, 1988, I was recognized and awarded a certificate for providing employment opportunities for older members of the community. This award was given cooperatively by: Lakeshore Job Service, Senior Community Services of Southeastern Wisconsin, Inc., and the Urban League of Racine and Kenosha.

Recognition: Since 1994, I have been recognized for exemplary performance, team work, and role-modeling by peers within my office.

Recognition: On several occasions, my employer identified my abilities and appointed me to positions of leadership within the office:

(1) March 1993, designated as Team Leader for staff in McMinn and Monroe Counties;
(2) August 1997, designated as Team Leader for staff in Bradley and Polk Counties;
(3) June, 2004, designated as Chief Assistant District Attorney General;
(4) Periodically, appointed District Attorney General pro tem, or delegated responsibilities reserved by statute and policy to the elected District Attorney General, in his absence.

30. List the citations of any legal articles or books you have published.

Technical and Research Report (with others):
Estes, J. N., Barnett, T., Donaghy, R., Donaghy, S., Newman, R., Carroll-Morgan, C., Thompson, H., & Young, S. (2006). *Communities that care about safety: End of term report.* Cleveland, TN: Dockins Graphics. Originally posted to: http://media1.winworld.cc/media/donaghy/pdf/DAbook.pdf

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

Law School courses: none

CLE seminars: none

Law related courses which I taught where credit was given:

(1) Criminal Law: I taught substantive criminal law at Cleveland State Community College in the Legal Assistant/Criminal Justice Department, Cleveland, Tennessee in the Fall 2002. Three college credits were awarded to those successfully completing the course.

(2) Basic Police Academy: From 1998 to present, I taught substantive legal material to those police officers attending the Cleveland State Basic Police Academy. Each of these courses is a required part of the Academy curriculum. Outlines, lecture notes, and worksheets are on file with the college and have been provided to POST as part of the accreditation process. College credit is awarded for successful completion of the entire training program, but I do not know the credit hours attributable to the materials I teach.

Attached as an exhibit is a listing of the classes taught and relevant dates: see Exhibit B.

(3) Anderson County Sheriff's Office In-service:
On September 27, 2010, October 4, 2010, and October 11, 2010, I taught a four-hour segment as part of annual continuing education required for POST certification on changes in the law and the Fourth Amendment. The program was held at the Anderson County Detention Facility, Clinton, Tennessee. I prepared an outline, practical scenarios, and submitted questions for testing on the material. The officers received CEU for attending the course.

(4) University of Tennessee Criminal Justice Class:
On October 24, 2012, I served on a panel of criminal justice practitioners and presented my perspective on the role of the prosecutor and responded to questions. I co-presented with a judge, a defense attorney, and an elected official. The presentation was four hours in length.

(5) Walker Valley High School, Cleveland, Tennessee:
On May 16, 2008 and April 17, 2009, I taught a class to high school mathematics and criminal justice students on technology and the law. Essentially, I discussed real life mathematical applications used in crime solving, forensics, and crime scene diagramming to give real world relevance to their studies. Each date, I presented to three classes. Each presentation was approximately 1.5 hours in length. The students received no credit for the class.

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

I was an applicant for the position of Circuit Court Judge in Racine County, Wisconsin in 1992.

I was an applicant for the position of Criminal Court Judge in the Tenth Judicial District in November/December 2005.

I was a candidate for the position of Criminal Court Judge for the Tenth Judicial District in election year 2006.

I have held the following appointed positions:

1988 – 1989, Juvenile Court Commissioner, Racine County, Wisconsin;

1989 – 1990, Special Prosecutor for the District Attorney's Office, Racine County, Wisconsin;

1992 – 1996, Assistant District Attorney General, Tenth Judicial District, Tennessee;

1996 – 1997, Assistant Public Defender, Kane County, Illinois;

1997 – 2006, Assistant District Attorney General, Tenth Judicial District, Tennessee;

2006 – present, Assistant District Attorney General, Seventh Judicial District, Tennessee; and

2006 – 2010, Juvenile Drug Court Magistrate, Bradley County, Tennessee.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No.

34. Attach to this questionnaire at least two examples of legal articles, books, briefs, or other legal writings which reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

The first attached example is a response to a petition for post-conviction relief. Trial of the matter was conducted before Judge Donald Elledge before a change in personnel at the District Attorney's Office related to an election. Having no prior knowledge of the case, I reviewed, analyzed, and referenced the trial transcript for this response. I have included this writing in support of my application because it demonstrates the capabilities to review extensive material for salient facts, to identify and apply relevant law, and to communicate the conclusions reached. These are the analytical skills required of an appellate judge. I was the sole author of this pleading: see Exhibit C.

The second attached sample is a response to a motion for new trial filed in the Circuit/Criminal Court of Anderson County, Tennessee. I was the sole author of this document. This response, with embedded citations, was made to several allegations of error on a first degree murder case. Trial was conducted by Judge David Hayes, following recusal of three judges. Testimony spanned five days. This writing shows concise and supported analysis of complicated issues: see Exhibit D.

The third attached sample is a response related to a demand for post-conviction relief. It was filed in the Circuit/Criminal Court of Anderson County, Tennessee. This writing is significant because the petitioner filed a series of pro se actions to challenge his conviction. I analyzed his filings to decipher the claims, researched and summarized the status, and then applied relevant law in response: see Exhibit E.

These writings were selected in support of the application because they demonstrate command of the skills required of a successful appellate jurist.

ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? ***(150 words or less)***

I love my job and appointment to the Court is perhaps the only position that could entice me to leave it. I seek this position as a privileged transition to the next level of service. It is my destiny to serve in this capacity.

Because I believe in strictly upholding the law, I am well suited to a position that interprets, illuminates, or limits its application. I am seasoned by diverse experience. As critical thinker, I am excited by the prospect of the challenge. I am driven to do right as mandated by the law and eager to share my conclusions and means of deriving them through writing. My expertise enables me to keenly review the law as applied by others, giving it clarification within the framework defined by the legislature. I want to serve my State in this capacity and believe it to be a natural fit.

36. State any achievements or activities in which you have been involved which demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. ***(150 words or less)***

Daily I promote equal justice in the system. I treat defendants as similarly as possible without regard for their financial status. I believe the best mechanism is consistent application of the law. In decisions or sentencing considerations, I remain blind to the person and consider only her or his actions. When dealing with indigent victims and children, I give deference to work schedules, ability to arrange transportation, and child care issues. I have met with witnesses at public places or in the evening to avoid causing them employment consequences. Although really just small acts of kindness, these are actions required by my oath of office and for which I have been formally recognized.

Unrelated to the courtroom, I have served on boards for non-profits and financially supported the efforts of organizations for the indigent. In private practice, I received satisfaction from pro bono referrals.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. ***(150 words or less)***

I seek appointment from the eastern section, an area with which I am familiar. I have practiced in two judicial districts and commute on a weekly basis from Cleveland to Clinton. I look forward to statewide travel to review cases from all three sections. I work well in a collaborative, collegial environment. Although comfortable working on my own, I am a good team player.

Because precedence is derived from cases reviewed, the analysis and opinions generated must clearly establish the facts and intellectually apply the law to elucidate the readers. Although this aspect appears quite different than my current practice, where I rapidly react to evolving facts,

my style is one of argument based on review of the issue from all perspectives with grounded research and critical thinking. I could comfortably make the transition to appellate judge and would bring to the court my experience from the trenches.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? ***(250 words or less)***

I am active in community service and I look forward to greater involvement if appointed judge.

I have received great personal satisfaction from helping others. Over time, I have volunteered for many organizations; always receiving more than I gave. I have provided direct service to others, served in leadership capacities, and given financial support as I have been able.

Currently, my free time is limited and so I choose to concentrate my efforts through the church. On matters of finance and policy, I work on both the local and divisional levels. I am the lay delegate to the church conference. I regularly attend worship and sing in the choir. As needed, I lead the worship service at small churches as a certified lay minister. Through church connections, I serve on a non-profit board to support an orphanage for homeless girls in India. I have been a spokesperson and spearheaded several videos describing their needs.

In the greater community, I support the Red Cross as a volunteer, and we give to the United Way and legal aid. Annually, we ride bikes to raise funds and awareness for Habitat for Humanity and regularly contribute to clothing drives or food pantry requests.

