

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
MAR - 1 2018
Clerk of the Appellate Courts
Rec'd By _____

STATE OF TENNESSEE,)
)
Movant,)
)
v.)
)
EDMUND ZAGORSKI,)
)
Defendant.)

No. M1996-00110-SC-DPE-DD

**EDMUND ZAGORSKI'S RESPONSE IN OPPOSITION TO STATE'S MOTION
FOR EXPEDITED EXECUTION DATES
AND REASONS WHY NO EXECUTION DATE SHOULD BE SET**

On September 7, 2017,¹ the State's contractor, a for-profit pharmaceutical supplier, told the State of Tennessee that midazolam "does not elicit strong analgesic effects," and that inmates "may be able to feel pain from the administration of the second and third drugs" in a three-drug protocol. *See* Attachment 2. That is, the State is on notice that if they use midazolam in place of a true anesthetic in a three-drug protocol, a condemned inmate will suffer severe pain during execution.²

Despite this warning, on October 18, 2017, the State began the process of procuring midazolam for use in executions, ultimately purchasing midazolam that

¹ *See*, Attachment 1, Chronology of Events Relevant to State's Motion to Expedite Execution Dates.

² Recently, "botched" executions in Arizona, Oklahoma, and Ohio also put the State of Tennessee on notice that midazolam is not an anesthetic, does not render inmates insensate to pain, and is grossly inappropriate for use in lethal injection executions.

expires on June 1, 2018. On October 26, 2017, one of the State's drug-suppliers,³ emailed the Tennessee Department of Correction, and stated, "I will have my pharmacist write up a protocol." Attachment 3. On November 28, 2017, one of the drug suppliers sent another email that contained, "revisions to the protocol." Attachment 4.

On January 8, 2018, the State promulgated a new lethal injection protocol that retained the one-drug, pentobarbital protocol and added a midazolam-based, three-drug lethal injection protocol: Tennessee's Midazolam Option.⁴ Apparently, this is the protocol drafted for the State of Tennessee by the for-profit supplier of drugs that are to be used in the proposed executions.

On January 11, 2018, the State moved this Honorable Court to resume executions. Five-days after requesting such executions, on January 16, 2018, and in response to a public records request, the State disclosed their amendment of the 2015 lethal injection protocol and the adoption of the Midazolam Option.⁵ No formal announcement was made alerting the public to the new protocol. However, in the February 15, 2018 Motion to Set Execution Dates, the State, for the first time, announced its intention to execute inmates using the Midazolam Option, and not via the single-drug pentobarbital protocol.

³ It is not known whether this is the same supplier who had warned Tennessee that midazolam would not work, or a different drug seller.

⁴ That is, the State bought the midazolam first, and created a mechanism to use it, second. With both actions being preceded by a warning from their supplier that midazolam was not effective.

⁵ This disclosure came in response to a public records request submitted by counsel for Abdur'Rahman, Johnson, Wright, and Zagorski. This request had been pending since November 6, 2017.

The State purchased midazolam in October of 2017 that would only be effective until June 1, 2018. This purchase was made while executions were on hold awaiting the United States Supreme Court's resolution of *Abdur'Rahman, et al. v. Parker, et al.*, Case No. 17-6068. The State knew that they would have very little time between a possibly favorable Supreme Court ruling, and the expiration of their midazolam. The State was aware that (1) applications for executive clemency will not be entertained until after execution dates are set, (2) this Court's practice has been to permit at least three months for the Governor to consider such applications, (3) this Court has traditionally scheduled executions many weeks or months apart, and (4) this Court's precedent demands a full and fair constitutional adjudication of substantively new execution protocols. Yet they purposefully kept their plans under wraps.

The State's decision to add the Midazolam Option to its lethal injection protocol (after purchasing it first, and despite being warned of its dangers), and to accept midazolam with a June 1, 2018 expiration date does not create an exigency warranting an unprecedented rush to execution.

The fact that the protocol that would be used to execute Mr. Zagorski was written, not by State actors, but by the supplier who profits from the sale of the protocol drugs,⁶ is yet another reason not to set Mr. Zagorski's execution.

⁶ In the State's response to public records requests, they have been less than illuminating about the process used to produce the current protocol. However, the emails that were produced are the only documents provided that detail any part of the drafting procedure. Thus, Edmund Zagorski relies on them as the best evidence of how the Midazolam Option came to be.

Mr. Zagorski should be given a full opportunity to litigate the constitutionality of the newly proposed lethal injection protocol without the extraordinary pressure of eight execution dates in a compressed, three-month timeframe. Mr. Zagorski and all similarly situated inmates, should be given adequate time to present petitions for clemency to the Governor of the State of Tennessee. The State's Motion to Set Execution Dates should be denied.

I. Principles Of Stare Decisis And Established Precedent Require A Full And Fair Adjudication Of The Merits Of The Now-Pending Declaratory Judgment Action That Was Filed Expeditiously (27 business days) After The Tennessee Midazolam Option Was Disclosed To Counsel For Abdur'Rahman, Johnson, Wright, and Zagorski.

The State's request for relief is foreclosed by binding Tennessee precedent.

This Court's precedent establishes that:

The principles of constitutional adjudication and procedural fairness require that decisions regarding constitutional challenges to acts of the Executive and Legislative Branches be considered in light of a fully developed record addressing the specific merits of the challenge. The requirement of a fully developed record envisions a trial on the merits during which both sides have an opportunity to develop the facts that have a bearing on the constitutionality of the challenged provision.

State v. West, No. M1987-000130-SC-DPE-DD, Order p.3 (Tenn. Nov. 29, 2010).

This Court has held true to the principles announced in *West*. See e.g., *State v.*

Strouth, No. E1997-00348-SC-DDT-DD, Order, p. 3 (Tenn. Apr. 8, 2014) ("Mr.

Strouth is correct that currently, there is no controlling law in Tennessee on the constitutionality of the use of the single drug, Pentobarbital, to execute a death row inmate... Accordingly, the Court will set Mr. Strouth's execution for a future date

that will allow plenty of time for resolution of the declaratory judgment action in the state courts.”).

The State’s motion fails to acknowledge the holding in *West*. Further, the State’s motion does not provide a single case to give this Court a reason to depart from the principles of *stare decisis*. “The power of this Court to overrule former decisions ‘is very sparingly exercised and only when the reason is compelling.’” *In re Estate of McFarland*, 167 S.W.3d 299, 306 (Tenn. 2005) quoting *Edinburgh v. Sears, Roebuck & Co.*, 206 Tenn. 660, 337 S.W.2d 13, 14 (1960). As this Court has held, “The sound principle of *stare decisis* requires us to uphold our prior precedents to promote consistency in the law and to promote confidence in this Court’s decisions.” *Cooper v. Logistics Insight Corp.*, 395 S.W.3d 632, 639 (Tenn. 2013). This Court does not deviate from precedent on the basis of speculative “uncertain[ty].” State’s Motion To Set Execution Dates, p. 2.

II. The State’s Professed Urgency To Schedule Executions Prior To June 1, 2018 Is A Manufactured And Avoidable Crisis That Does Not Justify Abridging Edmund Zagorski’s Right To Fully Challenge The Midazolam Option.

A. The State Manufactured A Crisis To Support Its Request For Executions Prior To June 1, 2018 To Prevent The Due Process Hearing Required By Court Precedent From Ever Taking Place.

Midazolam is the most controversial, dangerous drug ever to be used in a lethal injection protocol in the State of Tennessee. Of the seven states to use midazolam in a lethal injection, three have abandoned its use. The State of Arizona has agreed to never again use any benzodiazepine, including midazolam, or a paralytic in a lethal injection. *First Amendment Coalition of Arizona, Inc., et al. v.*

Ryan, et al., Case No. 2:14-CV-01447-NVW-JFM, Stipulated Settlement Agreement, Docket Entry No. 152 (D. Ariz. Dec. 19, 2016)(Attachment 5)(midazolam); *First Amendment Coalition of Arizona, Inc., et al. v. Ryan, et al.*, Case No. 2:14-CV-01447-NVW-JFM, Stipulated Settlement Agreement, Docket Entry No. 186 (D. Ariz. June 21, 2017)(Attachment 6)(paralytic).

Midazolam— a sedative with no analgesic properties— is a completely different class of pharmaceutical than the barbiturates sodium thiopental and pentobarbital. Unlike sodium thiopental and pentobarbital, midazolam does not render the inmate unaware or insensate to severe pain. The Supreme Court has held: “It is uncontested that, failing a proper dose of sodium thiopental that would render the prisoner unconscious, there is a substantial, constitutionally unacceptable risk of suffocation from the pancuronium bromide and pain from the administration of potassium chloride.” *Baze v. Rees*, 553 U.S. 35, 53 (2008). The Davidson County Chancery Court agreed with Chief Justice Roberts’ opinion in *Baze* in the 2010 *West v. Ray* litigation. See *West v. Ray*, Case No. 10-1675-I, Order (Davidson County Chancery Court November 22, 2010). The Chancellor’s opinion in the 2010 *West* litigation remains undisturbed. Similarly undisturbed is the opinion of the Davidson County Chancery Court in the 2005 *Abdur’Rahman v. Bredesen* litigation that pavulon (a paralytic similar to the one used in the new Midazolam Option) serves no purpose in an execution. *Abdur’Rahman v. Bredesen*, 181 S.W. 3d 292, 307 (Tenn. 2005) (noting that “the Chancellor correctly observed

that the State failed to show a legitimate reason for the use of Pavulon in the lethal injection protocol[.]”)

When Tennessee last used a three-drug protocol, it was found to be unconstitutional unless the State implemented sufficient checks to ensure that the inmate would be unable to experience suffocation and pain. Those necessary checks are absent from Tennessee’s Midazolam Option, perhaps because the protocol was drafted by the State’s for-profit drug supplier.

The State knew, or reasonably should have known, when they chose to change its lethal injection protocol and add a Midazolam Option, that its new protocol would be challenged in court. They also knew that the challenge would have merit because they were warned by their for-profit drug supplier that midazolam does not work like sodium thiopental or pentobarbital. In a September 7, 2017, email, the supplier wrote “Here is my concern with midazolam, being a benzodiazepine, it does not elicit strong analgesic effects. The subjects may be able to feel pain from the administration of the second and third drugs. Potassium Chloride especially.” Attachment 2. The State knew that counsel for Abdur’Rahman, *et al.*, submit requests for public records regarding execution drugs (among other information) on a routine basis. *See* Attachment 7, Chronology of Public Records Requests During Past Six Months. Despite producing public records on November 6, 2017, TDOC did not provide any records regarding a change in the lethal injection protocol to include a Midazolam Option or regarding TDOC’s attempts to procure midazolam until January 16, 2018. *See* Attachments 1, 7.

On October 18, 2017, TDOC was told that the midazolam it was purchasing expired on June 1, 2018. Attachment 8, Email. TDOC moved forward with the purchase of midazolam they knew would expire before any challenge to its use could be litigated in court. Emails, W-9's, invoices and photographs of the drugs purchased demonstrate that the State knew well in advance of January 8, 2018, that it intended to use Tennessee's Midazolam Option to execute Mr. Zagorski. Yet, despite public records requests made throughout that time, the State failed to notify undersigned counsel of any intent to implement a new lethal injection protocol.

The State's decision to withhold this information from defense counsel appears intentional and calculated to gain a litigation advantage. The State seeks to avoid a trial on the merits of any challenge to Tennessee's Midazolam Option. To do so, they seek to cut off Mr. Zagorski's access to the courts by executing him before he has a chance to present his proof.

On January 18, 2018, just two days after learning of Tennessee's Midazolam Option, Mr. Zagorski told this Court that he intended to challenge the new protocol but required time to consult with experts; Mr. Zagorski additionally stated he would file a challenge on or before February 20, 2018 – a deadline Mr. Zagorski met. The State delayed until February 15, 2018, to tell this Court that its midazolam supply expires on June 1, 2018.

Importantly, and fatal to their request for expedited execution dates, the State does not say that they will be unable to obtain the drugs necessary to carry out executions after June 1, 2018. Rather, the State alleges that their ability to do

so is “uncertain.” State’s Motion to Set Execution Dates, p. 2. Such vague and unsupported allegations are not enough to overturn Tennessee precedent, particularly where the State could have informed Mr. Zagorski months earlier that it intended to adopt a new lethal injection protocol that adds a Midazolam Option. Under the circumstances, Mr. Zagorski has acted with extreme diligence, expediency and transparency. The same cannot be said for the State. *See* Attachment 1.

B. The State’s Vague and Unsupported Representation To The Court About Its Efforts to Obtain Pentobarbital Is Inconsistent With The Proof In The Record, Their Own Representations To The United States Supreme Court, Their Representations To The Public, And The Fact That Executions Using Pentobarbital Continue To Be Carried Out.⁷

In its motion, the State tells the Court: “The Department’s supply of pentobarbital expired while the *West* proceeding was pending.” State’s Motion to Set Execution Dates, p. 2. This cannot be true. TDOC’s numerous responses to Tennessee Public Records Act requests make clear that TDOC never received any pentobarbital (compounded or otherwise) from its supplier(s) and never had any in its possession, thus there was none to expire. The reason TDOC never had pentobarbital is because the 2015 lethal injection protocol, current Protocol A, uses compounded pentobarbital. According to the USP,⁸ high-risk sterile compounds, which compounded pentobarbital is, have a beyond use date of 24 hours at

⁷ Although this Court does not resolve factual disputes, and Edmund Zagorski is not requesting that the Court do so, the following facts are asserted in response to the State’s representation regarding pentobarbital. The truth will ultimately be determined in the pending Chancery Court proceedings.

⁸ The United States Pharmacopeia sets the world industry standards to “ensure the quality, safety, and benefit of medicines and foods.” <http://www.usp.org/about> (last checked March 1, 2018).

controlled room temperature or three days refrigerated. *See West, et al. v. Schofield, et al.*, Case No. M2015-01952-COA-R3-CV, Technical Record, Trial Exhibits 5, 6. Testimony from State agents during the previous *West* litigation established that the TDOC had a signed contract with a pharmacist who assured that s/he could obtain the active pharmaceutical ingredient necessary to compound pentobarbital and that the compounder was ready, willing, and able to manufacture and distribute compounded pentobarbital to TDOC upon the setting of an execution date. *See, e.g., West, et al. v. Schofield, et al.*, Case No. M2015-01952-COA-R3-CV, Technical Record, Transcript, Volume III, pp. 823-824; *Id.*, Trial Exhibit 54. On March 2, 2017, Debra Inglis, TDOC legal counsel, told reporters that TDOC was able to obtain the drugs necessary for an execution “as needed.” Boucher, *Lethal injections stalled*, *The Tennessean*, March 3, 2017, p. A3; 2017 WLNR 6714205.

Counsel for Abdur’Rahman, Johnson, Wright and Zagorski have consistently requested public records from TDOC. Attachments 1, 7. TDOC has not produced a document indicating that the compounder has withdrawn from the contract with TDOC. TDOC has not produced a document establishing that they are unable to obtain compounded pentobarbital. On November 13, 2017, the State continued to defend the compounded pentobarbital protocol in the United States Supreme Court. *Abdur’Rahman, et al. v. Parker, et al.*, No. 17-6068, Brief in Opposition. That the State did so indicates that they were confident in their ability to obtain pentobarbital as recently as November 13, 2017.

Public records productions by TDOC, which the State represents are full and accurate as of January 10, 2018, provide no evidence that TDOC is unable to obtain compounded pentobarbital.⁹ In fact, documents produced on January 16, 2018, contain a contract signed December 4, 2017, with an individual who agreed to compound drugs for lethal injections in Tennessee. Attachment 9, Pharmacy Services Agreement, Article 1, §1.2.

The State's new protocol, which retained pentobarbital and added a Midazolam Option, is dated January 8, 2018. Texas was prepared to carry out an execution using pentobarbital on February 22, 2018, but the defendant in that case was granted executive clemency hours before the execution was carried out. Georgia is set to carry out an execution using pentobarbital on March 15, 2018. Thus, the State's bald assertion that their ability to obtain pentobarbital is uncertain does not justify their request to schedule Mr. Zagorski's execution prior to June 1, 2018, and to choose the Midazolam Option, without ever giving Mr. Zagorski an opportunity for the due process hearing this Court's precedent demands.

C. The State's Argument That The Pharmaceutical Companies Are Acting At The Behest Of Death Penalty Opponents Is A Baseless Conspiracy Theory.

Multi-billion dollar pharmaceutical companies do not act at the behest of small, non-profit death penalty abolitionist groups. These businesses act at the behest of their stockholders and pursuant to their business model. These private businesses do not have a stake or a position on how or whether Mr. Zagorski lives or

⁹ Despite requests to the contrary, when TDOC finally answers public records requests they only do so as of the date of the letter requesting the records. A February 2, 2018 public records request remains unanswered.

dies. Mr. Zagorski has no control over these Fortune 500 companies. Nor does Mr. Zagorski have control over the actions of small, non-profits.

The truth is that the pharmaceutical companies have always objected to their drugs being misused in lethal injections. When states began to use branded drugs in lethal injections, those companies simply enforced their contracts, as any business would.

The fact that the business concerns of multi-billion dollar companies collide with the State's interest in misusing those companies' drugs is not the fault of Mr. Zagorski. The actions of individuals on either side of the death penalty debate are irrelevant to Mr. Zagorski's right to due process and the rule of law. Such actions do not provide a reason to cast aside *stare decisis* and set execution dates before Mr. Zagorski has an opportunity to fully and fairly litigate his case against the new lethal injection protocol.

III. Tennessee Courts Are To Be Concerned With Due Process And The Rule Of Law.

The February 22, 2018 botched non-execution of Doyle Hamm in Alabama¹⁰ demonstrates why it is essential to fully and fairly litigate challenges to risky protocols such as the Tennessee Midazolam Option in a courtroom environment without the extreme pressure of compressed execution schedules. The constitutionality of the Midazolam Option must be adjudicated in a forum that is free from the immense time pressure the State seeks to impose.

¹⁰<https://www.reuters.com/article/us-alabama-execution/alabamas-aborted-execution-was-botched-and-bloody-lawyer-idUSKCN1G90Y2> (last checked March 1, 2018).

The cases cited by the State in their motion arise in a stay-posture where the defendants faced a higher burden than the one governing Mr. Zagorski's pending lawsuit in Chancery Court. Moreover, the cases cited by the State do not change the fact that this Court has always held that lethal injection challenges must be fairly adjudicated on their own, unique facts in Tennessee.¹¹ Fair adjudication means a trial with a full record addressing the merits. "The requirement of a fully developed record envisions a trial on the merits during which both sides have an opportunity to develop the facts that have a bearing on the constitutionality of the challenged provision." *State v. West*, No. M1987-000130-SC-DPE-DD, Order p.3 (Tenn. Nov. 29, 2010). The State's motion implicitly admits that there is no time to meet the requirement of a fully developed record if eight executions are to be conducted by June 1, 2018. The State's motion fails on the basis of precedent alone.

Indeed, this Court's precedent establishes that Mr. Zagorski is entitled to sufficient notice and time to challenge the Tennessee Midazolam Option that this State's courts have never reviewed. This Court previously acknowledged that Mr. Zagorski has a "legitimate. . . right to and need for notice" regarding significant changes in lethal injection protocols. *West v. Schofield*, 468 S.W.3d 482, 494 (Tenn.

¹¹ Edmund Zagorski's lawsuit cannot be dismissed by reference to cases decided in other jurisdictions in the context of appeals from the preliminary injunction proceedings respecting protocols which are not identical to the Tennessee Midazolam Option. Tennessee courts decide what is constitutional in Tennessee after a full and fair hearing. Further, the State overstates the Supreme Court's holding in *Glossip v. Gross*, 135 S.Ct. 2726 (2015). *Glossip* did not hold that the any lethal injection protocol using midazolam is constitutional. Rather, in the context of an appeal from the denial of a preliminary injunction in a federal court action, it was found that the lower court did not commit clear error. *Id.*, at 2740-41.

2015) (interlocutory appeal holding challenge to electrocution unripe but guaranteeing sufficient notice and time to challenge any change to the protocol).

IV. Scheduling Execution Dates On An Expedited Basis Unduly Burdens And/Or Denies Edmund Zagorski Fair Access To Meaningful Clemency Proceedings.

Mr. Zagorski has a statutory and constitutional right to seek executive clemency. As the United States Supreme Court has observed

Executive clemency has provided the “fail safe” in our criminal justice system. K. Moore, *Pardons: Justice, Mercy, and the Public Interest* 131 (1989). It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible. But history is replete with examples of wrongfully convicted persons who have been pardoned in the wake of after-discovered evidence establishing their innocence. In his classic work, Professor Edwin Borchard compiled 65 cases in which it was later determined that individuals had been wrongfully convicted of crimes. Clemency provided the relief mechanism in 47 of these cases; the remaining cases ended in judgments of acquittals after new trials. E. Borchard, *Convicting the Innocent* (1932). Recent authority confirms that over the past century clemency has been exercised frequently in capital cases in which demonstrations of “actual innocence” have been made. *See* M. Radelet, H. Bedau, & C. Putnam, *In Spite of Innocence* 282-356 (1992).

Herrera v. Collins, 506 U.S. 390, 415 (1993). The Court reaffirmed the importance of clemency in *Harbison v. Bell*, 556 U.S. 180, 192 (2009) (“As this Court has recognized, however, ‘[c]lemency is deeply rooted in our Anglo–American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted.’ *Herrera v. Collins*, 506 U.S. 390, 411–412, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993) (footnote omitted).”).

In the modern era, the State of Tennessee has executed six men.¹² Two men and one woman facing imminent execution have received executive clemency.¹³ Thus, in this state, fully one-third of defendants who completed the standard three-tier process and who were facing execution were found to be worthy of a life sentence.

A request for executive clemency in a capital case will not be considered by the executive branch until all litigation is exhausted. An effective case for clemency cannot be cobbled together in a matter of days. Moreover, expediting eight executions before June 1, 2018, prevents a careful, thorough and meaningful consideration of Mr. Zagorski's clemency request. Forcing Mr. Zagorski to seek clemency while at the same time litigating the Tennessee Midazolam Option under an extremely compressed timeline alongside seven other inmates is the equivalent of denying all inmates a legitimate opportunity to pursue clemency. Such a compressed timeframe is also extremely disrespectful to Governor Haslam, who would be expected to make eight life or death decisions in mere weeks.¹⁴ This is a separate and untenable injustice that would result if expedited execution dates are set.

¹² Robert Coe, Sedley Alley, Philip Workman, Daryl Holton, Stephen Henley, Cecil Johnson.

¹³ Michael Boyd, Edward Harbison, Gaile Owens.

¹⁴ Governor Haslam's two predecessors were asked to make only one more clemency determination (nine), during the sixteen years they held office.

V. This Court Should Not Set An Execution Date But Instead Impose A Life Sentence, Where The Death Sentence Here Is Arbitrary And Unjust.

The death sentence here is arbitrary and/or disproportionate or otherwise unfair because the prosecution offered Zagorski a life sentence before trial; in many similar or worse homicides in Tennessee involving drug-related killings, like this case, Tennessee courts and juries have concluded that a life sentence is the greatest penalty to be imposed under such circumstances; in Tennessee, many, many worse offenders with more egregious homicides have received life sentences for their offenses; the death sentence is rare in Tennessee, and Ed Zagorski is not the “worst of the worst.” This Court, therefore, should not set an execution date but instead reform Ed Zagorski’s sentences to sentences of life imprisonment.

A. The Death Sentence Is Arbitrary And Unwarranted Where The Prosecution Acknowledged Pretrial That This Case Only Merited The Lesser Sentence Of Life Imprisonment, And That Death Is Not Warranted.

In this case, the prosecution agreed that a life sentence was the appropriate sentence for Ed Zagorski, having offered him two (2) life sentences in exchange for a guilty plea. *See* Attachment 10 (Affidavit of Larry Wilks, Esq.). That is still the case now. Because the state agreed that a life sentence was appropriate and would serve all the interests necessary for the state in this case, it was (and is) arbitrary for the state to have imposed death instead – and only after Ed Zagorski exercised his right to a jury trial. *United States v. Jackson*, 390 U.S. 570 (1968). The state’s offer of life proves, *ipso facto*, the death penalty never was – and is not today – a necessary or appropriate punishment for Ed Zagorski. As such, this Court should vacate the

death sentence and impose life sentences instead, as the prosecution sought at the time of trial.

B. The Death Sentence Is Arbitrary, Disproportionate, And Unfair Where Similar Or Worse Tennessee Offenders Involved In Drug-Related Homicides Have Been Sentenced To The Lesser Punishment Of Life Imprisonment.

The fact that the drug-related homicides in this case merit only a life sentence is confirmed by the fact that in numerous drug-related homicides in Tennessee – some involving even worse homicides, including many more victims than those here – Tennessee courts have ultimately concluded that a life sentence is the appropriate sentence. The proof at trial showed that the victims here were dealing drugs, intoxicated at the time of their deaths, and unlike Ed Zagorski, at least 20 (twenty) other persons convicted of drug-related double homicides (or worse) have not been sentenced to death, but to life imprisonment. *See Attachment 11* (chart identifying drug-related, double-homicide cases, or worse, in which the defendant received a sentence less than death either via jury or via plea).

As the attached chart demonstrates, of the twenty defendants convicted in similar drug-related, cases, some defendants killed three victims and received only life sentences, or even a more lenient punishment. Shannon Lee Beckner, Randy Gail Gordon, and Kelvin DeWayne King all committed three drug-related homicides and were only sentenced to life imprisonment, while the remainder of drug-related double homicides only resulted in life sentences. Because Ed Zagorski's offense is no more serious or egregious than these many other double and triple homicides involving drug deals, in the interest of justice and to prevent the arbitrary or

disproportionate infliction of the death sentence, his sentence should be modified to life as well.

C. The Death Sentence Is Arbitrary And Disproportionate Where Tennessee Defendants Who Have Killed Up To Six (6) Victims Have Only Been Sentenced To Life Imprisonment.

Moreover, while triple and double drug-related homicides in Tennessee have resulted in life sentences, there is a long list of persons who have committed triple, quadruple, quintuple, and even sextuple homicides in Tennessee for whom the punishment imposed has been only life imprisonment. The life sentences given to these much worse defendants for more egregious homicides confirm that the death sentence for Ed Zagorski is an excessive punishment under the circumstances, and arbitrary as well.

In Edmund Zagorski's case, the death penalty is also arbitrary and disproportionate and excessive (and thus cruel and unusual) where significantly *worse* murders and murderers throughout Tennessee have received *lesser* sentences than Ed Zagorski. Throughout the state, persons who have committed 6, 5, 4, and 3 first-degree murders have been given life sentences for their crimes, not death. This offense is *not* worse than significantly *worse* offenders who were given life sentences for significantly worse crimes. Thus, for example, Henry Burrell and Zakkawanda Moss committed 6 first-degree murders in Lincoln County yet were sentenced to life.¹⁵ Jacob Shaffer committed 5 first-degree murders and he, too, was sentenced to

¹⁵ See Attachment 12: Tennessee Supreme Court Rule 12 Reports, *State v. Burrell & Moss*.

life.¹⁶ Curtis Johnson in Shelby County committed 4 first-degree murders,¹⁷ as did Carey Caughron,¹⁸ Thomas Elder,¹⁹ and Courtney Matthews,²⁰ yet none of these multiple murderers was sentenced to death. Moreover, there are literally *dozens* of triple murderers in this state who were also given life sentences, not death. The following is a list of persons who received life sentences for killing three (3) victims: *See e.g., State v. Cox*, 1991 Tenn.Crim.App.Lexis 199 (Shelby Co.);²¹ *Chung v. State*, 1994 Tenn.Crim.App.Lexis 609;²² *Bounnam v. State*, 1999 Tenn.Crim.App.Lexis 842;²³ *Angel v. State*, 2015 Tenn.Crim.App.Lexis 72 (two defendants received life for three first-degree murder convictions);²⁴ *Bailey v. State*, 2010 Tenn.Crim.App.Lexis 357; *State v. Billington*, Hamilton Co. No. 240690;²⁵ *State v. Howell*, 34 S.W.3d 484 (Tenn. 2000)(6 different persons convicted of triple first-degree murders sentenced to life); *State v. Casteel*, 2004 Tenn.Crim.App.Lexis 814;²⁶ *State v. Jenkins*, Davidson Co. No. 2013-A-866;²⁷ *State v. Johnson*, Bradley Co. No. 08-456;²⁸ *State v. Kelley*, 683 S.W.2d 1 (Tenn.Crim.App.Lexis 1984)(two defendants sentenced to life for triple first-degree murders);²⁹ *State v. Myers*, 2004 Tenn.Crim.App.Lexis 390;³⁰

¹⁶ See Attachment 13: Rule 12 Reports, *State v. Shaffer*.

¹⁷ *Johnson v. State*, 1995 Tenn.Crim.App.Lexis 370; See Attachment 14, Rule 12 Report: *State v. Curtis Johnson*.

¹⁸ See Attachment 15: Rule 12 Report, *State v. Carey Caughron*.

¹⁹ See Attachment 16: Rule 12 Report, *State v. Thomas Elder*.

²⁰ See *State v. Matthews*, 2008 Tenn.Crim.App.Lexis 598.

²¹ See Attachment 17: Rule 12 Report, *State v. Brian Cox*.

²² See Attachment 18: Rule 12 Report, *State v. Hung Van Chung*.

²³ See Attachment 19: Rule 12 Report, *State v. Kong Chung Bounnam*.

²⁴ See Attachment 20: Rule 12 Reports, *State v. Angel & Wood*.

²⁵ See Attachment 21: Rule 12 Report, *State v. Peter Billington*.

²⁶ See Attachment 22: Rule 12 Report, *State v. Frank Casteel*.

²⁷ See Attachment 23: Rule 12 Report, *State v. Lorenzo Jenkins*.

²⁸ See Attachment 24: Rule 12 Report, *State v. Maurice Johnson*.

²⁹ See Attachment 25: Rule 12 Reports, *State v. Kelley & Kelley*.

³⁰ See Attachment 26: Rule 12 Report, *State v. Raymond Myers*.

Norman v. State, 1990 Tenn.Crim.App.Lexis 199; *Palmer v. State*, 2007
Tenn.Crim.App.Lexis 71;³¹ *State v. Matthew v. Perkins*, Coffee Co. No. 38306F;³²
State v. Fredrick Robinson, Davidson Co. No. 99-A-403;³³ *State v. Taylor*, 2006
Tenn.Crim.App.Lexis 678.³⁴

Consequently, the death sentence here is cruel and unusual, disproportionate and arbitrary. It is excessive. This Court should therefore reform the death sentence to impose life sentences instead.

D. There Remain Unanswered Questions Whether Jimmy Blackwell Actually Committed These Murders, Not Ed Zagorski.

And even while the offenses here were not the “worst of the worst,” there remain questions whether Ed Zagorski is even the person who committed them. In fact, Jimmy Blackwell (a large-scale drug dealer in Hickman County) admitted that he – not Ed Zagorski – was the one who committed the murders of Porter and Dotson, for which Ed Zagorski now faces execution. *See* Attachment 31, Evidentiary Hearing Transcript, *Zagorski v. Bell*, M.D.Tenn. No. 99-1193, p. 150 (testimony of Roger Farley). In his own handwriting, Blackwell later admitted his involvement in the death of the victims. *See* Attachment 32: Mar. 6, 1991 Letter of Jimmy Blackwell. Moreover, Jimmy Blackwell committed an identical, signature, drug-related murder under similar circumstances in Hickman County, again proving that he (not Zagorski) was the guilty party. *See* Attachment 31, pp. 132-137, 149-150;

³¹ *See* Attachment 27: Rule 12 Report, *State v. Percy Palmer*.

³² *See* Attachment 28: Rule 12 Report, *State v. Matthew Perkins*.

³³ *See* Attachment 29: Rule 12 Report, *State v. Fredrick Robinson*.

³⁴ *See* Attachment 30: Rule 12 Report, *State v. Latonya Taylor*.

Attachment 33 (newspaper articles regarding homicide, introduced at federal evidentiary hearing).

E. This Court Should Not Set An Execution Date.

In sum, therefore, the death sentence is simply not an appropriate punishment in this case, where: (a) the state admitted that a life sentence was more than enough punishment; (b) in Tennessee, similar or worse drug-related homicides have only merited a life sentence; (c) in Tennessee, much worse homicides with many more victims have received the lesser sentence of life; and (d) it appears that Jimmy Blackwell, not Ed Zagorski, is the guilty party. Under these circumstances, this Court should not set an execution date, but instead reform the death sentences in this case to sentences of life imprisonment.

VI. This Court Should Grant Ed Zagorski Relief From His Convictions And Death Sentences Under *Arizona v. Fulminante*, 499 U.S. 279 (1991), *Sandstrom v. Montana*, 442 U.S. 510 (1979), And *Lockett v. Ohio*, 438 U.S. 586 (1978).

A. Zagorski's Statements Were Unconstitutional And Harmful, But No Tennessee Court Has Fully Addressed His Meritorious Claims; This Court Should Thus Consider Zagorski's Claims, Grant Him Relief, And Deny The State's Motion To Set An Execution Date.

Edmund Zagorski's challenges to his custodial statements have taken a tortured path through the Tennessee courts. He has challenged three separate statements: one from June 1, 1983; a second statement from July 27, 1983; and a third statement from August 1, 1983. All of the proof - not yet considered by any Tennessee court - shows that as to the first statement, he invoked his right to counsel, which was ignored in violation of *Edwards v. Arizona*, 451 U.S. 477 (1981). There is also no reasonable dispute, when one considers all the relevant evidence,

that Zagorski's second and third statements were involuntary. As shown *infra*, those statements were the product of inhumane conditions and unconstitutional coercion, because Zagorski was placed in solitary confinement in an unventilated metal hotbox for seven (7) weeks during the heat of the summer, which decimated him physically and mentally, made him mentally ill and suicidal, and led him to give statements in order to end the unbearable conditions.

1. No Tennessee Court Has Ever Fully Considered All Record Evidence Showing The Involuntariness Of Zagorski's Statements, Nor Conducted An Accurate Harmless-Error Analysis Using Principles Governing The Harmlessness Of Involuntary Statements.

The problem with the Tennessee courts' analysis of Zagorski's involuntary statement claims is that, up to now, such analysis has been piecemeal. At no time has this Court or the Court of Criminal Appeals fully considered or analyzed Zagorski's claim in light of all the record evidence and the governing law. The reasons for this are as follows:

On direct appeal, this Court's analysis was fatally deficient in two separate ways. First, this Court did not have before it all of the record evidence which is now before this Court showing the extraordinary duress and coercion which led to Zagorski's second and third statements, and which establishes that Zagorski's statements were unquestionably involuntary and inadmissible as a matter of due process. As a result of not having before it all the relevant evidence, this Court concluded that there was no evidence of coercion (*State v. Zagorski*, 701 S.W.2d 808, 812 (Tenn. 1985)), a factual conclusion that is unquestionably false, given all the

record evidence (discussed *infra*) proving that, in light of Zagorski's physical and mental torture, his statements were unquestionably involuntary.

Second, on direct appeal, this Court also stated that admission of all three of his statements was "harmless." *Id.* In reaching this conclusion, however, this Court never performed a proper harmless-error analysis. This Court never analyzed how Zagorski's three statements were effectively presented and argued as compelling evidence of guilt, an analysis which is demanded by the Supreme Court in *Fulminante*. See *Fulminante*, 499 U.S. at 299. This Court thus found such statements to be harmless without applying undisputed principles enunciated by the Supreme Court as governing harmless-error analysis of involuntary statements.

