

EXHIBIT 1

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NewsRoom

8/2/96 COMAPL A1

Page 1

8/2/96 Com. Appeal (Mem. TN) A1
1996 WLNR 3580581

Memphis Commercial Appeal (TN)
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August 2, 1996

Section: News

WHITE FIRST CASUALTY OF YES-NO OPTION ON JUDGES SOFT-ON-CRIME CHARGE COSTS SEAT

Paula Wade The Commercial Appeal Nashville Bureau

NASHVILLE Tennessee voters threw Justice **Penny White** off the state Supreme Court Thursday after an unprecedented campaign by conservative activists and victims advocates who labeled her soft on crime.

The stunning defeat, which surprised even the leaders of the dump-White movement, means Gov. Don Sundquist will name his first justice to the court. He has promised to choose only a justice who supports the death penalty.

With 2,404 of 2,413 precincts reporting (99%), the vote on White was:

Retain 236,903 (45%)

Do Not Retain 292,405 (55%)

White, who was named to the court in 1994 by then-Gov. Ned McWherter, was the target of a wildfire campaign that used a handful of her rulings to cast her as an enemy of the death penalty and a coddler of criminals.

White and her supporters rejected those labels, pointing out that she had upheld convictions in 85 percent of her cases as an appellate judge. Thursday night, it became clear how deeply the soft-on-crime charge resonated with voters.

"To the voters of Tennessee, let me say that I deeply respect your decision. . . While I would have welcomed the opportunity to continue to serve, my parents often taught me that when any door is closed, another one opens," White said in a written statement from the Washington County Courthouse in Jonesborough.

In the lounge of the Vanderbilt Plaza Hotel in Nashville, anti-White forces were jubilant as they watched the numbers roll in. They repeated their pledge that the anti-White effort was only a warmup for a larger battle to unseat other Supreme Court and appeals judges in 1998.

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8/2/96 COMAPL A1

Page 2

'We had no money, no organization; and the prime movers could all fit into a booth at Shoney's,' said Rebecca Easley, a victims advocate who helped lead the effort against White. 'I think when it's all totaled, we'll probably all get up and dance a little jig.'

GOP chairman Jim Burnett said White's defeat signals that Tennesseans 'are fed up with judges who put the rights of criminals above the rights of victims, and this shows they're not going to take it any more.'

'We didn't really expect it honestly - we figured she would squeak through,' said John Davies, head of the Tennessee Conservative Union, from his home near Chattanooga. 'In two years, we're at least going to go after Justices (Adolpho) Birch and (Riley) Anderson, and we may go after the other two (Lyle Reid and Frank Drowota).'

Later, Davies corrected himself, indicating his group would 'go after whoever the two were who agreed with Penny White in the Odom case,' in which a Memphis killer was ordered to be resentenced. Davies said he meant Birch and Reid.

White is the first Supreme Court justice to be booted from the court in the yes-no retention vote required under Tennessee's new scheme for selecting appellate court judges, called the Tennessee Plan.

On Thursday, voters chose to retain three appellate judges who also were on the ballot statewide - Court of Criminal Appeals Judge Jerry Smith of Nashville, Court of Criminal Appeals Judge William Barker and Court of Appeals Judge Holly Kirby Lillard of Memphis.

With 2,404 of 2,413 precincts reporting (99%), the vote on Smith was:

Retain 285,174 (66%)

Do Not Retain 143,811 (34%)

With 2,404 of 2,413 precincts reporting (99%), the vote on Barker was:

Retain 287,420 (65%)

Do Not Retain 153,832 (35%)

With 2,404 of 2,413 precincts reporting (99%), the vote on Lillard was:

Retain 281,453 (65%)

Do Not Retain 154,759 (35%)

Throughout the campaign, White's backers expressed fears that if White were removed, it would force judges to take public opinion into account, instead of sticking to the facts and the law.

White came under fire after she concurred in a Supreme Court opinion overturning the death sentence of Richard Odom, who raped and killed 77-year-old

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8/2/96 COMAPL A1

Page 3

Mina Ethel Johnson in a Memphis hospital parking garage.

The court held Odom had to be resentenced because of errors made during the sentencing and because two of the 'aggravating circumstances' to merit the death sentence were not proven. In one of them, the court found the evidence did not prove the killing was 'heinous, atrocious and cruel in that it involved torture or serious physical abuse beyond that required to produce death.'