If I am appointed as Judge, I intend to increase my community service. I dream about visiting the orphanages in India and Africa, and joining the fight to eradicate malaria. On a local level, I would like to lend support to literacy, drug dependency, and the homeless.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Commission in evaluating and understanding your candidacy for this judicial position. ***(250 words or less)***

My life experiences have been learning experiences. I am a better person for the road I traveled.

As a child, I swam competitively, participated in girl scouts, and worked in the family restaurant. When others were socializing, I had to wait tables. At times, I felt confined, but I learned to manage money, coordinate among competing objectives, and to develop people skills. I used these skills for more responsible positions, to organize my school work, and ultimately to propel myself into a top tier law school. I enjoyed success my career.

Along the way, I learned that successes are better and defeats not so devastating if you are surrounded by people that care about you. Family and my husband are steadfast. We have shared dreams and supported one another through loss.

Professionally, I use my experience, talents, and interpersonal skills to foster collegial relationships. I am a good listener and respectful of input from others, preferring to use a coaching style. I am goal oriented and seek relationships based on mutual respect.

My life experiences have given me insight, inspiration, and the wisdom that comes through perseverance. Each has been a stepping stone. I am a complex woman: a restaurant girl that liked math because others feared it; an attorney because of hard work; and a Tennessee wife for adventure.

I ask you to look "outside of the box." Celebrate my diversity. Let me use my skills and perspectives in continued service to my State.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. ***(250 words or less)***

I will. I respect the law and those with the authority to make it. As a practitioner, it has been my duty to follow it. If on a personal level I feel change is in order, like any other citizen, I can lobby for change in the appropriate forum. My oath requires that I uphold the law.

As example, I prosecuted an assault case involving injuries to an infant caused by drug use during pregnancy by a drug-addicted mother. The child was hospitalized for months and treated to ameliorate the pain of withdrawal. Changes in the law now prohibit prosecution of a mother for the injuries she caused to her fetus. As one who wanted children of my own, I can say the actions of that mother were selfish and alarming. As a taxpayer, the situation was costly. I would like to see the mother held accountable, yet I dismissed the case as required by the law.

As a defense attorney, I faced a similar dilemma. I represented a man with a reputation as a drug dealer. Law enforcement found cocaine in a portion of his home. I concluded on a personal level that he was involved in the dealing and knew the drugs were there. Nonetheless, I helped him advance his case and argued he lacked knowledge. Because I did my job, he was acquitted by a jury.

As a judge, I will follow the law.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Commission or someone on its behalf may contact these persons regarding your application.

David S. Clark, District Attorney General, Seventh Judicial District, Suite 300

101 S. Main Street, Clinton, Tennessee 37716; Telephone: (865) 457-5640
Hon. Donald R. Elledge, Circuit Court Judge, Seventh Judicial District, Anderson County Courthouse, Third Floor, 100 Main Street, Clinton, Tennessee 37716; Telephone: (865) 457-7875
Dianna Calfee, Tennessee Academic Specialist (contracted educational consultant), [redacted], Cleveland, Tennessee 37323; [redacted]
Jerry N. Estes, Attorney, Jerry N. Estes Law Office, 296 W. Madison Avenue, Athens, Tennessee 37303; (423) 507-1157
Lyn Lucas, Administrative Assistant, Office of the District Attorney, 101 S. Main Street, Suite 300, Clinton, Tennessee 37716; Telephone: (865) 457-5640

AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Court of Criminal Appeals of Tennessee, and if appointed by the Governor, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Commission members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the Governor for the judicial vacancy in question.

Dated: June 8, 2013

Sandra N. Craig Donaghy

Signature

When completed, return this questionnaire to Debbie Hayes, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.

TENNESSEE JUDICIAL NOMINATING COMMISSION

511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
TENNESSEE BOARD OF JUDICIAL CONDUCT
AND OTHER LICENSING BOARDS

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information which concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the state of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Tennessee Judicial Nominating Commission to request and receive any such information and distribute it to the membership of the Judicial Nominating Commission and to the office of the Governor.

Sandra N. Craig Donaghy
Name

Sandra N. C. Donaghy
Signature

June 8, 2013
Date

#15743
BPR #

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

Wisconsin: Board of Bar Examiners

Member Number is 1006628

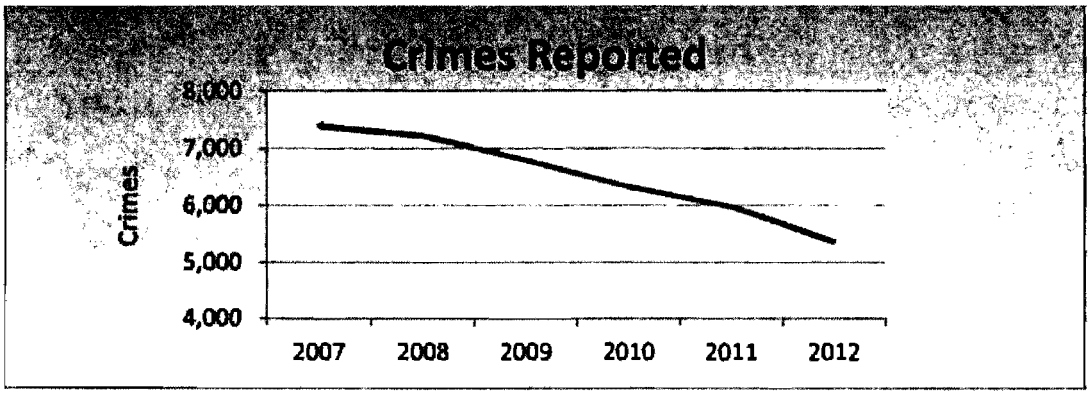
Illinois: Attorney Registration and

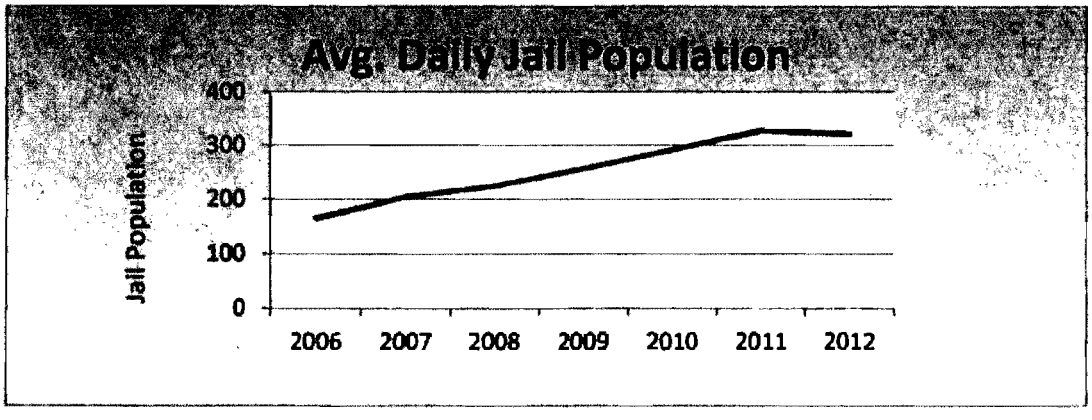
Disciplinary Commission

Registration Number is 6231685

7th JUDICIAL DISTRICT CRIMINAL JUSTICE STATISTICS

	2006	2007	2008	2009	2010	2011	2012
Crimes Reported[1]		7,387	7,221	6,793	6,327	5,976	5,351
Percent of Crimes Solved[1]	32.65	38.13	38.54	40.62	40.81	39.88	41.19
Avg. Daily Jail Population[2]	165.6	205.4	225	256.9	291.6	328	321
New Gen. Sessions I Cases[3]	3,320	3,375	3,959	3,592	3,355	3,724	3,351
New Gen. Sessions II Cases[3]	3,733	3,471	3,777	3,957	3,819	4,086	3,681
New Circuit Court Indictments[3]	356	674	762	1,009	1,677	1,427	680





[1] Tennessee Bureau of Investigation TIBRES
[2] Anderson County Sheriff's Department
[3] Anderson County Circuit Court Clerk

EXHIBIT A (referenced in Question 7)

Listing of accredited courses taught within last five years at Cleveland State Police Academy:

Basic Law, Citizen's Rights, Restraint of Power (4 hours):