In post-conviction proceedings, Zagorski then presented, as a matter of record evidence, undisputed proof of physical and mental coercion which this Court had not considered on direct appeal. See *generally* P.C. Exs. 15 & 30. The Court of Criminal Appeals, however, never considered that evidence in light of standards governing involuntary statements, and thus never decided whether, in light of all the evidence, Zagorski's statements were involuntary. *Zagorski v. State*, 1997 Tenn.Crim.App.Lexis 535, pp. *29-30. As a result, neither this Court nor the Court of Criminal Appeals has ever made any determination - based upon all the record evidence - of the involuntariness of Zagorski's second and third statements. Instead, the Court of Criminal Appeals adopted this Court's flawed conclusion that admission of such statements was harmless (*Id.* at p. *30) - despite the fact that

this Court's conclusion on direct appeal did not apply the principles governing harmless-error analysis of coerced confession claims, as enunciated in *Fulminante*.

In sum, on direct appeal, this Court didn't have all the facts and didn't apply the governing law. In post-conviction proceedings, the Court of Criminal Appeals had all the relevant facts, but still didn't decide whether Zagorski's statements were involuntary, instead relying upon an unquestionably errant harmless-error analysis under *Fulminante*. Consequently, this Court is now faced, for the first time, with all the relevant facts and all the governing law. When this Court properly considers all the relevant facts and law, it is constrained to conclude that Zagorski's statements were unconstitutional and not harmless, warranting a new trial.

2. Zagorski's Challenges To His Custodial Statements Are Meritorious, And This Court Should Therefore Grant Him Relief And Deny The State's Motion To Set An Execution Date.

Because no Tennessee court has considered all the facts and all the law in any given proceeding, this Court must do so now, in the interest of justice. When the Court does so, it will become obvious that Zagorski's statements were all unconstitutional, that his second and third statements were the unconstitutional product of physical and mental torture, and that they cannot be considered harmless under *Fulminante*. Neither they, nor his first custodial statement, were harmless because, as *Fulminante* makes clear, such statements were argued by the prosecution as independently showing Zagorski's guilt, and as confirming other evidence of guilt. Under such circumstances, Zagorski's statements were

unconstitutional and not harmless, and this Court should deny the State's motion to execute Zagorski, and order a new trial and sentencing hearing.

a. All The Record Evidence Establishes That Zagorski's Custodial Statements Were Unconstitutionally Obtained After He Sought Counsel Or After He Was Physically And Mentally Tortured Through Lengthy Solitary Confinement In A Windowless Metal "HotBox" During The Heat Of The Summer.

When this Court considers for the first time all of the relevant evidence introduced in all court proceedings concerning the unconstitutionality of Ed Zagorski's custodial statements, it is evident that his custodial statements either violated his right to counsel or were involuntary, and that their use at trial was not (as this Court previously thought) harmless. Zagorski will first summarize all of that undisputed evidence and then explain why, as a legal matter, in light of all that evidence, his statements were unconstitutional and not harmless.

Ed Zagorski gave statements to authorities on June 1, July 27, and August 1, 1983. Authorities obtained these statements by ignoring Zagorski's invocation of his rights to counsel and to remain silent, and by subjecting him to torturous, unconstitutional conditions in the Robertson County Jail. The undisputed facts show the following:

1) The June 1, 1983 Statement: Zagorski Invoked His Rights To Counsel And To Remain Silent, Authorities Initiated Questioning, Did Not Provide Counsel, And Did Not Cut Off Questioning Once Counsel Was Requested.

Ed Zagorski was arrested in Ohio on May 26, 1983. After his arrest, he was questioned on May 27, 1983 in a West Virginia hospital by Robertson County,

Tennessee, Sheriff Ted Emery, Deputy Ronnie Perry, and law enforcement officers from Ohio.³⁵

On May 27, Zagorski specifically invoked his right to counsel, stating that he wanted to talk to a lawyer.³⁶ He also exercised his right to remain silent, stating that he "wasn't going to make no statements or answer any questions"³⁷ and he'd "better not answer any questions."³⁸ Sheriff Emery did not dispute that Zagorski "had specifically asked for a lawyer."³⁹ Not surprisingly, the Tennessee Supreme Court found as a matter of fact that Ed Zagorski invoked his right to counsel on May 27.⁴⁰

Despite Zagorski's May 27 invocation of his rights to counsel and to remain silent, prosecution and law enforcement authorities initiated another interrogation of Zagorski on June 1, 1983, this time in Tennessee. Robertson County Sheriff Emery, Deputy Ronnie Perry, and Assistant District Attorney General (ADA Dee Gay conducted the interrogation in Sheriff Emery's Office in Springfield, Tennessee.⁴¹ Zagorski was shackled.⁴²

³⁵ Motion To Suppress, p. 32 (Sheriff Ted Emery)(Contained in Attachment 34).

³⁶ *Id.*, p. 57 (Sheriff Emery)(Attachment 34).

³⁷ *Id.*, p. 55 (Emery)(Attachment 34).

³⁸ Motion To Suppress, p. 56 (Emery)("I better not answer any questions." "Well, like I said, I really should not talk about it.")(Attachment 34).

³⁹ *Id.*, p. 62 (Emery)(Attachment 34).

⁴⁰ *State v. Zagorski*, 701 S.W.2d 808, 812 (Tenn 1985). No statements made by Zagorski on May 27, 1983 were admitted at trial.

⁴¹ Trial Tr. 883 (Ronnie Perry)(Attachment 35); Motion to Suppress, p. 39 (Ted Emery)(Attachment 34). Ed Zagorski was appointed counsel after the interrogation on June 1, 1983. *Id.*, p. 29 (Larry Wilks)(Attachment 34).

⁴² Motion To Suppress, pp. 52-53 (Emery)(Attachment 34).

The interrogation began with Zagorski being asked whether he had been read his rights and understood them,⁴³ but he was never provided a written admonition of rights, nor did he waive his rights by signing any waiver form.⁴⁴ After stating that he understood his rights,⁴⁵ ADA Gay proceeded to ask Zagorski whether he would talk about the case, "whether he would tell us about it."⁴⁶ Zagorski reiterated (as he stated in West Virginia) that he wanted to speak to an attorney and didn't want to be questioned.⁴⁷

Sheriff Emery's testimony makes this clear. When asked whether Zagorski "stated to you and Mr. Gay and Mr. Perry on June the 1st that he didn't want to answer any questions without a lawyer being present," Emery responded: "Yes."⁴⁸ Zagorski said: "I don't want to answer any questions about the murder without a lawyer being present."⁴⁹

Though Zagorski had sought counsel twice (once in West Virginia and now in Tennessee) and his interrogators knew he wanted counsel, they pressed onward. Rather than cutting off questioning or providing him counsel, Emery, Perry, and Gay "continued to ask him questions."⁵⁰ Trying to get information about the offense, the interrogators sought information about how Zagorski "ended up in Hickman County," where the offense may have occurred.⁵¹ Gay specifically questioned

⁴³ Trial Tr. 883 (Attachment 35); Motion To Suppress, p. 40 (Emery)(Attachment 34).

⁴⁴ *Id.* (Attachment 34).

⁴⁵ Trial Tr. 884 (Perry)(Attachment 35).

⁴⁶ Motion To Suppress, p. 40 (Emery)(Attachment 34).

⁴⁷ Trial Tr. 884 (Perry)(Attachment 35); Motion To Suppress, pp. 40-41 (Emery)(Attachment 34).

⁴⁸ Motion To Suppress, p. 58 (Sheriff Emery)(Attachment 34).

⁴⁹ *Id.*, p. 59 (Emery)(Attachment 34).

⁵⁰ *Id.*, p. 58 (Emery)(Attachment 34); Trial Tr. 884 (Ronnie Perry)(Attachment 35).

⁵¹ Motion To Suppress, p. 61 (Emery)(Attachment 34).

Zagorski about Jimmy Blackwell, and Zagorski responded to the ongoing interrogation.⁵² Zagorski said he was a mercenary, and discussed a scabbard allegedly found near the bodies.⁵³

Still without counsel, Zagorski then supposedly stated that he would tell them about the murders.⁵⁴ With the interrogators having failed to cut off questioning and having continued the interrogation without providing counsel, Gay tried to backtrack, asserting that Zagorski didn't have to talk until he talked to his lawyer.⁵⁵ Zagorski, though, had been cajoled into speaking, and continued to talk.⁵⁶ Afterwards, Zagorski provided damaging information concerning his activities and his involvement in the homicides.⁵⁷

2) Zagorski's July 27 And August 1 Statements Were The Product Of Unbearable, Unconstitutional Conditions At The Robertson County Jail Which Made Him Mentally Ill And Drove Him To The Brink Of Suicide.

Starting in June 1983, Ed Zagorski was held in solitary confinement in the Robertson County Jail. Just weeks before, the United States District Court for the Middle District of Tennessee declared the jail unconstitutional, and enjoined Sheriff Emery from imposing the very type of conditions of confinement which he then imposed on Ed Zagorski. *Douglas v. Emery*, No. 81-3826 (M.D.Tenn. Apr. 15, 1983)(Agreed Order).⁵⁸

⁵² Attachment 36 (Custodial Statement).

⁵³ Motion To Suppress, pp. 42-43 (Emery)(Attachment 34).

⁵⁴ Attachment 36 (Statement); Motion To Suppress, p. 44 (Ted Emery)(Attachment 34).

⁵⁵ *Id.* (Attachment 34).

⁵⁶ *Id.* (Attachment 34).

⁵⁷ The typewritten redaction of the oral statement was not signed by Ed Zagorski and shows no indication he agreed to the contents thereof. The June 1, 1983 statement was then introduced at trial. *See* Trial Tr. 884-889 (Attachment 35).

⁵⁸ Attachment 37, P.C. Ex. 30 (Agreed Order).

The jail was like a dungeon. There was no natural light.⁵⁹ There was no air conditioning, no air circulation, and the meager ventilation system rarely worked.⁶⁰ The drunk tank (used for segregation) was a solid metal cell measuring 8' by 8',⁶¹ with one tiny window.⁶² It was so dark and bleak that one could not read without straining the eyes.⁶³ Because extended isolation adversely affects mental health, the District Court specifically enjoined Sheriff Emery from placing anyone in such segregation for more than ten (10) days.⁶⁴

After Ed Zagorski was arrested, however, Sheriff Emery defied the federal court order, and he did so throughout the time Zagorski was in jail. On June 1, 1983, Emery initially placed Zagorski in the solid metal drunk tank⁶⁵ but then transferred him to a similar solid 8' by 8' metal isolation cell.⁶⁶

In direct violation of the federal court order, Ed Zagorski was placed in solitary confinement not for days, but months on end - from June to October 1983. During that time, he was caged in a closed metal cell 24 hours a day,⁶⁷ except for a legal visit or the not-so-rare occasions when he was taken to the hospital suffering

⁵⁹ Attachment 38, P.C. Ex. 30: *Douglas v. Emery*, Stipulations, p. 4, ¶17 (M.D.Tenn. Apr. 13, 1983); Attachment 39, p. 7 (*Douglas v. Emery*, Report Of Inspection Of Robertson County Jail, Anthony S. Kuharich, May 10, 1983).

⁶⁰ *Id.*, p. 6 ("The facility has no air conditioning. The staff admitted that there is no air circulation."); Attachment 40, p. 1 (Testimony of Sheriff Emery in *Douglas v. Emery*, p. 6).

⁶¹ Motion To Suppress, p. 64 (Larry Wilks)(Attachment 34).

⁶² Attachment 38, P.C. Ex. 30: *Douglas v. Emery*, Stipulations, p. 2, ¶6; Attachment 41: "Juveniles Occupy Dingy Drunk Tank At Robertson Jail," *The Tennessean*, 1982.

⁶³ Attachment 42, pp. 190-191 (Testimony of Robertson County Lieutenant Elvis Wilson, Apr. 1, 1984 Hearing in *Douglas v. Emery*, M.D.Tenn. No. 81-3826).

⁶⁴ Attachment 37, P.C. Ex. 30, p. 2, ¶¶ 2d, 2e: Agreed Order In *Douglas v. Emery*, (M.D.Tenn. Apr. 15, 1983).

⁶⁵ See Motion To Suppress, p. 53 (Ted Emery)(Attachment 34).

⁶⁶ Motion To Suppress, p. 64 (Larry Wilks)(Attachment 34).

⁶⁷ Compare Attachment 38, P.C. Ex. 30, p. 9, ¶¶ 51-53 (when injunction entered, pretrial detainees were never let out of cell).

from psychiatric illness brought on by the horrific conditions. Throughout those months, as Sheriff Emery admitted, while in jail, Ed Zagorski literally never saw the light of day.⁶⁸

Needless to say, solitary confinement creates deleterious psychiatric effects. It "can adversely affect a person's mental health."⁶⁹ According to Dr. Stuart Grassian, M.D., of the Harvard Medical School, solitary confinement causes profound psychiatric disturbance, including panic attacks; perceptual distortions; thinking, concentration and memory problems; paranoia; and hypersensitivity to external stimuli.⁷⁰ Those in such confinement may act like persons with organic brain damage.⁷¹ The effects are similar to those endured by prisoners of war, and can occur even after isolation for just a few days.⁷²

Deputy Ronnie Perry acknowledged that "if they put me back there" where Zagorski was confined, "I'd go nuts."⁷³ Ed Zagorski did, soon showing clear signs of mental illness. He began to "act[] irrationally."⁷⁴ By June 18, he was started on the

⁶⁸ Motion To Suppress, p. 85 (Ted Emery: Ed Zagorski received no sunshine)(Attachment 34); Attachment 43 (Pre-Trial Motion To Be Removed From Solitary Confinement)(describing deplorable conditions of Zagorski's cell).

⁶⁹ *Comer v. Stewart*, 215 F.3d 910, 916 (9th Cir. 2000), citing *Hoptowit v. Ray*, 682 F.2d 1237, 1257-1258 (9th Cir. 1982)(find unconstitutional deprivation of fresh air and light); *LaReau v. MacDougall*, 473 F.2d 974, 978 (2d Cir. 1972)(inmate placed in dark cell almost all day and night); *McClary v. Kelly*, 4 F.Supp.2d 195, 205-210 (W.D.N.Y. 1998). Compare *Toussaint v. McCarthy*, 597 F.Supp. 1388 (N.D.Cal. 1984), *rev'd in part* 801 F.2d 1080 (9th Cir. 1986)(inmates spent 24 hours a day in windowless cells that were 5-6 feet wide and 8-10 feet long); *Madrid v. Gomez*, 889 F.Supp. 1146 (N.D.Cal. 1995).

⁷⁰ Attachment 44, Psychiatric Effects Of Solitary Confinement, pp. 4-7.

⁷¹ *Id.* at 6-7.

⁷² *Id.* at 10-11, citing M. Meltzer, *Solitary Confinement*, Group For Advancement Of Psychiatry, Symposium #3: Factors Used To Increase The Susceptibility Of Individual To Forceful Indoctrination (New York: 1956).

⁷³ Attachment 45 (Transcript of Statement Of Ronnie Perry to Larry Wilks, Esq. and James Walton, Esq.).

⁷⁴ Attachment 42, p. 2 (Pre-Trial Motion To Be Removed From Solitary Confinement).

antipsychotic medication Haloperidol (Haldol) after he broke out in a rash "due to nerves."⁷⁵ He progressively deteriorated.

In the early morning hours of July 3, Zagorski was brought to the emergency room with "acute anxiety," he was "sweating [and] anxious" and in an "uncontrollable rage," having beaten his knuckles bloody against the metal wall; He was given Haldol and Librium.⁷⁶ A few short hours later, he was back at the hospital with an acute anxiety attack, but after being given valium, he was returned to the torturous isolation cell.⁷⁷

Then came a "sweltering summer heat wave" which scorched Robertson County and only exacerbated Zagorski's already dire situation.⁷⁸ Zagorski languished in the cramped, unventilated cell, as the temperature kept rising. The outdoor temperature was 87 on July 9, broke 90 on July 12, and ranged from 97 to 100 between July 21 and 25, peaking at 100 degrees on July 22 - a day of great significance, as discussed *infra*. Though the temperature dropped below 90 on July 26 and 27, it went back into the 90s between July 28 and August 1.⁷⁹ As the crops

⁷⁵ Attachment 46, P.C. Ex. 15 (June 18, 1983 Examination: Progress Notes); *See Physician's Desk Reference*, Vol. 54, p. 2153 (2000) (Haloperidol "is indicated for use in the management of manifestations of psychotic disorders").

⁷⁶ Attachment 47, P.C. Ex. 15 (July 3, 1983, Jesse Holman Jones Hospital Emergency Room Record, 12:53 a.m.).

⁷⁷ Attachment 47, P.C. Ex. 15 (July 3, 1983 Jesse Holman Jones Hospital Emergency Room Record, 1:10 p.m.).

⁷⁸ Attachment 48, "Heat Reaches 100 Degrees; Crops Damaged," Robertson County Times, July 28, 1983; Attachment 49, "State Crop Disaster Aid Is Sought By Alexander," Robertson County Times, Sept. 8, 1983 (noting "extended drought and extreme heat" gripping the state).

⁷⁹ Attachment 50 (Recorded Temperatures In Robertson County, July-August 1983). Temperatures between July 9 and August 1, 1983 were: July 9 (87); July 10 (86); July 11 (89); July 12 (90); July 13 (91); July 14 (92); July 15 (92); July 16 (92); July 17 (92); July 18 (92); July 19 (92); July 20 (95); July 21 (97); July 22 (100); July 23 (99); July 24 (98); July 25 (97); July 26 (85); July 27 (87); July 28 (91); July 29 (92); July 30 (91); July 31 (92); August 1 (93). *Id.*

withered in the fields,⁸⁰ Ed Zagorski withered physically and mentally in the metal box.

Astonishingly, Zagorski had "lost 30 pounds since he has been in the isolation cell in the Robertson County Jail."⁸¹ In the midst of the heat wave, Zagorski found himself again in the emergency room on July 16.⁸² This time, having intentionally taken an overdose of valium, he was lethargic, his face was swollen, and his speech slurred; he was given Serax, an even stronger tranquilizer.⁸³

On July 18, Zagorski complained of a "severe headache" and was suffering yet another anxiety reaction.⁸⁴ Without any hope of getting out of the hotbox, though, Zagorski remained suicidal, telling the doctor (just two days after the valium overdose) that he "want[ed] to sleep till the police fry him."⁸⁵ Nevertheless, he was sent back to the very conditions that were literally driving him crazy.

Two days later, counsel for Zagorski begged the court to remove him from isolation, and to provide him tolerable living conditions. Appearing "listless and dazed"⁸⁶ at a July 20 court hearing, Ed Zagorski and his attorneys implored the judge to "move [Zagorski] out of Robertson County or . . . remove him from isolation."⁸⁷ The judge refused.

⁸⁰ See Attachment 50.

⁸¹ Attachment 51, "Suspect Bound Over In Drug Deal," Nashville Banner, July 21, 1983.

⁸² Attachment 52, P.C. Ex. 15 (July 16, 1983 Jesse Holman Jones Emergency Room Record). July 16 was the fifth day in a row that the temperature exceeded 90 degrees. See Attachment 46.

⁸³ Attachment 53, P.C. Ex. 15.

⁸⁴ Attachment 54, P.C. Ex. 15 (July 18, 1983 Emergency Room Record).

⁸⁵ *Id.*

⁸⁶ Attachment 51, "Suspect Bound Over In Drug Deal," Nashville Banner, July 21, 1983.

⁸⁷ *Id.*

For nearly two months, Ed Zagorski was caged in an “unbearable” metal box “in solitary confinement in the jail in an eight by eight foot steel room.”⁸⁸ As the temperature outside peaked at 100 degrees on July 22, Ed Zagorski remained (as he had been for nearly two months) alone in a metal box whose temperature had climbed to 110-120 degrees.⁸⁹ Ed Zagorski knew, however, that he wasn't going to get out of that terrible box. The judge had just told him so, and he wanted to die.

Having been broken by unbearable circumstances, Ed Zagorski wanted to make sure he could end his suffering. To that end, on July 22 – the peak of the heat wave when it was 100 degrees outside – he sent out a note saying he “needed” to speak to Deputy Perry or Sheriff Emery.⁹⁰ On July 24, his blood pressure had skyrocketed to 150/90, he had a migraine headache, his extremities were numb, and he couldn't sleep.⁹¹ Zagorski was, according to the doctor, showing “poor judgment.”⁹²

By July 27 – the fifth straight day it had been over 97 degrees outside – Zagorski wanted to be dead. His message to Perry was simple: “[I]f you'll let me pick the type [of] execution and the day of execution, I'll confess to these murders.”⁹³

⁸⁸ Motion To Suppress, p. 64 (Larry Wilks)(Attachment 34).

⁸⁹ Compare Attachment 39, p. 6 (Testimony of Sheriff Emery in *Douglas v. Emery*: Q. On the hot days, how high would you estimate that the temperature gets? A. It would, I guess be over 100; if it had been 100 outside, it would be that hot or hotter in there.”); *Id.*, p. 3 (temperature in the jail rises to the 100 degree range during the summer); *Id.* (even with use of small electrical fans, temperatures remained in 100 degree range).

⁹⁰ Trial Tr. 894 (Attachment 35); Motion To Suppress, pp. 70-71 (Ronnie Perry)(Attachment 34).

⁹¹ Attachment 54, P.C. Ex. 15 (July 24, 1983 Jesse Holman Jones Emergency Room Record). Zagorski was given Vistaril (an anti-anxiety medication) and Midrin (used to treat vascular headaches). *Id.*; See *Physician's Desk Reference*, Vol. 54, pp. 902, 2388 (2000).

⁹² Attachment 54, P.C. Ex. 15.

⁹³ Motion To Suppress, pp. 72-73 (Attachment 34); pp. 76-77 (Ronnie Perry: “[H]e said . . . I'd confess to these murders if you all would do one thing for me; if you all would let me pick the type of execution and the date and time of execution.”).

Zagorski was not read his rights, nor did he make any written or other waiver of his rights.⁹⁴ Then in a discussion which lasted "probably about three minutes," Zagorski said that he had been part of the murders, and that Dale Dotson's death was a mistake.⁹⁵ Zagorski also stated that the killings occurred in Boiling Springs, near Bucksport, in Hickman County.⁹⁶

Still in this disturbed state on August 1, according to Ronnie Perry, "Mr. Zagorski was brought into Lieutenant Wilson's office, and we sat down and started talking"⁹⁷ after the "jailer had informed Perry that Ed was wanting to talk to me."⁹⁸ Perry's testimony in no way indicates that Zagorski was read his rights, or that he waived his rights before talking to Perry.⁹⁹ Zagorski then stated that he had been involved in the murders, and that Porter and Dotson were killed after being picked up by Zagorski and others.¹⁰⁰ Zagorski never admitted killing the victims.

Zagorski remained mentally and physically unstable. He tried to commit suicide by drug overdose and was found nearly unconscious on September 5,¹⁰¹ he suffered sharp chest pains on September 7,¹⁰² and, in an attempt to commit suicide, he harmed himself again on September 19, shocking himself with an electric fan.¹⁰³

⁹⁴ *Id.*

⁹⁵ Trial Tr. 894 (Ronnie Perry)(Attachment 35).

⁹⁶ *Id.*; Motion To Suppress, p. 73 (Ronnie Perry)(Attachment 34).

⁹⁷ Trial Tr. 895 (Perry)(Attachment 35).

⁹⁸ Motion To Suppress, p. 74 (Perry)(Attachment 34).

⁹⁹ Trial Tr. 895-896 (Perry)(Attachment 35).

¹⁰⁰ Trial Tr. 895 (Perry)(Attachment 35); Motion To Suppress, pp. 74-75 (Perry)(Attachment 34).

¹⁰¹ Attachment 55, P.C. Ex. 15 (Sept. 5, 1983 Jesse Holman Jones Emergency Room Record).

¹⁰² Attachment 56, P.C. Ex. 15 (Sept. 7, 1983 Jesse Holman Jones Emergency Room Record).

¹⁰³ Attachment 57, P.C. Ex. 15 (Sept. 19, 1983 Jesse Holman Jones Emergency Room Record).

b. Zagorski's Statements Were All Unconstitutional, Yet The Prosecution Argued All Those Statements As Proving Zagorski's Guilt.

It quite clearly appears that each of Zagorski's statements was unconstitutional.

1) Zagorski's First Statement Violates *Edwards v. Arizona*.

Concerning Zagorski's first statement, there is no question that Ed Zagorski: (1) invoked his right to counsel on May 27;¹⁰⁴ (2) authorities initiated an interrogation of him on June 1;¹⁰⁵ (3) on June 1, Zagorski again invoked his right to counsel;¹⁰⁶ but (4) the authorities continued to question him without providing him an attorney.¹⁰⁷ This was a clear violation of the prophylactic rule of *Edwards v. Arizona*, 451 U.S. 477, 484-485 (1981), which provides:

[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police initiated custodial interrogation even if he has been advised of his rights. We further hold that an accused . . . having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communications, exchanges, or conversations with the police.

Id., 484-85.

With Zagorski having invoked his right to counsel not once, but twice, and with authorities initiating contact on June 1 and not cutting off questioning after the

¹⁰⁴ Motion To Suppress, p. 55-57, 62 (Emery)(Attachment 34).

¹⁰⁵ Trial Tr. 883 (Perry)(Attachment 35); Motion To Suppress 39 (Emery)(Attachment 34).

¹⁰⁶ Trial Tr. 884 (Perry)(Attachment 35); Motion To Suppress, pp. 58-59 (Ted Emery)(Attachment 34).

¹⁰⁷ Motion To Suppress, p. 58 (Ted Emery)(Attachment 34); Trial Tr. 884 (Ronnie Perry)(Attachment 35).

second request for counsel, Zagorski's June 1 statement was taken in clear violation of the Fifth Amendment. *See also Maryland v. Shatzer*, 559 U.S. (2010)(after invocation of right to counsel, *Edwards* invalidates all statements resulting from authorities' reinitiation of discussions within two weeks of requesting counsel). This Court's prior conclusion that Zagorski re-initiated discussions after requesting counsel (*Zagorski*, 701 S.W.2d at 812) simply does not withstand scrutiny.

2) Zagorski's Second And Third Statements Were The Product Of Physical And Mental Torture And Involuntary.

Zagorski's second and third statements were also unconstitutional, because they were involuntary, as was any purported waiver of his right to counsel. "A confession by which life becomes forfeit must be the expression of free choice," and thus a "confession obtained by coercion - whether physical or mental - is forbidden . . ." *Payne v. Arkansas*, 356 U.S. 560, 566, 561 (1958). *See Blackburn v. Alabama*, 361 U.S. 199, 206 (1960) (coercion can be mental as well as physical).

As the Supreme Court explained in *Berghuis v. Thompkins*, 560 U.S. 370 (2010), to be admissible a custodial statement must be voluntary, i.e., an "uncoerced statement," and any waiver of the right to counsel must also "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception' . . ." *Id.* at 382. Significantly, the Supreme Court in *Thompkins* made clear that a statement or waiver of the right to counsel is involuntary if it is "accompanied . . . by other facts indicating coercion, such as an incapacitated and sedated subject, sleep and food deprivation, and threats," and/or

the fact that “police threatened or injured” a suspect. *Id.* at 387. That is precisely the case here.

There is little question that Ed Zagorski’s statements (and his waiver of the right to counsel) were involuntary. He was kept in solitary confinement for weeks on end, driven to mental illness and multiple attempts of suicide, and tortured by being cooked in a 110-120 degree metal box. There is no meaningful dispute that he was both physically and mentally coerced into talking to the authorities. He was both physically and mentally “injured” by the shocking, barbarous treatment inflicted upon him by authorities. Any question whether his statements were involuntary is dispelled by the fact that Zagorski made clear that he was willing to talk solely because he wanted to end his ongoing psychological and physical misery by being executed. His statements were not, under any view of the facts, voluntary. They were the statements of a man broken by the abject cruelty of his incarceration.

Indeed, the Supreme Court and numerous other courts have readily acknowledged that statements given under such circumstances are not “voluntary” in any sense of the word. In fact, where defendants have been subjected to harsh conditions of isolation, courts have not hesitated to find statements involuntary. *See, e.g., Davis v. North Carolina*, 384 U.S. 737, 752 (1966)(custodial statement involuntary where defendant isolated for weeks in windowless cell); *Townsend v. Henderson*, 405 F.2d 324, 328 (6th Cir. 1968)(involuntary statement where defendant subjected to solitary confinement and suffered from wounds requiring treatment). Zagorski made no “free and unconstrained choice” to inculcate himself,

because Zagorski was decimated physically and mentally by solitary confinement in the 100-plus degree heat for weeks on end. *Culombe v. Connecticut*, 367 U.S. 586, 602 (1961). Understandably so.

In fact, Zagorski's case is remarkably similar to the shocking circumstances attending the unconstitutional statement in *Brooks v. Florida*, 389 U.S. 413 (1967)(per curiam). There, Brooks gave a statement only after being placed in a "windowless sweatbox" for fourteen (14) days and deprived of food. Such "a shocking display of barbarism" did not "escape the remedial action" of the Supreme Court, which reached the only reasonable conclusion under the circumstances: Brooks' statement was constitutionally "tainted" by the "days he spent in such an oppressive hole." *Id.* at 415, 414. That is precisely the situation here.

Similarly, in *United States v. Koch*, 552 F.2d 1216 (7th Cir. 1977), the Seventh Circuit held a statement involuntary where the defendant was isolated in a windowless "'boxcar' cell for six hours," where that cell was "a 6 feet x 8 feet room" "without visibility outside of the cell." *Id.* at 1218. Citing the Supreme Court's decision in *Brooks*, the Court had little problem finding the statement involuntary, where the "confession was extracted . . . after [Koch] was in exacerbated solitary confinement." *Koch*, 552 F.2d at 1219. Zagorski was held under even worse conditions for a much longer period of time than Koch. *A fortiori*, Zagorski's statements were involuntary as well.

In sum, the horrific circumstances here "rise to the level of the kinds of involuntary-confession fact patterns that the Supreme Court has condemned."

Jackson v. McKee, 525 F.3d 430, 434 (6th Cir. 2008). Zagorski's second and third statements were obtained in violation of fundamental principles of decency and humanity, in violation of *Brooks v. Florida*, 389 U.S. 413 (1967)(per curiam), and *Davis v. North Carolina*, 384 U.S. 737 (1966), and *Thompkins*. As a result, it is apparent that this Court's earlier conclusion that Zagorski was "not subject to any coercive action on the part of the state" (*Zagorski*, 701 S.W.2d at 812) cannot be sustained, given consideration of all the relevant evidence. Rather, "evidence of coercion . . . both physical or psychological" permeates this record. *State v. Walton*, 41 S.W.3d 75, 94 (Tenn. 2001).

All told, the available evidence, clearly shows that each of Zagorski's custodial statements was unconstitutional. The first violated *Edwards*, and the second and third were involuntary. This Court should so conclude.

3) Admission Of Zagorski's Statements Was Not Harmless Under *Fulminante*.

The crux of the issue before this Court is whether the admission of Zagorski's three statements was harmless. This Court previously said that admission of the statements was harmless "in view of the overwhelming evidence of guilt in this case." *Zagorski*, 701 S.W.2d at 812. This conclusion, however, cannot be squared with the Supreme Court's discussion of the harmless-error standard in *Arizona v. Fulminante*, 499 U.S. 279 (1991) which makes clear that Zagorski's statements were highly prejudicial because of the way in which they were used by the prosecution at trial.

When this Court initially found admission of the statements to be harmless, this Court did not have the instruction of the Supreme Court's *Fulminante* decision. In *Fulminante*, the Supreme Court emphasized that "A confession is like no other evidence," because it is "probably the most probative and damaging evidence that can be admitted against" a defendant. *Fulminante*, 499 U.S. at 296. "Certainly, confessions have profound impact on the jury." *Id.* In fact, this Court has itself recognized that:

[A] confession by a defendant is 'like no other evidence' and the sheer power of an admission of guilt is precisely the reason we go to extraordinary lengths to ensure that it is reliable, i.e., voluntarily made without compulsion or coercion. . . .

State v. Walton, 41 S.W.3d at 94, citing *Fulminante*, 499 U.S. at 296 and *Bruton v. United States*, 391 U.S. 123, 139-140 (1968)(White, J., dissenting).

Thus, in *Fulminante*, the United States Supreme Court found harmful unconstitutional statements which provided the jury "motive and state of mind" and "reinforced and corroborated" other evidence. *Id.* at 299. The Supreme Court did so where (like this Court on direct appeal) the state court had affirmed the conviction and death sentence on the grounds that there was "overwhelming evidence" of guilt. *Id.* at 297 (discussing Arizona Supreme Court conclusion that admission of involuntary statements was harmless).

Here, the prejudice from Zagorski's statement "cannot be soft pedaled, and the error was not harmless." *Anderson v. Terhune*, 516 F.3d 781, 792 (9th Cir. 2008)(en banc). The reason for this - which was not discussed by this Court on direct appeal - was that the prosecution emphasized in closing argument that the

unconstitutional statements “reinforced and corroborated” (*Fulminante*, 499 U.S. at 299) other evidence in the case, exactly like the statements in *Fulminante* which were found not to be harmless.

Indeed, here, the prosecution specifically told jurors to rely on Zagorski’s custodial statements as grounds for convicting him of first-degree murder:

When you go back there to deliberate, consider the different accounts of the murders that Mr. Zagorski gave to different people at different times.

Trial Tr. 1018 (Attachment 35).

After making this point, the prosecution proceeded to parse those statements in detail, emphasizing highly damaging aspects of each. Trial Tr. 1018-1020 (Attachment 35). As to the June 1 statement, the prosecution pointed out that Zagorski admitted some involvement in the offense. Trial Tr. 1019-1020 (Attachment 35). As to the July 27 statement, the prosecution argued that Zagorski implicated himself in the crime, said that Dotson’s death was a mistake, and that the murders occurred in Red Boiling Springs. Trial Tr. 1020 (Attachment 35). Finally, the prosecution used the August 1 statement to corroborate the July 27 statement in an effort to bolster the theory of Zagorski’s guilt. *Id.*

In rebuttal, the prosecution again refocused the jury on the June 1 statement, telling jurors to “remember that Mr. Zagorski . . . told General Gay and Detective Perry and the Sheriff” about Dotson and Porter being in their pickup truck and driving toward Kentucky. Trial Tr. 1053 (Attachment 35). The prosecution followed by tying the statements to their entire case, emphasizing that Zagorski’s statements

were not only independent proof of guilt but corroborated the prosecution's other evidence indicating guilt:

That was out of Mr. Zagorski's very own lips. That's in view of all the hard, hard evidence that we have introduced here as exhibits.

Trial Tr. 1054 (Attachment 35)(emphasis supplied).

Given the prosecution's arguments, *Fulminante* controls and makes clear that the admission of Zagorski's statements was not harmless. Indeed, exactly as in *Fulminante*, the prosecution here used the unconstitutional statements to reinforce each other (*Compare* Trial Tr. 1020 (Attachment 35) *with Fulminante*, 499 U.S. at 299), and to corroborate the prosecution's other evidence. *Compare* Trial Tr. 1054 (Attachment 35) *with Fulminante*, 499 U.S. at 299). Significantly, exactly as in *Fulminante*, the prosecution used the two involuntary statements to show alleged motive (Trial Tr. 1020, Attachment 35), which was critical to the jury's finding, beyond a reasonable doubt, of the elements of premeditation and deliberation. This is exactly what occurred in *Fulminante*, where the Supreme Court found that the admission of involuntary statements was *not* harmless. *Fulminante*, 499 U.S. at 299.