The Odom case is the only direct appeal of a death penalty that White has heard in her 19 months on the Supreme Court.

photo

AP

Tennessee Supreme Court Justice **Penny White** goes over some paperwork as she speaks with Harlan Mathews on the phone Thursday in Johnson City. She is the first Supreme Court justice to be removed from the court in the yes-no retention vote required under the state's new scheme for selecting appellate court judges.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Crime (1CR87); Judicial (1JU36); Legal (1LE33); Social Issues (1SO05); Criminal Law (1CR79))

REGION: (USA (1US73); Americas (1AM92); Tennessee (1TE37); North America (1NO39))

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8/2/96 COMAPL A1

8/2/96 COMAPL A1

Page 4

END OF DOCUMENT

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EXHIBIT 2

Westlaw

NewsRoom

8/4/96 COMAPL C6

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Section: Business

ORGANIZATION TAKING CREDIT FOR OUSTING **PENNY WHITE**

Michelle Williams The Associated Press

CHATTANOOGA, Tenn. Is the Tennessee Conservative Union a powerful political group capable of stirring voters to oust a Supreme Court justice or just two guys with a fax machine pushing their views?

It depends on who is asked.

"I've never thought the Tennessee Conservative Union has nearly the political muscle that the organization sometimes gets credit for," said political analyst M. Lee Smith of Nashville. "The media keeps calling them and quoting them. Maybe we're the ones at fault."

Indeed, TCU president John Davies gives his organization credit for the ouster of state Supreme Court Justice **Penny White** in the state primary election last week.

"Justice White would still be a justice today if not for the Tennessee Conservative Union," Davies said, adding that the campaign gained steam once joined by victim's rights groups, police officers and attorneys.

"It sends a message to judges that people want the death penalty enforced and they want it enforced now," he said.

The TCU's effort against White began in June after the Supreme Court reversed the death sentence of Richard Odom, who was convicted of raping and murdering an elderly Memphis woman.

White and two other justices ruled Odom's treatment of the elderly woman didn't fit the state's legal definition of "torture or serious physical abuse beyond that necessary to produce death."

The group mailed 12,000 letters urging people to vote against White "since she has never voted for the death penalty" and ran radio commercials in East

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8/4/96 COMAPL C6

Page 2

Tennessee, a region considered vital by the TCU since White is from Johnson City.

The campaign worked. White, the only justice facing a retention vote this year, was defeated 293,664 to 238,225. Her replacement will be appointed by month's end and all five justices will be up for a revote in 1998.

But some question the TCU's influence in the outcome.

Rev. Joe Ingle, who has ministered to death row inmates for 20 years, said the TCU's campaign was "a disgraceful exercise in petty politics."

He said detractors "pulled out the stops and essentially distorted her record and smeared her."

He, Smith and others also doubted the Chattanooga-based group was as large as touted and questioned its funding.

Davies said in a 1991 deposition for the Tennessee Registry of Election Finance that the TCU "technically does not have any members," but about 5,000 supporters.

There are three board members: Davies, chairman Lloyd Daugherty, who has a syndicated radio fishing show based in Knoxville, and Lowell Lynch, a public school teacher in Tazwell.

Davies, 37, the son of a prominent Chattanooga lawyer, is president of Free the Fathers, an organization working for the release of Roman Catholic priests held prisoner in China.

A former member of the state Republican Executive Committee, he was elected in March as a Bob Dole delegate to this month's Republican National Convention.

Davies said the TCU now has about 12,000 members, but there are no dues or regular meetings.

Last year, supporters contributed \$75,000 to help the group fight for conservative causes, he said.

When asked for a list of members who would talk about their involvement with the group, Davies said he would have to ask their permission to submit their names.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Judicial (1JU36); Legal (1LE33))

REGION: (USA (1US73); Americas (1AM92); Tennessee (1TE37); North America (1NO39))

Language: EN

OTHER INDEXING: (BOB DOLE; REPUBLICAN EXECUTIVE COMMITTEE; REPUBLICAN NATIONAL CONVENTION; ROMAN CATHOLIC; SUPREME COURT; TCU; TENNESSEE CONSERVATIVE UNION; TENNESSEE REGISTRY OF ELECTION FINANCE) (Davies; Joe Ingle; John Davies; Justice White; Lloyd Daugherty; Lowell Lynch; M. Lee Smith; Odom; Penny White; Richard

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8/4/96 COMAPL C6

Page 3

Odom; Smith; White) (JUDGE; ELECTION; RESULT; TN; ORGANIZATION)

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8/4/96 COMAPL C6

END OF DOCUMENT

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EXHIBIT 3

Westlaw

NewsRoom

9/22/96 COMAPL A14

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Section: News

JUDGES MAY FEAR LOSING THEIR JOBS

Phil West The Associated Press

NASHVILLE Job security will join ethics and case law on the minds of state Supreme Court candidates when they stand before the Tennessee Judicial Selection Commission.

That's because voters removed **Penny White** from her seat on the state Supreme Court, say the commission chairman, a law professor and a political scientist.