July 25, 2007	July 23, 2010
October 22, 2007	October 25, 2010
February 14, 2008	February 2, 2011
August 25, 2008	July 22, 2011
November 3, 2008	October 24, 2011
February 16, 2009	February 20, 2012
July 27, 2009	July 20, 2012
October 30, 2009	October 5, 2012
February 12, 2010	February 22, 2013

Confessions and Interrogations / Post-Arrest and Pre-Trial (4 hours):

August 17, 2007	August 13, 2010
November 26, 2007	November 3, 2010
April 1, 2008	March 18, 2011
August 29, 2008	August 26, 2011
November 26, 2008	November 4, 2011
March 30, 2009	April 2, 2012
August 28, 2009	August 10, 2012
November 13, 2009	November 20, 2012
March 26, 2010	March 22, 2013

Testifying in Court with practicum (4 hours):

August 31, 2007	September 21, 2010
November 30, 2007	December 8, 2010
April 4, 2008	March 28, 2011
September 22, 2008	September 16, 2011
December 4, 2008	December 2, 2011
April 13, 2009	April 6, 2012
September 18, 2009	September 17, 2012
December 4, 2009	December 3, 2012
April 12, 2010	April 5, 2013

Victims' Rights and the responsibilities of law enforcement (2 hours):

August 31, 2007	September 21, 2010
November 30, 2007	December 8, 2010
April 4, 2008	March 28, 2011
September 22, 2008	September 16, 2011
December 4, 2008	December 2, 2011
April 13, 2009	April 6, 2012
September 18, 2009	September 17, 2012
December 4, 2009	December 3, 2012
April 12, 2010	April 5, 2013

Case Law Review (2 hours):

August 31, 2007	September 21, 2010
November 30, 2007	December 8, 2010
April 4, 2008	March 28, 2011
September 22, 2008	September 16, 2011
December 4, 2008	December 2, 2011
April 13, 2009	April 6, 2012
September 18, 2009	September 17, 2012
December 4, 2009	December 3, 2012
April 12, 2010	April 5, 2013

Fourth Amendment—Detention (3 hours):

July 25, 2007	July 23, 2010
October 22, 2007	October 25, 2010
February 14, 2008	February 2, 2011
August 25, 2008	July 22, 2011
November 3, 2008	October 24, 2011
February 16, 2009	February 20, 2012
July 27, 2009	July 20, 2012
October 30, 2009	October 5, 2012
February 12, 2010	February 22, 2013

Fourth Amendment—Arrest, Search with Warrant, Exceptions to the Warrant Requirement (8 hours):

July 26, 2007	August 9, 2010
October 23, 2007	October 29, 2010
March 31, 2008	March 14, 2011
August 27, 2008	August 12, 2011
November 25, 2008	October 28, 2011
February 27, 2009	March 5, 2012
July 31, 2009	July 24, 2012
November 9, 2009	November 5, 2012
February 26, 2010	March 15, 2013

Evidence, Criminal Procedure, and Sentencing Considerations (3 hours):

August 17, 2007	August 13, 2010
November 26, 2007	November 3, 2010
April 1, 2008	March 18, 2011
August 29, 2008	August 26, 2011
November 26, 2008	November 4, 2011
March 30, 2009	April 2, 2012
August 28, 2009	August 10, 2012
November 13, 2009	November 20, 2012
March 26, 2010	March 22, 2013

IN THE CRIMINAL COURT FOR ANDERSON COUNTY, TENNESSEE

STATE OF TENNESSEE	)	
	)	
VERSUS	)	NO. B0C00570
	)	
PHILLIP DOUGLAS SEALS	)	

RESPONSE OF THE STATE TO
PETITION FOR POST-CONVICTION RELIEF

COMES NOW the State of Tennessee, by and through the offices of David Clark, District Attorney General for the Seventh Judicial District, and files this response to defendant's petition for post-conviction relief.

Specifically, the State of Tennessee responds as follows:

1. The State disputes the recitals contained in Paragraphs (1) through (22) to the extent such facts are inconsistent with the dates, orders, or other notices contained within the Court file and official record of proceedings.

2. The State disputes the Statement of Historical Facts contained in Paragraphs (1) through (16) to the extent such facts are inconsistent with those presented at trial.

3. The State disputes and denies the allegations stated in "Additional Sustainable Facts" contained in Paragraphs (1) through (16) and demands strict proof thereof. More specifically, the State affirmatively asserts that:

A. In response to (1): The defendant was served with a copy of the Indictment at arraignment which notified him in written form of the charges of which he was accused and for which he stood trial.

B. In response to (2): The number of contacts by the defendant with counsel

and the basis of those contacts are unknown and therefore denied. The substance of this allegation relates to not having been provided with a transcript of the opening statements of counsel. The defendant was present and heard the opening statements. In addition, the law is settled and the jury was instructed that the statements of counsel are not evidence and that if any statements were made that were unsupported by the evidence, they were to be disregarded. *T.P.I. 1.07.* Further defendant asserts that this transcript was needed for his direct appeal. The direct appeal was made and the conviction affirmed. There is no ground alleged in this PCR concerning the opening statements, Therefore, this issue has been resolved and is not properly before the Court.

C. In response to (3): The State specifically denies this allegation. Contrarily, Officer Sean Cusic did testify that the door was unsecured (Record 10, line 10) and that he neither forced it or broke the facings or wood. (Record 13, lines 5-11). He was not asked if he observed signs of broken facings or wood. This allegation is a mischaracterization of the facts.

D. In response to (4) and (12): The State denies this allegation and demands strict proof. There are no indications the search warrant was changed after it was signed. There is evidence in the case file that records relating to the purchase of the firearms did not come from the search warrant but instead came through ATF and were received significantly after the time of the execution and return on the search warrant. While it was the ATF records that lead law enforcement to find where the defendant purchased two guns,

this is not fruit of a poison tree. The pawn shop records were evidence developed from an investigative lead.

E. In response to (5): This is correct. There was a partial credit card number on the receipt, but no information as to the identity of the person that used the credit card.

F. In response to (6): The State admits that certain evidence was seized from defendant's home. However, as alleged by the defendant, this property was not introduced as evidence in the trial. Therefore, this allegation is irrelevant and due no consideration by the Court.

G. In response to (7, 8, and 9): The State admits that the 911 tape was introduced through dispatcher Chuck Peters. Chuck Peters could not identify the caller. Contrary to defendant's assertions, witness Gary Davis did identify the voice as that of the defendant. (Record 205, lines 4-5 and 11-13). The defendant admitted to calling 911 (Record 636, lines 16-21).

H. In response to (10): The State denies that defendant was not allowed to present expert testimony on ballistics. The Court did not control or prohibit the defendant's presentation of the case. He could have called a ballistics expert had he wanted to so. On the other hand, the defense cross-examined the State's expert concerning his inability to determine when the bullets were fired, how long ago they were fired, and whether the bullets had been reloaded into the weapon. (Record 353, lines 3-22). The expert admitted under cross-examination that the head stamp designation was very common. (Record 354, lines 18-19), and that additional testing could have been done

through the TBI (Record 357, lines 13-15).

I. In response to (11): No factual assertion is made in this paragraph and so the State moves to strike it.

J. In response to (13): No factual assertion is made in this paragraph and so the State moves to strike it.

K. In response to (14): No factual assertion is made in this paragraph and so the State moves to strike it. At most it is an invitation by the Court for the defense to offer argument.

L. In response to (15): No factual assertion is made in this paragraph and so the State moves to strike it. He alleges a general lack of exculpatory materials and then quotes from the State's closing.

M. In response to (16): The defendant asserts he was prejudiced by being denied a jury instruction on self-defense. Such an instruction is not supported by the evidence and was contrary to the defendant's own testimony. Defendant testified at trial that he entered the apartment with a key (Record 633, lines 4-6), that he heard mumbling in the bedroom (Record 633, lines 18-20), that he kicked in the door (Record 634, line 7), that he saw his wife and this man "in bed naked having sex" (Record 634, Line13), that there was a commotion (Record 634, line 15) and that he started shooting (Record 635, line 2). He did not see a weapon. (Record 635, line 8), but he thought there was one in the apartment because Misty had multiple guns. (Record 635, lines 9-14). After he shot the man, he noticed movement and saw Misty coming towards him with her arms raised. (Record 636, lines 3-4) He shot her (Record 636,

EXHIBIT C

line 6). He argues that self defense of his home and his wife was a jury question. The allegation is unsupported by any facts.