Exactly as in *Fulminante*, the admission of Zagorski's statements was far from harmless. Applying *Fulminante* (which was not available at the time of direct appeal) to the facts here (which were not fully considered on direct appeal), this Court should so hold. This Court should also hold that the admission of the statements was not harmless as to the death sentence, where Tennessee law fully recognizes residual doubt as a mitigating factor supporting imposition of a life

sentence. *State v. Hartman*, 42 S.W.3d 44 (Tenn. 2001). Rather than setting an execution date, this Court should grant Ed Zagorski relief from his convictions and death sentences.

B. Governing Federal Law Leads Inexorably To The Conclusion That Zagorski's Conviction And Death Sentence Are Unconstitutional Given An Unconstitutional Instruction Which Presumed The Essential Element Of "Malice".

Consideration of the State's motion to set an execution date requires due consideration of the governing Supreme Court law of *Sandstrom v. Montana*, 442 U.S. 510 (1979) and *Francis v. Franklin*, 471 U.S. 307 (1985), which establishes that, in violation of due process under the Fourteenth Amendment, Zagorski was unconstitutionally convicted and sentenced to death based upon a presumption of malice.

Ed Zagorski was charged with two counts of first-degree murder, which required proof beyond a reasonable doubt of the essential elements of "malice," "willfulness," "premeditation," and "deliberation." Tenn. Code Ann. §39-2-202(a) (1983).¹⁰⁸ The jury here was specifically instructed that the prosecution had to establish that "the killing was malicious."¹⁰⁹ The jury, however, was instructed to presume the essential element of "malice" from the mere fact that the deceased had been killed:

If it is shown beyond a reasonable doubt that the alleged victim was killed, the killing is presumed to be malicious in the absence of evidence that would rebut the implied presumption.

¹⁰⁸ Tenn. Code Ann. §39-2-202(a)(1983) provided: "Every murder perpetrated by means of poison, lying in wait, or by other kind of willful, deliberate, malicious, and premeditated killing . . . is murder in the first degree."

¹⁰⁹ Trial Tr. 1087 (Attachment 35).

Id. at 1088 (Attachment 35).

There is no question that this instruction is unconstitutional. Indeed, elsewhere, the state has conceded that this exact instruction is unconstitutional *See e.g., Houston v. Dutton*, 50 F.3d 381, 385-386 (6th Cir. 1995); *Workman v. Bell*, 178 F.3d 759, 777 (6th Cir. 1998). Ed Zagorski's challenge to this instruction, therefore, is clearly meritorious under the clearly established law of *Sandstrom v. Montana*, 442 U.S. 510 (1979) and *Francis v. Franklin*, 471 U.S. 307 (1985), both of which prohibit the very type of burden-shifting presumption employed here. And the error here was not harmless, as the unconstitutional presumption of malice "paved the way" for the jury to find all four essential elements of first-degree murder. *Houston*, 50 F.3d at 386.

On direct appeal, this Court emphasized that it had reviewed "the entire record" (*State v. Zagorski*, 701 S.W.2d at 809), but failed to explicitly address this clearly erroneous instruction. As a matter of fundamental justice, this Court should do so now and should conclude (as it must) that Zagorski was convicted and sentenced to death in violation of due process under *Sandstrom* and *Francis*. In so concluding, this Court should grant him a new trial and sentencing hearing, and likewise deny the state's motion to set an execution date, for executing Zagorski under these circumstances would violate the Constitution.

C. Governing Federal Law Establishes That, In Violation Of The Eighth And Fourteenth Amendments, The Jury Did Not Fully Consider Relevant Mitigating Circumstances.

Consideration of the State's motion to set an execution date also requires due consideration of the governing Supreme Court law of *Lockett v. Ohio*, 438 U.S. 586 (1978) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982) (and their progeny) and the fact that Zagorski's jury received an inaccurate definition of "mitigating evidence" which prevented full consideration of mitigating evidence, in violation of the Eighth and Fourteenth Amendments. Given this Court's duty to ensure justice, its supervisory authority over the Tennessee judicial system, and its statutory duty to reverse any death sentence which is "imposed in arbitrary fashion," (Tenn. Code Ann. §39-13-206(c)(1), Tenn. Code Ann. §39-2-24(c)(1)(1982)), this Court should deny the state's motion and instead grant Ed Zagorski a new sentencing hearing.

At the sentencing phase of trial, the jury was uncertain about the meaning of "mitigating evidence." The jurors asked the judge: "[W]hat is the meaning of the word mitigating?" Tr. 1131. The judge responded as follows:

Mitigating would mean any circumstance which would have a tendency to *lessen the aggravating*, which have any tendency to - *give a reason for the act*. I cannot think of a better definition right now, except that it's opposed to aggravating and would have a tendency to lessen or tend - not 'to' necessarily, but *tend to justify*, and to take away any of the aggravation of the circumstance.

Tr. 1131-1132 (emphasis supplied).

Contrary to the trial judge's definition, under the Supreme Court's Eighth Amendment jurisprudence, "mitigating evidence" is defined quite expansively, in order that capital sentencing juries may consider as broadly as possible all reasons

why the defendant ought not be sentenced to death. In the seminal case of *Lockett v. Ohio*, 438 U.S. 586 (1978), the Supreme Court defined “mitigating evidence” and held that capital sentencing juries *must* consider all such evidence when rendering sentence:

[T]he Eighth and Fourteenth Amendments require that the sentencer . . . not be precluded from considering, as a mitigating factor, *any aspect of the defendant's character or record and any of the circumstances of the offense* that the defendant proffers as a basis for a sentence less than death.

Lockett v. Ohio, 438 U.S. at 604 (emphasis supplied). Mitigating factors thus include all “*factors which may call for a less severe penalty.*” *Lockett*, 438 U.S. at 605 (emphasis supplied). They include any and all evidence which provides a reason for a sentence less than death, “including a defendant's prior criminal record, age, and mental or emotional state.” *Penry v. Lynaugh*, 492 U.S. 302, 316 (1989). “*Lockett* recognizes that ‘justice requires that there be taken into account *the circumstances of the offense together with the character and propensities of the offender.*” *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982)(emphasis supplied), quoting *Pennsylvania v. Ashe*, 302 U.S. 51, 55 (1937).

Under the Eighth Amendment, “The jury must be allowed to consider *all relevant mitigating evidence.*” *Blystone v. Pennsylvania*, 494 U.S. 299, 307 (1990)(emphasis supplied); See *Penry v. Lynaugh*, 492 U.S. 302, 316 (1989). A state, therefore, cannot impose “any barrier to the sentencer's consideration of all mitigating evidence.” *Mills v. Maryland*, 486 U.S. 367, 375, 108 S.Ct. 1860, 1865-1866 (1988). “Each juror must be permitted to consider and give effect to mitigating

evidence.” *McKoy v. North Carolina*, 494 U.S. 433, 442-443 (1990). Accordingly, any failure to allow consideration of mitigating evidence – whether by operation of a sentencing statute or jury instructions, or through a trial court’s ruling excluding evidence – is unconstitutional. *See Lockett, supra; Eddings, supra* (trial court’s exclusion of evidence); *Skipper v. South Carolina*, 476 U.S. 1 (1986)(trial court’s exclusion of evidence); *Hitchcock v. Dugger*, 481 U.S. 393, 107 S.Ct. 1821 (1987)(sentencing statute); *Penry, supra* (jury instructions); *McKoy v. North Carolina*, 494 U.S. 433 (1990)(jury instructions); *Penry v. Johnson*, 532 U.S. 782 (2001)(inadequate and misleading jury instructions about consideration of mitigating evidence)

Here, the trial judge’s definition failed to fully inform the jury about the scope and meaning of mitigating evidence. Rather, the judge told the jury (in the disjunctive) that they could only consider evidence which “lessened aggravation” or “gave a reason” for the act, or tended “to justify” the act (Tr. 1131-1132). These confusing and inaccurate instructions prevented the jury from considering almost all of the mitigating evidence presented at trial.¹¹⁰

¹¹⁰ Because the trial judge gave varying erroneous instructions concerning the meaning of “mitigating,” one does not know which erroneous definition the jurors may have used when evaluating potentially mitigating evidence. Given the uncertainty of which definition the jurors may have employed, because both of the definitions were unconstitutional, error has occurred, because one cannot presume that the jurors did not rely upon one of these unconstitutional definitions. *See e.g., Yates v. Evatt*, 500 U.S. 391, 401 n.6 (1991)(where incorrect statement of the law provided to jury, error occurs even if contradictory instructions which might properly state the law are given to jury, because one cannot eliminate the possibility that the jury relied upon the unconstitutional instruction); *Francis v. Franklin*, 471 U.S. 307, 322 (1985)(“Language that merely contradicts and does not explain a constitutionally infirm instruction will not suffice to absolve the infirmity.”).

First, the jury instructions rendered the “aspects” of Ed Zagorski’s character (*Lockett’s* first definition of mitigating evidence) irrelevant to the jury’s life-or-death decision. Indeed, nothing about Ed Zagorski’s character either lessened the aggravating circumstances found by the jury (heinousness, and felony murder), nor “gave a reason” for the act, nor “justified” the homicides. All mitigating evidence of Ed Zagorski’s character thus could not be considered by the jury under this erroneous instruction. Similarly, even though Ed Zagorski had a minimal criminal record and no history of violent offenses, this non-deathworthy “record” (*Lockett’s* second definition of mitigation) likewise could not be considered by the jury, because it did not negate or lessen any aggravating circumstance, nor did it justify or give a reason for the homicides. The judge’s inaccurate instruction thus also prevented the jury from considering Ed Zagorski’s record as mitigating evidence.

In addition, vital circumstances of the homicide (*Lockett’s* third definition of mitigating evidence) were also rendered useless through the trial judge’s definition of mitigation. Indeed, there were various mitigating aspects of the offense upon which the jury could have voted for life, including: (1) the victims were involved in illegal drug dealing, which led them to the situation in which they were killed; (2) the victims were highly intoxicated at the time of their deaths; and (3) the victims were carrying a gun.

All of these particular circumstances are mitigating within the meaning of *Lockett*, but the jury was essentially told that they could not impose a life sentence unless the victims’ drug dealing, intoxication, and carrying of weapons “justified”

their deaths, or “lessened” the aggravating circumstances. But it is clear that while the victims’ deaths were not “justified” merely because they were drug dealers, a reasonable juror still could have imposed a life sentence because even though their deaths were not “justifiable,” a life sentence – not the death penalty – was the appropriate sanction for their deaths. Under the trial judge’s instructions, the jury was unable to fully consider the mitigating circumstances of the offense itself.

In fact, in *Hodge v. Kentucky*, 568 U.S. 1056, 1060 (2012), Justice Sotomayor acknowledged that when mitigation evidence is limited (as here) to evidence that explains or “provides a rationale” for a homicide, the jury cannot and does not properly consider mitigating circumstances as required by the Eighth Amendment. Such a definition of “mitigation” violates the Eighth Amendment, because mitigation “does not play so limited a role” of merely providing reasons or explanations for an offense. *Id.* That is exactly what occurred here, which resulted in a clear Eighth Amendment violation.

The trial judge’s inaccurate definition of “mitigating evidence,” therefore, violated *Lockett*, *Eddings*, and their progeny, as it prevented the jurors from giving full effect to mitigating evidence of Ed Zagorski’s background and character, and, importantly, the mitigating circumstances of the offense itself.

This Court is the final arbiter of Tennessee law and also has a statutory duty to determine whether, in this case, the “sentence of death was imposed in any arbitrary fashion.” Tenn. Code Ann. §39-2-24(c)(1)(1982); Tenn. Code Ann. §39-13-206(c)(1). Exercising these supervisory and statutory authorities, this Court should

therefore conclude that Ed Zagorski's death sentence violates the Eighth and Fourteenth Amendment and grant him relief from his death sentence and order a new sentencing hearing.

VII. Empirical Data Establishes that the Tennessee Death Penalty System is Broken, Arbitrary and Violates Tennessee's Evolving Standards of Decency.

Tennessee's capital sentencing system operates in an unconstitutionally arbitrary and capricious manner. As the sharp decline in new death sentences over the past sixteen years demonstrates, capital punishment is contrary to Tennessee's evolved standard of decency. An extensive survey, conducted over the past three-plus years by attorney H.E. Miller, Jr., of all Tennessee first-degree murder cases since the inception of Tennessee's current capital sentencing system in 1977 provides empirical proof that the Tennessee's death penalty is broken, arbitrary, capricious and violates evolving standards of decency. Attachment 36. Mr. Miller's survey process is described in his report. An article written by Bradley MacLean and Mr. Miller analyzing the data from Mr. Miller's survey titled *Tennessee's Death Penalty Lottery* has been accepted for publication in the upcoming issue of the *Tennessee Journal of Law and Policy*. A copy of this article is attached as Attachment 37.

Before now, this evidence has not been available. Notwithstanding Tenn. S. Ct. R. 12 reporting requirements, which are breached by trial judges in at least 46% of adult murder cases,¹¹¹ there is no reliable centralized collection of statewide data

¹¹¹ Mr. Miller's Report (Attachment 58) and the article *Tennessee's Death Penalty Lottery* (Attachment 59) discuss the astounding Rule 12 noncompliance rate. See Attachment 59 at 26-31.

on first degree murder cases. Furthermore, this kind of statistically based evidence necessarily accumulates and develops over time, and it continues to accumulate and develop through the present. Until now, no party has been in a position to statistically review the 40-year history of Tennessee's capital sentencing system; and until now, no court has been in a position to properly adjudicate these claims.

As discussed at some length in *Tennessee's Death Penalty Lottery*, the premise underlying the Supreme Court's Eighth Amendment death penalty jurisprudence, established in *Furman v. Georgia*, 408 U.S. 238 (1972), is that the death penalty must be analyzed in the context of how the entire capital sentencing system operates. (Significantly, none of the opinions in *Furman* discusses the facts or merits of the individual cases that were under review.) *Furman's* bedrock principle is that, under the Eighth Amendment, a capital punishment sentencing system must not operate in an arbitrary or capricious manner, and its operation must comport with "evolving standards of decency." Each of the Justices in the *Furman* majority cited statistical evidence to support their conclusions that discretionary capital punishment systems are unconstitutionally arbitrary. In light of this framework for analysis, Mr. Miller undertook his survey of Tennessee's first degree murder cases.

The most salient findings from Mr. Miller's survey include:

- Over the past 40 years, Tennessee has convicted more than 2,500 defendants of first degree murder. Among those 2,500+ defendants, only 86 defendants (3.4%) received sustained death sentences, and only 6 defendants (or 1 out of 400) were executed.

- Over the past 40 years, while death sentences have been imposed on a total of 192 defendants, only 86 of those defendants (or 45%) ended up with sustained death sentences. In other words, cases resulting in death sentences at trial have experienced a 55% reversal rate, indicating deep flaws in the system.
- Over the past 40 years, the death sentences of more than 23% of capital defendants have been vacated on grounds of ineffective assistance of counsel, further indicating serious problems with the administration of the system especially in light of the stringent standards for proving both “deficient performance” and “prejudice” under the *Strickland* test for ineffective assistance of counsel claims.
- Over the past 40 years, at least 339 defendants were convicted of multiple counts of first degree murder (*i.e.*, involving multiple murder victims), many involving extraordinarily egregious crimes, but only 33 of those defendants (10%) received sustained death sentences, while the remaining 306 defendants (90%) received life or life without parole sentences. Of the seventeen defendants found guilty of mass murder (four or more victims), only two mass-murder defendants (12%) received sustained death sentences; the other fifteen mass-murder defendants (88%) were sentenced to life or life without parole.
- Whereas during the four-year period 1989 to 1993 Tennessee imposed 37 new death sentences at the rate of 9.25 cases per year, during the most recent four-year period of 2013 to 2017, Tennessee imposed only one new death sentence at the rate of 0.25 per year. This represents a 97% decline in the rate of new death sentences.
- Moreover, Tennessee has not imposed any new death sentences since June 2014 (more than 3½ years ago); and no death sentences have been imposed in Davidson County, or in the entire Middle Grand Division of the State, since February 2001 (17 years ago).
- Over the past 40 years, no death sentences were imposed in 47 of the State’s 95 counties, and many of those death sentences were vacated or reversed. Only 28 of Tennessee’s counties have imposed sustained death sentences. Over the past sixteen-plus years, sustained death sentences were imposed in only eight counties; and over the past five-plus years, death sentences were imposed only in Shelby County.

These findings, along with the other findings in Mr. Miller’s report, prompt several questions required by *Furman’s* systemic analysis of the constitutionality of

any capital punishment system. Given that Tennessee is imposing death sentences on only 3.4% of first degree murderers, and only 10% of murderers with more than one victim; and given that the State so far has executed only one out of 400 of those convicted, how is our system selecting the very few from the very many for imposing the ultimate penalty? Is Tennessee consistently and reliably sentencing to death only the “worst of the bad”? What arbitrary factors infect the system? Given the sharp decline in new death sentences, has Tennessee’s evolved standard of decency reached the point where the death penalty has become a dead letter in close to all of the counties in the state, rendering capital punishment unconstitutional?

From the statistical data, it cannot be reasonably disputed that Tennessee’s capital sentencing system operates arbitrarily and capriciously. A number of factors contribute to the arbitrariness of the system, including: infrequency of application, geographical disparity, timing and natural deaths, error rates, quality of defense representation, prosecutorial discretion and misconduct, defendants’ impairments, race, and judicial disparity.¹¹²

Two penological interests have been proposed as justifications for capital punishment: deterrence and retribution. It is debatable whether any capital punishment system has ever served these interests. But when the historical data is analyzed, no one can reasonably argue that our current capital punishment system serves either of these interests. There no longer exists a valid doctrinal foundation to support this system.

¹¹² See Attachment 37, *Tennessee’s Death Penalty Lottery*, at 32-71.

Mr. Miller's survey necessarily leads to the following conclusion:

When over the past 40 years we have executed fewer than one out of every 400 defendants (less than ¼ of 1%) convicted of first degree murder; when we sentence 90% of multiple murderers to life or life without parole and only 10% to death; when the majority of capital cases are reversed or vacated because of trial error; when the courts have found that in over 23% of capital cases, defense counsel's performance was constitutionally deficient; when the number of death row defendants who die of natural causes is four times greater than the number Tennessee actually executed; when we have not seen a new capital case in Tennessee since mid-2014; when we haven't seen any death sentences in the Grand Middle Division since early 2001 – then, it must also be said that the death penalty is an “unusual” and unfair punishment. The statistics make clear that Tennessee's system is at least as arbitrary and capricious as the systems declared unconstitutional in *Furman* – and that is without accounting for the exorbitant delays and costs inherent in Tennessee's system, which far exceed the delays and costs inherent in the pre-*Furman* era.

The lack of proportionality and rationality in our selection of the few whom we decide to kill is breathtakingly indifferent to fairness, without justification by any legitimate penological purpose. The death penalty system as it has operated in Tennessee over the past 40 years, and especially over the past ten years, is but a cruel lottery, entrenching the very problems that *Furman* sought to eradicate.

Attachment 37, *Tennessee's Death Penalty Lottery*, at 78-79.

Mr. Zagorski's arguments are brought under both the United States Constitution (the Eighth and Fourteenth Amendments) and the Tennessee Constitution (Article I, §§ 8, 13 and 16). While the discussion of these issues mostly revolves around the protection against cruel and unusual punishment afforded by the Eighth Amendment, the Tennessee Constitution ought to provide greater protection against excessive or cruel punishments, for at least three reasons.

First, Tennessee's Declaration of Rights includes two separate provisions prohibiting excessive or unreasonable punishments: the Cruel and Unusual

Punishments Clause of Art. I, § 16; and the “Unnecessary Rigor” Clause of Art. I, § 13. Thus, the Tennessee Constitution explicitly provides greater protections for inmates than the Eighth Amendment.

Second, the arbitrary and capricious operation of Tennessee’s death penalty system implicates due process under the Law of the Land Clause of Art. I, § 8.

Furman was decided under the Eighth Amendment Cruel and Unusual Punishments Clause, not under the Due Process Clause.

And third, this Court has long recognized that, “as the final arbiter of the Tennessee Constitution, [it] is always free to expand the minimum level of protection mandated by the federal constitution.” *State v. Ferguson*, 2 S.W.3d 912, 916 (Tenn. 1999). *See also, Burford v. State*, 845 S.W.2d 204, 207 (Tenn. 1992) (“U.S. Supreme Court interpretations of the due process clauses of the U.S. Constitution only establish a minimum level of protection, and this Court, as the final arbiter of the Tennessee Constitution, is always free to expand the minimum level of protection”); *Doe v. Norris*, 751 S.W.2d 834, 838 (Tenn. 1988) (same); *State ex rel. Anglin v. Mitchell*, 596 S.W.2d 779, 785-86 (Tenn. 1980) (proclaiming that due process is an “advancing standard”); *Miller v. State*, 584 S.W.2d 758, 760 (Tenn. 1979) (“[A]s to Tennessee’s Constitution, we sit as a court of last resort, subject solely to the qualification that we may not impinge upon the minimum level of protection established by Supreme Court interpretations of the federal constitutional guarantees. But state supreme courts, interpreting state

constitutional provisions, may impose higher standards and stronger protections than those set by the federal constitution.” (emphasis added)).

VIII. Conclusion

This Court should deny the motion to expedite execution date to allow the litigation and conclusion of Davidson County Chancery Court proceedings in *Abdur’Rahman et al. v. Parker*, No. 18-183-II. This Court should also deny the motion to set execution date and either reform the death sentences to life sentences, or otherwise grant Edmund Zagorski a new trial and sentencing proceeding.

As the supreme judicial authority of Tennessee, this Court has the inherent, supreme judicial power under Article VI §1 of the Tennessee Constitution, *In Re Burson*, 909 S.W.2d 768, 772 (Tenn. 1995)), and undisputed "broad conference of full, plenary, and discretionary inherent power" under Tenn. Code Ann. §§16-3-503 & 504, *See Burson*, 909 S.W.2d at 772-773, to deny the Attorney General's motion to set an expedited execution date and instead vacate Mr. Zagorski's death sentence and modify it to life. *See Ray v. State*, 67 S.W.553 (1901)(modifying death sentence to life); *Poe v. State*, 78 Tenn. 673 (1882)(modifying death sentence to life). This Court also has the statutory authority to recommend that the Governor commute Mr. Zagorski's sentence by issuing a certificate of commutation under Tenn. Code Ann. §40-27-106,¹¹³ order a new sentencing hearing, or recall the post-conviction mandate and grant post-conviction relief.

Respectfully Submitted,

¹¹³ *See Green v. State*, 14 S.W. 489 (Tenn. 1889)(recommending commutation),

FEDERAL PUBLIC DEFENDER FOR THE
MIDDLE DISTRICT OF TENNESSEE

KELLEY J. HENRY, BPR#21113
Supervisory Asst. Federal Public Defender
810 Broadway, Suite 200
Nashville, TN 37203
Phone: (615) 736-5047
Fax: (615) 736-5265



Counsel for Edmund Zagorski

DESIGNATION OF ATTORNEY OF RECORD

Pursuant to Tenn. S. Ct. R. 12.3(B), Defendant Edmund Zagorski designates the following person as attorney of record upon whom service shall be made:

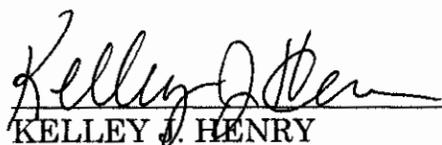
KELLEY J. HENRY
Supervisory Asst. Federal Public Defender
810 Broadway, Suite 200
Nashville, TN 37203
Phone: (615) 736-5047
Fax: (615) 736-5265
Email: kelley_henry@fd.org

Ms. Henry prefers to be notified of orders or opinions of the Court by means of email.

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March, 2018, a correct copy of the foregoing was served by email and United States Mail on:

JENNIFER L. SMITH
Associate Solicitor General
P.O. Box 20207
Nashville, TN 37202
Jennifer.smith@ag.tn.gov



KELLEY J. HENRY

Attachment 1

**CHRONOLOGY OF EVENTS RELEVANT TO
STATE'S MOTION TO EXPEDITE EXECUTION DATES**

Date	Event
9/7/2017	Drug Supplier Emails TDOC stating ""Here is my concern with midazolam, being a benzodiazepine, it does not elicit strong analgesic effects. The subjects may be able to feel pain from the administration of the second and third drugs. Potassium Chloride especially."
9/12/2017	TPRA Request sent to TDOC by counsel for <i>Abdur'Rahman, et al.</i>
10/18/2017	Drug Supplier emails TDOC a list of drugs that they have provided, indicating a June 1, 2018 expiration date, and inquiring about TDOC DEA license.
10/26/2017	Drug Supplier emails first invoice for midazolam.
10/26/2017	Drug Supplier emails TDOC "I will have my pharmacist write up a protocol."
11/1/2017	Drug Supplier emails second invoice for midazolam and signed W-9
11/06/2017	Response to 9/12/2017 TPRA request received. Despite request that response be current as of date of response, TDOC produces documents only up to September 7, 2017. "As has become your practice, you ask for records as of the date of your request, as well as the date of my response. In responding to your request I must request records from multiple sources, and necessarily must include a cut-off date in such requests. Accordingly, I will respond as of the date of your request only. As you are aware, the TPRA does not require that I do more."
11/06/2017	TPRA Request sent to TDOC by counsel for <i>Abdur'Rahman, et al.</i>
11/07/2017	TDOC sends email to drug supplier which asks "Any more product come in?"
11/08/2017	TDOC sends copy of Deberry Special Needs DEA license to Drug Supplier.
11/04/2017	Drug Supplier sends photos of the drugs to TDOC.
11/27/2017	Drug Supplier emails third invoice for midazolam.
11/28/2017	Drug Supplier sends email with attachments "Edited Protocol.pdf" and "TN Agreement -Executed.pdf."
12/4/2017	Pharmacy service agreement signed by Tony Parker; date agreement signed by Drug Supplier is unknown because of redaction.
12/5/2017	TPRA Request sent to TDOC by counsel for <i>Abdur'Rahman, et al.</i>
12/14/2017	Drug Supplier emails fourth invoice for midazolam.
12/21/2017	TDOC legal counsel sends letter to counsel for <i>Abdur'Rahman, et al.</i> stating that TDOC will respond to TPRA requests from 11/6/2017 and 12/5/2017 by 01/15/2018.
12/28/2017	Drug Supplier emails fifth invoice for midazolam.
01/08/2018	Petition for Writ of Certiorari in <i>Abdur'Rahman v. Parker</i> , No. 17-6068 is denied.

**CHRONOLOGY OF EVENTS RELEVANT TO
STATE'S MOTION TO EXPEDITE EXECUTION DATES**

Date	Event
01/08/2018	TDOC adopts new lethal injection protocol adding the Midazolam Option
1/10/2018	TPRA Request sent to TDOC by counsel for <i>Abdur'Rahman, et al.</i>
1/11/2018	State Attorney General files Notice with the Tennessee Supreme Court regarding the denial of certiorari in <i>Abdur'Rahman</i> . No mention of problems with drug supply; no mention of new protocol. Service is by mail. The motions were filed late in the day Thursday. The following Friday state offices and many businesses in Nashville are closed due to inclement weather. The next business day is Tuesday, January 16, 2018 due to Martin Luther King Day.
1/16/2018	Response to 11/06/2017 and 12/05/2017 TPRA requests is received. Despite request that response be current as of date of response, TDOC produces documents only up to December 4, 2017, plus the new protocol containing the Midazolam Option. This is the first notice to any person working on behalf of Tennessee Death Row Inmates that TN had adopted a new lethal injection protocol.
01/18/2018	Abdur'Rahman, Johnson, Hall, Irick, Miller, Sutton, Wright, West, and Zagorski each file notice with the Tennessee Supreme Court of their intent to challenge the new Midazolam Option in Chancery Court and state that such Complaint will be filed in thirty days.
01/18/2018	Tennessee Supreme Court sets August 9, 2018 execution date for Billy Ray Irick.
02/02/2018	Response to 01/10/2018 TPRA request is received. Despite request that response be current as of date of response, TDOC produces documents only up to January 3, 2018. This heavily redacted response did not provide any additional relevant information.
02/02/2018	TPRA Request sent to TDOC by counsel for <i>Abdur'Rahman, et al.</i>
02/15/2018	State Attorney General files Motion asking Tennessee Supreme Court to set expedited execution dates for Abdur'Rahman, Johnson, Hall, Miller, Sutton, Wright, West, and Zagorski. Motion indicates that the State intends to use the Midazolam Option to execute the named inmates.
02/15/2018	Counsel for Abdur'Rahman, Johnson, Hall, Miller, Sutton, Wright, West, and Zagorski file notice with Tennessee Supreme Court that they intend to respond to State's motion for expedited execution dates within 14 days and that they will file Complaint in Chancery Court on February 20, 2018.
02/20/2018	Abdur'Rahman, Johnson, Hall, Irick, Miller, Sutton, Wright, West, and Zagorski and others file 16 count, 92 page complaint in Davidson County Chancery Court challenging the Midazolam Option.

Attachment 2

The places that it is readily available from do they have disclaimer requirements like what [REDACTED] hit us with on the Pento?



CONFIDENTIALITY: The information contained in this e-mail message, including any attachments, is intended only for the personal, confidential and privileged (either legally or otherwise) use of the individual to which it is addressed. The email message and attachments may contain confidential information that is protected by Attorney/Client privilege and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are notified that any review, use, disclosure, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender by reply e-mail immediately and destroy all copies of the original message.

From: [REDACTED]
Sent: Thursday, September 07, 2017 12:58 PM
To: [REDACTED]
Subject: RE: Updtae

*** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. ***

Hello [REDACTED]

That stuff is readily available along with potassium chloride. I reviewed several protocols from states that currently use that method. Most have a 3 drug protocol including a paralytic and potassium chloride. Here is my concern with Midazolam. Being a benzodiazepine, it does not elicit strong analgesic effects. The subjects may be able to feel pain from the administration of the second and third drugs. Potassium chloride especially. It may not be a huge concern but can open the door to some scrutiny on your end. Consider the use of an alternative like Ketamine or use in conjunction with an opioid. Availability of the paralytic agent is spotty. Pancuronium, Rocuronium, and Vecuronium are currently unavailable. Succinylcholine is available in limited quantity. I'm currently checking other sources. I'll let you know shortly.

Regards,

<image004.jpg>

This document may contain information covered under the Privacy Act, 5 USC 552(a), and/or Health Insurance Portability and Accountability Act (PL104-191) and its various implementing regulations and must be protected in accordance with those provisions. Healthcare information is personal and sensitive and must be treated accordingly. If this correspondence contains healthcare information it is being provided to you after appropriate authorization from the patient or under circumstances that do not require patient authorization. You, the recipient, are obligated to maintain it in a safe, secure, and confidential manner. Redisclosure without additional patient consent or as permitted by law is prohibited. Unauthorized redisclosure or failure to maintain confidentiality subjects you to appropriate sanction. If you have received this correspondence in error, please notify the sender at once and destroy any copies you have made.

Attachment 3

[REDACTED]

From: [REDACTED]
Sent: Thursday, October 26, 2017 4:16 PM
To: [REDACTED]
Subject: Re: Additional Info

Can you shoot me a W9 so I can get that to fiscal?

Sent from my iPhone

On Oct 26, 2017, at 3:30 PM, [REDACTED] wrote:

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

[REDACTED]

I will have my pharmacist write up a protocol. All drugs are required to be stored in a secured location at room temperature (between 15 and 30 degrees celcius).

Attached is the current invoice along with our Pharmacy Services Agreement. Please review the agreement and let me know if you have any concerns or questions. We will also need the address along with a copy of the current DEA and pharmacy/state license for the facility where we will be shipping the medication to.

There is another shipment arriving tomorrow with 8 Midazolam and 4 Vecuronium sets on board. I will get you the particulars when it arrives. Thanks Kelly. Let me know if I can be of further assistance.

Regards,

[REDACTED]

This document may contain information covered under the Privacy Act, 5 USC 552(a), and/or Health Insurance Portability and Accountability Act (PL104-191) and its various implementing regulations and must be protected in accordance with those provisions. Healthcare information is personal and sensitive and must be treated accordingly. If this correspondence contains healthcare information it is being provided to you after appropriate authorization from the patient or under circumstances that do not require patient authorization. You, the recipient, are obligated to maintain it in a safe, secure, and confidential manner. Redisclosure without additional patient consent or as permitted by law is prohibited. Unauthorized redisclosure or failure to maintain confidentiality subjects you to appropriate sanction. If you have received this correspondence in error, please notify the sender at once and destroy any copies you have made.

From: [REDACTED]
Sent: Thursday, October 26, 2017 1:43 PM

Attachment 4

[REDACTED]

From: [REDACTED]
Sent: Tuesday, November 28, 2017 12:48 PM
To: [REDACTED]
Subject: [REDACTED]
Attachments: Edited Protocol.pdf; TN Agreement - Executed.pdf

*** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. ***

[REDACTED]

[REDACTED]

Attached is the executed agreement and revisions to the protocol. Only one change was noted. Where the potassium chloride is concerned, in order to reach the required dose you need 120ml. Using 50cc syringes would only allow for 100ml necessitating the need for a third syringe with 20ml. You can eliminate the third syringe by using two 60cc syringes in place of the 50cc. One thing to note is that each 10mg Vecuronium vial will need to be reconstituted with 10ml of bacteriostatic water before use, which we will provide. Did you all want us to provide you with the syringes and needles?

[REDACTED]

Regards,

Attachment 5

1 JON M. SANDS
Federal Public Defender, District of Arizona
2 DALE A. BAICH (OH Bar No. 0025070)
dale_baich@fd.org
3 JESSICA L. FELKER (IL Bar No. 6296357)
Jessica_felker@fd.org
4 850 West Adams Street, Suite 201
Phoenix, Arizona 85007
5 602.382.2816 | 602.889.3960 facsimile

6 Counsel for Condemned Plaintiffs

7 MARK E. HADDAD (CA Bar No. 205945)
mhaddad@sidley.com
8 SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
9 Los Angeles, California 90013
213.896.6000 | 213.896.6600 facsimile

10 Counsel for the Coalition and Condemned Plaintiffs

11 MARK BRNOVICH
Attorney General
12 (Firm State Bar No. 14000)
JEFFREY L. SPARKS (SBN 027536)
13 Assistant Attorney General
Capital Litigation Section
14 1275 West Washington
Phoenix, Arizona 85007-2997
15 602.542.4686 | CADocket@azag.gov

16 Counsel for Defendants
[additional counsel listed on signature page]

17 **UNITED STATES DISTRICT COURT**
18 **FOR THE DISTRICT OF ARIZONA**

19 First Amendment Coalition of Arizona, Inc.;
Charles Michael Hedlund; Graham S.
20 Henry; David Gulbrandson; Robert Poyson;
Todd Smith; Eldon Schurz; and Roger
21 Scott,

22 Plaintiffs,

23 v.