Wednesday is the deadline for candidates seeking to succeed White, rejected by Tennessee voters in August by a vote of 293,664 to 238,225.

Practicing attorneys have been speculating that all Tennessee courts are delaying decisions on important cases until after the elections, said University of Memphis law professor Barbara Kritchevsky.

"The initial fear of something like this is it's going to make the judges not do their jobs and interpret the law and just render decisions that are watered down and popular," she said.

White was targeted by Republicans, conservatives and victims' advocates for her part in overturning the death penalty for a man convicted of raping and murdering a 78-year-old woman.

White, the second woman to serve on Tennessee's Supreme Court, was appointed by former governor Ned McWherter in 1994.

Gov. Don Sundquist will pick White's successor from a list of three nominated by the state Judicial Selection Commission.

White's rejection "might have the effect that judges will have to pay even closer attention to public opinion, especially as they get closer to an election," said Mark Byrnes, a political science professor at Middle Tennessee

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9/22/96 COMAPL A14

Page 2

State University.

'That's the question: will it affect the decisions they make? We don't want judges to ignore public opinion, but then we don't want them to be swayed by it.'

Memphis lawyer George Lewis, who heads the selection commission, said he doesn't know if the White rejection is scaring away good judicial candidates.

'Some candidates express some concern about job security of the appellate court now. . . . There's a lot of talk among lawyers in the state about what it means to the future. It's on the people's minds, both on incumbent judges and for people applying,' Lewis said.

But he said there's been no lack of applicants.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Judicial (1JU36); Legal (1LE33))

REGION: (USA (1US73); Americas (1AM92); Tennessee (1TE37); North America (1NO39))

Language: EN

OTHER INDEXING: (JUDICIAL SELECTION COMMISSION; MEMPHIS; MIDDLE TENNESSEE STATE UNIVERSITY; SUNDQUIST; SUPREME COURT; TENNESSEE; TENNESSEE JUDICIAL SELECTION COMMISSION; UNIVERSITY OF MEMPHIS) (Barbara Kritchevsky; FEAR LOSING; George Lewis; Gov; JUDGES MAY; Lewis; Mark Byrnes; Ned McWherter; Penny White; Practicing; White) (COURT; JUDGE; CAMPAIGN; TN)

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END OF DOCUMENT

EXHIBIT 4

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NewsRoom

10/9/96 COMAPL A13

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Section: News

DEATH PENALTY GAINING MORE FRIENDS AMONG TENN. LEGISLATIVE CANDIDATES

The Associated Press

NASHVILLE They don't want to end up like **Penny White**.

Candidates for the state Legislature are making it loud and clear this year that they support the death penalty.

White became the first Supreme Court Justice to be voted off the bench after a campaign led by the Tennessee Conservative Union, Republicans and victims' advocates portrayed her as being soft concerning the death penalty.

The last time Tennessee executed a man was 1960. Nearly 100 convicted murderers sit on death row now.

"I'm a firm believer in capital punishment," said Republican state Rep. Bill McAfee of Chattanooga, who's up for re-election Nov. 5. "Anything the Legislature can do that we haven't already done, I'm in favor of."

His opponent, Democrat Frank Groves, said he not only favors the death penalty, he put a man on death row while a prosecutor for the state.

But he doesn't see much happening on the state level.

Rep. Don Bird (R-Cleveland), lists his sponsorship of a bill limiting the appeals process as one of his first-term accomplishments.

C. Wayne Shearer, a Republican candidate for state House District 31, said, "We need to get things going with the death penalty in this state." He's going after the seat held by Rep. Arnold Stulce (D-Soddy Daisy).

John Davies, president of the Conservative Union, said the **Penny White** vote has something to do with it, "but also people have gotten to the point that they want something done about violent crime."

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10/9/96 COMAPL A13

Page 2

"The public doesn't have any sympathy for legislators, lawyers or judges who dillydally with the death penalty. They want it enforced and they want it now."

Polls consistently show that Tennessee voters favor the death penalty four to one, said Will Cheek, chairman of the state Democratic Party.

"For that reason, I'd imagine that support for the death penalty is going to be universal among candidates, except maybe for longtime officials who don't have to," Cheek said.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Judicial (1JU36); Legal (1LE33))

REGION: (USA (1US73); Americas (1AM92); Tennessee (1TE37); North America (1NO39))

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OTHER INDEXING: (CONSERVATIVE UNION; TENNESSEE; TENNESSEE CONSERVATIVE UNION)
(Arnold Stulce; C. Wayne Shearer; Cheek; DEATH PENALTY GAINING; Democrat Frank Groves; Democratic Party; John Davies; White) (LEGISLATURE; CAMPAIGN; TN; DEATH PENALTY)

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END OF DOCUMENT

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