N. In response to (17): The defendant alleges prejudice by referral to the defendant as domestically violent. The State denies prejudice. The defendant admitted that he made an anonymous 911 call wherein he requested emergency help. (Record 636, lines 16-22). The dispatcher confirmed that there was a report of a "domestic" (Record 198, lines 2-17) and the first responding officer, Cusic, responded to a "possible domestic." (Record 9, line 21). Therefore this characterization is consistent and accurate. Additionally, he testified to a January 25, 2005 incident when Ken Campbell responded to an altercation (Record 643-4, lines 1-22 and 1-13). Connecting this claim to the statutes for murder is nonsensical. The State moves to strike.

O. In response to (18): There is no factual assertion made in this paragraph. The State moves to strike it.

P. In response to (19): There is no factual assertion in this paragraph. Defendant argues the sequential jury instruction which was previously determined by the Court of Criminal Appeals.

Q. In response to (20): There is no factual assertion in this paragraph. Defendant argues the findings of the appellate court. State moves to strike.

4. The State disputes and denies the allegations stated in "Grounds for Relief" contained in Paragraphs (1) through (20) of the pre-trial section, Paragraphs (1) through (20) of the trial section, Paragraphs (1) through (3) of the post-trial section, Paragraphs (1) through

(2) of the direct appeal section, and Paragraphs (1) through (3) of the post-appeal section. The State demands strict proof thereof. More specifically, the State affirmatively asserts that:

CLAIM 1: Pre-trial publicity arising from a Motion to Revoke Bond heard before trial tainted the jury pool and impacted the fairness of the trial.

1. Allegations that the jury was prejudiced by pre-trial publicity are contained in "Pre-trial issues (1), (2), (3), and (5)." The State submits that these grounds could have been and should have been raised at the appellate level. Pursuant to TCA 40-30-106(f), the grounds contained in this claim are waived.

2. The State further submits that the jury was not prejudiced by pre-trial publicity. Questions asked by the court and counsel were carefully crafted to inquire into any prior knowledge about the case, be it from publicity around the time of the bond hearing or at other times while the case was under investigation or charges pending.

3. A Motion to Revoke Bond was heard because law enforcement had no clue where the defendant was. Upon information and belief, even his bondsman did not know where he was residing or working or how to contact him. A motion was filed and heard. It is unknown the extent of any media coverage so the State denies this and demands strict proof. Nonetheless, the questions posed to prospective jurors were designed to screen out anyone with prior knowledge about the case.

4. The defendant asserts that his attorney filed a Motion for Change of Venue. This was responsive action to any perceived negative pre-trial publicity. If such a motion was filed and denied, the appropriate course of action would have been to appeal the ruling. Failure to appeal such an issue is a waiver.

EXHIBIT C

5. Although not specifically asserted, if the defendant believes that failure to raise the issue further or to have appealed it is evidence of ineffective assistance, the State denies same. The State asserts that counsel's defense of the petitioner met the "reasonably effective assistance" standard established in *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975), and is in accordance with ABA guidelines pertaining to Standards for Criminal Justice (ABA Def. Funct. 4-4.1, 4-3.6).

6. Defendant also asserts that he was denied a fair trial by the Court failing to have issued a "gag order" following the pre-trial motion hearing. The State denies that any such order was requested or supported by the facts. No error is alleged.

7. Although not specifically asserted, if the defendant believes that failure to demand a "gag order" is evidence of ineffective assistance, the State denies same. The State asserts that counsel's defense of the petitioner met the "reasonably effective assistance" standard established in *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975), and is in accordance with ABA guidelines pertaining to Standards for Criminal Justice (ABA Def. Funct. 4-4.1, 4-3.6).

Therefore, the State submits that the allegations in this claim are neither timely nor with merit, and moves the Court to dismiss the Claim in its entirety.

CLAIM 2: Mr. Marshall was ineffective for failing to request a "new trial" after it was learned jurors may have had access to television or radio while sequestered.

1. It is alleged in "Pre-trial issues (4)" and "Trial Issues (3)" that the attorney for defendant was ineffective for failing to request a "new trial" after it was determined that

jurors may have had access to television or radio while sequestered. The State submits that this ground could have been and should have been raised in the Motion for New Trial if it had merit. Pursuant to TCA 40-30-106(f), the grounds contained in this claim are waived.

2. The State further submits that there is no evidence that any juror was prejudiced in any way by access to outside sources of information. Upon information and belief, the jury was instructed numerous times to speak with no one about the trial, to refrain from listening to or reading any reports about the case, and to keep an open mind until instructed to deliberate on the case. There is no indication that any juror did not follow the courts instructions.

3. Under these circumstances, failure to make a demand for a new trial or even a mistrial would be unethical if unsupported by the facts of the case. The State asserts that counsel's defense of the petitioner met the "reasonably effective assistance" standard established in *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975), and is in accordance with ABA guidelines pertaining to Standards for Criminal Justice (ABA Def. Funct. 4-4.1, 4-3.6).

Therefore, the State submits that the allegations in this claim are neither timely nor with merit, and moves the Court to dismiss the Claim in its entirety.

CLAIM 3: Mr. Marshall was ineffective for failing to appeal issues related to the charges of felony murder.

1. It is alleged in "Pre-trial issues (6)" and "Post-Trial (1)" that the attorney for defendant was ineffective for failing to argue at trial, at motion for new trial, or on

appeal that there was no underlying felony to support the felony murder conviction. He alleges that because this issue was addressed by the appellate court, it is de facto evidence of ineffective assistance of counsel for failing to raise it earlier. The State denies this claim.

2. The State asserts that the jury heard the proof and was instructed on the law. The jury convicted on premeditate murder and on felony murder. The court then merged the convictions for purposes of sentencing. Therefore, defendant suffered no prejudice.
3. As evidenced by the reported decision in the appeal of this case, and as asserted by the defendant, this issue was raised and considered on appeal. Therefore, the issue is previously determined.

Therefore, the State asserts this does not raise a claim on which relief may be granted.

CLAIM 4: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL-PRE-TRIAL AS EVIDENCED BY FAILING TO INTERVIEW WITNESSES, FAILING TO INVESTIGATE BACKGROUNDS, AND FAILING TO DISCUSS TIME LINE.

1. It is alleged in "Pre-trial issues (7), (8), (9), (13), (14), (15), (16), (17), and (20)" and "Trial issues (1), (4), (6), (7), (8), (10), (11), and (15)" that the attorney for defendant was ineffective for failing to investigate the crime scene, to interview the witnesses, to properly cross-examine the witnesses, and to object to admission of evidence related thereto. The State denies this allegation.
2. The State asserts by the time a defense attorney is appointed, certain aspects of the crime scene have been cleared or moved. To that extent, Attorney Marshall could not have investigated something that no longer existed.

3. The State asserts that as evidenced by the rigorous cross-examination of the State's witnesses, Mr. Marshall knew the facts of the case, was fully prepared, and interrogated the witnesses on details of their observations and testimony.
4. The attorney for defense was aware of the witnesses and upon information and belief was provided with a witness list.
5. The attorney for defendant explored through rigorous cross-examination of the witnesses the testimony and possible errors, flaws, or confusion over time. As to witness Fine, the defense even called an alibi witness to refute the testimony.
6. Ultimately, when testimony given by a witness is impeached or refuted by the testimony of another, the weight to be given the particular facts discerned is an issue within the providence of the jury. The jury verdict resolved any such conflicts in favor of the State. To the extent of testimony characterized as perjured, this issue has been previously determined when the Appellate Court affirmed the conviction.
7. Under these circumstances, the State asserts that counsel's defense of the petitioner met the "reasonably effective assistance" standard established in *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975), and is in accordance with ABA guidelines pertaining to Standards for Criminal Justice (ABA Def. Funct. 4-4.1, 4-3.6).

Therefore, the State submits that the allegations in this claim are without merit, and moves the Court to dismiss the Claim in its entirety.

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CLAIM 5: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL-PRE-TRIAL AS EVIDENCED BY FAILING TO CHALLENGE THE SEARCH WARRANT.