24 Charles L. Ryan, Director of ADC; James
O'Neil, Warden, ASPC-Eyman; Greg Fizer,
25 Warden, ASPC-Florence; and Does 1-10,
26 Unknown ADC Personnel, in their official
capacities as Agents of ADC,

27 Defendants.
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Case No. 2:14-cv-01447-NVW-JFM

**STIPULATED SETTLEMENT
AGREEMENT AND [PROPOSED]
ORDER FOR DISMISSAL OF CLAIM
ONE**

1 Plaintiffs Charles Michael Hedlund, Graham S. Henry, David Gulbrandson,
2 Robert Poyson, Todd Smith, Eldon Schurz, and Roger Scott (collectively, "Plaintiffs,"),
3 and Defendants Charles L. Ryan, Director of the Arizona Department of Corrections
4 ("ADC"); James O'Neil, Warden, ASPC-Eyman; and Greg Fizer, Warden, ASPC-
5 Florence (collectively, "Defendants"), hereby stipulate and agree as follows:

6 **WHEREAS**, Claim One of Plaintiffs' Second Amendment Complaint ("Claim
7 One") challenges ADC's intended use of lethal injection drug Protocol C that consists of
8 midazolam, which belongs to a class of drugs called benzodiazepines, followed by a
9 paralytic (vecuronium bromide, rocuronium bromide, or pancuronium bromide), and
10 potassium chloride under the Eighth Amendment;

11 **WHEREAS**, Defendants contend that ADC's previous supplier of midazolam no
12 longer provides the drug for use in lethal injection executions and that ADC's supply of
13 midazolam expired on May 31, 2016;

14 **WHEREAS**, ADC has removed Protocol C, the three-drug combination
15 beginning with midazolam that Plaintiffs' challenge in Claim One, from Department
16 Order 710;

17 **WHEREAS**, Defendants hereby represent, covenant, and agree, and Plaintiffs
18 and Defendants (collectively, the "parties") intend, that ADC will never again use
19 midazolam, or any other benzodiazepine, as part of a drug protocol in a lethal injection
20 execution;

21 **WHEREAS**, Plaintiffs contend that they have incurred in excess of \$2,080,000 in
22 attorneys' fees and costs in litigating this action;

23 **WHEREAS**, the parties agree that, because of the above-described
24 circumstances, resolution of Claim One—without further litigation, without any
25 admission of liability, and without any final adjudication of any issue of fact or law—is
26 appropriate and will avoid prolonged and complicated litigation between the parties;

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1 **WHEREAS**, the parties intend this stipulated settlement agreement to be
2 enforceable by, and for the benefit of, not only the Plaintiffs but also all current and
3 future prisoners sentenced to death in the State of Arizona (“Condemned Prisoner
4 Beneficiaries”), who are express and intended third-party beneficiaries of this stipulated
5 settlement agreement and who are entitled to all rights and benefits provided to Plaintiffs
6 herein, and who, upon any showing that ADC intends to use midazolam, or any other
7 benzodiazepine, in an execution or in an execution protocol, may continue this action as
8 substituted plaintiffs pursuant to Rule 25(c) of the Federal Rules of Civil Procedure;

9 **WHEREAS**, the parties intend this stipulated settlement agreement to bind
10 Defendants, ADC, and any of Defendants’ successors in their official capacities as
11 representatives of ADC, who, in the event that any Plaintiff or Condemned Prisoner
12 Beneficiary moves to reopen this proceeding under Rule 60(b)(6) of the Federal Rules of
13 Civil Procedure, will be deemed to have been automatically substituted as defendants in
14 this action pursuant to Rule 25(d) of the Federal Rules of Civil Procedure;

15 **WHEREAS**, the parties intend and agree that, upon any breach of this stipulated
16 settlement agreement, (a) any Plaintiff or Condemned Prisoner Beneficiary has standing
17 and the right to move to reopen this proceeding under Rule 60(b)(6) of the Federal Rules
18 of Civil Procedure, and (b) an order shall issue permanently enjoining ADC from using
19 midazolam, or any other benzodiazepine, in an execution or in an execution protocol;

20 **WHEREAS**, in the event that any Plaintiff or Condemned Prisoner Beneficiary
21 moves to reopen this proceeding under Rule 60(b)(6) of the Federal Rules of Civil
22 Procedure, the parties agree that Defendants, ADC, and/or any of Defendants’
23 successors in their official capacities as representatives of ADC waive all objections to
24 this Court’s reopening of this proceeding, including on the basis of timing, ripeness,
25 mootness, or the standing of the moving parties;

26 **WHEREAS**, in the event that this stipulated settlement agreement is breached
27 through ADC’s use or intent to use a benzodiazepine in an execution or in an execution
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1 protocol, and any Plaintiff's or Condemned Prisoner Beneficiary's motion to reopen this
2 proceeding under Rule 60(b)(6) of the Federal Rules of Civil Procedure is not granted
3 for reasons related to the moving parties' standing or the Court's jurisdiction,
4 Defendants consent to the entry of an order in a separate action by a Plaintiff or a
5 Condemned Prisoner Beneficiary for breach of this agreement that permanently enjoins
6 ADC from using midazolam, or any other benzodiazepine, in an execution or in an
7 execution protocol.

8 **IT IS THEREFORE STIPULATED AND AGREED that:**

9 (1) Claim One of Plaintiffs' Second Amended Complaint is dismissed,
10 without prejudice.

11 (2) Upon any showing by any Plaintiff or Condemned Prisoner Beneficiary
12 that ADC intends to use midazolam, or any other benzodiazepine, in an execution or in
13 an execution protocol, Claim One shall be reinstated and reopened pursuant to Rule
14 60(b)(6) of the Federal Rules of Civil Procedure, and, based on the agreement and
15 consent of the parties granted herein, an injunction shall issue in this action or in a
16 separate action for breach of the parties' stipulated settlement agreement permanently
17 enjoining ADC from using midazolam, or any other benzodiazepine, in an execution or
18 in an execution protocol.

19 (3) Plaintiffs agree not to seek their attorneys' fees and costs incurred in
20 litigating Claim One unless Defendants or ADC breach this stipulated settlement
21 agreement, in which case Plaintiffs shall be entitled to seek an award of their reasonable
22 attorneys' fees and costs incurred in litigating Claim One, in an amount to be determined
23 by the Court, either in this action or in a separate action for breach of the parties'
24 stipulated settlement agreement. In that circumstance, Plaintiffs shall also be entitled to
25 seek to collect their reasonable attorneys' fees and costs incurred in moving to enforce
26 this stipulated settlement agreement.

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Dated: December 19, 2016

Sidley Austin LLP

s/ Mark E. Haddad

Mark E. Haddad

Attorneys for Plaintiffs Charles Michael Hedlund; Graham S. Henry; David Gulbrandson; Robert Poyson; Todd Smith; Eldon Schurz; and Roger Scott

Dated: December 19, 2016

Office of the Arizona Attorney General

s/ Jeffrey L. Sparks

Jeffrey L. Sparks

David Weinzweig

Lacey Stover Gard

John Pressley Todd

Attorneys for Defendants

I, Mark Haddad, hereby attest that counsel for Defendants, Jeffrey L. Sparks, authorized the use of his signature on, and concurred in the filing of, this document, on December 19, 2016.

s/ Mark E. Haddad

Mark E. Haddad

* * *

ORDER

IT IS SO ORDERED.

DATED this ___ day of _____, 2016.

Neil V. Wake
United States District Judge

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Attachment 6

1 JON M. SANDS
Federal Public Defender, District of Arizona
2 DALE A. BAICH (OH Bar No. 0025070)
dale_baich@fd.org
3 JESSICA L. FELKER (IL Bar No. 6296357)
Jessica_felker@fd.org
4 850 West Adams Street, Suite 201
Phoenix, Arizona 85007
5 602.382.2816 | 602.889.3960 facsimile

6 Counsel for Condemned Plaintiffs

7 MARK E. HADDAD (CA Bar No. 205945)
mhaddad@sidley.com
8 SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
9 Los Angeles, California 90013
213.896.6000 | 213.896.6600 facsimile

10 Counsel for the Coalition and Condemned Plaintiffs

11 MARK BRNOVICH
Attorney General
12 (Firm State Bar No. 14000)
JEFFREY L. SPARKS (SBN 027536)
13 Assistant Attorney General
Capital Litigation Section
14 1275 West Washington
Phoenix, Arizona 85007-2997
15 602.542.4686 | CADocket@azag.gov

16 Counsel for Defendants
[additional counsel listed on signature page]

17 **UNITED STATES DISTRICT COURT**
18 **FOR THE DISTRICT OF ARIZONA**

19 First Amendment Coalition of Arizona, Inc.;
Charles Michael Hedlund; Graham S.
20 Henry; David Gulbrandson; Robert Poyson;
Todd Smith; Eldon Schurz; and Roger
21 Scott,

22 Plaintiffs,

23 v.

24 Charles L. Ryan, Director of ADC; James
O'Neil, Warden, ASPC-Eyman; Greg Fizer,
25 Warden, ASPC-Florence; and Does 1-10,
26 Unknown ADC Personnel, in their official
capacities as Agents of ADC,

27 Defendants.
28

Case No. 2:14-cv-01447-NVW-JFM

**STIPULATED SETTLEMENT
AGREEMENT AND [PROPOSED]
ORDER FOR DISMISSAL OF
CLAIMS SIX AND SEVEN**

1 Plaintiffs Charles Michael Hedlund, Graham S. Henry, David Gulbrandson, Robert
2 Poyson, Todd Smith, Eldon Schurz, and Roger Scott (collectively, "Plaintiffs"), and
3 Defendants Charles L. Ryan, Director of the Arizona Department of Corrections ("ADC");
4 James O'Neil, Warden, ASPC-Eyman; and Greg Fizer, Warden, ASPC-Florence
5 (collectively, "Defendants"), hereby stipulate and agree as follows:

6 **WHEREAS**, on December 22, 2016, this Court entered an Order for Dismissal of
7 Claim One (ECF No. 155) based on the December 19, 2016 Stipulated Settlement
8 Agreement (ECF No. 152) between Plaintiffs and Defendants (collectively, the "parties");

9 **WHEREAS**, Claim Six and Claim Seven of Plaintiffs' Second Amended
10 Complaint ("SAC") (ECF No. 94) and Plaintiffs' Supplemental Complaint (ECF No. 163)
11 challenge the ADC's reservations of excessive discretion in its execution procedures, and
12 Defendants' past and proposed future exercises of that discretion, including through "last-
13 minute deviations from critical aspects of its announced execution process," May 18,
14 2016, Order Granting in Part and Denying in Part Defendants' Motion to Dismiss SAC at
15 13 (ECF No. 117), as violative of the Eighth and Fourteenth Amendments;

16 **WHEREAS**, Defendants intend to resolve the deficiencies Plaintiffs allege
17 through their permanent repudiation of certain provisions contained in past versions of the
18 ADC's execution procedures, as set forth herein, and through the adoption of a new set of
19 execution procedures reflecting those changes;

20 **WHEREAS**, Defendants' execution procedures have, in the past, stated that "[t]his
21 Department Order outlines internal procedures and does not create any legally enforceable
22 rights or obligations," *e.g.*, Ariz. Dep't of Corr., Dep't Order 710, at p.1 (Jan. 11, 2017);

23 **WHEREAS**, Defendants hereby represent, covenant, and agree, and the parties
24 intend, that Defendants and the ADC will remove from the ADC's current execution
25 procedures the sentence—"[t]his Department Order outlines internal procedures and does
26 not create any legally enforceable rights or obligations"—and that Defendants and the
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1 ADC will never again include such language or substantially similar language in any
2 future version of the ADC's execution procedures (together, "Covenant No. 1");

3 **WHEREAS**, Defendants' execution procedures have, in the past, granted the
4 Director of the ADC (the "ADC Director") the discretion to change any of the timeframes
5 set forth in the execution procedures based on the ADC Director's determination that there
6 has been an "unexpected or otherwise unforeseen contingency," *e.g.* Ariz. Dep't of Corr.,
7 Dep't Order 710 ¶ 1.1.2.3 (Jan. 11, 2017);

8 **WHEREAS**, Defendants hereby represent, covenant, and agree, and the parties
9 intend, that the ADC Director shall henceforth have the authority to change timeframes
10 relating to the execution process only when those timeframes correspond to minor or
11 routine contingencies not central to the execution process; that timeframes that *are* central
12 to the execution process include, but are not limited to, those relating to execution
13 chemicals and dosages, consciousness checks, and access of the press and counsel to the
14 execution itself; and that Defendants and the ADC will never again include provisions in
15 any version of the ADC's execution procedures that purport to expand the ADC Director's
16 discretion to deviate from timeframes set forth in the execution procedures beyond those
17 relating to minor or routine contingencies not central to the execution process (together,
18 "Covenant No. 2");

19 **WHEREAS**, Defendants' execution procedures have, in the past, granted the ADC
20 Director the discretion to change the quantities or types of chemicals to be used in an
21 execution at any time that he determines such a change to be necessary, even after a
22 warrant of execution has been sought, *e.g.*, Ariz. Dep't of Corr., Dep't Order 710, Att. D
23 ¶ C.6 (Jan. 11, 2017);

24 **WHEREAS**, Defendants hereby represent, covenant, and agree, and the parties
25 intend, that the ADC Director shall henceforth have the authority to change the quantities
26 or types of chemicals to be used in an execution after a warrant of execution has been
27 sought only if the Director, the ADC, Defendants, and/or their counsel, (1) notify the
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1 condemned prisoner and his/her counsel of the intended change, (2) withdraw the existing
2 warrant of execution, and (3) apply for a new warrant of execution; and that Defendants
3 and the ADC will never again include provisions in any version of the ADC's execution
4 procedures that permit the ADC Director or the ADC to change the quantities or types of
5 chemicals to be used in an execution after a warrant of execution has been sought without
6 also withdrawing and applying through counsel for a new warrant of execution (together,
7 "Covenant No. 3");

8 **WHEREAS**, Defendants' execution procedures, in the past, have not expressly
9 limited the ADC Director's discretion regarding the use of quantities and types of
10 chemicals to only those quantities and types of chemicals set forth in the ADC's execution
11 procedures;

12 **WHEREAS**, Defendants hereby represent, covenant, and agree, and the parties
13 intend, that the ADC Director's discretion to choose the quantities and types of chemicals
14 for an execution shall be limited to the quantities and types of chemicals set forth expressly
15 in the then-current execution procedures; that the quantities or types of chemicals that may
16 be used in an execution may be modified only through the formal publication of an
17 amended set of execution procedures; and that any future version of execution procedures
18 will expressly reflect this limitation of discretion (together, "Covenant No. 4");

19 **WHEREAS**, Defendants' execution procedures, in the past, have required that, if
20 any compounded chemical is to be used in an execution, the ADC shall obtain it from only
21 a "certified or licensed" compounding pharmacist or compounding pharmacy, but the
22 ADC's most recent version of its execution procedures has removed that limitation in lieu
23 of a requirement that the ADC provide a "qualitative analysis of any compounded or non-
24 compounded chemical to be used in the execution . . . within ten calendar days after the
25 state seeks a Warrant of Execution," *compare* Ariz. Dep't of Corr., Dep't Order 710, Att.
26 D ¶ C.2 (Oct. 23, 2015), *with* Ariz. Dep't of Corr., Dep't Order 710, Att. D ¶ C.2 (Jan. 11,
27 2017);
28

1 **WHEREAS**, Defendants hereby represent, covenant, and agree, and the parties
2 intend, that the ADC shall provide, upon request and within ten (10) calendar days after
3 the State of Arizona seeks a warrant of execution, a quantitative analysis of any
4 compounded or non-compounded chemical to be used in an execution that reveals, at a
5 minimum, the identity and concentration of the compounded or non-compounded
6 chemical; that ADC will only use chemicals in an execution that have an expiration or
7 beyond-use date that is after the date that an execution is to be carried out; that, if the
8 chemical's expiration or beyond-use date states only a month and year (*e.g.*, "May 2017"),
9 ADC will not use that chemical after the last day of the month specified; and that all future
10 versions of the ADC's execution procedures shall include these requirements (together,
11 "Covenant No. 5");

12 **WHEREAS**, Defendants' execution procedures have, in the past, permitted the use
13 of a three-drug lethal-injection protocol using: (1) a barbiturate or a benzodiazepine as the
14 first drug, (2) a paralytic such as vecuronium bromide, pancuronium bromide, or
15 rocuronium bromide (collectively, "Paralytic") as the second drug, and (3) potassium
16 chloride as the third drug; *e.g.*, Ariz. Dep't of Corr., Dep't Order 710, Att. D ¶ C.2 at Chart
17 C (Jan. 11, 2017);

18 **WHEREAS**, Defendants hereby represent, covenant, and agree, and the parties
19 intend, that Defendants and the ADC will never again use a Paralytic in an execution; and
20 that Defendants and the ADC consequently will remove their current three-drug lethal-
21 injection protocol from the current and any future version of the ADC's execution
22 procedures (together, "Covenant No. 6");

23 **WHEREAS**, Defendants' execution procedures have, in the past, provided for
24 prisoners or their agents to purchase and/or supply chemicals for use in the prisoner's own
25 execution, *e.g.*, Ariz. Dep't of Corr., Dep't Order 710, Att. D ¶ C.1 (Jan. 11, 2017);

26 **WHEREAS**, Defendants hereby represent, covenant, and agree, and the parties
27 intend, that Defendants and the ADC shall remove from the ADC's execution procedures
28

1 any provision that purports to permit prisoners or their agents to purchase and/or supply
2 chemicals for use in the prisoner's own execution, and that Defendants and the ADC will
3 never again include any such provision or any substantially similar provision in any future
4 version of the ADC's execution procedures (together, "Covenant No. 7");

5 **WHEREAS**, the parties agree that the version of Department Order 710 published
6 on June 13, 2017 fully satisfies Covenant Nos. 1 through 7;

7 **WHEREAS**, Plaintiffs contend that they have incurred in excess of \$2,350,000 in
8 attorneys' fees and costs in litigating this action since its inception, and have incurred in
9 excess of \$280,000 in attorneys' fees and costs in litigating this action since this Court's
10 December 22, 2016, Order dismissing Claim One without prejudice (ECF No. 155);

11 **WHEREAS**, the parties agree that, because of the above-described circumstances,
12 resolution of Claim Six and Claim Seven—without further litigation, without any
13 admission of liability, and without any final adjudication of any issue of fact or law—is
14 appropriate and will avoid prolonged and complicated litigation between the parties;

15 **WHEREAS**, the parties intend this Stipulated Settlement Agreement to be
16 enforceable by, and for the benefit of, not only the Plaintiffs but also all current and future
17 prisoners sentenced to death in the State of Arizona ("Condemned Prisoner
18 Beneficiaries"), who are express and intended third-party beneficiaries of this Stipulated
19 Settlement Agreement and who are entitled to all rights and benefits provided to Plaintiffs
20 herein, and who, upon any showing that any of the Defendants, any of the Defendants'
21 successors in their official capacities as representatives of the ADC ("Defendants'
22 Successors"), or the ADC has violated or intends to violate any of Covenant Nos. 1
23 through 7 may continue this action as substituted plaintiffs pursuant to Rule 25(c) of the
24 Federal Rules of Civil Procedure;

25 **WHEREAS**, the parties intend this Stipulated Settlement Agreement to bind
26 Defendants, the ADC, and Defendants' Successors, who, in the event that any Plaintiff or
27 Condemned Prisoner Beneficiary moves to reopen this proceeding under Rule 60(b)(6) of
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1 the Federal Rules of Civil Procedure, will be deemed to have been automatically
2 substituted as defendants in this action pursuant to Rule 25(d) of the Federal Rules of Civil
3 Procedure;

4 **WHEREAS**, the parties intend and agree that, upon any breach of this Stipulated
5 Settlement Agreement, (a) any Plaintiff or Condemned Prisoner Beneficiary has standing
6 and the right to move to reopen this proceeding under Rule 60(b)(6) of the Federal Rules
7 of Civil Procedure, and (b) an order shall immediately issue permanently enjoining the
8 ADC from violating Covenant Nos. 1-7;

9 **WHEREAS**, in the event that any Plaintiff or Condemned Prisoner Beneficiary
10 moves to reopen this proceeding under Rule 60(b)(6) of the Federal Rules of Civil
11 Procedure, the parties agree that the Defendants, the ADC, and Defendants' Successors
12 waive all objections to this Court's reopening of this proceeding, including on the basis of
13 timing, ripeness, mootness, or the standing of the moving parties;

14 **WHEREAS**, in the event that this Stipulated Settlement Agreement is breached
15 through an actual or intended violation of any of Covenant Nos. 1 through 7 by
16 Defendants, Defendants' Successors, or the ADC, and any Plaintiff's or Condemned
17 Prisoner Beneficiary's motion to reopen this proceeding under Rule 60(b)(6) of the
18 Federal Rules of Civil Procedure is not granted for reasons related to the moving parties'
19 standing or the Court's jurisdiction, Defendants, Defendants' Successors, and the ADC
20 consent to the entry of an order in a separate action by a Plaintiff or a Condemned Prisoner
21 Beneficiary for breach of this agreement that permanently enjoins Defendants,
22 Defendants' Successors, and the ADC from engaging in any conduct that violates any of
23 Covenant Nos. 1 through 7.

24 **IT IS THEREFORE STIPULATED AND AGREED** that:

25 (1) Claims Six and Seven of Plaintiffs' Second Amended Complaint and
26 Supplemental Complaint are dismissed, without prejudice.

27 (2) The parties do not hereby intend to settle, and Plaintiffs instead expressly
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1 reserve their right to appeal, other claims that were dismissed by the Court's May 18,
2 2016, Order, including Claims 3, 4, and 5, which challenge various aspects of the ADC's
3 execution procedures on First Amendment grounds.

4 (3) Upon any showing by any Plaintiff or Condemned Prisoner Beneficiary that
5 any of the Defendants, any of the Defendants' Successors, or the ADC intend to engage
6 in or have actually engaged in any of the following conduct (together, the "Prohibited
7 Conduct"):

8 (a) adopt language in any future version of the ADC's execution
9 procedures that purports to disclaim the creation of rights or obligations;

10 (b) grant the ADC and/or the ADC Director the discretion to deviate
11 from timeframes set forth in the ADC's execution procedures regarding issues that
12 are central to the execution process, which include but are not limited to those
13 relating to execution chemicals and dosages, consciousness checks, and access of
14 the press and counsel to the execution itself;

15 (c) change the quantities or types of chemicals to be used in an execution
16 after a warrant of execution has been sought without first notifying the condemned
17 prisoner and his/her counsel of the intended change, withdrawing the existing
18 warrant of execution, and applying for a new warrant of execution;

19 (d) select for use in an execution any quantity or type of chemical that is
20 not expressly permitted by the then-current, published execution procedures;

21 (e) fail to provide upon request, within ten (10) calendar days after the
22 State of Arizona seeks a warrant of execution, a quantitative analysis of any
23 compounded or non-compounded chemical to be used in an execution that reveals,
24 at a minimum, the identity and concentration of the compounded or non-
25 compounded chemicals;

26 (f) use or select for use in an execution any chemicals that have an
27 expiration or beyond-use date that is before the date that an execution is to be
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1 carried out; or use or select for use in an execution any chemicals that have an
2 expiration or beyond-use date listed only as a month and year that is before the
3 month in which the execution is to be carried out;

4 (g) adopt or use any lethal-injection protocol that uses a paralytic
5 (including but not limited to vecuronium bromide, pancuronium bromide, and
6 rocuronium bromide); or

7 (h) adopt any provision in any future version of the ADC's execution
8 procedures that purports to permit prisoners or their agents to purchase and/or
9 supply chemicals for use in the prisoner's own execution; then

10 Claims Six and Seven shall be reinstated and reopened pursuant to Rule 60(b)(6) of the
11 Federal Rules of Civil Procedure, and, based on the agreement and consent of the parties
12 granted herein, an injunction shall immediately issue in this action or in a separate action
13 for breach of this Stipulated Settlement Agreement permanently enjoining Defendants,
14 Defendants' Successors, and the ADC from engaging in any of the Prohibited Conduct.

15 (4) Plaintiffs agree not to seek their attorneys' fees and costs incurred in
16 litigating Claims Six and Seven unless Defendants, Defendants' Successors, or the ADC
17 breach this Stipulated Settlement Agreement, in which case Plaintiffs shall be entitled to
18 an award, either in this action or in a separate action for breach of this Stipulated
19 Settlement Agreement, of their reasonable attorneys' fees and costs incurred in litigating
20 this action from its inception through the effective date of this Stipulated Settlement
21 Agreement, as determined by the Court after briefing by the parties. In that circumstance,

22 ///

23 ///

24 ///

25 ///

26 ///

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1 Plaintiffs shall also be entitled to seek to collect their reasonable attorneys' fees and costs
2 incurred in moving to enforce this Stipulated Settlement Agreement.

3 **IT IS SO STIPULATED.**

4
5
6 Dated: June 21, 2017

Sidley Austin LLP

7 s/ Mark E. Haddad

8 Mark E. Haddad

9 Attorneys for Plaintiffs

10
11 Dated: June 21, 2017

Office of the Arizona Attorney General

12 s/ Jeffrey L. Sparks

13 Jeffrey L. Sparks

14 Attorneys for Defendants
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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2017, I electronically filed the foregoing **Stipulated Settlement Agreement and [Proposed] Order for Dismissal of Claims Six and Seven** by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Barbara Cunningham

Barbara Cunningham
Legal Secretary

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Attachment 7

Chronology of Public Records Requests

Request Date	Response Date	Timeframe of Documents Actually Produced
September 12, 2017	November 6, 2017	February 15, 2017- September 7, 2017
November 6, 2017 & December 5, 2017	January 16, 2018	October 17, 2017- December 4, 2018
January 10, 2018	February 2, 2018	October 26, 2017 - January 3, 2018
February 2, 2018	No Response Received	

Attachment 8

[REDACTED]

From: [REDACTED]
Sent: Wednesday, October 18, 2017 11:01 AM
To: [REDACTED]
Subject: Re: Question

I believe we do I will double check on it.

Sent from my iPhone

On Oct 18, 2017, at 10:47 AM, [REDACTED] wrote:

Good morning [REDACTED]

Below is a list of what has been received from our suppliers

Midazolam – 1000mg, Lot: [REDACTED] EXP: 1June2018

Vecuronium – 200mg, Lot: [REDACTED] EXP: 12/18

Potassium Chloride – 2000mEq, Lot: [REDACTED] EXP: 1May2018

I'm working on revising the BAA and agreement. I should have it to you by the end of the day. Do you all have a DEA license?

Regards,

[REDACTED]

This document may contain information covered under the Privacy Act, 5 USC 552(a), and/or Health Insurance Portability and Accountability Act (PL104-191) and its various implementing regulations and must be protected in accordance with those provisions. Healthcare information is personal and sensitive and must be treated accordingly. If this correspondence contains healthcare information it is being provided to you after appropriate authorization from the patient or under circumstances that do not require patient authorization. You, the recipient, are obligated to maintain it in a safe, secure, and confidential manner. Redisclosure without additional patient consent or as permitted by law is prohibited. Unauthorized redisclosure or failure to maintain confidentiality subjects you to appropriate sanction. If you have received this correspondence in error, please notify the sender at once and destroy any copies you have made.

From: [REDACTED]
Sent: Wednesday, October 18, 2017 8:33 AM
To: [REDACTED]
Subject: RE: Question

I got some info re: the test Let me know if there is a good time to call and fill you in. thx

Attachment 9

PHARMACY SERVICES AGREEMENT

This PHARMACY SERVICES AGREEMENT ("Agreement") is being made and entered into by and between [REDACTED] ("Pharmacy") and [REDACTED] ("Department") on this 21 day November, 2017, and is being made for the purposes and the consideration herein expressed.

WITNESSETH:

WHEREAS, Pharmacy is [REDACTED] that provides controlled substance and compounded preparations to practitioners for office use; and

WHEREAS, Department is a State of Tennessee governmental agency that is responsible for carrying out sentences of death by means of lethal injection; and

WHEREAS, Department desires to engage Pharmacy to provide Department with certain controlled substances and/or compounded preparations for lethal injection administration by the Department to those individuals sentenced to death; and

WHEREAS, Pharmacy and Department have agreed to enter into this Agreement setting forth the terms under which Pharmacy will provide certain controlled substances and/or compounded preparations to Department for use in lethal injection.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, Pharmacy and Department hereby agree as follows:

Article 1
SERVICES

1.1 **Controlled substance.** Upon a written request, which may be sent electronically via facsimile or electronic mail, by Department, Pharmacy shall provide Department with the requested controlled substance. Quantities of the controlled substance shall be limited to an amount that does not exceed the amount the Department anticipates may be used in the Department's office or facility before the expiration date of the controlled substance and is reasonable considering the intended use of the controlled substance and the nature of the services offered by the Department. For controlled substance, Pharmacy shall dispense all drugs in accordance with applicable licensing regulations adopted by the [REDACTED] and the United States Food and Drug Administration that pertain to pharmacies dispensing controlled substance.

1.2 **Compounding Preparations.** Upon a written request, which may be sent electronically via facsimile or electronic mail, by Department, Pharmacy shall provide Department with the requested compounded preparation. Quantities of the compounded preparation shall be limited to an amount that does not exceed the amount the Department anticipates may be used in the Department's office or facility before the expiration date of the compounded preparation and is reasonable considering the intended use of the compounded preparation and the nature of the services offered by the Department. For compounded preparations, Pharmacy shall compound all drugs in a clean sterile environment in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation Departments. In addition, Pharmacy shall compound all drugs in accordance with applicable licensing regulations adopted

by the [REDACTED] that pertain to pharmacies compounding sterile preparations.

1.3 Limitation on Services. Pharmacy shall only provide controlled substance and compounding preparations that it can prepare to ensure compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation Departments. In the event Department requests a controlled substance or compounded preparation which Pharmacy is not able to fill, Pharmacy shall notify Department.

1.4 Recalls. In the event that Pharmacy determines that a recall for any controlled substance or compounded preparation provided hereunder is warranted Pharmacy shall immediately notify Department of the medication and/or preparations subject to the recall. Pharmacy shall instruct Department as how to dispose of the medication or preparation, or may elect to retrieve the medication or preparation from Department. Pharmacy shall further instruct Department of any measures that need to be taken with respect to the recalled medication or preparation.

Article 2 **OBLIGATIONS OF DEPARTMENT**

2.1 Written Requests. All requests for controlled substances and compounded preparations must be in writing and sent to Pharmacy via electronic mail or facsimile. The following shall appear on all requests:

- A. Date of request;
- B. FOR COMPOUNDED PREPARATIONS ONLY: Name, address, and phone number of the practitioner requesting the preparation;
- C. Name, strength, and quantity of the medication or preparation ordered; and
- D. Whether the request needs to be filled on a STAT basis.

2.2 Use of Controlled Substance and Compounded Preparations. Department agrees and acknowledges that all controlled substance and compounded preparations provided by Pharmacy may only be used by Department in carrying out a sentence of death by lethal injection and may not be dispensed or sold to any other person or entity. Department assumes full responsibility for administering any controlled substance or compounded preparations.

2.3 Recordkeeping. Department agrees to maintain records of the lot number and beyond-use date of a controlled substance or compounded preparation to be administered or administered by Department that was prepared by Pharmacy. Department agrees to maintain inventory control and other recordkeeping as may be required by applicable federal and state laws and regulations.

Article 3 **TERM AND TERMINATION**

3.1 Term. The Effective Date of this Agreement shall be the date first specified above. The term of this Agreement shall be for a period of one (1) year unless sooner terminated by either party pursuant to the terms and provisions hereof. If this Agreement is not terminated by either party prior to the anniversary date of this Agreement or any renewal term, this Agreement shall automatically renew for an additional one (1) year term.

3.2 Termination.

- A. Either party to this Agreement may terminate this Agreement, with or without cause, by providing the other party sixty (60) days prior written notice of said termination.
- B. Pharmacy may immediately terminate this Agreement in the event of any of the following:
 - 1. Department ceases to provide professional services for any reason.
 - 2. Department's professional license is revoked, terminated, or suspended.
 - 3. Department declares bankruptcy.
 - 4. Department fails to comply the terms of this Agreement and fails to cure such breach within 5 business days of receiving notice of the breach.
- C. Department may immediately terminate this Agreement in the event of any of the following:
 - 1. Pharmacy's professional license is revoked, terminated, or suspended.
 - 2. Pharmacy is excluded or debarred from participation in the Medicare and/or Medicaid programs for any reason.
 - 3. Pharmacy declares bankruptcy.
 - 4. Pharmacy fails to comply the terms of this Agreement and fails to cure such breach within 5 business days of receiving notice of the breach.

Article 4 REPRESENTATION

4.1 Representation by TN Attorney General. The Tennessee Attorney General's Office will represent or provide representation to Pharmacy in any civil lawsuit filed against Pharmacy for its acts or omissions arising out of and within the scope and course of this agreement except for willful, malicious or criminal acts or omissions or for acts or omissions done for personal gain. Any civil judgment leveled against Pharmacy arising out of its acts or omissions pursuant to this agreement will be reimbursed by the State in accordance with the terms of T.C.A. § 9-8-112. The Attorney General's Office will advocate before the Board of Claims for full payment of any judgment against Pharmacy arising out of a civil lawsuit in which the Attorney General's Office represents or provides representation to Pharmacy.

Article 5 Miscellaneous

5.1 Amendment. This Agreement may be amended only by mutual agreement and reduced to writing and signed by both parties hereto.

5.2 Payment. Pharmacy agrees to submit invoices within thirty (30) days after rendering services and/or providing controlled substances or compounded preparations to: TDOC Fiscal Director, Rachel Jackson Building, 6th Floor, 320 6th Avenue North, Nashville, Tennessee, 37243. Department agrees to pay an annual fee to Pharmacy in the amount of \$5,000.00 (five thousand dollars).

5.3 Captions. Any caption or heading contained in this Agreement is for convenience only and shall not be construed as either broadening or limiting the content of this Agreement.

5.4 Sole Agreement. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter herein.

5.5 Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The parties hereto expressly agree that this Agreement is executed and shall be performed in Davidson County, Tennessee, and venue of all disputes, claims and lawsuits arising hereunder shall lie in Davidson County, Tennessee.

5.6 Severability. The sections, paragraphs and individual provisions contained in this Agreement shall be considered severable from the remainder of this Agreement and in the event that any section, paragraph or other provision should be determined to be unenforceable as written for any reason, such determination shall not adversely affect the remainder of the sections, paragraphs or other provisions of this Agreement. It is agreed further, that in the event any section, paragraph or other provision is determined to be unenforceable, the parties shall use their best efforts to reach agreement on an amendment to the Agreement to supersede such severed section, paragraph or provision.

5.7 Notice. Any notices under this Agreement shall be hand-delivered or mailed by certified mail, return receipt requested to the parties at the addresses set forth on the signature page of this Agreement, or such other addresses as the parties may designate to the other in writing from time to time.

5.8 Agreement Subject to State and Federal Law. The parties recognize that this Agreement, at all times, is subject to applicable state, local and federal laws including, but not limited to, the Social Security Act and the rules, regulations and policies adopted thereunder and adopted by the [REDACTED] as well as the public health and safety provisions of state laws and regulations. The parties further recognize that this Agreement shall be subject to amendments of such laws and regulations, and to new legislation. Any such provisions of law that invalidate, or otherwise are inconsistent with the terms of this Agreement, or that would cause one or both of the parties to be in violation of the laws, shall be deemed to have superseded the terms of this Agreement; provided, however, that the parties shall exercise their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of applicable laws and regulations.