1. It is alleged in "Pre-trial issues (10)" that the attorney for defendant was ineffective for failing to file a pre-trial motion to suppress the search warrant. The State denies this allegation.
2. The State asserts that a valid search warrant was sought to search the defendant's home. Recovered from the home, and subject of this allegation, were Wal-Mart receipts for ammunition. The ATF firearm purchase records and the sealed letter were not taken under the search warrant. Reliance on the search warrant to object to the latter articles is misplaced. According to Det. Vaughn Becker neither the ATF records nor any sealed letter were removed from defendant's residence. Both items of evidence were secured long after the search warrant and by independent means.
3. Failure to challenge a search warrant can be ineffective assistance of counsel only if there was a recognizable defect that was not challenged. The State asserts that in this case, the warrant met all statutory and case law requirements and that there was no basis to challenge it.
4. The defendant also asserts that a .45 caliber weapon, ammunition and blood stained clothing were seized from his residence as "ascribed" by the warrant. The State denies this allegation in so much as the murder weapon was never recovered and the defendant himself stated that he threw it into the lake from a bridge. If he meant by the use of the word "ascribe" that law enforcement wanted to search for those items, he may be correct. If he is asserting that the weapon was recovered,

EXHIBIT C

he is incorrect.

5. Under these circumstances, the State asserts that failing to file a motion to suppress absent grounds is ethical and "reasonably effective assistance" standard established in *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975), and is in accordance with ABA guidelines pertaining to Standards for Criminal Justice (ABA Def. Funct. 4-4.1, 4-3.6).

Therefore, the State submits that the allegations in this claim are without merit, and moves the Court to dismiss the Claim in its entirety.

CLAIM 6: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL-PRE-TRIAL AS EVIDENCED BY FAILING TO DEMAND EXCULPATORY EVIDENCE.

1. It is alleged in "Pre-trial issues (11)" that the attorney for defendant was ineffective for failing to request exculpatory evidence. The State denies this allegation.
2. The State asserts that defendant filed a motion for discovery which includes a demand for exculpatory evidence. Even without a motion, the State would have a duty to disclose exculpatory evidence.
3. The defendant claims telephone records were not provided. Contrarily, phone records were in the file and, upon information and belief, were provided. The State chose not to admit the telephone records into evidence as the information sought came in through other witnesses. This claim is baseless.

Therefore, the State submits that the allegations in this claim are without merit, and moves the Court to dismiss the Claim in its entirety.

EXHIBIT C

CLAIM 7: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL-PRE-TRIAL FOR FAILING TO SECURE FUNDS FOR AN INDEPENDENT EXPERT.

1. It is alleged in "Pre-trial issues (12) and (18)" that the attorney for defendant was ineffective for failing to secure an expert and to secure funds to hire an independent expert. The defendant also asserts that failure to offer better proof on the issue was ineffective assistance of counsel. The State denies these allegations.
2. The State asserts that Dr. William Bernet was hired by the defense to examine and testify about defendant's ability to form the intent required for the crime. This doctor was hired and testified about the defendant. He had fine credentials, being the Director of Psychiatry at Vanderbilt. Therefore, this claim is baseless.
3. Dr. Bernet's testimony was limited by the court after findings were made about the area was not yet reliable and not generally accepted in the field. This issue was raised on appeal and so it has been previously determined.
4. Dr. Bernet testified about his findings after examination of the defendant. That portion of his testimony that was excluded was preserved for appellate review. The portion of his testimony that was admitted was considered by the jury. When weighed against the proof and the State's experts, the jury chose to give it little weight. The defendant cannot claim post-conviction relief for those portions of the testimony with which he does not agree.
5. Under these circumstances, the defense attorney can only put on the proof as permitted by the rules of evidence and the rulings of the court. The State asserts that counsel's defense of the petitioner met the "reasonably effective assistance" standard established in *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975), and is

in accordance with ABA guidelines pertaining to Standards for Criminal Justice (ABA Def. Funct. 4-4.1, 4-3.6).

Therefore, the State submits that the allegations in this claim are without merit and have been previously determined. The State moves the Court to dismiss the Claim in its entirety.

CLAIM 8: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL-PRE-TRIAL FOR FAILING TO CONSULT WITH DEFENDANT DURING TRIAL ABOUT TESTIFYING IN HIS OWN DEFENSE.

1. It is alleged in "Pre-trial issues (19)" that the attorney for defendant did not sufficiently consult with the defendant during trial for the defendant to make an informed decision about his desire to testify. The State denies this allegation.
2. The State does not know the nature or the extent of the conversations between counsel and the defendant. The State does not know if a *Momon* hearing was held. Upon information and belief, there were sufficient conversations between the defendant and his attorney for the defendant to make a reasoned and informed decision. Under these circumstances, the State asserts that counsel's defense of the petitioner met the "reasonably effective assistance" standard established in *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975), and is in accordance with ABA guidelines pertaining to Standards for Criminal Justice (ABA Def. Funct. 4-4.1, 4-3.6).

Therefore, the State submits that the allegations in this claim are without merit and moves the Court to dismiss the Claim in its entirety.

CLAIM 9: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DURING TRIAL FOR FAILING TO REQUEST REMOVAL OF JUROR ROCHELLE HENLEY.

1. It is alleged in "trial issues (2)" that the attorney for defendant was ineffective for failing to remove Juror Rochelle Henley. The State denies this allegation and puts the defendant to strict proof thereof.
2. There are limited notes in the file regarding the jury selection process. No notes concerning Juror Henley could be found.

CLAIM 10: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DURING TRIAL FOR FAILING TO HAVE A DEFENSE THEORY OF THE CASE.

1. It is alleged in "trial issues (5)" that the attorney for defendant was ineffective for failing to have an overall strategy to the defense case. The State denies this allegation and puts the defendant to strict proof thereof.

CLAIM 11: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DURING TRIAL FOR FAILING TO OBJECT TO CERTAIN TESTIMONY OF SHERRY MORRELL.

1. It is alleged in "trial issues (9)" that the attorney for defendant was ineffective for failing to object to certain testimony of witness Sherry Morrell. The State denies this allegation and puts the defendant to strict proof thereof.
2. Contrarily, the State asserts that defense counsel did object to potential hearsay testimony by this witness. (Record 167, lines 5-7).
3. To fail to object to all questions or areas of inquiry may also be a tactical decision.
4. The State asserts that counsel's defense of the petitioner met the "reasonably

effective assistance" standard established in *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975), and is in accordance with ABA guidelines pertaining to Standards for Criminal Justice (ABA Def. Funct. 4-4.1, 4-3.6).

Therefore, the State submits that the allegations in this claim are without merit and moves the Court to dismiss the Claim in its entirety.

CLAIM 12: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DURING TRIAL FOR FAILING TO OBJECT TO THE CONDUCT OF SEVERAL JURORS.

1. It is alleged in "trial issues (12)" that the attorney for defendant was ineffective for failing to object to the conduct of the jurors. No conduct is identified or articulated. This claim fails to state a basis on which relief may be granted. The State denies this allegation and puts the defendant to strict proof thereof.

Therefore, the State submits that the allegation in this claim is without merit and moves the Court to dismiss the Claim in its entirety.

CLAIM 13: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DURING TRIAL FOR FAILING TO OBJECT OR MOVE FOR A MISTRIAL WHEN PROSECUTORIAL MISCONDUCT WAS COMMITTED.

1. It is alleged in "trial issues (13), (14), (17), (18), (19), and (20)" that the attorney for defendant was ineffective for failing to object to the conduct of the prosecutor. No conduct is identified or articulated but it is merely asserted that inappropriate comments were made. This claim fails to state a basis on which relief may be granted. The State denies these allegations and puts the defendant to strict proof thereof.

Therefore, the State submits that the allegation in this claim is without merit and moves the Court to dismiss the Claim in its entirety.

CLAIM 14: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DURING TRIAL FOR FAILING TO MAKE OBJECTIONS REQUESTED BY DEFENDANT.

1. It is alleged in "trial issues (16)" that the attorney for defendant was ineffective for failing to make objections specifically requested by the defendant. No specific conduct is identified or articulated but it is merely asserted that there was a failure to act. This claim fails to state a basis on which relief may be granted. The State denies these allegations and puts the defendant to strict proof thereof.
2. The State asserts that the conduct of the defense attorney is controlled by the Rules of Evidence, Rules of the Court, ethics, and tactical decisions made at trial. One cannot object just because a non-lawyer/client wants you to object.

Therefore, the State submits that the allegation in this claim is without merit and moves the Court to dismiss the Claim in its entirety.

CLAIM 15: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DURING APPEAL FOR FAILING TO CLAIM UNJUST DISPARITY IN SENTENCING LAWS AS COMPARED WITH OTHER NAMED OFFENDERS.