5.9 Compliance With All Applicable Laws. The parties hereto hereby acknowledge and agree that each party shall comply with all applicable rules regulations, laws and statutes including, but not limited to, any rules and regulations adopted in accordance with and the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The parties hereby specifically agree to comply with all privacy and security rules, regulations and provisions of HIPAA and to execute any required agreements required by all HIPAA Security Regulations and HIPAA Privacy Regulations whether presently in existence or adopted in the future, and which are mutually agreed upon by the parties. In addition, in the event the legal counsel of either party, in its reasonable opinion, determines that this Agreement or any material provision of this Agreement violates any federal or state law, rule or regulation, the parties shall negotiate in good faith to amend this Agreement or the relevant provision thereof to remedy such violation in a manner that will not be inconsistent with the intent of the parties or such provision. If the parties cannot reach an agreement on such amendment, however, then either party may terminate this Agreement immediately. This section shall survive the termination of this Agreement.

5.10 Referral Policy. Nothing contained in this Agreement shall require, directly or indirectly, explicitly or implicitly, either party to refer or direct any patients to the other party.

5.11 Assignment. This Agreement is not assignable without the other party's prior written consent.

5.12 Independent Contractor Status. In performing their responsibilities pursuant to this Agreement, it is understood and agreed that Pharmacy and its pharmacists and other professionals are at all times acting as independent contractors and that the parties to this Agreement are not partners, joint-venturers, or employees of one another.

5.13 Non-Waiver. No waiver by one of the parties hereto of any failure by the other party to keep or perform any provision, covenant or condition of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same, or any other provision, covenant or condition.

5.14 Counterparts/Execution. This document may be executed in multiple counterparts, each of which when taken together shall constitute but one and the same instrument. In addition, this Agreement may be executed by facsimile or electronic signature, which shall constitute an original signature.

5.15 No Third-Party Beneficiaries. No provision of this Agreement is intended to benefit any third party, nor shall any person or entity not a party to this Agreement have any right to seek to enforce or recover any right or remedy with respect hereto.

5.16 Confidentiality. Both parties agree to keep this Agreement and its contents confidential and not disclose this Agreement or its contents to any third party, other than its attorneys, accountants, or other engaged third parties, unless required by law, without the written consent of the other party.

IN WITNESS WHEREOF, the parties have hereunto caused their authorized representatives to execute this Agreement as of the date first set forth above.

By: _____
Name: _____
Title: _____
Date: _____

Address: _____

By: 
Name: Tony Parker
Title: TDOC Commissioner
Date: 12/4/17

Address: 320 6th Ave, North, 6th Floor
Nashville, TN 37243

Attachment 10

AFFIDAVIT OF LARRY WILKS, ESQ.

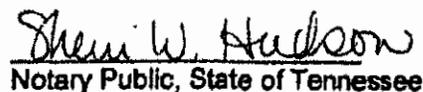
State of Tennessee)
)
County Of Robertson)

1. I am an adult citizen of Springfield, Robertson County, Tennessee.
2. In 1983 and 1984, along with James Walton, I was defense counsel for Edmund Zagorski when he faced two charges of first-degree murder.
3. The prosecution sought the death penalty in Mr. Zagorski's case.
4. Prior to trial, the district attorney conveyed to me an offer to settle the case for a sentence less than death.
5. The prosecution's offer of a non-capital sentence was as follows: In exchange for pleas of guilty, the district attorney would agree to two consecutive sentences of life imprisonment.
6. I conveyed the offer of two consecutive life sentences to Mr. Zagorski, but he rejected it.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief


Larry D. Wilks, Esq.

Subscribed and sworn before me this 20th day of October, 2010


Notary Public, State of Tennessee

My Commission Expires: 3-19-2013



Attachment 11

**LIFE WITH PAROLE & LWOP SENTENCES (OR LESS)
INVOLVING DRUG-RELATED DOUBLE HOMICIDES
WITH VICTIMS WHO WERE DRUG DEALERS/USERS**

Sentence	Victims	Date	Defendant	Circumstances Of Offense
25 Years	2	1987	1. Richard Allen	Two drug dealer victims were killed in woods; defendant convicted of second-degree murder of one and acquitted of killing the other <i>State v. Allen</i> , 10 S.W.3d 286 (Tenn.Cr.App. 1999)
27 Years	3	1994	2. James Montgomery	Three victims (including two drug dealers) killed and buried beneath casket in cemetery (noncapital sentence imposed after death sentences reversed)
Life (3)	3	1991	3. Shannon Lee Beckner (Gordon #4 co-Δ)	Defendant involved in three murders related to drug transactions: <i>State v. Beckner & Gordon</i> , 1993 Tenn.Crim.App.Lexis 259; Rule 12 Form: <i>State v. Beckner</i> , No. 91-CR-5777 (Hawkins Co.)
Life (3)	3	1991	4. Randy Gail Gordon (Beckner #3 co-Δ)	Defendant involved in three drug-related murders <i>State v. Beckner & Gordon</i> , 1993 Tenn.Crim.App.Lexis 259; Rule 12 Form: <i>State v. Gordon</i> , No. 5778 (Hawkins Co.)
LWOP (3)	3	2004	5. Kelvin Dewayne King	Defendant killed 2 victims after argument about drugs, and killed third victim because she was a witness <i>State v. King</i> , 2010 WL 1172209

Life (2)	2	2006	6. Daniel Lopez	Defendant killed victims for allegedly stealing 3 kilograms of cocaine (Rule 12 Form: <i>State v. Lopez</i> , No. 06-00684 (Shelby Co.))
Life (2)	2	2005	7. Brandon Compton	Victims bought drugs from defendant, paid with counterfeit money, and were shot following confrontation (Rule 12 Form: <i>State v. Compton</i> , No. 78832 (Knox Co.))
Life (2)	2	2002	8. Cameron Winselle	Victims killed in course of drug deal <i>State v. Winselle</i> , 2008 Tenn.Crim.App.Lexis 92
Life (2)	2	2000	9. Mila Love	Defendant supplied drugs to victim and killed victim and another at victim's house during attempted robbery (Rule 12 Form: <i>State v. Mila Love</i> , No. 4754a (Fayette Co.))
Life (2)	2	2000	10. Steve Skinner	Defendant killed victims in dispute over drug proceeds (Rule 12 Form: <i>State v. Skinner</i> , No. 00-05699, Shelby Co.))
Life (2)	2	1999	11. Larry Brumit	One victim involved in drug dealing had become informant and victims were shot as a result (Rule 12 form: <i>State v. Brumit</i> , No. F-34370B (Rutherford Co.); 2000 Tenn.Crim.App.Lexis 341)
Life (2)	2	1998	12. Steven James McCain	Defendant shot and killed two victims following victim's stealing of drugs (Rule 12 Form: <i>State v. McCain</i> , No. 98-D-2520 (Davidson Co.); 2002 Tenn.Crim.App.Lexis 455
Life (2)	2	1998	13. Andrew Charles Helton	Defendant and co-defendant shot two victims following confrontation over drugs (Rule 12 Form: <i>State v. Helton</i> , No. 98-B-1052 (Davidson Co.))

Life (2)	2	1997	14. DeWayne Jordan (Chambers #20 co-Δ)	Victims who had drugs were killed in apartment and drugs stolen (Rule 12 Form: <i>State v. Jordan</i> , No. 97-03036, 97-03037, 97-03038 (Shelby Co.))
Life (2)	2	1996	15. Aaron Winters (Thomas #19 co-Δ)	Two teenagers killed in "an abandoned house which was frequented by drug dealers and users." <i>State v. Winters & Thomas</i> , 1999Tenn.Crim.App.Lexis 846
LWOP (1)+ Life (1)	2	2002	16. Derrick Settles	Defendant shot two victims following altercation and possible drug deal <i>State v. Settles</i> , 2007 Tenn.Crim.App.Lexis 883
LWOP (2)	2	2005	17. Jason Christopher Underwood	Two victims were involved with cocaine and crack cocaine <i>State v. Underwood</i> , 2008 Tenn.Crim.App.Lexis 963
LWOP (2)	2	1998	18. Asata Lowe	Two victims involved in drug dealing <i>State v. Lowe</i> , 2002 Tenn.Crim.App.Lexis 783
LWOP (2)	2	1996	19. Derwin Thomas (Winters #15 co-Δ)	Two teenagers killed in "an abandoned house which was frequented by drug dealers and users." <i>State v. Winters & Thomas</i> , 1999 Tenn.Crim.App.Lexis 846
LWOP (2)	2	1996	20. Eric Chambers (Jordan #14 co-Δ)	Drug deal gone bad: "Put simply, this case involves drugs, kidnaping and two murders." <i>State v. Chambers</i> , 2000 WL 279645 (Tenn.Crim.App. 2000)

Attachment 12

13. Defendant's Military History, including type of discharge:
NONE
- 14.a. Does the defendant have a record of prior convictions? Yes (X) No ()
- b. If yes, list the offenses, the dates of the offenses and the sentences imposed:
- | Offense | Date | Sentence |
|-----------------------------------|------------|----------|
| 1. ASSAULT 2 ND DEGREE | 04/18/2001 | 18 YEARS |
| 2. ROBBERY 2 ND DEGREE | 07/18/2004 | 18 YEARS |
| 3. ASSAULT 2 ND DEGREE | 04/18/2006 | 18 YEARS |
| 4. ASSAULT 2 ND DEGREE | 04/18/2006 | 18 YEARS |
15. Was the defendant a resident of the community where the homicide occurred?
Yes () No (X)
16. Noteworthy physical or mental characteristics or disabilities of defendant:
None
17. Other significant data about the defendant:
None

C. DATA CONCERNING VICTIM, CO-DEFENDANTS AND ACCOMPLICES

VICTIM : WARREN VINCENT CRUTCHER

C. DATA CONCERNING VICTIM, CO-DEFENDANTS AND ACCOMPLICES

- Age of victim: 66yr:72054
- Sex: Male
- Race of Victim: Black
- Marital Status: Never Married
- Children: 2
Ages: 3 years; 2 months;
Other Dependents: Primary source of support for mother of one child and that child; provided some support for other child and that child's mother.
- Partner - Living? Yes

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- Mother - Living? Yes
- Education: Highest Grade or Level Completed: High School
 - Employment at time of offense: drug dealer
 - Criminal Record? Yes
 - Describe the relationship between the defendant and victim (e.g., family member, employer, friend, etc.): The defendant was a member of the Defendant's illegal drug "crew".
 - Was the victim a resident of the community where the homicide occurred? Yes
 - Was the victim held hostage during the crime? Yes - More than one (1) hour
We believe he was probably held while some of the other victims of the team murder were tortured and killed. If so, since they were killed at two separate residences, it probably took more than one hour. This cannot be proven.
 - a. Describe the physical harm and/or injuries inflicted on the victim: Three close gunshot wounds to the back of the head.
b. Was the victim tortured, state the nature of the torture: Not physically, as far as can be ascertained.
 - Co-Defendants: Zakharovna Zawamin Moss
a. Were there any co-defendants in the trial? No (This Defendant pled guilty. His co-defendants had a trial.
b. If yes, what conviction and sentence were imposed on them? Guilty of six counts of 1st degree murder by premeditation; received six consecutive life sentences.
c. Nature of co-defendant's role in offense: Respective roles unknown.
 - Other accomplices:
a. Were there any persons not tried as co-defendants who the evidence showed participated in the commissioned offense with the defendant? No
b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A
c. Did the accomplice testify at the defendant's trial? N/A

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VICTIM : AMBER DESHAI MCCAULLEY

C. DATA CONCERNING VICTIM, CO-DEFENDANTS AND ACCOMPLICES

- Age of victim: 21 years
- Sex: Female
- Race of Victim: Black
- Marital Status: Never Married
- Children: 1
Ages: approximately one year at time of murders.
Other Dependents: None known
- Partner - Living? Yes
Mother - Living? Yes
- Education: Highest Grade or Level Completed: High School degree plus some college nursing courses
- Employment at time of offense: Yes, exact job unknown
- Criminal Record: None
- Describe the relationship between the defendant and victim (e.g., family member, employer, friend, etc.): strangers
- Was the victim a resident of the community where the homicide occurred? No
- Was the victim held hostage during the crime? No - We do not know for certain, but believe she was killed relatively quickly.
- a. Describe the physical harm and/or injuries inflicted on the victim: Single gunshot wound to the head.
b. Was the victim tortured, state the nature of the torture: We do not believe she was physically tortured.
14. Co-Defendants: Zakharovna Zawamin Moss
a. Were there any co-defendants in the trial? No (This Defendant pled guilty. His co-defendant had a trial.
b. If yes, what conviction and sentence were imposed on them? Guilty of six counts of 1st degree murder by premeditation; received six consecutive life sentences.
c. Nature of co-defendant's role in offense: Respective roles unknown.

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- Other accomplices:
a. Were there any persons not tried as co-defendants who the evidence showed participated in the commissioned offense with the defendant? No
b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A
c. Did the accomplice testify at the defendant's trial? N/A

VICTIM : CHABREYA RAYTEL CAMPBELL

C. DATA CONCERNING VICTIM, CO-DEFENDANTS AND ACCOMPLICES

- Age of victim: 22 years
- Sex: Female
- Race of Victim: Black
- Marital Status: Never Married
- Children: 2, plus one in utero
Ages: Three Years; Sixteen months; fetus approximately thirty weeks gestational age.
Other Dependents: None known
- Partner - Living? Yes
Mother - Living? Yes
- Education: Highest Grade or Level Completed: High School degree plus some medical-related courses.
- Employment at time of offense: None known
- Criminal Record: None known
- Describe the relationship between the defendant and victim (e.g., family member, employer, friend, etc.): Acquainted as result of association between the father one of her children (Victim Warren Vincent Crutcher) and the Defendant. Defendant was member of Mr. Crutcher's "crew" in his illegal drug operation.
- Was the victim a resident of the community where the homicide occurred? Yes
- Was the victim held hostage during the crime? Yes - More than one (1) hour

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Our belief is that this victim was held in her residence and tortured in an effort to obtain information about the location of hidden drugs, cash and/or weapons. The duration and details could not be determined.

13. a. Describe the physical harm and/or injuries inflicted on the victim: Repeated ligature strangulation; abrasions to face and neck; lacerations of lips placed in bathtub containing water where possibly doused, although no water in lungs
- b. Was the victim tortured, state the nature of the torture: Yes, see 13a.
14. Co-Defendants: Zakharovs Zevanaba Moon
- a. Were there any co-defendants in the trial? No (This Defendant pled guilty. His co-defendant had a trial.
- b. If yes, what conviction and sentence were imposed on them? Guilty of six counts of 1st degree murder by premeditation; received six consecutive life sentences.
- c. Nature of co-defendant's role in offense: Respective roles unknown.
15. Other accomplices:
- a. Were there any persons not tried as co-defendants who the evidence showed participated in the commissioned offense with the defendant: No
- b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A
- c. Did the accomplice testify at the defendant's trial? N/A

VICTIM: UNBORN CHILD OF CHAWREYA RAY'EL CAMPBELL, NAMED NEVAEH BY FATHER POSTHUMOUSLY

C. DATA CONCERNING VICTIM, CO-DEFENDANTS AND ACCOMPLICES

1. Age of victim: unborn fetus approximately thirty weeks gestational age
2. Sex: Female
3. Race of Victim: Black
4. Marital Status: N/A
5. Children: N/A
6. Father - Living? Yes
- Mother - Living? No, murdered, which resulted in this victim's death

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7. Education: Highest Grade or Level Completed: N/A
8. Employment at time of offense: N/A
9. Criminal Record: N/A
10. Describe the relationship between the defendant and victim (e.g., family member, employer, friend, etc.): N/A
11. Was the victim a resident of the community where the homicide occurred? Yes
12. Was the victim held hostage during the crime? Yes - More than one (1) hour
- Our belief is that this victim's mother was held in her residence and tortured in an effort to obtain information about the location of hidden drugs, cash and/or weapons. The duration and details could not be determined.
13. a. Describe the physical harm and/or injuries inflicted on the victim: suffocated when her mother was murdered.
- b. Was the victim tortured, state the nature of the torture: N/A
14. Co-Defendants: Zakharovs Zevanaba Moon
- a. Were there any co-defendants in the trial? No (This Defendant pled guilty. His co-defendant had a trial.
- b. If yes, what conviction and sentence were imposed on them? Guilty of six counts of 1st degree murder by premeditation; received six consecutive life sentences.
- c. Nature of co-defendant's role in offense: Respective roles unknown.
15. Other accomplices:
- a. Were there any persons not tried as co-defendants who the evidence showed participated in the commissioned offense with the defendant: No
- b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A
- c. Did the accomplice testify at the defendant's trial? N/A

VICTIM: RABHAD O'BRIEN RAGLAND, JR.

C. DATA CONCERNING VICTIM, CO-DEFENDANT'S AND ACCOMPLICES

1. Age of victim: Sixteen months

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2. Sex: Male
3. Race of Victim: Black
4. Marital Status: N/A
5. Children: N/A
6. Father - Living? Yes
- Mother - Living? No, she was murdered as part of the same mass murder that resulted in this victim's death.
7. Education: Highest Grade or Level Completed: N/A
8. Employment at time of offense: N/A
9. Criminal Record: N/A
10. Describe the relationship between the defendant and victim (e.g., family member, employer, friend, etc.): This victim's mother was in a social relationship with Warren Crutcher, who "employed" the defendant in his illegal drug operation.
11. Was the victim a resident of the community where the homicide occurred? Yes
12. Was the victim held hostage during the crime? Unknown
13. a. Describe the physical harm and/or injuries inflicted on the victim: His head was stomped into a hard floor, resulting in "multiple blunt force injuries."
- b. Was the victim tortured, state the nature of the torture: Unknown, but probably not.
14. Co-Defendants: Zakharovs Zevanaba Moon
- a. Were there any co-defendants in the trial? No (This Defendant pled guilty. His co-defendant had a trial.
- b. If yes, what conviction and sentence were imposed on them? Guilty of six counts of 1st degree murder by premeditation; received six consecutive life sentences.
- c. Nature of co-defendant's role in offense: Respective roles unknown.
15. Other accomplices:
- a. Were there any persons not tried as co-defendants who the evidence showed participated in the commissioned offense with the defendant: No
- b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A
- c. Did the accomplice testify at the defendant's trial? N/A

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VICTIM: JESSICA LEIGH BROWN

C. DATA CONCERNING VICTIM, CO-DEFENDANT'S AND ACCOMPLICES

1. Age of victim: 27 years
2. Sex: Female
3. Race of Victim: White
4. Marital Status: Never Married
5. Children: 1
- Age: 2 months at the time of the murder
6. Father - Living? Yes
- Mother - Living? Yes
7. Education: Highest Grade or Level Completed: High school degree plus college courses
8. Employment at time of offense: Taco Bell and Calsonic
9. Criminal Record: None Known
10. Describe the relationship between the defendant and victim (e.g., family member, employer, friend, etc.): Acquainted because victim was in off and on social relationship with Warren Crutcher, who "employed" the Defendant as a member of his crew in Crutcher's illegal drug operation.
11. Was the victim a resident of the community where the homicide occurred? Yes
12. Was the victim held hostage during the crime? Yes - More than one (1) hour
- The exact timeframe cannot be established, but we believe she was held in her home and tortured in an effort to obtain information from her and/or Crutcher regarding the location of drugs, cash and/or weapons.
13. a. Describe the physical harm and/or injuries inflicted on the victim: Repeated extreme tightening of ligature around throat; ligature marks on both wrists; multiple abrasions and contusions.
- b. Was the victim tortured, state the nature of the torture: Yes, see 13a; plus she was placed in a bathtub containing water. Although there was no water noted in her lungs it seems logical that she was submerged as part of the process described in 13a.
14. Co-Defendants: Zakharovs Zevanaba Moon

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a. Were there any co-defendants in the trial? No (This Defendant pled guilty. His co-defendant had a trial.)

b. If yes, what conviction and sentence were imposed on them? Guilty of six counts of 1st degree murder by premeditation; received six consecutive life sentences.

c. Nature of co-defendant's role in offense: Respective roles unknown.

15. Other accomplices:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commissioned offense with the defendant: No

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A

c. Did the accomplice testify at the defendant's trial? N/A

D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant? 3 (If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)

2. Name of counsel: Donna Harwood, Mitchell Collins and Bill Harold, all of the 17th Judicial District Public Defender's Office

3. Date counsel secured: 10/08/2013

4. How was counsel secured:

- a. Retained by defendant ()
b. Appointed by court ()
c. Public defender (X)
5. If counsel was appointed by court, was it because:
a. Defendant was unable to afford counsel (X)
b. Defendant refused to secure counsel ()
c. Other (explain) ()

6. How many years has counsel practiced law?

- a. 0 to 5 ()
b. 5 to 10 ()
c. Over 10 (X)

7. What is the nature of counsel's practice?

- a. Mostly civil ()
b. General ()
c. Mostly criminal (X)
8. Did counsel serve throughout trial? Yes (X) No ()
9. If not, explain in detail:

10. Other significant data about defense representation:

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant?

- a. Under 10% () N/A
b. 10% - 25% ()
c. 25% - 50% ()
d. 50% - 75% ()
e. 75% - 90% ()
f. Over 90% ()

2. Were members of defendant's race represented on the jury? Yes () No () How many of defendant's race were jurors?

3. a. Was a change of venue requested? Yes () No () b. If yes, was it granted? Yes () No ()

Reasons for change, if granted:

F. CHRONOLOGY OF CASE

- 1. Date of offense: 10/22/2012 to 10/23/2012 Elapsed Days
2. Date of arrest: 05/22/2013 via courier brought to A Johnson prison
3. Date trial began: N/A
4. Date sentence imposed: 01/22/2014 (plus date)
5. Date post-trial motions ruled on: N/A
6. Date trial judge's report completed: 10/06/2014
*7. Date received by Supreme Court
*8. Date sentence review completed
*9. Total elapsed days

16. Other:

*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for such comments as either desired to make concerning its factual accuracy.

- 1. Comments are attached () D.A. Defense Counsel ()
2. Had no comments (X) (X)
3. Has not responded () ()

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

Date: 10/6/14

Forest A. Durward, Jr. FOREST A. DURWARD, JR. Circuit Judge, Part I Seventeenth Judicial District of Tennessee

REPORT OF TRIAL JUDGE IN FIRST DEGREE MURDER CASES IN THE CIRCUIT COURT OF LINCOLN COUNTY, TENNESSEE AT FAYETTEVILLE

FILED OCT 9 2014 Clerk of the Courts

STATE OF TENNESSEE VS. ZAKKAWANDA ZAWUMBA MOSS, Defendant. CASE NO.: 13CR63 Sentence of Death 0 or Life Without Parole 0 or Life Imprisonment (X)

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

- 1. a. Status of Case: Original Trial (X) Retrial/Re-arresting ()
b. Brief summary of the facts of the homicide, including the means used to cause death and name of victim: Homicide of 6 victims at two different residences. Victims were either shot, stabbed to death or strangled.
2. How did the defendant plead? Guilty () Not Guilty (X)
3. Was guilt determined with or without a jury? With (X) Without ()
4. Separate Offenses:
a. Were other offenses tried in the same trial? Yes () No (X)
b. If yes, list those offenses, disposition, and punishment:
5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes (X) No ()
6. Did the defendant waive jury determination of punishment? Yes () No (X)
7. a. Did the State file a notice of intent to seek the death penalty? Yes () No (X)
b. Did the State file a notice of intent to seek life imprisonment without parole? Yes () No (X)
c. Did the State withdraw its notice of intent to seek the death penalty either formally or informally? Yes () No () N/A
d. Who sentenced the defendant? Judge (X) Jury ()
e. What sentence was imposed? Death () Life Without Parole (X)

* A separate report must be submitted for each defendant convicted under T.C.A. §19-13-201 inoperative if the sentence imposed. This includes defendants who have pleaded guilty to first-degree murder.

- f. If life imprisonment, was it imposed as a result of a hung jury? Yes () No (X)
8. Was victim impact evidence introduced at trial? Yes () No (X) at sentencing
9. Aggravating Circumstances, T.C.A. §39-13-204(d):
OMITTED: NO NOTICE OF ENHANCED PUNISHMENT FILED
- a. Were statutory aggravating circumstances found? Yes () No ()
- b. Which of the following statutory aggravating circumstances were instructed and which were found? (please note the version of the statutory aggravating circumstances instructed in the blanks provided when applicable, i.e., the 1989 version or the 1993 version.)

	Instructed	Found
(1) Youth of the victim	()	()
(2) Prior convictions	()	()
(3) Risk of death to others	()	()
(4) Murder for remuneration	()	()
(5) Heinous, atrocious, or cruel	()	()
(6) To avoid arrest or prosecution	()	()
(7) Committed in conjunction with another felony	()	()
(8) Committed while in custody	()	()
(9) Victim was a member of law enforcement, etc.	()	()
(10) Victim was a judge, district attorney, etc.	()	()
(11) Victim was elected official, etc.	()	()
(12) Mass murder	()	()
(13) Mutilation of the body	()	()
(14) Elderly or particularly vulnerable victim	()	()
(15) Other ²	()	()

Releate any significant aspects of the aggravating circumstance(s) that influence the punishment.

- a. Were the aggravating circumstances found supported by the evidence?
 Yes () No ()
10. Mitigating Circumstances, T.C.A. § 39-13-204(i):

² In this space, the trial court should file by statutory designation any statutory aggravating factor that was instructed, but is not in the prior list.

OMITTED: NO NOTICE OF ENHANCED PUNISHMENT FILED

- a. Were the mitigating circumstances raised by the evidence? Yes () No ()
- b. If so, what mitigating circumstances were raised by the evidence?
- | | Yes | No |
|--|-----|-----|
| (1) No significant prior criminal history | () | () |
| (2) Extreme mental or emotional disturbance | () | () |
| (3) Participation or consent by victim | () | () |
| (4) Belief that conduct justifiable | () | () |
| (5) Intoxication | () | () |
| (6) Extreme duress or substantial duress | () | () |
| (7) Youthful/frustrated age of defendant | () | () |
| (8) Mental disease or defect or intoxication | () | () |
| (9) Other (explain) ³ | () | () |

c. Releate any significant facts about the mitigating circumstances that influence the punishment.

d. If tried with a jury, was the jury instructed regarding all the circumstances indicated in 10(b) as mitigating circumstances? Yes () No ()
 If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted:

11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed?
 Yes () No () N/A
12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes () No (X)
 If yes, explain:
13. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has

³ In the space provided, please list all statutory mitigating factors raised by the evidence.

tried, etc.): STATE DID NOT SEEK DEATH PENALTY OR LIFE WITHOUT PAROLE. LIFE SENTENCES WERE THEREFORE AUTOMATIC FOR FIRST DEGREE MURDER CONVICTIONS.

14. Brief impression of the trial judge as to conduct and/or affect of defendant at trial and sentencing: rather flat affect, quiet

B. DATA CONCERNING THE DEFENDANT⁴

1. Name MOSS, ZAKKAWANDA ZAWUMBA 2. Birth Date 10/23/1977
 Last, First Middle mo/day/year
3. Sex MALE 4. Marital status: Never Married ()
 Married (X)
5. Race BLACK 6. Divorced ()
7. Children: Number: NONE Spouse Dec'd ()
 Ages: _____
8. Parents: Father - Living? Yes () No () UNKNOWN
 Mother - Living? Yes () No () UNKNOWN
9. Education: Highest Grade or Level Completed: UNKNOWN
10. Intelligence level: Low (IQ below 70) _____
 Med. (IQ 70 to 100) _____
 High (IQ above 100) _____
 Not known X
- 10.a. Was the issue of defendant's intellectual disability under T.C.A. §39-13-303 raised?
 Yes () No (X)
- b. If so, did the court find that the defendant had intellectual disability as defined in T.C.A. §39-13-203(a)? Yes () No ()
- 11.a. Was a psychiatric or psychological evaluation performed? Yes () No (X)
- b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation:
12. Employment record of defendant at or near time of offense, including if known, type of job, pay, dates job held and reason for termination:
WORKED AT A CAR WASH
13. Defendant's Military History, including type of discharge:

⁴ Include exact and only any information that may, if disclosed, impede the interests of the state.

NONE

- 14.a. Does the defendant have a record of prior convictions? Yes (X) No ()
- b. If yes, list the offenses, the dates of the offenses and the sentences imposed:
- | Offense | Date | Sentence |
|-------------------------------------|------------|-------------------|
| 1. Felony in Possession of Firearms | 06/23/2004 | 15 years/100 days |
| 2. Obstructive Justice | 06/23/2004 | |
| 3. Felony Cocaine Possession | 07/23/2005 | |
| 4. _____ | | |
| 5. _____ | | |
| 6. _____ | | |
15. Was the defendant a resident of the community where the homicide occurred?
 Yes () No (X)
16. Noteworthy physical or mental characteristics or disabilities of defendant:
NONE
17. Other significant data about the defendant:
NONE

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

VICTIM: WARREN VINCENT CRUTCHER

C. DATA CONCERNING VICTIM, CO-DEFENDANTS AND ACCOMPLICES

1. Age of victim: 61yr/7/2018
2. Sex: Male
3. Race of Victim: Black
4. Marital Status: Never Married
5. Children: 2
 Ages: 3 years; 2 months;
 Other Dependents: Primary source of support for mother of one child and that child, provided some support for other child and that child's mother.
6. Father - Living? Yes

Mother - Living? Yes

7. Education: Highest Grade or Level Completed: High School

8. Employment at time of offense: drug dealer

9. Criminal Record: Yes

10. Describe the relationship between the defendant and victim (e.g., family member, employer, friend, etc.): The defendant and victim were members of a drug selling enterprise headed by the victim.

11. Was the victim a resident of the community where the homicide occurred? No. Lived in Huntsville, AL, but spent considerable time in Lincoln County.

12. Was the victim held hostage during the crime? Yes - More than one (1) hour

We believe he was probably held while some of the other victims of the mass murder were tortured and killed. If so, since they were killed at two separate residences, it probably took more than one hour. This seems to be proven.

13. a. Describe the physical harm and/or injuries inflicted on the victim: Three close gunshot wounds to the back of the head.

b. Was the victim tortured, state the nature of the torture: Not physically, as far as can be ascertained.

14. Co-Defendants: Henry Lee Burrell

a. Were there any co-defendants in the trial? Henry Lee Burrell pleaded guilty.

b. If yes, what conviction and sentence were imposed on them? Henry Lee Burrell pleaded guilty to six counts of 1st degree murder by premeditation; received six life sentences, two of them consecutive to each other.

c. Nature of co-defendant's role in offense: Respective roles unknown.

15. Other accomplices:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commissioned offense with the defendant? No

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A

c. Did the accomplice testify at the defendant's trial? N/A

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b. If yes, what conviction and sentence were imposed on them? Henry Lee Burrell pleaded guilty to six counts of 1st degree murder by premeditation; received six life sentences, two of them consecutive to each other.

c. Nature of co-defendant's role in offense: Respective roles unknown.

15. Other accomplices:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commissioned offense with the defendant? No

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A

c. Did the accomplice testify at the defendant's trial? N/A

VICTIM: CHABREYA RAY'EL CAMPBELL

C. DATA CONCERNING VICTIM, CO-DEFENDANTS AND ACCOMPLICES

1. Age of victim: 22 years

2. Sex: Female

3. Race of Victim: Black

4. Marital Status: Never Married

5. Children: 2, plus one in utero

Age: Three Years; Sixteen months; fetus approximately thirty weeks gestational age.

Other Dependents: None known

6. Father - Living? Yes

Mother - Living? Yes

7. Education: Highest Grade or Level Completed: High School degree plus some medical-related courses.

8. Employment at time of offense: None known

9. Criminal Record: None known

10. Describe the relationship between the defendant and victim (e.g., family member, employer, friend, etc.): Ms. Campbell had a child by Warren Crutcher (another victim) and Mr. Crutcher spent at least some time living at the Huntsville Highway residence where Ms. Campbell, Vianita Crutcher (Ms. Campbell and Mr. Crutcher's son) and Rico

7

VICTIM: AMBER DESEAI MCCAULLEY

C. DATA CONCERNING VICTIM, CO-DEFENDANTS AND ACCOMPLICES

1. Age of victim: 21 years

2. Sex: Female

3. Race of Victim: Black

4. Marital Status: Never Married

5. Children: 1

Age: approximately one year at time of murder.

Other Dependents: None known

6. Father - Living? Yes

Mother - Living? Yes

7. Education: Highest Grade or Level Completed: High School degree plus some college nursing courses

8. Employment at time of offense: Yes, exact job unknown

9. Criminal Record: None

10. Describe the relationship between the defendant and victim (e.g., family member, employer, friend, etc.): Ms. McCaulley was acquainted with Warren Crutcher (another victim). Defendant, Mr. Crutcher and Henry Burrell were members of a drug selling enterprise headed by Mr. Crutcher.

11. Was the victim a resident of the community where the homicide occurred? No, lived in Huntsville, AL.

12. Was the victim held hostage during the crime? No - We do not know for certain, but believe she was killed relatively quickly.

13. a. Describe the physical harm and/or injuries inflicted on the victim: Single gunshot wound to the head.

b. Was the victim tortured, state the nature of the torture: We do not believe she was physically tortured.

14. Co-Defendants: Henry Lee Burrell

a. Were there any co-defendants in the trial? Henry Lee Burrell pleaded guilty.

7

Ragland (Ms. Campbell's other son) lived. Defendant, Mr. Crutcher and Henry Burrell were members of a drug selling enterprise headed by Mr. Crutcher.

11. Was the victim a resident of the community where the homicide occurred? Yes

12. Was the victim held hostage during the crime? Yes - More than one (1) hour

Our belief is that this victim was held in her residence and tortured in an effort to obtain information about the location of hidden drugs, cash and/or weapons. The duration and details could not be determined.

13. a. Describe the physical harm and/or injuries inflicted on the victim: Repeated ligature strangulation; abrasions to face and neck; lacerations of lip; placed in bathtub containing water where possibly dunked, although no water in lungs

b. Was the victim tortured, state the nature of the torture: Yes, see 13a.

14. Co-Defendants: Henry Lee Burrell

a. Were there any co-defendants in the trial? Henry Lee Burrell pleaded guilty.

b. If yes, what conviction and sentence were imposed on them? Henry Lee Burrell pleaded guilty to six counts of 1st degree murder by premeditation; received six life sentences, two of them consecutive to each other.

c. Nature of co-defendant's role in offense: Respective roles unknown.

15. Other accomplices:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commissioned offense with the defendant? No

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A

c. Did the accomplice testify at the defendant's trial? N/A

VICTIM: UNBORN CHILD OF CHABREYA RAY'EL CAMPBELL, NAMED REVAEH BY FATHER POSTHUMOUSLY

C. DATA CONCERNING VICTIM, CO-DEFENDANTS AND ACCOMPLICES

1. Age of victim: unborn fetus approximately thirty weeks gestational age

2. Sex: Female

3. Race of Victim: Black

9

4. Marital Status: N/A

5. Children: N/A

6. Father - Living? Yes

Mother - Living? No, unrecorded, which resulted in this victim's death

7. Education: Highest Grade or Level Completed: N/A

8. Employment at time of offense: N/A

9. Criminal Record: N/A

10. Describe the relationship between the defendant and victim (e.g., family member, employer, friend, etc.): Ms. Campbell had a child by Warren Crutcher (another victim) and Mr. Crutcher spent at least some time living at the Huntsville Highway residence where Ms. Campbell, Virginia Crutcher (Ms. Campbell and Mr. Crutcher's son) and Rico Ragland (Ms. Campbell's other son) lived. Defendants, Mr. Crutcher and Henry Burrell were members of a drug selling enterprise headed by Mr. Crutcher.