1. It is alleged in "Post-Trial issues (2)" that the attorney for defendant was ineffective for failing to make appeal the imposed sentence considering sentences imposed on two others, Mary Winkler and Eric McLean. The cases he wishes his sentence be compared with are not before the court and the facts of the cases are unknown. This claim fails to state a basis on which relief may be granted. The State denies these allegations and moves the ground be stricken as irrelevant.

Therefore, the State submits that the allegation in this claim is without merit and moves the Court to dismiss the Claim in its entirety.

CLAIM 16: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DURING APPEAL FOR FAILING TO OBJECT TO JURY INSTRUCTIONS.

1. It is alleged in "Post-Trial issues (3)" that the attorney for defendant was ineffective for failing to object to the jury instructions. The State asserts that one-quarter of the appeal was based on the jury instructions given. No additional specific allegations are made. This claim has been previously determined.

Therefore, the State submits that the allegation in this claim has been previously determined, is without merit and moves the Court to dismiss the Claim in its entirety.

CLAIM 17: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DURING APPEAL FOR FAILING TO PROVIDE THE TRANSCRIPT OF OPENING STATEMENTS AND FOR FAILING TO PROVIDE THE APPELLATE BRIEF IN A TIMELY FASHION.

1. It is alleged in "On Direct Appeal issues (1) and (2)" that the attorney for defendant was ineffective for failing to provide a transcript of the opening statement and for failing to timely provide a copy of the appellate brief.
2. As evident from the defendant's complaint, he received the appellate brief. It was just as quick as he would have liked to receive it. This assertion is not grounds for post-conviction relief. No harm is alleged. Actual receipt is acknowledged. This claim is without merit.
3. The defendant asserts that he failed to receive a copy of the transcript of the

opening statements. No basis for harm is alleged. The opening statements of counsel are not evidence, they are merely a statement by counsel about that which each believes the case to be. The jury is instructed that the statements of counsel are not evidence. The defendant does not assert why he feels this is important. He apparently received the entire transcript of the trial.

4. No harm is alleged. This claim is baseless.

Therefore, the State submits that the allegation in this claim is without merit and moves the Court to dismiss the Claim in its entirety.

CLAIM 18: DEFENDANT COMPLAINS ABOUT DEBITTING OF HIS TRUST FUND ACCOUNT.

1. It is alleged in "Post-Appeal issues (1), (2), and (3)" that the attorney for defendant failed to act on defendant's claim that his funds were being debited for court costs. No constitutional issue is raised. These allegations are outside of the parameters for post-conviction review.

Therefore, the State submits that the allegations in these claims are outside the jurisdiction of the court and moves the Court to dismiss the Claim in its entirety.

For the foregoing reasons, the State requests that the petition be dismissed and for such other, further, or additional relief to which the State may be entitled.

Respectfully submitted:

Sandra Donaghy

Sandra N. C. Donaghy
Assistant District Attorney General

EXHIBIT C

CERTIFICATE OF SERVICE

I certify that on this date a true and exact copy of the foregoing RESPONSE was delivered to: Attorney Les Hunt, counsel for defendant.
This the 9th day of March, 2011.

Sandra Donaghy
Assistant District Attorney

EXHIBIT C

IN THE CRIMINAL COURT FOR ANDERSON COUNTY, TENNESSEE

STATE OF TENNESSEE	)	
	)	
VERSUS	)	NO. A6CR0027
	)	
JAMES MICHAEL FLINN	)	

RESPONSE OF THE STATE TO
MOTION FOR NEW TRIAL AND JUDGMENT OF ACQUITTAL

COMES NOW the State of Tennessee, by and through the offices of David Clark, District Attorney General for the Seventh Judicial District, and files this response to the defendant's Motion.

In response to each of the numbered paragraphs of the Motion for New Trial and Judgment of Acquittal the State would show:

1. The evidence, viewed in the light most favorable to the State, proved all of the elements of the offense by evidence beyond a reasonable doubt. Proof of guilt was overwhelming and all questions concerning the credibility of witnesses, the weight and value to be given the evidence and all factual issues were resolved by the trier of fact. The jury found, or any rational trier of fact could have found, sufficient proof of the essential elements of the offense charged.

2. That Judge properly approved the verdict as the thirteenth juror. There is no reason for the Court to overturn the jury verdict.

3. The Court followed the patterned jury instructions after having considered the requests of both parties. The "sequential charge" given has been consistently approved by the appellate courts. *See, e.g., State v. Raines, 882 S.W.2d 376, 381-82 (Tenn. Crim. App. 1994); State v. McPherson, 882 S.W.2d 365, 375-76 (Tenn. Crim. App. 1994); State v. Rutherford, 876 S.W.2d 118, 119-20 (Tenn. Crim. App. 1993); Wester, 2006 Tenn. Crim. App. LEXIS 154, 2006 WL 304700, at *11; State v. Joe A. Gallaher, No. E2001-01876-CCA-R3-CD, 2003 Tenn. Crim. App. LEXIS 552, 2003 WL 21463017, *5 (Tenn. Crim. App., at Knoxville, June 25, 2003).* All jury instructions given conformed to the law.

4. The Court carefully reviewed the facts presented and the applicable law, weighed the evidence, and made findings of facts consistent with the proof presented. The records in question belonged to the merchant, Wal-Mart. Irrespective of the use of a federal form for documenting a portion of the

information, the information itself was not subject of privacy statutes. The records were part of inventory control, proof of purchase, compliance with State law, and cash register documentation consistent with all sale transactions in the store. No rights of the defendant were violated. Sound discretion was exercised by the Court during the process.

The court carefully reviewed the facts presented and the law cited. The statutes give authority for inspection of the records by law enforcement in the course of a criminal investigation, or under a subpoena or search warrant. *T.C.A. 39-17-1316(k).* Further, the same rationale advanced by this defendant has been reviewed and rejected by federal courts. See *City of New York v. Bob Moates' Sport Shop, Inc., et al*, 2008 U.S. Dist. LEXIS 89448, and *United States v. Marchant*, 55 F.3d 509, 515-516 (19th Cir. 1995). These courts reasoned that defendant lacked standing to challenge an inspection of records of a firearms dealer, noting that the dealer had the right to have and to convey to anyone whom he wished the information on the ATF Form 4473.

5. This motion was filed pro se by the defendant in spite of the fact he was represented by counsel. The Court carefully reviewed the facts presented and the applicable law, weighed the evidence, and made findings of facts consistent with the proof. Defendant had not been previously convicted or acquitted. The case had not previously gone to disposition. Although defendant had been confined, the confinement did not amount to pre-trial punishment. Jeopardy had not attached at the time of confinement. The issue of a previous bond revocation was not relevant to proceedings at trial and the Court properly denied further hearing. The defendant was arrested on a capias after indictment. Double jeopardy was not at issue because no disposition had been made.

6. No overly gruesome or horrifying photos of the decedent were displayed to the jury. The photos admitted into evidence were to show the wounds and the fractures. The photos were required to demonstrate the entry and exit wounds and the path of the pellets through the body. They were necessary, according to the testimony of Dr. Mileusnic, to show and explain the wounds and injuries. The Court carefully reviewed the photos objected to by defense and made findings consistent with admission. Each of the photos admitted were allowed to explain or demonstrate facts at issue. The State denies that any evidence offered was overly gruesome. Admissibility of evidence rests within the discretion of the trial court, and sound discretion was exercised by the Court during the process.

7. The autopsy report, a report of Dr. Cleland Blake, was not admitted into evidence although it had been relied upon by Dr. Darinka Mileusnic, the

forensic pathologist and medical examiner called as an expert witness by the State. Contrarily, the report of Dr. Mileusnic was admitted (Exhibit 97) after it was authenticated, and compared with her original for accuracy. It was part of the documentation and work of the Forensic Examiner.

Dr. Mileusnic testified at trial and then authenticated her report. She was cross-examined concerning the findings and conclusions she made, including her characterization of the pellets as of the brand "Federal." Her report merely summarized in writing those findings about which she testified.
The admission of evidence is a matter entrusted to the sound discretion of the trial court. *State v. Banks, 564 S.W.2d 947, 949 (Tenn. 1978).*

Determinations regarding the admissibility of expert testimony are left to the sound discretion of the court. *State v. Ballard, 855 S.W.2d 557, 562 (Tenn. 1993).* The facts or data relied upon by an expert in forming an opinion may include facts made known to the expert at or before the hearing. *Rule 703, Rules of Evidence.* In the instance of reference to the recovered pellets as being of the Federal brand, Dr Mileusnic was cross-examined on the issue and she explained that she formed her opinion in reliance on her training, observations, examination of the evidence, and on the TBI ballistics report which had been provided to her in advance of the hearing.

The court neither applied an incorrect legal standard, nor reached a decision contrary to logic or reasoning. No injustice was caused to the defendant.

8. The jury charge given was in conformity with, and fully consistent, with the facts as presented. The patterned jury instruction was used.

Respectfully submitted this the 16th day of January, 2009.

_____
Assistant District Attorney

CERTIFICATE OF SERVICE
I certify that on this date a true and exact copy of the foregoing RESPONSE was faxed and then mailed to: Public Defender
This the 16th day of January, 2009.

_____
Assistant District Attorney

EXHIBIT D

IN THE CRIMINAL COURT FOR ANDERSON COUNTY, TENNESSEE

STATE OF TENNESSEE	)	
	)	
VERSUS	)	NO. B0C01004 and
	)	A7CR0020
THOMAS EDWARD KOTEWA	)	

RESPONSE OF THE STATE OF TENNESSEE TO DEFENDANT'S AMENDED MOTION TO RE-OPEN PETITION FOR POST-CONVICTION RELIEF

NOW COMES the State of Tennessee, by Sandra N.C. Donaghy, to respond to Defendant's Amended Motion to Re-Open previously dismissed Petition for Post-Conviction Relief:

FACTUAL HISTORY OF THE FILINGS RELATED TO THIS CASE:

Conviction: On November 6, 2006, defendant pled guilty to, and was convicted of, Second Degree Murder. The Judgment is entered in Case No. A6CR0004.

Petition for Post-Conviction Relief: On or about January 10, 2007, defendant filed a pro se petition for Post-Conviction Relief. He alleged various theories of ineffective assistance of counsel and alleged that the plea was involuntary. The Petition for PCR was assigned Case No. A7CR0020. On or about April 9, 2007, an Amended Petition for Post-Conviction Relief was filed. He alleged: (1) Ineffective Assistance of Counsel for failure to file motions, failure to interview witnesses, failure to mentally evaluate, late change of attorneys, failure to request a continuance of plea hearing, failure to have sufficient time with Attorney Webster, Observing trial counsel go "into chambers" on

three occasions, failure to raise a claim of defective indictment, and failure to adequately prepare for plea hearing; (2) Guilty plea was involuntary or coerced; and (3) The indictment was defective and void. On September 17, 2007, a full hearing was held on the Petition for PCR (A7CR0020). At the conclusion of the proof, the Court made findings of facts and conclusions of law. The Petition was dismissed. A written Order was entered on September 24, 2007. A pro se Notice of Appeal was filed September 17, 2007. Defendant filed a pro se Motion for Transcript of the hearing. On November 20, 2007, the Court granted the motion. A written order was filed that same date. An appeal was filed by Attorney Brennan Lenihan on behalf of defendant, appellate case no. E2007-02193-CCA-R3-PC. By Order of the Criminal Court of Appeals dated June 11, 2009, the judgment of the trial court was affirmed.

Writ of Mandamus: On July 12, 2007, a Writ of Mandamus was filed alleging denial of access to the court, law books and his attorney. It was determined that on June 22, 2007, defendant had been returned to the TDOC and the Writ deemed moot. An Order denying the Writ of Mandamus was entered on or about July 18, 2007. This action was assigned case No. A7CR0335.

Motion to Obtain Records: On or about August 10, 2010, the defendant filed a pro se Motion to Obtain Records. In his filing, he referenced Anderson County case no. A7CR0020 and an appellate case no. E2007-02193-CCA-R3-PC. The State responded to this filing on September 9, 2010 with a written response bearing Case Nos. A6CR0004 and A7CR0020. On September 10, 2010, the matter was taken up in open court with

Attorney Lenihan appearing as defendant's former attorney. The Court ruled in A6CR0004 that the requested information had been provided in advance of the plea hearing of November 20, 2007 (sic 2006) and that the matter was no longer within the jurisdiction of the Court. As to A7CR0020, the Court ruled that Post-Conviction Relief was denied September 24, 2007 and that the Court no longer had jurisdiction. Written orders were entered October 7, 2010 and September 24, 2010 *nunc pro tunc* to September 10, 2010. On or about September 23, 2010, defendant filed a Response to the State's Response in this action. This filing was in case nos. A6CR0004 and A7CR0020. A Motion to Reconsider was filed on September 27, 2010, in case no. A6CR0004. On October 1, 2010, the defendant made an application in the Court of Criminal Appeals for a Rule 10 Extraordinary Appeal of the Order denying the defendant's Motion to Obtain Records. He requested in that same application a stay of the pending Writ of Error Coram Nobis. The Court of Appeals assigned a case no. E2010-02053-CCA-R10-CO and referenced Anderson County Case No. A6CR0004. The Court of Criminal Appeals affirmed the judgment of the trial court dismissing the petition for failing to sign it, swear to it, or date the pleading. In the opinion, the court overlooked the procedural defects and reviewed the petition on its merits. The Court concluded the petitioner was not entitled to relief.

Petition for Writ of Error Coram Nobis: On September 13, 2010, defendant filed a pro se Petition for Writ of Error Coram Nobis. It is unknown to the State the case number assigned to this filing. On September 23, 2010, the State responded in case numbers A6CR0004 and A7CR0020. On October 7, 2010, by written order, the matter was

dismissed. This order was filed October 8, 2010 in case no. B0C00860. On October 28, 2010, the defendant filed a Response to the State's Response. This pleading was filed in A6CR0004, A7CR0020 and B0C00860, after the matter had been dismissed. On or between October 28, 2010 and November 5, 2010, defendant filed a Motion to Reconsider. This was filed in case no. B0C00860. A Notice of Appeal was filed October 29, 2010. The Court of Criminal Appeals affirmed the judgment of the Trial Court on June 7, 2011, CCA case no. E2010-02305-CCA-R3-CO.

Petition for Post-Conviction DNA Analysis: On October 28, 2010, defendant filed a Petition for Post-conviction DNA Analysis. On November 17, 2010, the State was ordered to respond to the petition. The State responded January 7, 2011. These pleadings were filed in case no. B0C01004. The State does not have a copy of an order in this matter.

Motion to Re-Open PCR: On September 3, 2010, defendant filed a Motion to Re-Open Post-Conviction under T.C.A. 40-30-117. He alleges that there is newly discovered evidence which is exculpatory in nature that was fraudulently concealed from him. He alleges that this evidence consists of: TBI latent print report issued March 15, 2006, TBI toxicology report issued January 3, 2006, property of defendant seized for DNA testing, Medical Examiner autopsy report, 911 Dispatcher report, 911-CAD report printed December 15, 2005, Oak Ridge Police Report dated December 10, 2005, and TBI ballistics report performed on the alleged murder weapon. The State responded to this motion on September 23, 2010, with pleadings filed in case nos. A6CR0004 and

A7CR0020. The defendant filed an Amended Motion to Re-Open on July 11, 2011 under these same two case numbers. The State prepared an Order to Transport related to this matter which was filed under case no. B0C01004.

SPECIFIC RESPONSE TO ALLEGATIONS IN THE AMENDED MOTION TO RE-OPEN PETITION FOR POST-CONVICTION RELIEF:

1. In response to the third paragraph of the amended motion, unnumbered, the defendant asserts that the State withheld favorable, material evidence; that the State violated his right to be free from oppressive government action; and, that trial counsel was ineffective. The State specifically denies these assertions.
2. In response to the fourth paragraph of the amended motion, unnumbered, the defendant asserts that the State withheld and fraudulently concealed scientific and exculpatory evidence that was favorable to the defendant. The State specifically denies these assertions.