11. Was the victim a resident of the community where the homicide occurred? Yes

12. Was the victim held hostage during the crime? Yes - More than one (1) hour

Our belief is that this victim's mother was held in her residence and tortured in an effort to obtain information about the location of hidden drugs, cash and/or weapons. The duration and details could not be determined.

13. a. Describe the physical harm and/or injuries inflicted on the victim: suffocated when her mother was murdered.

b. Was the victim tortured, state the nature of the torture: N/A

14. Co-Defendants: Henry Lee Burrell

a. Were there any co-defendants in the trial? Henry Lee Burrell pleaded guilty.

b. If yes, what conviction and sentence were imposed on them? Henry Lee Burrell pleaded guilty to six counts of 1st degree murder by premeditation; received six life sentences, two of them consecutive to each other.

c. Nature of co-defendant's role in offense: Respective roles unknown.

15. Other accomplices:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commissioned offense with the defendant? No

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A

c. Did the accomplices testify at the defendant's trial? N/A

VICTIM: RASHAD "RICO" O'BRIEN RAGLAND, JR.

C. DATA CONCERNING VICTIM, CO-DEFENDANT'S AND ACCOMPLICES

1. Age of victim: Sixteen months

2. Sex: Male

3. Race of Victim: Black

4. Marital Status: N/A

5. Children: N/A

6. Father - Living? Yes

Mother - Living? No, she was murdered as part of the same mass murder that resulted in this victim's death.

7. Education: Highest Grade or Level Completed: N/A

8. Employment at time of offense: N/A

9. Criminal Record: N/A

10. Describe the relationship between the defendant and victim (e.g., family member, employer, friend, etc.): This victim's mother, Chabrya Campbell, had a child by Warren Crutcher (another victim) and Mr. Crutcher spent at least some time living at the Huntsville Highway residence where Ms. Campbell and Rico lived. Defendants, Mr. Crutcher, and Henry Burrell were members of a drug selling enterprise headed by Mr. Crutcher.

11. Was the victim a resident of the community where the homicide occurred? Yes

12. Was the victim held hostage during the crime? Unknown

13. a. Describe the physical harm and/or injuries inflicted on the victim: Rico suffered extensive skull fractures and hemorrhaging in the deepest tissues of his brain. The medical examiner testified that his skull was broken into pieces and the physical composition of the brain was altered before his death (i.e., the brain was softened as a

result of his injuries). Rico's injuries were consistent with his head being stomped on several times while lying on a floor.

b. Was the victim tortured, state the nature of the torture: Yes, see response to 13(a).

14. Co-Defendants: Henry Lee Burrell

a. Were there any co-defendants in the trial? Henry Lee Burrell pleaded guilty.

b. If yes, what conviction and sentence were imposed on them? Henry Lee Burrell pleaded guilty to six counts of 1st degree murder by premeditation; received six life sentences, two of them consecutive to each other.

c. Nature of co-defendant's role in offense: Respective roles unknown.

15. Other accomplices:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commissioned offense with the defendant? No

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A

c. Did the accomplices testify at the defendant's trial? N/A

VICTIM: JESSICA LEEGR BROWN

C. DATA CONCERNING VICTIM, CO-DEFENDANT'S AND ACCOMPLICES

1. Age of victim: 21 years.

2. Sex: Female

3. Race of Victim: White

4. Marital Status: Never Married

5. Children: 1

Age: 2 months at the time of the murders

6. Father - Living? Yes

Mother - Living? Yes

7. Education: Highest Grade or Level Completed: High school degree plus college courses

8. Employment at time of offense: Taco Bell and Cabela's

9. Criminal Record: None Known

10. Describe the relationship between the defendant and victim (e.g., family member, employer, friend, etc.): Ms. Brown had a child by Warren Crutcher. Defendants, Mr. Crutcher and Henry Burrell were members of a drug selling enterprise headed by Mr. Crutcher.

11. Was the victim a resident of the community where the homicide occurred? Yes

12. Was the victim held hostage during the crime? Yes - More than one (1) hour

The exact timeframe cannot be established, but we believe she was held in her home and tortured in an effort to obtain information from her and/or Crutcher regarding the location of drugs, cash and/or weapons.

13. a. Describe the physical harm and/or injuries inflicted on the victim: Repeated extensive fighting of ligature around throat; ligature marks on both wrists; multiple abrasions and contusions.

b. Was the victim tortured, state the nature of the torture: Yes, See 13a; plus she was placed in a bucket containing water. Although there was no water noted in her lungs it seems logical that she was submerged as part of the process described in 13a.

14. Co-Defendants: Henry Lee Burrell

a. Were there any co-defendants in the trial? Henry Lee Burrell pleaded guilty.

b. If yes, what conviction and sentence were imposed on them? Henry Lee Burrell pleaded guilty to six counts of 1st degree murder by premeditation; received six life sentences, two of them consecutive to each other.

c. Nature of co-defendant's role in offense: Respective roles unknown.

15. Other accomplices:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commissioned offense with the defendant? No

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A

c. Did the accomplices testify at the defendant's trial? N/A

D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant? _____

(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)

2. Name of counsel: HERSHELL KOGER
3. Date counsel assumed: 08/05/2013
4. How was counsel secured:
- a. Retained by defendant
 - b. Appointed by court
 - c. Public defender
5. If counsel was appointed by court, was it because:
- a. Defendant was unable to afford counsel
 - b. Defendant refused to secure counsel
 - c. Other (explain)
6. How many years has counsel practiced law?
- a. 0 to 5
 - b. 5 to 10
 - c. Over 10
7. What is the nature of counsel's practice?
- a. Mostly civil
 - b. Criminal
 - c. Mostly criminal
8. Did counsel serve throughout trial? Yes No
9. If not, explain in detail:

(i). Other significant data about defense representation: THE TRIAL OF THE CASE BEGAN 4 DAYS AFTER COUNSEL WAS APPOINTED TO REPRESENT DEFENDANT DUE TO DEFENDANT HAVING FILED A PRO SE MOTION FOR A SPEEDY TRIAL PRIOR TO COUNSEL BEING APPOINTED.

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant?
- a. Under 10%
 - b. 10% - 25%
 - c. 25% - 50%

- d. 50% - 75%
 - e. 75% - 90%
 - f. Over 90%
2. Were members of defendant's race represented on the jury? Yes No
How many of defendant's race were jurors? _____
3. a. Was a change of venue requested? Yes No
b. If yes, was it granted? Yes No
Reasons for change, if granted: N/A (NOT GRANTED)

F. CHRONOLOGY OF CASE

- | | Elapsed Days |
|---|--------------|
| 1. Date of offense <u>10/22/2012 and 10/23/2012</u> | |
| 2. Date of arrest <u>05/22/2013 via carpal tunnel at Alabama prison</u> | |
| 3. Date trial began <u>11/05/2013 - 11/22/2013</u> | |
| 4. Date sentence imposed <u>01/21/2014</u> | |
| 5. Date post-trial motions ruled on <u>03/04/2014</u> | |
| 6. Date trial judge's report completed <u>10/06/2014</u> | |
| *7. Date received by Supreme Court _____ | |
| *8. Date sentence review completed _____ | |
| *9. Total elapsed days _____ | |
| 10. Other _____ | |

*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for each counsel as either desired to make concerning its factual accuracy.

- | | D.A. | Defense Counsel |
|--------------------------|-------------------------------------|-------------------------------------|
| 1. Comments are attached | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Had no comments | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Has not responded | <input type="checkbox"/> | <input type="checkbox"/> |

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

Date 10/16/14

Forest A. Durard, Jr.
FOREST A. DURARD, JR.
Circuit Judge, Part I
Seventeenth Judicial District of Tennessee

Attachment 13

IN THE CIRCUIT COURT OF LINCOLN COUNTY

STATE OF TENNESSEE

Case No. S0900096

v.

Sentence of Death ()

or

JACOB SHAFFER

Life Without Parole (X) 5 counts, all consecutive

(Defendant)

or

Life Imprisonment ()

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. a. Status of Case: Original Trial (x) Retrial/Resentencing ()
b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime: Defendant stabbed to death his wife, Tracie Shaffer, Ms. Shaffer's father, Billy Hall, her brother, Chris Hall; her son from a previous marriage, Devin Brooks; and Brooks' friend, Robert Barber Brock. Chris Hall and Billy Hall were killed in their residence, and the other three victims were killed in Ms. Shaffer's residence. The two residences were across the street from one another. The defendant purchased stun guns to accomplish the offenses; at least some of the victims were subjected to the stun guns and one of the stun guns was found under the body of one of the decedents. Sometime after the offenses the defendant was found on the front steps of Ms. Shaffer's residence. Upon his arrest, the defendant told the police that he had discovered that his wife was "cheating" on him.

2. How did the defendant plead? Guilty (x) Not guilty () defendant pled guilty 7-22-11

3. Was guilt determined with or without a jury? With () Without (x)

- (5) Heinous, atrocious, or cruel () () Listed in notice
(6) To avoid arrest or prosecution () () Listed in notice
(7) Committed in conjunction with another felony () () Listed in notice
(8) Committed while in custody () ()
(9) Victim was a member of law enforcement, etc. () ()
(10) Victim was a judge, district attorney, etc. () ()
(11) Victim was elected official, etc. () ()
(12) Mass murder () () Listed in notice
(13) Mutilation of the body () ()
(14) Elderly or particularly vulnerable victim () ()
(15) Other: () ()

2 In this space, the trial court should list by statutory designation any statutory aggravating factor that was instructed, but is not in the prior list.

Rebated any significant aspects of the aggravating circumstance(s) that influence the punishment. _____

a. Were the aggravating circumstances found supported by the evidence? Yes () No ()

10. Mitigating Circumstances, T.C.A. § 39-13-204(j):

a. Were the mitigating circumstances raised by the evidence? Yes () No () defendant pled guilty

b. If so, what mitigating circumstances were raised by the evidence?

- (1) No significant prior criminal history () ()
(2) Extreme mental or emotional disturbance () ()
(3) Participation or consent by victim () ()
(4) Belief that conduct justified () ()
(5) Minor accomplice () ()
(6) Extreme duress or substantial domination () ()
(7) Youth/advanced age of defendant () ()

4. Separate Offenses:

- a. Were other offenses tried in the same trial? Yes () No (x) Offenses were charged in indictment but no convictions following plea
b. If yes, list those offenses, disposition, and punishment:

5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt?
Yes () No () defendant pled guilty

6. Did the defendant waive jury determination of punishment?
Yes (x) No () as part of guilty plea

7. a. Did the State file a notice of intent to seek the death penalty?
Yes (x) No ()

b. Did the State file a notice of intent to seek life imprisonment without parole?
Yes (x) No () as part of death notice

c. Did the State withdraw its notice of intent to seek the death penalty either formally or informally? Yes (x) No () upon guilty plea

d. Who sentenced defendant? Judge (x) Jury ()

e. What sentence was imposed? Death () Life Without Parole (x) at 5 counts

f. If life imprisonment, was it imposed as a result of a hung jury?
Yes () No (x)

8. Was victim impact evidence introduced at trial? Yes () No (x) no trial

9. Aggravating Circumstances, T.C.A. § 39-13-204(i):

a. Were statutory aggravating circumstances found? Yes () No (x)

b. Which of the following statutory aggravating circumstances were instructed and which were found? (Please note the version of the statutory aggravating circumstance instructed in the blank provided when applicable, i.e., the 1989 version or the 1995 version.)

- (1) Youth of the victim () ()
(2) Prior convictions () ()
(3) Risk of death to others () ()
(4) Murder for remuneration () ()

(8) Mental disease or defect or intoxication () ()

(9) Other (explain): () ()

3 In the space provided, please list all nonstatutory mitigating factors raised by the evidence.

(c) Relate any significant facts about the mitigating circumstances that influence the punishment.

(d) If tried with a jury, was the jury instructed regarding all the circumstances indicated in 10(b) as mitigating circumstances? Yes () No () defendant pled guilty

If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted:

11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes () No () defendant pled guilty

12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense?
Yes () No (x)

If yes, explain:

13. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.): The only other mass murder case I've been involved in (State v. Daryl Keith Holton) was as an assistant district attorney and he received the death penalty. The instant case is of similar, if not greater, violence and cruelty than the Holton case. The Defendant deserved the sentences imposed for committing these brutal premeditated murders.

14. Brief impression of the trial judge as to conduct and/or affect of defendant at trial and sentencing: The Defendant completely understood his rights and pleaded guilty to avoid a possible death sentence. He was competent to make this decision and acted freely, voluntarily and understandingly. He acknowledged his guilt in the plea colloquy and also in his allocution. At all times during the plea acceptance hearing he was attentive, calm and fully engaged in the proceedings.

B. DATA CONCERNING THE DEFENDANT*

* Defense counsel may omit any information that may, if disclosed, impair the interests of the client.

1. Name Shaffer, Jacob 2. Birth Date 6-13-79

3. Sex male

4. Marital Status: Never Married ()

- Married ()
- Divorced (x) first wife
- Spouse Dec'd () second wife

5. Children: Number 3
Ages 12, 8, 6

Offense	Date	Sentence
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

15. Was the defendant a resident of the community where the homicide occurred? Yes (x) No ()

16. Noteworthy physical or mental characteristics or disabilities of defendant:

17. Other significant data about the defendant:

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES - Tracie Shaffer

Other dependents: _____

7. Parents: Father—living? Yes () No (x) unknown
Mother—living? Yes () No (x)

8. Education: Highest Grade or Level Completed: _____

9. Intelligence Level: Low (IQ below 70) _____
Medium (IQ 70 to 100) _____
High (IQ above 100) _____
Not Known _____

10 a. Was the issue of defendant's mental retardation under T.C.A. § 39-13-203 raised? Yes () No (X)

b. If so, did the court find that the defendant was mentally retarded as defined in T.C.A. § 39-13-203(a)? Yes () No ()

11 a. Was a psychiatric or psychological evaluation performed? Yes () No ()

b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation:

12. Employment record of defendant at or near time of offense, including if known, type of job, pay, dates job held and reason for termination:

13. Defendant's Military History, including type of discharge:

14a. Does the defendant have a record of prior convictions?

Yes () No (x)

b. If yes, list the offenses, the dates of the offenses and the sentences imposed:

1. Age of victim 38
2. Sex Female
3. Race of victim W
4. Marital Status: Never Married ()
Married (x)
Divorced ()
Spouse Dec'd ()
5. Children: Number 3
Ages 4, 8, 16

Other dependents _____

6. Parents: Father - Living? Yes () No (x)
Mother - Living? Yes () No (x)

7. Education: Highest Grade or Level Completed _____

8. Employment at time of offense unemployed

9. Criminal record passing worthless check- 2007

10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.):
husband and wife estranged

11. Was the victim a resident of the community where the homicide occurred?
Yes (x) No ()

12. Was the victim held hostage during the crime?

___x___ Yes —Less than one (1) hour unknown time

___x___ Yes —More than one (1) hour unknown time

___ No

If yes, give details:

13. a. Describe the physical harm and/or injuries inflicted on the victim.
five stab wounds to the back; three stab wounds to right shoulder/upper arm; two stab wounds to right side of chest; four stab wounds to left side of chest; stab wound to upper left arm; stab wound to left shoulder; stab wound to right

abdomen; defensive wounds to both hands; associated injuries to heart, lungs, stomach, sternum and ribs.

b. Was the victim tortured, state the nature of the torture: see above; she was raped, either before, during or after her killing.

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES - Christopher Lee Hall

1. Age of victim 34
2. Sex Male
3. Race of victim W
4. Marital Status: Never Married ()
Married ()
Divorced ()
Spouse Dec'd ()
5. Children: Number
Ages
Other dependents _____
6. Parents: Father - Living? Yes () No (x)
Mother - Living? Yes () No (x)
7. Education: Highest Grade or Level Completed _____
8. Employment at time of offense construction
9. Criminal record none known
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.):
defendant was married to Chris Hall's sister, Tracie Shaffer
11. Was the victim a resident of the community where the homicide occurred?
Yes (x) No ()
12. Was the victim held hostage during the crime?
____ Yes --Less than one (1) hour unknown time
____ Yes --More than one (1) hour unknown time

11. Was the victim a resident of the community where the homicide occurred?

Yes (x) No ()

12. Was the victim held hostage during the crime?

____ Yes --Less than one (1) hour unknown time

____ Yes --More than one (1) hour unknown time

____x No

If yes, give details:

13. a. Describe the physical harm and/or injuries inflicted on the victim:
stab wound to right side of chest; two stab wounds to left side of chest; stab wound to left side; associated injuries to lungs, heart and ribs.

b. Was the victim tortured, state the nature of the torture: see above

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES -- Robert Barber

1. Age of victim 16
2. Sex Male
3. Race of victim W
4. Marital Status: Never Married (x)
Married ()
Divorced ()
Spouse Dec'd ()
5. Children: Number
Ages
Other dependents _____
6. Parents: Father - Living? Yes (x) No ()
Mother - Living? Yes (x) No ()
7. Education: Highest Grade or Level Completed high school student
8. Employment at time of offense

____x No

If yes, give details:

13. a. Describe the physical harm and/or injuries inflicted on the victim:
five stab wounds to chest and upper abdomen; six stab wounds to back; wound to front of right forearm; associated injuries to lungs, heart, sternum and liver.

b. Was the victim tortured, state the nature of the torture: see above; it is believed a stun gun was used on him.

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES - Billy Gene Hall

1. Age of victim 56
2. Sex Male
3. Race of victim W
4. Marital Status: Never Married ()
Married ()
Divorced ()
Spouse Dec'd (x)
5. Children: Number 3
Ages 36, 34, ?
Other dependents _____
6. Parents: Father - Living? Yes () No ()
Mother - Living? Yes () No ()
7. Education: Highest Grade or Level Completed _____
8. Employment at time of offense installed countertops
9. Criminal record none known
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.):
defendant was married to Billy Hall's daughter, Tracie Shaffer

9. Criminal record none known

10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.):

victim was friend of defendant's stepson, Devin Brooks

11. Was the victim a resident of the community where the homicide occurred?

Yes (x) No ()

12. Was the victim held hostage during the crime?

____ Yes --Less than one (1) hour unknown time

____ Yes --More than one (1) hour unknown time

____x No

If yes, give details:

13. a. Describe the physical harm and/or injuries inflicted on the victim: two stab wounds to back; three stab wounds to left arm; nine stab wounds to chest and neck; defensive wounds to hands; wound to right side of neck; to abdomen and left side of chest; associated injuries to left lung and sternum.

b. Was the victim tortured, state the nature of the torture: see above

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES - Devin Brooks

1. Age of victim 16
2. Sex Male
3. Race of victim W
4. Marital Status: Never Married (x)
Married ()
Divorced ()
Spouse Dec'd ()
5. Children: Number

Ages

Other dependents _____

6. Parents: Father - Living? Yes () No ()

Mother - Living? Yes () No (x) victim, Trade Shaffer

7. Education: Highest Grade or Level Completed: high school

8. Employment at time of offense

9. Criminal record: juvenile-vandalism

10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.):

stepfather/stepson

11. Was the victim a resident of the community where the homicide occurred?

Yes (x) No ()

12. Was the victim held hostage during the crime?

Yes - Less than one (1) hour unknown time

Yes - More than one (1) hour unknown time

No (x)

If yes, give details:

13. a. Describe the physical harm and/or injuries inflicted on the victim: stab wound to right upper chest; stab wound to right lower chest; two stab wounds to left chest; stab wound to left upper arm; wound- front of right wrist; associated injuries to lungs, heart and liver.

b. Was the victim tortured, state the nature of the torture: see above

14. Co-Defendants: none

a. Were there any co-defendants in the trial? Yes () No (x)

a. Defendant unable to afford counsel (x)

b. Defendant refused to secure counsel ()

c. Other (explain): _____

5. How many years has counsel practiced law?

a. 0 to 5 ()

b. 5 to 10 (x) Harold

c. Over 10 (x) Hargrove, Dearing, Collins

7. What is the nature of counsel's practice?

a. Mostly civil ()

b. General ()

c. Mostly criminal (x)

8. Did counsel serve throughout the trial? Yes () No () no trial- defendant entered a plea agreement prior to trial

9. If not, explain in detail:

10. Other significant data about defense representation:

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant? No trial

a. Under 10% ()

b. 10%—25% ()

c. 25%—50% ()

d. 50%—75% ()

e. 75%—90% ()

f. Over 90% ()

2. Were members of defendant's race represented on the jury? Yes () No ()

How many of defendant's race were jurors? _____

b. If yes, what conviction and sentence were imposed on them?

c. Nature of co-defendant's role in offense: _____

d. Any further comments concerning co-defendants: _____

15. Other Accomplices:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No (x)

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:

c. Did the accomplice(s) testify at the defendant's trial? Yes () No ()

D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant? 4

(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)

2. Name of counsel: Donna Hargrove, Public Defender, Jack Dearing, Mike Collins, Bill Harold, Asst. Public Defenders

3. Date counsel secured: 7-20-09 General Sessions, 1-19-10 Circuit

4. How was counsel secured:

a. Retained by defendant ()

b. Appointed by court ()

c. Public defender (x)

5. If counsel was appointed by court, was it because:

3. a. Was a change of venue requested?

Yes (x) No ()

b. If yes, was it granted?

Yes (x) No ()

Reasons for change, if granted: change of venue only; jury would have been selected in Bedford County, trial would have been held in Lincoln County. Undue excitement/media coverage in Lincoln County. Defense objected to Court's order that jury be selected from another county within the 17th judicial district.

F. CHRONOLOGY OF CASE

Elapsed Days

1. Date of offense 7-19-09

2. Date of arrest 7-19-09

3. Date trial began _____ defendant pled guilty 7-22-11

4. Date sentence imposed 7-22-11

5. Date post-trial motions ruled on _____

6. Date trial judge's report completed _____

*7. Date received by Supreme Court _____

*8. Date sentence review completed _____

*9. Total elapsed days: _____

10. Other _____

*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for such comments as either desired to make concerning its factual accuracy.

1. Comments are attached () ()
2. Had no comments (x) (x)

3. Has not responded () ()

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

9/15/11
Date


Judge Robert Crigler
Court of Lincoln County
Judicial District 17th

Attachment 14

FILED
NOV 06 1989
85-00871 89-00873
A. M. WALKER, CLERK

STATE OF TENNESSEE Case no. _____
vs. Sentence of Death ()
or
Life Imprisonment (X)
4 life sentences
2 of them consecutive

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. Brief summary of the facts of the homicide, including the means used to cause death:

Defendant was high on drugs and got into an argument with his wife. They began fighting and he stabbed and killed her, his two step children and his child.

2. How did the defendant plead? Guilty (X) Not guilty ()

3. Was guilt determined with or without a jury? With () Without (X)

4. Separate Offenses:
a. Were other offenses tried in the same trial? Yes () No (X)
b. If yes, list those offenses, disposition, and punishment:
N/A

5. Co-Defendants:
a. Were there any co-defendants in the trial? Yes () No (X)
b. If yes, what conviction and sentence were imposed on the co-defendants?
N/A

c. Nature of the co-defendants' role in offense:
N/A

*A separate report must be submitted for each defendant convicted under T.C.A. §8-2-202 as amended by Ch. 51, Public Acts of 1977, irrespective of punishment.

d. Any further comments concerning co-defendants:
N/A

6. Other Accessories:
a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No ()

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:
N/A

c. Did the accomplice(s) testify at the defendant's trial? Yes () No () N/A

7. a. Do you agree with the verdict of the jury as to guilt? Yes () No ()

b. If no, explain: N/A

8. Did the defendant waive jury determination of punishment? Yes () No () N/A

9. a. What sentence was imposed? Death () Life Imprisonment (X)

b. If life imprisonment, was it imposed as a result of a hung jury? Yes () No ()

10. Aggravating Circumstances, T.C.A. §39-2-203(i): N/A

a. Were statutory aggravating circumstances found? Yes () No ()

b. Which of the following statutory aggravating circumstances were instructed and which were found?

	Instructed	Found
(1) The murder was committed against a person less than twelve years of age and the defendant was eighteen years of age, or older.	()	()
(2) The defendant was previously convicted of one or more felonies, other than the present charge, which involve the use or threat of violence to the person.	()	()

	Instructed	Found
(3) The defendant knowingly created a great risk of death to two or more persons, other than the victim murdered, during his act of murder.	()	()
(4) The defendant committed the murder for remuneration or the promise of remuneration, or employed another to commit the murder for remuneration or the promise of remuneration.	()	()
(5) The murder was especially heinous, atrocious, or cruel in that it involved torture or depravity of mind.	()	()
(6) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another.	()	()
(7) The murder was committed while the defendant was engaged in committing, or was an accomplice in the commission of, or was attempting to commit, or was fleeing after committing or attempting to commit, any first degree murder, arson, rape, robbery, burglary, larceny, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb.	()	()
(8) The murder was committed by the defendant while he was in lawful custody or in a place of lawful confinement or during his escape from lawful custody or from a place of lawful confinement.	()	()
(9) The murder was committed against any peace officer, corrections official, corrections employee or fireman, who was engaged in the performance of his duties, and the defendant knew or reasonably should have known that such victim was a peace officer, corrections official, corrections employee or fireman, engaged in the performance of his duties.	()	()
(10) The murder was committed against any present or former judge, district attorney general or state attorney general, assistant district attorney general or assistant state attorney general due to or because of the exercise of his official duty or status and the defendant knew that the victim occupies or occupied said office.	()	()
(11) The murder was committed against a national, state, or local popularly elected official, due to or because of the official's lawful duties or status, and the defendant knew that the victim was such an official.	()	()

(12) The defendant committed "mass murder" which is defined as the murder of three or more persons within the State of Tennessee within a period of forty-eight (48) months, and perpetrated in a similar fashion in a common scheme or plan.

Relate any significant aspects of the aggravating circumstances that influence the punishment.

c. Were the aggravating circumstances found supported by the evidence? Yes () No () N/A

11. Mitigating Circumstances, T.C.A. §39-2-203(j): N/A

a. Were mitigating circumstances in evidence? Yes () No ()

b. If so, what mitigating circumstances were in evidence?

	Yes	No
(1) The defendant has no significant history of prior criminal activity;	()	()
(2) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;	()	()
(3) The victim was a participant in the defendant's conduct or consented to the act;	()	()
(4) The murder was committed under circumstances which the defendant reasonably believed to provide a moral justification for his conduct;	()	()
(5) The defendant was an accomplice in the murder committed by another person and the defendant's participation was relatively minor;	()	()
(6) The defendant acted under extreme duress or under the substantial domination of another person;	()	()
(7) The youth or advanced age of the defendant at the time of the crime;	()	()
(8) The capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was substantially impaired as a result of mental disease or defect or intoxication which was insufficient to establish a defense to the crime but which substantially affected his judgment.	()	()

5. If counsel was appointed by court, was it because:

- A. Defendant unable to afford counsel? (X)
- B. Defendant refused to secure counsel? ()
- C. Other (explain) _____

6. How many years has counsel practiced law? A. 0 to 5 ()
 B. 5 to 10 (X)
 C. Over 10 ()

7. What is the nature of counsel's practice?
 A. Mostly civil () Malley--General
 B. General () Jones--Criminal
 C. Mostly criminal ()

8. Did counsel serve throughout trial? Yes (X) No ()

9. If not, explain in detail. _____

10. Other significant data about defense representation. _____

E. GENERAL CONSIDERATIONS

1. Was race raised by the defense as an issue in the trial?
 Yes () No () N/A

2. Did race otherwise appear as an issue in the trial?
 Yes () No () N/A

3. What percentage of the population of your county is the same race as the defendant?

- a. Under 10% ()
- b. 10 to 25% (X)
- c. 25 to 50% ()
- d. 50 to 75% ()
- e. 75 to 90% ()
- f. Over 90% ()

4. Were members of defendant's race represented on the jury?
 Yes () No () N/A

How many of defendant's race were jurors? _____

5a. If not, was there any evidence they were systematically excluded from the jury? Yes () No () N/A

b. If yes, what was that evidence? _____

6. Was there extensive publicity in the community concerning this case? Yes () No (X)

7. Was the jury instructed to disregard such publicity?
 Yes () No () N/A

8. Was the jury instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when imposing sentence?
 Yes () No () N/A

9. Was there any evidence that the jury was influenced by passion, prejudice, or any other arbitrary factor when imposing sentence? Yes () No () N/A

10. If answer is yes, what was that evidence? _____

11a. Was a change of venue requested? Yes () No (X)

b. If yes, was it granted? Yes () No ()

Reasons for change if granted: _____

F. CHRONOLOGY OF CASE

Elapsed Days

- 1. Date of offense 11-7-88
- 2. Date of arrest 11-7-88
- 3. Date trial began guilty plea 3-22-89
- 4. Date sentence imposed _____
- 5. Date post-trial motions ruled on _____
- 6. Date trial judge's report completed _____
- *7. Date received by Supreme Court _____
- *8. Date sentence review completed _____
- *9. Total elapsed days _____
- 10. Other _____

(To be completed by Supreme Court).

This report was submitted to the defendant's counsel and to the attorney for the state for such comments as either desired to make concerning factual accuracy.

	D.A.	Defense Counsel
1. His comments are attached	()	()
2. He stated he had no comments	()	()
3. He has not responded	()	()

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

11/20/89
 (Date)

Joseph A. Carter
 Judge, Dist. 8
 Court of Lawrence
 County Shelby

Attachment 15

FILED

REPORT OF TRIAL JUDGE IN CAPITAL CASE NO. 5852

IN THE Circuit COURT OF COCKE COUNTY TENNESSEE

STATE OF TENNESSEE

Case No. 5852

VS. Sentence of Death () or Life Imprisonment [X]

Carey Earl Coughran (Defendant)

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. Brief summary of the facts of the homicide, including the means used to cause death:

In August, 1991, the defendant set fire to the upper floor of an apartment building that caused the death of four residents of the apartments.

2. How did the defendant plead? Guilty () Not guilty [X]

3. Was guilt determined with or without a jury? With [X] Without ()

4. Separate offenses: a. Were other offenses tried in the same trial? Yes [X] No ()

b. If yes, list those offenses, disposition, and punishment: Aggravated Assault; 4 counts Grand Theft Murder; Attempted First Degree Murder; 4 counts Felony Murder

5. Co-defendants: a. Were there any co-defendants in the trial? Yes () No [X]

b. If yes, what conviction and sentence were imposed on the co-defendants?

c. Nature of the co-defendants' role in offense:

* A separate report must be submitted for each defendant convicted under T.C.A. 39-2-202 as amended by Ch. 21, Public Acts of 1991, irrespective of punishment.

d. Any further comments concerning co-defendants:

6. Other Accessories:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes [X] No ()

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:

The defendant's wife was seen with the defendant both before and after the murder. However, no evidence at trial indicated direct participation in the setting of the fire.

c. Did the accomplice(s) testify at the defendant's trial? Yes () No ()

7a. Do you agree with the verdict of the jury as to guilt? Yes [X] No ()

b. If no, explain:

8. Did the defendant waive jury determination of punishment? Yes () No [X]

9. a. What sentence was imposed? Death () Life Imprisonment [X]

b. If life imprisonment, was it imposed as a result of a hung jury? Yes () No ()

10. Aggravating Circumstances, T.C.A. 39-2-203(4):

a. Were statutory aggravating circumstances found? Yes () No [X]

b. Which of the following statutory aggravating circumstances were instructed and which were found?

Table with 3 columns: Instructed, Found, and numbered list of aggravating circumstances (1-10).

Table with 3 columns: Instructed, Found, and numbered list of aggravating circumstances (11-12).

Relate any significant aspects of the aggravating circumstances that influence the punishment. The defendant intentionally set fire to an apartment building knowing many people were present.

c. Were the aggravating circumstances found supported by the evidence? Yes [X] No ()

11. Mitigating Circumstances, T.C.A. 39-2-203(5):

a. Were mitigating circumstances in evidence? Yes [X] No ()

b. If so, what mitigating circumstances were in evidence?

Table with 3 columns: Instructed, Found, and numbered list of mitigating circumstances (1-5).

- (6) The defendant acted under extreme duress or under the substantial domination of another person? () (X)
- (7) The youth or advanced age of the defendant at the time of the crime? () ()
- (8) The capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was substantially impaired as a result of mental disease or defect or intoxication which was insufficient to establish a defense to the crime but which substantially affected his judgment. (X) ()
- (9) Other (explain): () ()

(c) Relate any significant facts about the mitigating circumstances that influence the punishment. *

(d) If tried with a jury, was the jury instructed to consider the circumstances indicated in 11(b) as mitigating circumstances? Yes () No ()

12. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes () No ()

13. Was there evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes () No (X)

If yes, explain:

11. Brief impression of trial judge as to conduct of defendant at trial and sentencing:

12. Prior Work Record of Defendant:

Type of Job	Pay	Dates Held	Reason for Termination
a.			
b.			
c.			
d.			
e.			

a. _____

b. _____

c. _____

d. _____

e. _____

13. Defendant's Military History:

None

14a. Does the defendant have a record of prior conviction?

Yes (X) No ()

b. If yes, list the offenses, the dates of the offenses and the sentences imposed:

Offense	Date	Sentence
1. Burglary	1983	
2.		
3.		
4.		
5.		
6.		

15. Was the defendant a resident of the community where the homicide occurred? Yes (X) No ()

14. General comments of the trial judge concerning the appropriateness of the sentence imposed in this case (may include consideration of sentences imposed in any similar cases the judge has tried):

B. DATA CONCERNING DEFENDANT

1. Name Last First Middle 2. Birth Date 7 22 59
Mo./Day/Year

3. Sex M 4. Marital Status: Never Married
Married
Divorced
Spouse Dec'd

5. Race W

6. Children: Number 2 Ages 6, 8

Other Dependents: _____

7. Parents: Father -- living? Yes () No (X)
Mother -- living? Yes (X) No ()

8. Education: Highest Grade or Level Completed: 8th

9. Intelligence Level Low (IQ below 70)
Medium (IQ 70 to 100)
High (IQ above 100) _____
Not Known _____

10 a. Was a psychiatric or psychological evaluation performed? Yes (X) No ()

b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation.

16. Noteworthy physical or mental characteristics or disabilities of defendant:

17. Other significant data about the defendant:

C. DATA CONCERNING VICTIM

1. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.):

Defendant & victim were in a bar drinking beer together. (No relation) Close since they were children's in grade. Victim: Dan Francis, Jr. born - Oct 10 (blind) Victim's address: 1100 S. ...

2. Was the victim a resident of the community where the homicide occurred? Yes (X) No ()

3. What was the victim's age? 56, 60, 68

4a. What was the victim's race? W

b. Was the victim the same race as defendant? Yes (X) No ()

5a. What was the victim's sex? F (M)

b. Was the victim the same sex as defendant? Yes (X) No ()

6. Was the victim held hostage during the crime?

Yes -- Less than an hour

Yes -- More than an hour

X No

If yes, give details:

Describe the physical harm and/or injuries inflicted on the victim:

Defendant's body was set fire by Def. from people died in fire

Was the victim tortured? Yes () No (X)
If yes, state the nature of the torture:

What was the victim's reputation in the community where he or she lived? Good () Bad () Unknown (X)

D. REPRESENTATION OF DEFENDANT (Ed Miller)

- 1. How many attorneys represented defendant? 2
2. Name of counsel: Ed Miller, Suzanne Lewis Thomas (Public Defenders)
3. Date counsel secured:
4. How was counsel secured: A. Retained by defendant () B. Appointed by court () C. Public defender (X)
5. If counsel was appointed by court, was it because: A. Defendant unable to afford counsel? (X) B. Defendant refused to secure counsel? () C. Other (explain)
6. How many years has counsel practiced law? A. 6 to 10 () B. 5 to 10 (X) C. over 10 ()
7. What is the nature of counsel's practice? A. Mostly civil () B. General () C. Mostly criminal (X)
8. Did counsel serve throughout the trial? Yes (X) No ()

9 (Miller)

Describe the physical harm and/or injuries inflicted on the victim:

Victims burned to death - Apartment building was set fire by defendant from people died in fire

Was the victim tortured? Yes () No (X)
If yes, state the nature of the torture:

What was the victim's reputation in the community where he or she lived? Good () Bad () Unknown (X)

D. REPRESENTATION OF DEFENDANT (Suzanne Lewis Thomas)

- 1. How many attorneys represented defendant? 2
2. Name of counsel: Ed Miller, Suzanne Lewis Thomas (Public Defenders)
3. Date counsel secured:
4. How was counsel secured: A. Retained by defendant () B. Appointed by court () C. Public defender (X)
5. If counsel was appointed by court, was it because: A. Defendant unable to afford counsel? (X) B. Defendant refused to secure counsel? () C. Other (explain)
6. How many years has counsel practiced law? A. 6 to 10 () B. 5 to 10 (X) C. over 10 ()
7. What is the nature of counsel's practice? A. Mostly civil () B. General () C. Mostly criminal (X)
8. Did counsel serve throughout the trial? Yes (X) No ()

9 (Thomas)

9. If not, explain in detail.

10. Other significant data about defense representation.

E. GENERAL CONSIDERATIONS

- 1. Was race raised by the defense as an issue in the trial? Yes () No (X)
2. Did race otherwise appear as an issue in the trial? Yes () No (X)
3. What percentage of the population of your county is the same race as the defendant? a. Under 10% () b. 10 to 25% () c. 25 to 50% () d. 50 to 75% () e. 75 to 90% () f. Over 90% (X)
4. Were members of defendant's race represented on the jury? Yes (X) No () How many of defendant's race were jurors? 1/1
5. If not, was there any evidence they were systematically excluded from the jury? Yes () No ()
6. If yes, what was that evidence?
6. Was there extensive publicity in the community concerning this case? Yes (X) No ()
7. Was the jury instructed to disregard such publicity? Yes (X) No ()
8. Was the jury instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when imposing sentence? Yes (X) No ()

10.

9. Was there any evidence that the jury was influenced by passion, prejudice, or any other arbitrary factor when imposing sentence? Yes () No ()

10. If answer is yes, what was that evidence?

11a. Was a change of venue requested? Yes (X) No ()

b. If yes, was it granted? Yes () No (X)

Reasons for change if granted:

F. CHRONOLOGY OF CASE

Table with 2 columns: Event, Elapsed Days. Rows include: Date of offense (8-22-91), Date of arrest (8-22-91), Date trial began (June 22, 1992), Date sentence imposed (6-27-92), Date post-trial motions ruled on (3-12-99), Date trial judge's report completed (8-24-98), Date received by Supreme Court, Date sentence review completed, Total elapsed days, Other.

*To be completed by Supreme Court.

11

This report was submitted to the defendant's counsel and to the attorney for the state for such comments as either desired to make concerning its factual accuracy.

D.A. Defense Counsel
[Signature] *[Signature]*

- 1. His comments are attached
- 2. He stated he had no comments
- 3. He has not responded

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

8/24/93
Date

[Signature]
Judge, Civil
Court of OLA
County Cocato

7

Attachment 16

REPORT OF TRIAL JUDGE IN FIRST-DEGREE MURDER CASES
IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE

Case No. 50836

FILED
NOV 8 1999
Clerk of the Court
Knox, Tenn.

v. **THOMAS J. ELDER**
Signature of Death
or
Life Without Parole ()
or
Life Imprisonment (X)

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

- Brief summary of the facts of the homicide, including the means used to cause death:
- How did the defendant plead? Guilty (X) Not Guilty ()
- Was guilt determined with or without a jury? With () Without (X)
- Separate Offenses: N/A
 - Were other offenses tried in the same trial? Yes () No () N/A
- If yes, list those offenses, dispositions, and punishments:
- Did you as "thorough juror" find that the defendant was guilty beyond a reasonable doubt? Yes () No () N/A
- Did the defendant waive jury determination of punishment? Yes (X) No ()
- Did the State file a notice of intent to seek the death penalty? Yes (X) No ()
- Did the State file a notice of intent to seek life imprisonment without parole? Yes () No ()
 - Did the State withdraw its notice of intent to seek the death penalty either formally or informally? Yes () No ()
 - What sentence was imposed? Death () Life Without Parole () Life Imprisonment (X)
 - If life imprisonment, was it imposed as a result of a hung jury? Yes () No (X)
- Aggravating Circumstances, T.C.A. §39-13-204 (j): N/A
 - Were statutory aggravating circumstances found? Yes () No () N/A
 - Which of the following statutory aggravating circumstances were enumerated and which were found? (None. Please note the version of the statutory aggravating circumstance instructed in the blanks provided where applicable, i.e. the 1989 version of the 1995 version) N/A

	Instructed	Found
(1) Age of the victim	()	()
(2) Prior convictions	()	()
(3) Risk of death to other	()	()
(4) Murder for remuneration	()	()
(5) Heinous, atrocious, or cruel	()	()
(6) To avoid arrest or prosecution	()	()
(7) Committed in conjunction with another felony	()	()

1

- (8) Committed while in custody () ()
- (9) Victim was member of law enforcement, etc. () ()
- (10) Victim was a judge, district attorney, etc. () ()
- (11) Victim was elected official, etc. () ()
- (12) Mass Murder () ()
- (13) Violation of body () ()

(14) Other:
Relate any significant aspects of the aggravating circumstance(s) that influence the punishment: N/A

- c. Were the aggravating circumstances found supported by the evidence?
Yes () No () N/A
9. Mitigating Circumstances, T.C.A. §39-13-204(g): N/A
- a. Were mitigating circumstances raised by the evidence? Yes () No () N/A
- b. If so, what mitigating circumstances were raised by the evidence?
- | | Yes | No |
|--|-----|-----|
| (1) No significant prior criminal history | () | () |
| (2) Extreme mental or emotional disturbance | () | () |
| (3) Participating in or consent by victim | () | () |
| (4) Heat of passion justified | () | () |
| (5) Minor accomplice | () | () |
| (6) Extreme duress or substantial domination | () | () |
| (7) Unusually advanced age of defendant | () | () |
| (8) Mental disease or defect or intoxication | () | () |
| (9) Other (specify) | () | () |
- c. Relate any significant facts about the mitigating circumstances that influence the punishment: N/A
- (10) If tried with a jury, was the jury instructed regarding all circumstances indicated in 11(b) as mitigating circumstances? Yes () No () N/A
- If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted:
10. If the sentence was death, does the evidence show that the defendant killed, attempted to kill or intended that a killing take place or that lethal force be employed? N/A Yes () No ()
11. Was there evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes () No () N/A
- If yes, explain:
12. General comments of the trial judge concerning the sentence imposed in this case (e.g. whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.):
13. Brief impression of the trial judge as to conduct and/or affect of defendant at trial and sentencing:

2

B. DATA CONCERNING DEFENDANT

- Name: **Elmer, Thomas J.** 2. Birth Date: **11/30/71**
Last: **Elmer** Middle: **J.**
- Sex: Male Marital Status: Never Married (X) Married ()
- Race: African-American (X) Mexican ()
- Children: Number: _____ Divorced: _____
Age: _____ Spouse Dec'd: _____
- Other dependents: _____
- Parents: Father - living Yes (X) No () Mother - living Yes (X) No ()
- Education: Highest Grade or Level Completed: 12th _____
- Intelligence Level: Low (IQ below 70) _____
Medium (IQ 70 to 100) (X) _____
High (IQ above 100) _____
Unknown _____
- a. Was the issue of defendant's mental retardation under T.C.A. §39-13-203 raised? Yes (X) No ()
- b. If no, did the court find that the defendant was mentally retarded as defined in T.C.A. §39-13-203 (a)? Yes () No (X)
- a. Was a psychiatric or psychological evaluation performed? Yes (X) No ()
- b. If yes, summarize pertinent psychiatric or psychological information and/or diagnosis revealed by such evaluation: No significant impairment
12. Prior Work Record of Defendant:
Type of Job Pay Dates Held Reason for Termination
a. No significant work history
b. _____
c. _____
d. _____
e. _____
f. _____
g. _____
h. _____
i. _____
13. Defendant's Military History: N/A
- a. Does the defendant have a record of prior convictions? Yes (X) No ()
- b. If yes, list the offenses, the dates of the offenses and the sentences imposed:
Offense Date Sentence
1. Attempted Murder 12 years
2. Eastern District Case Number 3-92-31-017 25 years
3. _____
4. _____
5. _____
6. _____
15. Was the defendant a resident of the community where the homicide occurred? Yes (X) No ()
16. Noteworthy physical or mental characteristics or disabilities of defendant: None
17. Other significant data about the defendant: None

3

C. DATA CONCERNING VICTIM, CO-DEFENDANT AND ACCOMPLICES

- Age of Victim(s): _____ Date of Birth: _____
* Asia Chatman - 11 months 1/1/92
* Oren Chatman - 1 year, 11 months 1/7/91
* Deatrice Jackson - 2 years 11/1/90
* Leon Monroe - 4 years 7/4/88
- Race of Victim(s): All Black
- Sex of Victim(s): Asia Chatman, Female; Oren Chatman, Male; Deatrice Jackson, Female; and Leon Monroe, Male
- Describe the relationship between the defendant and the victim (e.g. family member, employer, friend, etc.): No relationship
- Was the victim a resident of the community where the homicide occurred? Yes (X) No ()
- Was the victim held hostage during the crime?
Yes - Less than one (1) hour _____
Yes - More than one (1) hour _____
X No
If yes, give details: _____
- a. Describe the physical harm and/or injuries inflicted on the victim:
All victims died of gunshot wounds. Some victims had first and/or second degree burns.
b. If the victim was removed, state the nature of the torture:

- Co-Defendants:
a. Were there any co-defendants in the trial? Yes () No (X)
b. If yes, what conviction and sentence were imposed on the co-defendants?

- Nature of the co-defendant's role in offense:

- Any further comments concerning co-defendants:

- Other Accomplices:
a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No (X)
b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:

- Did the accomplice(s) testify at the defendant's trial? Yes () No () N/A

4

D. REPRESENTATION OF DEFENDANT

1. How many attorneys represented defendant? Two
(If more than one counsel served, answer the following questions as to each counsel and attached a copy for each in this report)
2. Name of Counsel: William Tolman and Thomas Slaughter
3. Date counsel secured: William Tolman 5/23/98 and Thomas Slaughter 8/23/98
4. How was counsel secured:
 - A. Retained by defendant
 - B. Appointed by court
 - C. Public Defender
5. If counsel was appointed by court, was it because:
 - A. Defendant was unable to afford counsel?
 - B. Defendant refused to secure counsel?
 - C. Other (specify) Conflict with the Public Defender's office
6. How many years has counsel practiced law?
 - A. 0 to 5
 - B. 5 to 10
 - C. Over 10
7. What is the nature of counsel's practice?
 - A. Mostly civil
 - B. General
 - C. Mostly criminal
8. Did counsel serve through the trial? Yes No
9. If not, explain in detail. Through Best Interest Plan
10. Other significant facts about defense representation.

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county where the trial was held is the same race as the defendant?
 - A. Under 10%
 - B. 10% to 25%
 - C. 25% to 50%
 - D. 50% to 75%
 - E. 75% to 90%
 - F. Over 90%
2. Were members of the defendant's race represented on the jury? Yes No N/A
How many of defendant's race were jurors? N/A
3. a. Was a change of venue requested? Yes No N/A
b. If yes, was it granted? Yes No
Reasons for change if granted:

F. CHRONOLOGY OF CASE

Elapsed Days

1. Date of offense: Court One: 12/6/92
Court Two: 12/6/92
Court Three: 12/92
Court Four: 12/92
2. Date of arrest: 12/7/92
3. Date trial began: N/A
4. Date sentence imposed: June 9, 1998
5. Date post-trial motions ruled on: N/A
6. Date trial judge's report completed: _____
- *7. Date received by Supreme Court: _____
- *8. Date sentence review completed: _____
- *9. Total elapsed days: _____
10. Other: _____

*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the state for such comments as either desired to make concerning its factual accuracy.

- | | D.A. | Defense Counsel |
|--------------------------|-------------------------------------|-------------------------------------|
| 1. Comments are attached | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Had no comments | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Has not responded | <input type="checkbox"/> | <input type="checkbox"/> |

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

Date: 11/1/99
 Judge Richard R. Bergman
 Court of Criminal, Benjamin L. Knox County
 Judicial District - Stuch

Attachment 17

FILED
MAR 6 1980
A. R. KEL. JR. CLERK

REPORT OF TRIAL JUDGE IN CAPITAL CASES*

IN THE CRIMINAL COURT OF SMITH COUNTY

89-05525 - 26

and
Case No. 89-1986 - 07

STATE OF TENNESSEE

vs. Sentence of Death ()
or

BRIAN COX Life Imprisonment (X)

(Defendant)

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. Brief summary of the facts of the homicide, including the means used to cause death:

Three females were stabbed in the early morning hours of April 2, 1988. Also repeatedly stabbed was an eleven year old male. Two females were criminally assaulted and all three died of multiple stab wounds, inflicted by a pocket knife or a kitchen steak knife, the blades being approximately 3 and 1/2 inches long and narrow in width.

2. How did the defendant plead? Guilty () Not guilty (X)

3. Was guilt determined with or without a jury?

with (X) Without ()

4. Separate Offenses:

a. Were other offenses tried in the same trial? Yes (X) No ()

b. If yes, list those offenses, disposition, and punishment:

Assault to commit murder First degree on the eleven yr. old Kevin Allen

5. Co-Defendants:

a. Were there any co-defendants in the trial? Yes () No (X)

b. If yes, what conviction and sentence were imposed on the co-defendants?

c. Nature of the co-defendants' role in offense:

*A separate report must be submitted for each defendant convicted under T.C.A. 39-2-202 as amended by Ch. 51, Public Acts of 1977, irrespective of punishment.

d. Any further comments concerning co-defendants:

6. Other Accomplices:
a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No ()

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:

c. Did the accomplice(s) testify at the defendant's trial? Yes () No ()

7. a. Do you agree with the verdict of the jury as to guilt? Yes (X) No ()

b. If no, explain:

8. Did the defendant waive jury determination of punishment? Yes () No (X)

9. a. What sentence was imposed? Death () Life Imprisonment (X)

b. If life imprisonment, was it imposed as a result of a hung jury? Yes () No (X)

10. Aggravating Circumstances, T.C.A. §39-2-202(i):

a. Were statutory aggravating circumstances found? Yes () No (X)

b. Which of the following statutory aggravating circumstances were instructed and which were found?

	Instructed	Found
(1) The murder was committed against a person less than twelve years of age and the defendant was eighteen years of age, or older.	()	()
(2) The defendant was previously convicted of one or more felonies, other than the present charge, which involve the use or threat of violence to the person.	(X)	()

2

	Instructed	Found
(3) The defendant knowingly created a great risk of death to two or more persons, other than the victim murdered, during his act of murder.	()	()
(4) The defendant committed the murder for remuneration or the promise of remuneration, or employed another to commit the murder for remuneration or the promise of remuneration.	()	()
(5) The murder was especially heinous, atrocious, or cruel in that it involved torture or depravity of mind.	()	()
(6) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another.	()	()
(7) The murder was committed while the defendant was engaged in committing, or was an accomplice in the commission of, or was attempting to commit, or was fleeing after committing or attempting to commit, any first degree murder, arson, rape, robbery, burglary, larceny, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb.	(X)	()
(8) The murder was committed by the defendant while he was in lawful custody or in a place of lawful confinement or during his escape from lawful custody or from a place of lawful confinement.	()	()
(9) The murder was committed against any peace officer, corrections official, corrections employee or fireman, who was engaged in the performance of his duties, and the defendant knew or reasonably should have known that such victim was a peace officer, corrections official, corrections employee or fireman, engaged in the performance of his duties.	()	()
(10) The murder was committed against any present or former judge, district attorney general or state attorney general, assistant district attorney general or assistant state attorney general due to or because of the exercise of his official duty or status and the defendant knew that the victim occupies or occupied said office.	()	()
(11) The murder was committed against a national, state, or local popularly elected official, due to or because of the official's lawful duties or status, and the defendant knew that the victim was such an official.	()	()

	Instructed	Found
(12) The defendant committed "mass murder" which is defined as the murder of three or more persons within the State of Tennessee within a period of forty-eight (48) months, and perpetrated in a similar fashion in a common scheme or plan.	(X)	()

Relate any significant aspects of the aggravating circumstances that influence the punishment.

c. Were the aggravating circumstances found supported by the evidence? Yes () No ()

11. Mitigating Circumstances, T.C.A. §39-2-203(j):

a. Were mitigating circumstances in evidence? Yes (X) No ()

b. If so, what mitigating circumstances were in evidence?

	Yes	No
(1) The defendant has no significant history of prior criminal activity;	()	()
(2) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;	()	()
(3) The victim was a participant in the defendant's conduct or consented to the act;	()	()
(4) The murder was committed under circumstances which the defendant reasonably believed to provide a moral justification for his conduct;	()	()
(5) The defendant was an accomplice in the murder committed by another person and the defendant's participation was relatively minor;	()	()
(6) The defendant acted under extreme duress or under the substantial domination of another person;	()	()
(7) The youth or advanced age of the defendant at the time of the crime;	()	()
(8) The incapacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was substantially impaired as a result of mental disease or defect or intoxication which was insufficient to establish a defense to the crime but which substantially affected his judgment.	()	()

Yes No

(9) Other (explain): the defense presented in evidence both in the guilt and punishment phases that one Reginald Wilkerson may have killed the three women and stabbed the young boy

(c) Relate any significant facts about the mitigating circumstances that influence the punishment.
See #9

(d) If tried with a jury, was the jury instructed to consider the circumstances indicated in 11(b) as mitigating circumstances? Yes (X) No ()

12. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes () No ()

13. Was there evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense?
Yes () No (X)

IF yes, explain:
?

14. General comments of the trial judge concerning the appropriateness of the sentence imposed in this case (may include consideration of sentences imposed in any similar cases the judge has tried): The defendant was fortunate in that he did not receive the death penalty. The defense's theory that another person committed the offenses and the prior sexual activities of one of the females may have influenced the jury in reaching their verdict.

B. DATA CONCERNING DEFENDANT

1. Name: Brian 2. Birth Date: 12/14/62
Last First Middle KIDDIG No./Day/YY

3. Sex: M 4. Marital Status: Never Married X

5. Race: B Married _____

6. Children: Number 1 Divorced _____

Age: 14 Spouse Dec'd _____

Other Dependents: _____

7. Parents: Father -- living? Yes () No (X)

Mother -- living? Yes (X) No ()

8. Education: Highest Grade or Level Completed: 8th grade

9. Intelligence Level: Low (IQ below 70) _____

Medium (IQ 70 to 100) X

High (IQ above 100) _____

Not known _____

10 a. Was a psychiatric or psychological evaluation performed? Yes () No (X)

b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation.

11. Brief impression of trial judge as to conduct of defendant at trial and sentencing: The defendant was alert and attentive during the trial. He appeared to be calm during many conferences with his attorneys. He participated in the voir dire proceedings.

12. Prior Work Record of Defendant:

Type of Job Pay Dates Held Reason for Termination

a. Construction Work \$4/hr 1986 arrest for current case

b. New Tack Packing \$4/hr 1/87 to 8/87

c. _____

d. _____

e. _____

13. Defendant's Military History:

NA

14 a. Does the defendant have a record of prior conviction? Yes (X) No ()

b. If yes, list the offenses, the dates of the offenses and the sentences imposed:

Offense Date Sentence

1. Murder 2d Degree 11/22/82 10 years

2. (Defendant was on parole at time of this incident)

3. _____

4. _____

5. _____

6. _____

15. Was the defendant a resident of the community where the homicide occurred? Yes () No (X)

16. Noteworthy physical or mental characteristics or disabilities of defendant: _____

17. Other significant data about the defendant: Defendant had several arrests involving violence - see presentence report dated 12/10/89

C. DATA CONCERNING VICTIM

1. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.):

The defendant's mother and sister lived in the apartment next door to the victims. The knew each other.

2. Was the victim a resident of the community where the homicide occurred? Yes (X) No ()

3. What was the victim's age? Kevin Allan - 11, Fannie Hall - 60+, Pamela Allen - 26+ and Janice Allen - 28+

4. What was the victim's race? black

5. Was the victim the same race as defendant? Yes (X) No ()

6. What was the victim's sex? female

7. Was the victim the same sex as defendant? Yes () No (X)

8. Was the victim held hostage during the crime?

Yes -- Less than an hour

Yes -- More than an hour

X No?

If yes, give details: _____

7a. Describe the physical harm and/or injuries inflicted on the victim: All victims had multiple stab wounds, some as many as 17. Pamela and Janice Allen both had sperm present in the vagina.

8. Was the victim tortured? Yes () No (X)

9. If yes, state the nature of the torture: _____

9. What was the victim's reputation in the community where he or she lived? Good (X) Bad () Unknown ()

D. REPRESENTATION OF DEFENDANT

1. How many attorneys represented defendant? two

(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)

2. Name of counsel: D'Army Bailey & Robert Jones

3. Date counsel secured: _____

4. How was counsel secured: A. Retained by defendant ()

B. Appointed by court ()

C. Public defender (X)

5. If counsel was appointed by court, was it because:
- A. Defendant unable to afford counsel? (x)
 B. Defendant refused to secure counsel? ()
 C. Other (explain) _____
-
6. How many years has counsel practiced law? A. 0 to 5 ()
 B. 5 to 10 ()
 C. Over 10 (x)
7. What is the nature of counsel's practice?
 A. Mostly civil ()
 B. General ()
 C. Mostly criminal (x)
8. Did counsel serve throughout trial? Yes (x) No ()
9. If not, explain in detail. _____
-
10. Other significant data about defense representation. _____

E. GENERAL CONSIDERATIONS

1. Was race raised by the defense as an issue in the trial?
 Yes () No (x)
2. Did race otherwise appear as an issue in the trial?
 Yes () No (x)
3. What percentage of the population of your county is the same race as the defendant?
 a. Under 10% ()
 b. 10 to 25% ()
 c. 25 to 50% (x)
 d. 50 to 75% ()
 e. 75 to 90% ()
 f. Over 90% ()
4. Were members of defendant's race represented on the jury?
 Yes (x) No ()
 How many of defendant's race were jurors? eleven
- 5a. If not, was there any evidence they were systematically excluded from the jury? Yes () No (x)
- b. If yes, what was that evidence? _____

9

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 CRIMINAL DIVISION

- Yes () No (x)
8. Was the jury instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when imposing sentence?
 Yes (x) No ()
9. Was there any evidence that the jury was influenced by passion, prejudice, or any other arbitrary factor when imposing sentence? Yes () No (x)
10. If answer is yes, what was that evidence? _____
-
- 11a. Was a change of venue requested? Yes () No (x)
 b. If yes, was it granted? Yes () No ()
 Reasons for change if granted: _____

F. CHRONOLOGY OF CASE

	Elapsed Days
1. Date of offense <u>4/2/88</u>	
2. Date of arrest <u>6/4/88</u>	<u>62</u>
3. Date trial began <u>10/16/89</u>	<u>18 months</u>
4. Date sentence imposed <u>10/21/89</u>	<u>5 days</u>
5. Date post-trial motions ruled on <u>1/15/90</u>	<u>76 days</u>
6. Date trial judge's report completed _____	
*7. Date received by Supreme Court _____	
*8. Date sentence review completed _____	
*9. Total elapsed days _____	
10. Other _____	

*(To be completed by Supreme Court).

10

This report was submitted to the defendant's counsel and to the attorney for the state for such comments as either desired to make concerning factual accuracy.

- | | | |
|----------------------------------|------------------------------|---|
| | D.A. | Defense Counsel |
| 1. His comments are attached. | <input type="checkbox"/> () | <input checked="" type="checkbox"/> (x) |
| 2. He stated he had no comments. | <input type="checkbox"/> () | <input type="checkbox"/> () |
| 3. He has not responded. | <input type="checkbox"/> () | <input type="checkbox"/> () |

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

March 1, 1990
 Date

J. J. Huppert
 JUDGE, Criminal Court, Div. II
 Court of Shelby County
 County

Attachment 18

FILED
FEB 4 1991
COURT
CLERK

STATE OF TENNESSEE Case No. 88-01443-A & S
vs. Sentence of Death ()
or
HUNG VAN TRUNG Life Imprisonment (x)
(Defendant)

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. Brief summary of the facts of the homicide, including the means used to cause death:

On Oct. 20, 1987, three persons, Kai Chuey, Arthur Lee and Amy Lee were killed in an armed robbery at the Jade East Restaurant-- a Chinese restaurant. Four persons were responsible including the defendant, Kai Chuey and Amy Lee were shot in the back of the head. Arthur Lee was shot eight (8) times including a head gun shot. Gold jewelry was taken--valued at approximately \$200,000 retail value.

2. How did the defendant plead? Guilty (x) Not guilty ()

3. Was guilt determined with or without a jury?
With () Without (x)

4. Separate Offenses:

a. Were other offenses tried in the same trial? (No) ()
b. If yes, list those offenses, disposition, and punishment:
plead guilty to armed robbery of Gin Sam Lee, female Chinese, age 77

5. Co-Defendants:

a. Were there any co-defendants in the trial? Yes (x) No ()
b. If yes, what conviction and sentence were imposed on the co-defendants?
Co-defendant, Neck Van Tran was tried in June 1989 and received death penalty. One co-defendant, Bourne, is still at large. One co-defendant, Duc Phouc Doan, represented [see attached page.]
c. Nature of the co-defendants' role in offense:

*(A separate report must be submitted for each defendant convicted under T.C.A. 39-2-102 as amended by Ch. 51, Public Acts of 1977, irrespective of punishment).

d. Any further comments concerning co-defendants:

6. Other Accomplices:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes (x) No ()
b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:

According to the State theory, another witness, Nien, Nien Nien, was a former employee of the Jade East and knew location of jewelry. He drew map of restaurant interior and furnished defendant, Neck Van Tran a .22 caliber pistol. Nien Nien was tried as an accessory before the fact to all three deaths in April 1989 and found not guilty.

c. Did the accomplice(s) testify at the defendant's trial?
Yes () No ()

7. a. Do you agree with the verdict of the jury as to guilt?
Yes () No ()
b. If no, explain:

8. Did the defendant waive jury determination of punishment?
Yes () No ()

9. a. What sentence was imposed?
Death () Life Imprisonment (x) GUILTY PLEA

b. If life imprisonment, was it imposed as a result of a hung jury?
Yes () No ()

10. Aggravating Circumstances, T.C.A. §39-2-203(1); N/A

a. Were statutory aggravating circumstances found?
Yes () No ()

b. Which of the following statutory aggravating circumstances were instructed and which were found?

	Instructed	Found
(1) The murder was committed against a person less than twelve years of age and the defendant was eighteen years of age, or older.	()	()
(2) The defendant was previously convicted of one or more felonies, other than the present charge, which involve the use or threat of violence to the person.	()	()

ATTACHMENT 1:

5. (b) by attorney Ed W. Chandler entered three pleas (3) of guilty to Murder 2nd degree and four (4) armed robberies. The pleas were entered and accepted by this Court on November 17, 1989. The State advised the Court that one reason for the minimum sentence was at the request of the surviving Lee family. Mr. Jerry Lee had informed the State after consultation with his family, that a ten (10) yr. sentence (currently) was reasonable. Doan had assisted the family in an attempt to locate and apprehend his co-defendants. Doan had confessed to his involvement upon arrest and assisted the FBI so that they might execute flight warrants on his co-defendant.

(6) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another. () ()

(7) The murder was committed while the defendant was engaged in committing, or was an accomplice in the commission of, or was attempting to commit, or was fleeing after committing or attempting to commit, any first degree murder, arson, rape, robbery, burglary, larceny, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb. () ()

(8) The murder was committed by the defendant while he was in lawful custody or in a place of lawful confinement or during his escape from lawful custody or from a place of lawful confinement. () ()

(9) The murder was committed against any peace officer, corrections official, corrections employee or fireman, who was engaged in the performance of his duties, and the defendant knew or reasonably should have known that such victim was a peace officer, corrections official, corrections employee or fireman, engaged in the performance of his duties. () ()

(10) The murder was committed against any present or former judge, district attorney general or state attorney general, assistant district attorney general or assistant state attorney general due to or because of the exercise of his official duty or status and the defendant knew that the victim occupies or occupied said office. () ()

(11) The murder was committed against a national, state, or local popularly elected official, due to or because of the official's lawful office or status, and the defendant knew that the victim was such an official. () ()

(12) The defendant committed "mass murder" which is defined as the murder of three or more persons within the State of Tennessee within a period of forty-eight (48) months, and perpetrated in a similar fashion in a common scheme or plan.

Instructed Found

Relate any significant aspects of the aggravating circumstances that influence the punishment.
 If defendant had proceeded to trial the Court would have charged aggravating circumstances (5), (7) and possibly (12).

c. Were the aggravating circumstances found supported by the evidence? Yes No

11. Mitigating Circumstances, T.C.A. §39-2-203(j):

a. Were mitigating circumstances in evidence? Yes No

b. If so, what mitigating circumstances were in evidence?

Yes No

- (1) The defendant has no significant history of prior criminal activity; (x)
- (2) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;
- (3) The victim was a participant in the defendant's conduct or consented to the act;
- (4) The murder was committed under circumstances which the defendant reasonably believed to provide a moral justification for his conduct;
- (5) The defendant was an accomplice in the murder committed by another person and the defendant's participation was relatively minor;
- (6) The defendant acted under extreme duress or under the substantial domination of another person;
- (7) The youth or advanced age of the defendant at the time of the crime; (x)
- (8) The capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was substantially impaired as a result of mental disease or defect or intoxication which was insufficient to establish a defense to the crime but which substantially affected his judgment.

(9) Other (explain): Yes No

(c) Relate any significant facts about the mitigating circumstances that influence the punishment.

(d) If tried with a jury, was the jury instructed to consider the circumstances indicated in 11(b) as mitigating circumstances? Yes No

12. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes No

13. Was there evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes No

If yes, explain:

14. General comments of the trial judge concerning the appropriateness of the sentence imposed in this case (may include consideration of sentences imposed in any similar cases the judge has tried): The Court is of the opinion that the defendant would have been found guilty of murder in the perpetration of a robbery. The defendant had confessed to robbing the restaurant and killing Amy Lee by shooting her in the back of the head while she lay on the floor. The victim was executed. See attached note.

Attachment 19

REPORT OF TRIAL JUDGE IN FIRST-DEGREE MURDER CASES¹

IN THE CRIMINAL COURT OF SHELBY COUNTY
NINTH JUDICIAL DISTRICT



STATE OF TENNESSEE

Case No. 88-04384 - 87

v. **KONG CHUNG BOUNNAM**
Defendant
Sentence of Death ()
or
Life Without Parole ()
or
Life Imprisonment (X)

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. Brief summary of the facts of the homicide, including the means used to cause death:

On October 30, 1987, three persons Kai Chuay, Arthur Lee and Amy Lee were killed in an armed robbery at the Jade East Restaurant - Chinese restaurant. Four persons were responsible including the defendant. Kai Chuay and Amy Lee were shot in the back of the head. Arthur Lee was shot eight (8) times including a head gun shot. Gold jewelry was taken—valued at approximately \$200,000 retail value.

2. How did the defendant plead? Guilty () Not guilty (X)

3. Was guilt determined with or without a jury? With (X) Without ()

4. Separate Offense:

a. Were other offenses tried in the same trial? Yes (X) No ()

b. If yes, list those offenses, disposition, and punishment:

Robbery with a Deadly Weapon - 25 yrs. Concurrently, but consecutive to 88-0144

5. Did you as "thirteenth juror" find that the defendant was guilty beyond a reasonable doubt?

Yes (X) No ()

6. Did the defendant waive jury determination of punishment?

Yes () No (X)

¹ A separate report must be submitted for each defendant convicted under T.C.A. §39-13-202, irrespective of the sentence received.

(14) Other² () ()

Relate any significant aspects of the aggravating circumstance(s) that influence the punishment:

c. Were the aggravating circumstances found supported by the evidence?

Yes () No ()

8. Mitigating Circumstances, T.C.A. § 39-13-204(j): N/A

a. Were mitigating circumstances raised by the evidence? Yes () No ()

b. If so, what mitigating circumstances were raised by the evidence?

N/A

No	Yes
(1) No significant prior criminal history () ()	
(2) Extreme mental or emotional disturbance () ()	
(3) Participation or consent by victim () ()	
(4) Belief that conduct justified () ()	
(5) Minor accomplice () ()	
(6) Extreme duress or substantial domination () ()	
(7) Youth/advanced age of defendant () ()	
(8) Mental disease or defect or intoxication () ()	
(9) Other ³ (explain) () ()	

c. Relate any significant facts about the mitigating circumstances that influence the punishment.

N/A

d. If tried with a jury, was the jury instructed regarding all the circumstances indicated in 8(b) as mitigating circumstances? Yes () No ()

N/A

(If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted.)

10. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? N/A

Yes () No ()

11. Was there evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense?

Yes () No (X)

² In this section, the trial court should list by statutory designation any aggravating factor that was introduced, but is not in the prior list as that aggravating factor was added to the statute by the legislature after this form was created.

³ In the space provided, please list all nonstatutory mitigating factors raised by the evidence.

7. a. Did the State file a notice of intent to seek the death penalty?

Yes () No (X)

b. Did the State file a notice of intent to seek life imprisonment without parole?

Yes () No (X)

c. Did the State withdraw its notice of intent to seek the death penalty either formally or informally?

Yes () No ()

d. What sentence was imposed?

Death () Life Without Parole () Life Imprisonment (X)

e. If life imprisonment, was it imposed as a result of a hung jury?

Yes () No (X)

8. Aggravating Circumstances, T.C.A. § 39-13-204(j): N/A

a. Were statutory aggravating circumstances found? Yes () No ()

b. Which of the following statutory aggravating circumstances were instructed and which were found?

(Note: Please note the version of the statutory aggravating circumstances included in the blanks provided when applicable, i.e., the 1986 version or the 1985 version)

	Instructed	Found
(1) Age of the victim () ()		
(2) Prior convictions () ()		
(3) Risk of death to others () ()		
(4) Murder for remuneration () ()		
(5) Heinous, atrocious, or cruel () ()		
(6) To avoid arrest or prosecution () ()		
(7) Committed in conjunction with another felony () ()		
(8) Committed while in custody () ()		
(9) Victim was member of law enforcement, etc. () ()		
(10) Victim was a judge, district attorney, etc. () ()		
(11) Victim was elected official, etc. () ()		
(12) Mass murder () ()		
(13) Mutilation of the body () ()		

If yes, explain:

12. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether the sentence is consistent with those imposed in similar cases the judge has tried, etc.):

Life without parole and the death penalty were not applicable. The defendant was extradited from Canada on an agreement that the State would not seek the death penalty. Due to the facts of this crime the defendant could have received the death penalty. In a prior trial, the defendant Heng Van Tran received the death penalty. A codefendant, Hung Van Chung received life or three guilty pleas.