   In subparagraph (a), the defendant asserts that a failure to disclose the latent print report which reported that the examination failed to reveal the presence of latent prints proves that the petitioner was not the shooter or that the petitioner did not touch the gun. The State responds that a copy of the latent print report was provided to Attorney Sams, attorney for petitioner, as evidenced by the handwritten notation on the report dated 03-29-06. The State also asserts that Attorney Farley reviewed the case file on 06-27-06 as evidenced by documentation on the front of the file. The report would have been within the case file and available a second time. The State asserts that even if no report had

been provided, a lack of latent prints does not necessarily prove that the defendant did not touch the weapon. It merely proves that no prints were found. This could have been caused by the defendant wearing gloves, the defendant wiping the weapon clean, the surface of the grip being too rough to preserve prints, or any prints seen were of insufficient quality to enable an examiner to match them to a particular contributor. Therefore, this is not "newly discovered evidence" and does not prove the defendant's innocence.

In subparagraph (b), the defendant asserts that a failure to disclose the toxicology report on the victim, which reported cocaine metabolite, negates the petitioner's guilt. The State responds that a copy of the autopsy including a toxicology report was in the case file, dated January 3, 2006. Both Attorney Sams and Attorney Farley reviewed the case file post-indictment as evidenced by documentation on the front of the file. The report would have been within the case file and available each time. The State asserts that even if no report had been provided, cocaine metabolite in the blood of the victim could not affect the defendant's mental state. It merely proves that the victim ingested cocaine at some time before his death. Therefore, this is not "newly discovered evidence" and does not prove the defendant's innocence.

In subparagraph (c), the defendant asserts that a failure to disclose the DNA testing of the defendant's clothing, which reported the presence of blood on the defendant's blue jeans and jacket requiring a sample of defendant's blood to confirm a match, is exculpatory. The State responds that a copy of two DNA test reports was in the case file, dated February 17, 2006 and March 29, 2006. Both

Attorney Sams and Attorney Farley reviewed the case file post-indictment as evidenced by documentation on the front of the file. The reports would have been within the case file and available each time. The State asserts that even if no report had been provided, DNA on the defendant's pants matched the defendant but was unconfirmed without a further sample. Therefore, this is not "newly discovered evidence" and does not prove the defendant's innocence.

In subparagraphs (d) and (i), the defendant asserts that a failure to disclose the autopsy report and the TBI ballistics report concerning projectile from victim's head, which reported the projectile recovered was fired through the gun submitted, is exculpatory. The State responds that a copy of the autopsy report, dated January 30, 2006, and the ballistics report dated June 13, 2006, were in the case file. Both Attorney Sams and Attorney Farley reviewed the case file post-indictment as evidenced by documentation on the front of the file. The report would have been within the case file and available each time. The State asserts that even if no report had been provided, a match of the projectile to the firearm tested is not exculpatory. It proves that weapon recovered is the weapon used to kill the victim. No latent print examination of the recovered projectile was requested. Therefore, this is not "newly discovered evidence" and does not prove the defendant's innocence.

In subparagraph (e), (f) (g) and (h), the defendant asserts that a failure to disclose the certain 911 records or police reports, which summarize information received and the action taken by law enforcement or dispatch is exculpatory. The State responds that a copy of the entire report of the Oak Ridge Police

Department including supplemental reports and dispatch records were in the case prior to indictment. Both Attorney Sams and Attorney Farley reviewed the case file post-indictment as evidenced by documentation on the front of the file. The reports would have been within the case file and available each time. Therefore, this is not "newly discovered evidence" and does not prove the defendant's innocence.

In subparagraph (j), the defendant asserts that a failure to disclose his confession proves he did not confess. The State admits that the confessions of the defendant are more accurately described as admissions. The statements were neither signed by him nor tape recorded. He made admissions to: Det. Bill Griffith during a detailed interview; to ACSO CO Sgt. Cantrell and CO Shelton during transport on December 13, 2005; and to witness Karen Leon. More specifically, in an oral statement made by petitioner to Detective Bill Griffith, he admitted that he shot the victim, Terrence Mims. He told the detective that he thought Mims was going to rob him and that was the reason he shot him. In response to an inquiry about the present location of the gun, Kotewa described the location from which it was recovered. Petitioner told Karen Leon over the telephone that he "just got a murder charge," that he "shot some ni--er in the face twice and killed him." While enroute to General Sessions Court, Deputy Jerry Shelton and Sgt. Cantrell documented without questioning that petitioner said he "tracked down [Mims] and killed that damn ni --er before he had a chance to hurt me first." State responds that report of the statements made from each of these persons were in the case file pre-indictment. Both Attorney Sams and Attorney

Farley reviewed the case file post-indictment as evidenced by documentation on the front of the file. The reports would have been within the case file and available each time. Therefore, this is not "newly discovered evidence" and does not prove the defendant's innocence.

3. The defendant asserts that motions for discovery were filed by Attorney Sams and Attorney Farley. The State admits these allegations. The State asserts that both Attorney Sams and Attorney Farley reviewed the case file post-indictment as evidenced by documentation on the front of the file. All complained of information would have been within the case file and available. Nothing named or referenced is "newly discovered evidence" and none of the documents prove the defendant's innocence.
4. The State denies that any exculpatory evidence was suppressed. The petitioner quotes from a letter written by former ADAG Jan Hicks which states that there is no exculpatory evidence other than what is already provided. This assertion is not an admission that any evidence was suppressed. Rather, it is a report that, beyond the evidence provided as of the writing of that letter, no exculpatory evidence is known to exist. Because the complete case file was made available to defendant, it is a report that the case file is complete and all that exists is contained within it.
5. In response to number (8) Exhibit (o), the State denies that the Court Order concerning provision of a transcript in any way reflects support for the defendant/petitioner's assertions that evidence had not been provided. On the

contrary, when post-conviction relief is filed, a copy of the transcript is provided as evidence of what occurred at the prior hearing.

6. In response to petitioner's reliance on Exhibit (P) as evidence that information was withheld or suppressed: The State denies the allegation. No Exhibit P was included with the State's copy of the motion. If there is a letter by former ADAG Jan Hicks characterizing the evidence as "weak," such a communication is merely her perception of the case and carries no weight or facts to support the defendant/petitioner's assertion.
7. Affirmatively, the State asserts that petitioner has attached many of the reports referenced as exhibits to his motion. The State asserts this is evidence that these documents were earlier provided to him and/or his attorneys.
8. The State incorporates the earlier filed response to the motion by reference as though fully set forth herein.

LAW:

T.C.A. 40-30-117 allows a petitioner to re-open the first post-conviction petition only if: (1) the claim is based on a final ruling of an appellate court establishing a constitutional right that did not exist at the time of the trial; (2) the claim is based on new scientific evidence establishing actual innocence; (3) the claim seeks relief from an enhanced sentence; and (4) the facts underlying the claim establish he petitioner is entitled to have the conviction set aside.

ARGUMENT:

In this case, the petitioner does not offer facts or argument to suggest that his claim is based on a new constitutional ground (ground 1), that he seeks relief from an enhanced sentence (ground 3), or that his claim is based upon new scientific evidence (ground 2). Instead, he grounds his claim on "newly discovered evidence." But, there is no new evidence. All of the information about which he complains was contained within the case file and made available to all three of his pre-conviction attorneys. It seems from the first hearing on PCR that the third attorney, Attorney James Webster reviewed the charge, his rights, and the plea agreement, but did not review the State's file. No doubt, he would have had access to the files created by Attorney Farley. Knowing his limited knowledge and work on the case, petitioner chose to go to the plea hearing represented by Attorney Webster. The petitioner acknowledged an understanding of the case and the plea agreement and voluntarily waived his rights and entered a plea of guilty to the charge. As to ground (4), the petitioner seeks the conviction set aside, but offers no proof or new facts to support the request.

The Petitioner's arguments are not support by the record and he has had a previous complete hearing for post-conviction relief. The motion to amend should be denied.

The State respectfully requests that the motion to amend be dismissed, without a hearing, and without re-appointment of counsel, and for such and further relief as deemed fair and equitable by the Court.

EXHIBIT E

Respectfully submitted this the 11th day of October, 2011.

Sandra Donaghy
Assistant District Attorney

CERTIFICATE OF SERVICE
I certify that on this date
a true and exact copy of the
foregoing RESPONSE was delivered to:

Thomas Edward Kotewa, #413696
Morgan County Correctional Complex
P.O. Box 2000
Wartburg, Tennessee 37887

Attorney Brennan Lenihan
(Attorney on original Petition for PCR)
10805 Kingston Pike, Suite 120
Knoxville, Tennessee 37934

This the 11th day of October, 2011.

Sandra Donaghy
Assistant District Attorney

EXHIBIT E