13. Brief impression of the trial judge as to conduct and/or affect of defendant at trial and sentencing:

The defendant, a Leaban, was very attentive during the proceedings—in pre-trial, trial and post trial proceedings. The Court appointed an interpreter/legal translator due to the defendant's inability to understand legal terms.

B. DATA CONCERNING DEFENDANT¹

1. Name: Buannam Kong Chung
last first middle
2. Birth Date: 8/18/88
mo./day/year
3. Sex Male
4. Marital Status: Never Married X
Married _____
Divorced _____
Spouse Dec'd. _____
5. Race African (African)
6. Children: Number 0
Ages: _____
Other Dependents: _____
7. Parents: Father - living? Yes () No (X)
Mother - living? Yes (X) No ()
8. Education: Highest Grade or Level Completed: 8th grade - 8th grade
9. Intelligence Level: Low (IQ below 70) _____
Medium (IQ 70 to 100) _____
High (IQ above 100) _____
Unknown X
10. a. Was the issue of defendant's mental retardation under T.C.A. § 39-13-203 raised? Yes () No (X)
b. If so, did the court find that the defendant was mentally retarded as defined in T.C.A. § 39-13-203(a)? Yes () No ()
11. a. Was a psychiatric or psychological evaluation performed? Yes () No (X)
b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation.
12. Prior Work Record of Defendant:
- | Type of Job | Pay | Dates Held | Reason for Termination |
|------------------------|----------|----------------------|------------------------|
| a. <u>Emmel Co.</u> | <u>?</u> | <u>Prior to 1987</u> | <u>criminal crime</u> |
| b. <u>Farm Laborer</u> | | <u>1988 - 1994</u> | <u>Canada</u> |
| c. _____ | | | |
| d. _____ | | | |
| e. _____ | | | |

¹ Defense counsel may omit any information that may, if disclosed, impair the interests of the client.

13. Defendant's Military History:

N/A

14 a. Does the defendant have a record of prior convictions?

Yes (X) No ()

b. If yes, list the offenses, the dates of the offenses and the sentences imposed:

Offense	Date	Sentence
1. <u>Possession of Drugs</u>	<u>8/8/87</u>	<u>\$50 fine</u>
2. <u>Possession of Liquor</u>	<u>5/21/87</u>	<u>\$25 fine</u>
3. <u>Shoplifting</u>	<u>8/8/87</u>	<u>\$50 fine</u>
4. _____		
5. _____		
6. _____		

15. Was the defendant a resident of the community where the homicide occurred?

Yes () No (X)

16. Noteworthy physical or mental characteristics or disabilities of defendant:

17. Other significant data about the defendant:

See #12

C. DATA CONCERNING VICTIM, CO-DEFENDANTS AND ACCOMPLICES

1. Age of victims: Arthur Lee - 24
Amy Lee - 24
Kai Chuey - 74
2. Race of victims: All those Chinese descents
3. Sex of victims: 1 - Male & 2 - female
4. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.):
None
5. Was the victim a resident of the community where the homicide occurred? Yes () No (X)
6. Was the victim held hostage during the crime?
Yes - Less than one (1) hour
Yes - More than one (1) hour
X No
If yes, give details:
7. a. Describe the physical harm and/or injuries inflicted on the victim:
Kai Chuey and Amy Lee were shot in the back of the head by contact gunshot. Arthur Lee was shot eight times of which some were contact gunshot.
b. If the victim was tortured, state the nature of the torture:
8. Co-Defendants:
a. Were there any co-defendants in the trial? Yes () No (X)
b. If yes, what conviction and sentence were imposed on the co-defendants?
c. Nature of the co-defendants' role in offense:
d. Any further comments concerning co-defendants:
9. Other Accomplices:
a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes (X) No ()
b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:
There were three other individuals involved in the robbery and killing of three victims in the Jack Earl Rastourghl in Memphis, Tennessee, on October 20, 1987. On November 17, 1988, the co-defendant Duc Phouc Down, entered three pleas of guilty to murder second degree and four

D. REPRESENTATION OF DEFENDANT

1. How many attorneys represented defendant? 1
(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)
2. Name of counsel: Charles Roney
3. Date counsel secured: _____
4. How was counsel secured: A. Retained by defendant ()
B. Appointed by court (X)
C. Public defender ()
5. If counsel was appointed by court, was it because:
A. Defendant was unable to afford counsel? (X)
B. Defendant refused to secure counsel? ()
C. Other (explain) _____
6. How many years has counsel practiced law? A. 0 to 5 ()
B. 5 to 10 ()
C. over 10 (X)
7. What is the nature of counsel's practice? A. Mostly civil ()
B. General ()
C. Mostly criminal (X)
8. Did counsel serve throughout the trial? Yes (X) No ()
9. If not, explain in detail.
10. Other significant data about defense representation.

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county where the trial was held is the same race as the defendant?

- a. Under 10% (X)
- b. 10% to 25% ()
- c. 25% to 50% ()
- d. 50% to 75% ()
- e. 75% to 90% ()
- f. Over 90% ()

2. Were members of defendant's race represented on the jury?

Yes () No (X)

How many of defendant's race were jurors? _____

3. a. Was a change of venue requested? Yes () No (X)

b. If yes, was it granted? Yes () No ()

Reasons for change if granted: _____

F. CHRONOLOGY OF CASE

	Elapsed Days
1. Date of offense	10/20/87
2. Date of arrest	10/24 - Canada
3. Date trial began	1/12/88
4. Date sentence imposed	2/12/88
5. Date post-trial motions ruled on	2/13/88
6. Date trial judge's report completed	3/20/88
7. Date received by Supreme Court	
8. Date sentence review completed	
9. Total elapsed days	
10. Other	

*To be completed by Supreme Court.

This report was submitted to the defendant's counsel and to the attorney for the state for such comments as either desired to make concerning its factual accuracy.

	D.A.	Defense Counsel
1. Comments are attached	(X)	(X)
2. Had no comments	()	()
3. Has not responded	()	()

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

Date 4/20/88 Judge L.T. Goff
 Judge, Criminal Court of Shelby County
 30th Judicial District, Division 24

**IN THE CRIMINAL COURT OF TENNESSEE
 FOR THE 30TH JUDICIAL DISTRICT AT MEMPHIS
 DIVISION 24**

STATE OF TENNESSEE

88-1443, 4, 5

VS. NO. (S) 88-1443, 4, 7, 8

CHARGE(S) MURDER 1

Range 4479

K.C. BOUNNAM

DEFENDANT

(KONG CHUNG BOUNNAM)

ORDER OVERRULING MOTION FOR NEW TRIAL

This Cause came on to be heard on a written MOTION FOR NEW TRIAL filed by the Defendant and upon the statements of counsel for the Defendant and the State of Tennessee. Which Motion and statements having been heard and fully considered by the Court, the Motion for New Trial is hereby OVERRULED, and the Court adopts the verdict of the Jury in the above cause.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the judgment heretofore imposed in the above cause on the 12 day of MARCH, 19 88 issue.

Entered this 12 day of March, 19 88.

A TRUE COPY ATTEST
 DATE 4/27/88
 NAME L. T. Goff
 CRIMINAL COURT CLERK

Judge

L.T. Goff

APPROVED

[Signature]
 Attorney for Defendant

Filed: 3-13-88
 William R. Kay, Clerk

[Signature]
 Assistant Attorney General

By: [Signature]

Attachment 20

**REPORT OF TRIAL JUDGE
IN FIRST DEGREE MURDER CASES¹**
IN THE CIRCUIT COURT FOR GILES COUNTY

FILED
MAR 21 2011
Clerk of the Courts

STATE OF TENNESSEE

Case No. 14861

V. Sentence of Death ()
or
Life Without Parole (X)
(3 counts / LWOP as to each)
(Concurrent Sentences)
or
Life Imprisonment ()

WILLIAM ANGEL, defendant

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. a. Status of Case: Original Trial (X) Retrial/Resentencing ()
b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime:
This defendant and co-defendant, Matthew Wood, on October 23, 2009, went to the rural home of Duane Thornton (38) and her two sons, Jerrod (16) and Anthony (9) late at night. The defendants carried gasoline with them. After stabilizing and setting the three victims, gasoline was poured on the bodies and throughout the house. The defendants left, bought more gasoline, and returned to the Thornton home before setting fire to victims, house, vehicle and dog.
2. How did the defendant plead? Guilty (X) Not Guilty ()
3. Was guilt determined with or without a jury?
With () Without (X)
(Defendant pled guilty)

¹A separate report must be submitted for each defendant convicted under T.C.A. § 39-13-202 irrespective of the sentence received. This includes defendants who have pleaded guilty to first-degree murder.

4. Separate Offenses:
a. Were other offenses tried in the same trial? Yes (X) No ()
b. If yes, list those offenses, disposition, and punishment:
Defendant was charged with and pled guilty to one count each of aggravated arson (25 year sentence in TDOC), aggravated burglary (6 years), aggravated cruelty to animals (2 years), setting fire to personal property (2 years), and theft of property under \$500 (11 months, 29 days). All sentences to run concurrently.
 5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes () No (X) (On trial / Defendant pled guilty)
 6. Did the defendant waive jury determination of punishment?
Yes (X) No () (Due to guilty plea)
 7. a. Did the State file a notice of intent to seek the death penalty?
Yes (X) No ()
b. Did the State file a notice of intent to seek life imprisonment without parole? Yes (X) No () (as part of death notice)
c. Did the State withdraw its notice of intent to seek the death penalty either formally or informally? Yes (X) No () (upon plea)
d. Who sentenced defendant? Judge (X) Jury () (due to plea)
e. What sentence was imposed? Death () Life Without Parole (X)
(Three Counts / LWOP as to each victim)
f. If life imprisonment, was it imposed as a result of a hung jury?
Yes () No (X) (No jury trial / defendant pled guilty)
 8. Was victim impact evidence introduced at trial? Yes () No (X) (No trial / defendant pled guilty)
 9. Aggravating Circumstances, T.C.A. § 39-13-204(f):
a. Were statutory aggravating circumstances found? Yes (X) No ()
b. Which of the following statutory aggravating circumstances were instructed and which were found? (Please note the version of the statutory aggravating circumstance instructed in the blocks provided when applicable, i.e., the 1989 version or the 1993 version.)
(No trial, as defendant pled guilty, will list those enumerated in death notice)
- | | Listed in notice | Found (by Court) |
|---|------------------|------------------|
| (1) Youth of the victim (1989 version) as to victim Anthony Thornton only | (X) | (X) |
| (2) Prior convictions | () | () |
| (3) Risk of death to others | () | () |

- | | | |
|---|-----|-----|
| (4) Murder for remuneration | () | () |
| (5) Heinous, atrocious, or cruel (1989 version) as to all three victims | (X) | (X) |
| (6) To avoid arrest or prosecution | () | () |
| (7) Committed in conjunction with another felony (1993 version) as to all three victims | (X) | (X) |
| (8) Committed while in custody | () | () |
| (9) Victim was a member of law enforcement, etc. | () | () |
| (10) Victim was a judge, district attorney, etc. | () | () |
| (11) Victim was elected official, etc. | () | () |
| (12) Mass murder (1989 version) as to all three victims | (X) | (X) |
| (13) Mutilation of the body | () | () |
| (14) Elderly or particularly vulnerable victim | () | () |

Relate any significant aspects of the aggravating circumstance(s) that influence the punishment: *Not Applicable (defendant pled guilty and agreed on punishment)*

c. Were the aggravating circumstances found supported by the evidence? Yes (X) No ()

10. Mitigating Circumstances, T.C.A. § 39-13-204(f):
a. Were the mitigating circumstances raised by the evidence?
Yes () No (X) (Not Applicable / defendant pled guilty and agreed on punishment)
b. If so, what mitigating circumstances were raised by the evidence?
Not Applicable (defendant pled guilty)
c. Relate any significant facts about the mitigating circumstances that influence the punishment. *Not Applicable (defendant pled guilty)*
d. If tried with a jury, was the jury instructed regarding all the circumstances indicated in 10(b) as mitigating circumstances?
Yes () No (X) (Not Applicable / defendant pled guilty)
If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted:
Not Applicable (defendant pled guilty)
11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that actual force be employed? Yes () No () (Not Applicable—no death sentence)

12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes () No (X)
If yes, explain: *Defendant claimed use of alcohol and marijuana.*
13. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.): *This is the strongest case for the death penalty that this judge has seen in 40 years, but the victims' family requested that the state agree to the defendant's offer of life without parole. The sentences are generally consistent though all cases are different.*
14. Brief impression of the trial judge as to conduct and/or effect of defendant at trial and sentencing: *The co-defendant, Matthew Wood, seemed intelligent and very "matter of fact" about the gruesome details of this case. He was the admitted leader in committing these crimes. Defendant Angel is not as intelligent as co-defendant Wood and was obviously the follower rather than the leader.*

B. DATA CONCERNING THE DEFENDANT²

1. Name: *Angel, William Charles Jr.*
2. Birth Date: *7/21/91*
3. Sex: *male*
4. Marital status: Never Married (X)
Married ()
Divorced ()
Spouse Dec'd ()
5. Race: *white*
6. Children: Number: *none*
Other dependents: *none*
7. Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes (X) No ()
8. Education: Highest Grade or Level Completed: *Grade 12, Special Ed.*
9. Intelligence level: Low (IQ below 70) _____
Med. (IQ 70 to 100) X
High (IQ above 100) _____
Not known _____
10. a. Was the issue of defendant's mental retardation under T.C.A.

²Defense counsel may omit any information that may, if disclosed, impair the interests of the client.

- § 39-13-203 raised? Yes () No (X) but examined
- b. If so, did the court find that the defendant was mentally retarded as defined in T.C.A. § 39-13-203(a)? Yes () No (X)
11. a. Was a psychiatric or psychological evaluation performed?
Yes (X) No ()
- b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation: Angel lacks self confidence and has limited social skills. He is uncomfortable relating to people. He reports positive relationship with both parents. Angel has trouble recognizing appropriate behavior and anticipating consequences. He is not at particularly high risk for addiction. He does not appear to be depressed. Angel reported that it hurts when he thinks about what happened and it makes him "mad when I sin." He reports that he feels hopeless when "I pray to God."
12. Employment record of defendant at or near time of offense, including if known, type of job, pay, dates job held and reason for termination: Not applicable - Full time student
13. Defendant's Military History, including type of discharge: N/A
14. a. Does the defendant have a record of prior convictions?
Yes () No (X)
- b. If yes, list the offenses, the dates of the offenses, and the sentences imposed: N/A
15. Was the defendant a resident of the community where the homicide occurred? Yes (X) No ()
16. Noteworthy physical or mental characteristics or disabilities of defendant:
Angel has normal physical traits for his age. Clear, bright eyes, excellent response to questions, excellent reason with attorneys and jail personnel. His school records reflect an IQ of 82. His evaluation reflects a full scale IQ of 74 which is at the 5th percentile for his age. He is diagnosed as borderline intellectual apt and his mental age is 13 years, 11 months. He was in special education since age 3.
17. Other significant data about the defendant:
Angel has limited academic skills. Reading single words at 2nd grade level, words in context, 6th grade level, spelling "abysmal." Angel has trouble remembering what people tell him, but does better with visual information. His attention to task was below average. Angel was well liked at school. He liked to please his teachers and friends, was cooperative and compliant.

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

DESEBE THORNTON

1. Age of victim: 11 2. Sex: Female
3. Race of victim: White 4. Marital Status: Never Married ()
5. Children: Number 2 Married ()
Agas 16, 9 (at death) Divorced (X)
Other dependents: _____ Spouse Dec'd ()

5

- (Victim's children killed in this incident)
6. Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes (X) No ()
7. Education: Highest Grade or Level Completed: Unknown
8. Employment at time of offense: Owner, Victory Gym, Paleski, TN
9. Criminal record: None
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): Ms. Thornton's son Jerrod attended high school with Co-Defendants Angel and Wood
11. Was the victim a resident of the community where the homicide occurred?
Yes (X) No ()
12. Was the victim held hostage during the crime?
X Yes - Less than one (1) hour
Yes - More than one (1) hour
No
- If yes, give details: The victim was not free to leave prior to the murder or up until the murder. This was accomplished by the use of a knife and physical force.
13. a. Describe the physical harm and/or injuries inflicted on the victim:
Angel held the 9-year-old victim while the victim was stabbed. He also carried the live victims into their home and helped burn all three.
- b. Was the victim tortured, state the nature of the torture: Yes. The victims were burned while they were still breathing.

ANTHONY THORNTON

1. Age of victim: 9 2. Sex: Male
3. Race of victim: White 4. Marital Status: Never Married (X)
5. Children: Number None Married ()
Agas _____ Divorced ()
Other dependents: None Spouse Dec'd ()
6. Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes () No (X) (killed in this incident)
7. Education: Highest Grade or Level Completed: 1st
8. Employment at time of offense: student
9. Criminal record: None
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): Anthony's older brother Jerrod attended high school with co-defendants Angel and Wood
11. Was the victim a resident of the community where the homicide occurred?
Yes (X) No ()
12. Was the victim held hostage during the crime?
X Yes - Less than one (1) hour
Yes - More than one (1) hour
No

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No

- If yes, give details: The victim was not free to leave prior to the murder or up until the murder. This was accomplished by the use of a knife and physical force.
13. a. Describe the physical harm and/or injuries inflicted on the victim:
Angel held the 9-year-old victim while the victim was stabbed. He also carried the live victims into their home and helped burn all three.
- b. Was the victim tortured, state the nature of the torture: Yes. The victims were burned while they were still breathing.

JERROD THORNTON

1. Age of victim: 16 2. Sex: Male
3. Race of victim: White 4. Marital Status: Never Married (X)
5. Children: Number: None Married ()
Agas _____ Divorced ()
Other dependents: _____ Spouse Dec'd ()
6. Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes () No (X) (killed in this incident)
7. Education: Highest Grade or Level Completed: 11th grade
8. Employment at time of offense: high school student
9. Criminal record: None
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): Attended high school with co-defendants Angel and Wood
11. Was the victim a resident of the community where the homicide occurred?
Yes (X) No ()
12. Was the victim held hostage during the crime?
X Yes - Less than one (1) hour
Yes - More than one (1) hour
No
- If yes, give details: The victim was not free to leave prior to the murder or up until the murder. This was accomplished by the use of a knife and physical force.
13. a. Describe the physical harm and/or injuries inflicted on the victim:
Angel held the 9-year-old victim while the victim was stabbed. He also carried the live victims into their home and helped burn all three.
- b. Was the victim tortured, state the nature of the torture: Yes. The victims were burned while they were still breathing.
14. Co-defendants:
a. Were there any co-defendants in the trial? Yes (X) No ()
b. If yes, what conviction and sentence were imposed on them? Co-defendant Matthew Wood pled guilty. Three counts first degree murder, life without parole, consecutive to each; felony first degree murder, merged with FDM; aggravated arson, 25 years concurrent to homicides; setting fire to personal property, 2 years concurrent; aggravated burglary, 6 years concurrent; theft, 11/29 concurrent; animal cruelty, 2 years concurrent.

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- aggravated burglary, 6 years concurrent; theft, 11/29 concurrent; animal cruelty, 2 years concurrent.
- c. Nature of co-defendant's role in offense: Matthew Wood stabbed all three victims and burned them while they were still breathing.
- d. Any further comments concerning co-defendants: N/A
15. Other Accomplices:
a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No (X)
- b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A
- c. Did the accomplice(s) testify at the defendant's trial? Yes () No () N/A

D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant? 3
(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)
2. Name of counsel:
Claudia Jack (District Public Defender)
Shirley Weems and Michelle VanDeRae (Assistant District Public Defenders)
3. Date counsel secured: 10/26/2009
4. How was counsel secured:
a. Retained by defendant ()
b. Appointed by court ()
c. Public defender (X)
5. If counsel was appointed by court, was it because:
a. Defendant unable to afford counsel (X)
b. Defendant refused to secure counsel ()
c. Other (explain): _____
6. How many years has counsel practiced law?
a. 0 to 5 Mr. Jack () Ms. Weems () Ms. VanDeRae ()
b. 5 to 10 () () ()
c. Over 10 (X) (X) (X)
7. What is the nature of counsel's practice?
a. Mostly civil () () ()
b. General () () ()
c. Mostly criminal (X) (X) (X)
8. Did counsel serve throughout the trial? Yes (X) No ()
9. If not, explain in detail: N/A (counsel served throughout trial)
10. Other significant data about defense representation:

8

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant? (Not Applicable—No trial, as defendant pled guilty)
2. Were members of defendant's race represented on the jury? Yes () No (X)
(Not Applicable—No trial, as defendant pled guilty)
3. How many of defendant's race were jurors? (None—no trial/defendant pled)
- a. Was a change of venue requested? Yes () No (X)
- b. If yes, was it granted? Yes () No () (N/A: no request)

F. CHRONOLOGY OF CASE

	Elapsed Days
1. Date of offense: 10/23/2009	
2. Date of arrest: 10/23/2009	0
3. Date Defendant pled guilty: 1/31/2011	466
4. Date sentence imposed: 1/31/2011	466
5. Date post-trial motions ruled on: N/A	
6. Date trial judge's report completed: 3/10/11	304
*7. Dated received by Supreme Court	
*8. Date sentence review completed	
*9. Total elapsed days	
10. Other	

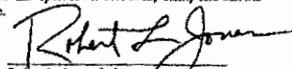
*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for such comments as either desired to make concerning its factual accuracy.

	State	Defense Counsel
1. Comments are attached	()	()
2. Had no comments	()	()
3. Has not responded	()	()

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

Date 3/18/11


Robert L. Jones, Judge
Circuit Court for Giles County
22nd Judicial District

**REPORT OF TRIAL JUDGE
IN FIRST DEGREE MURDER CASES¹
IN THE CIRCUIT COURT FOR GILES COUNTY**

FILED
MAR 21 2011
Clerk of the Court

STATE OF TENNESSEE

Case No. 14860

V. MATTHEW WOOD, defendant
Sentence of Death ()
or
Life Without Parole (X)
(3 counts (LWOP as to each))
(Consecutive Sentences)
or
Life Imprisonment ()

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. a. Status of Case: Original Trial (X) Re-trial/Resentencing ()
b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime: This defendant and co-defendant, William Ansel, on October 23, 2009, went to the rural home of Deane Thornton (88) and her two sons, Jarrod (16) and Anthony (9) late at night. The defendants carried gasoline with them. After stabbing and cutting the three victims, gasoline was poured on the bodies and throughout the house. The defendants left, bought more gasoline, and returned to the Thornton home before setting fire to victims' house, vehicle, and dog.
2. How did the defendant plead? Guilty (X) Not Guilty ()
3. Was guilt determined with or without a jury?
With () Without (X)
(Defendant pled guilty)
4. Separate Offenses:
a. Were other offenses tried in the same trial? Yes (X) No ()
b. If yes, list those offenses, disposition, and punishment:

¹A separate report must be submitted for each defendant convicted under T.C.A. § 39-13-202 irrespective of the sentence received. This includes defendants who have pleaded guilty to first-degree murder.

Defendant was charged with and pled guilty to one count each of aggravated arson (25 year sentence in TDOC), aggravated burglary (6 years), aggravated cruelty to animals (2 years), setting fire to personal property (2 years), and theft of property under \$500 (11 months, 29 days). All sentences to run concurrently, except three sentences of life without parole were consecutive for this defendant.

5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes () No (X) (No trial/Defendant pled guilty)
6. Did the defendant waive jury determination of punishment?
Yes (X) No () (Case to guilty plea)
7. a. Did the State file a notice of intent to seek the death penalty?
Yes (X) No ()
b. Did the State file a notice of intent to seek life imprisonment without parole? Yes (X) No () (as part of death notice)
c. Did the State withdraw its notices of intent to seek the death penalty either formally or informally? Yes (X) No () (upon plea)
d. Who sentenced defendant? Judge (X) Jury () (due to plea)
e. What sentence was imposed? Death () Life Without Parole (X)
(Three Counts / LWOP as to each victim)
f. If life imprisonment, was it imposed as a result of a hung jury?
Yes () No (X) (No jury trial/defendant pled guilty)
8. Was victim impact evidence introduced at trial? Yes () No (X) (No trial/defendant pled guilty)
9. Aggravating Circumstances, T.C.A. § 39-13-204(i):
a. Were statutory aggravating circumstances found? Yes (X) No ()
b. Which of the following statutory aggravating circumstances were instructed and which were found? (Please note the version of the statutory aggravating circumstance instructed in the blanks provided when applicable, i.e., the 1989 version or the 1995 version.)
(No trial, as defendant pled guilty; will list those enumerated in death notice)

	Listed in notice	Found (by Court)
(1) Youth of the victim (1989 version) as to victim Anthony Thornton only	(X)	(X)
(2) Prior convictions	()	()
(3) Risk of death to others	()	()
(4) Murder for remuneration	()	()
(5) Heinous, atrocious, or cruel (1989 version) as to all three victims	(X)	(X)

- (6) To avoid arrest or prosecution () ()
- (7) Committed in conjunction with another felony (1995 version) as to all three victims (X) (X)
- (8) Committed while in custody () ()
- (9) Victim was a member of law enforcement, etc. () ()
- (10) Victim was a judge, district attorney, etc. () ()
- (11) Victim was elected official, etc. () ()
- (12) Mass murder (1989 version) as to all three victims (X) (X)
- (13) Mutilation of the body () ()
- (14) Elderly or particularly vulnerable victim () ()

Relate any significant aspects of the aggravating circumstance(s) that influence the punishment. Not Applicable (defendant pled guilty and agreed on punishment)
c. Were the aggravating circumstances found supported by the evidence? Yes (X) No ()

10. Mitigating Circumstances, T.C.A. § 39-13-204(j):
a. Were the mitigating circumstances raised by the evidence? Yes () No (X) (Not Applicable (defendant pled guilty and agreed on punishment))
b. If so, what mitigating circumstances were raised by the evidence? Not Applicable (defendant pled guilty)
c. Relate any significant facts about the mitigating circumstances that influence the punishment. Not Applicable (defendant pled guilty)
d. If tried with a jury, was the jury instructed regarding all the circumstances included in 10(b) as mitigating circumstances? Yes () No (X) (Not Applicable (defendant pled guilty))

If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted: Not Applicable (defendant pled guilty)
11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes () No () (Not Applicable—no death sentence)
12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes () No ()

If yes, explain: Defendant claimed use of alcohol and marijuana, but conceded such use did not constitute a defense or even meaningful mitigation.

13. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.): This is the youngest case for the death penalty that this judge has seen in 40 years, but the victims' family requested that the State agree to the defendant's offer of life without parole. The sentences are generally consistent, though all cases are different.
14. Brief impression of the trial judge as to conduct and/or affect of defendant at trial and sentencing: This defendant seemed intelligent and very "matter of fact" about the gruesome details of this case. He was the admitted leader in committing these crimes.

B. DATA CONCERNING THE DEFENDANT²

- Name: Wood, Matthew James
- Birth Date: 8/12/59
- Sex: male
- Marital status: Never Married (X)
Married ()
Divorced ()
Spouse Dec'd ()
- Race: white
- Children: Number: none
Other dependents: none
- Parents: Father - Living? Yes () No (X)
Mother - Living? Yes (X) No ()
- Education: Highest Grade or Level Completed: 11th
- Intelligence level: Low (IQ below 70)
Med (IQ 70 to 100) X
High (IQ above 100)
Not known
- a. Was the issue of defendant's mental retardation under T.C.A. § 59-13-203 raised? Yes () No (X)
b. If so, did the court find that the defendant was mentally retarded as defined in T.C.A. § 59-13-203(a)? Yes () No ()

²Defense counsel may omit any information that may, if disclosed, impair the interests of the client.

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- a. Was a psychiatric or psychological evaluation performed? Yes (X) No ()
b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation: There was a psychological evaluation performed by the defense psychologist, however, further evaluation by a psychiatrist was not complete at the time the guilty plea was entered. The defendant was competent to stand trial and was competent at the time the events occurred. Counsel was not aware of any evidence that would have risen to a defense during the guilt innocence phase. After consulting with the psychologist, it was counsel's intention to assume mental health evidence only in the mitigation phase.
- Employment record of defendant at or near time of offense, including if known, type of job, pay, dates job held and reason for termination: N/A
- Defendant's Military History, including type of discharge: N/A
- a. Does the defendant have a record of prior convictions? Yes () No (X)
b. If yes, list the offenses, the dates of the offenses and the sentence imposed: N/A
- Was the defendant a resident of the community where the homicide occurred? Yes (X) No ()
- Noteworthy physical or mental characteristics or disabilities of defendant: N/A
- Other significant data about the defendant: The defendant was a senior in high school at the time of the events.

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

DESERE THORNTON

- Age of victim: 38
- Sex: Female
- Race of victim: White
- Marital Status: Never Married ()
Married ()
Divorced (X)
Spouse Dec'd ()
- Children: Number: 2
Age: 16, 9 (1st death) (Victim's children killed in this incident)
Other dependents: none
- Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes (X) No ()
- Education: Highest Grade or Level Completed: Unknown
- Employment at time of offense: Owner, Victory Gym, Palaski, TN
- Criminal record: None

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- Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): Ms. Thornton's son Jerrod attended high school with Co-Defendants Angel and Wood
 - Was the victim a resident of the community where the homicide occurred? Yes (X) No ()
 - Was the victim held hostage during the crime?
X Yes - Less than one (1) hour
 Yes - More than one (1) hour
 No
- If yes, give details: The victim was not free to leave prior to the murder or up until the murder. This was accomplished by the use of a knife and physical force.
- a. Describe the physical harm and/or injuries inflicted on the victim: Wood stabbed all three victims and burned them while they were still breathing.
b. Was the victim tortured, state the nature of the torture: Yes. They were burned while they were still breathing.

ANTHONY THORNTON

- Age of victim: 2
- Sex: Male
- Race of victim: White
- Marital Status: Never Married (X)
Married ()
Divorced ()
Spouse Dec'd ()
- Children: Number: None
Age: _____
Other dependents: _____
- Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes () No (X) (killed in this incident)
- Education: Highest Grade or Level Completed: 3rd grade
- Employment at time of offense: student
- Criminal record: None
- Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): Anthony's older brother Jerrod attended high school with co-defendants Angel and Wood
- Was the victim a resident of the community where the homicide occurred? Yes (X) No ()
- Was the victim held hostage during the crime?
X Yes - Less than one (1) hour
 Yes - More than one (1) hour
 No

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- If yes, give details: The victim was not free to leave prior to the murder or up to the murder. This was accomplished by the use of a knife and physical force.
- a. Describe the physical harm and/or injuries inflicted on the victim: Wood stabbed all three victims and burned them while they were still breathing.
b. Was the victim tortured, state the nature of the torture: Yes. They were burned while they were still alive.

JERROD THORNTON

- Age of victim: 16
 - Sex: Male
 - Race of victim: White
 - Marital Status: Never Married (X)
Married ()
Divorced ()
Spouse Dec'd ()
 - Children: Number: None
Age: _____
Other dependents: _____
 - Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes () No (X) (killed in this incident)
 - Education: Highest Grade or Level Completed: 11th grade
 - Employment at time of offense: high school student
 - Criminal record: None
 - Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): Attended high school with co-defendants Angel and Wood and had some hostilities with Wood in the past.
 - Was the victim a resident of the community where the homicide occurred? Yes (X) No ()
 - Was the victim held hostage during the crime?
X Yes - Less than one (1) hour
 Yes - More than one (1) hour
 No
- If yes, give details: The victim was not free to leave prior to the murder or up to the murder. This was accomplished by the use of a knife and physical force.
- a. Describe the physical harm and/or injuries inflicted on the victim: Wood stabbed all three victims and burned them while they were still breathing.
b. Was the victim tortured, state the nature of the torture: Yes. They were burned while they were still alive.
- Co-defendants:
a. Were there any co-defendants in the trial? Yes (X) No ()

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b. If yes, what conviction and sentence were imposed on them? William Angel, Jr. entered a plea. Three counts of first degree murder that merged with three counts of felony first degree murder. Life without parole, concurrent to each other, aggravated arson, 25 years to serve concurrent to homicides, setting fire to personal property, 2 years to serve concurrent, aggravated burglary, 6 years to serve concurrent, theft, 11/29 to serve concurrent, animal cruelty, 2 years concurrent.

c. Nature of co-defendant's role in offense: Angel held the 9-year-old victim while Wood stabbed him. He also carried the five victims into their house and helped burn them.

d. Any further comments concerning co-defendants: N/A

15. Other Accomplishes:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No (X)

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A

c. Did the accomplice(s) testify at the defendant's trial? Yes () No () N/A

D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant? 2

(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)

2. Name of counsel:

William Massey, Lorna McClusky, Ed Fowlkes

3. Date counsel secured: October 2009

4. How was counsel secured:

- a. Retained by defendant (X)
- b. Appointed by court ()
- c. Public defender ()

5. If counsel was appointed by court, was it because: N/A (retained counsel)

- a. Defendant unable to afford counsel ()
- b. Defendant refused to secure counsel ()
- c. Other (explain):

6. How many years has counsel practiced law?

	Mr. Massey	Ms. McClusky	Mr. Fowlkes
a. 0 to 5	()	()	()
b. 5 to 10	()	()	()
c. Over 10	(X)	(X)	(X)

7. What is the nature of counsel's practice?

- a. Mostly civil () () ()
- b. General () () ()

c. Mostly criminal (X) (X) (X)

8. Did counsel serve throughout the trial? Yes () No (X)

9. If not, explain in detail: No counsel served through guilty plea

10. Other significant data about defense representation: Although defendant retained counsel, defendant was later declared indigent for purposes of receiving services pursuant to Supreme Court Rule 13.

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant? (Not Applicable—No trial, as defendant pled guilty)

2. Were members of defendant's race represented on the jury? Yes () No (X) (Not Applicable—No trial, as defendant pled guilty) How many of defendant's race were jurors? (None—no trial/defendant pled)

3. a. Was a change of venue requested? Yes (X) No ()

b. If yes, was it granted? Yes (X) No () (venue only; trial would have been held in Giles County)

Reasons for change, if granted: Undue excitement/excessive publicity in Giles County

F. CHRONOLOGY OF CASE

	Elapsed Days
1. Date of offense: 10/23/2009	0
2. Date of arrest: 10/27/2009	4
3. Date Defendant pled guilty: 1/31/2011	466
4. Date sentence imposed: 1/31/2011	466
5. Date post-trial motions ruled on: N/A	
6. Date trial judge's report completed: 3/10/11	504
*7. Dated received by Supreme Court	
*8. Date sentence review completed	
*9. Total elapsed days	
10. Other	

*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for such comments as either desired to make concerning its factual accuracy.

	D.A.	Defense Counsel
1. Comments are attached	()	()
2. Had no comments	()	()
3. Has not responded	(X)	(X)

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

Date 3/18/11

Robert L. Jones
Robert L. Jones, Judge
Circuit Court for Giles County
22nd Judicial District

Attachment 21

**REPORT OF TRIAL JUDGE
IN FIRST DEGREE MURDER CASES**

IN THE CRIMINAL COURT OF HAMILTON COUNTY

STATE OF TENNESSEE

Case No. 240690

v. Sentence of Death ()
or
Life Without Parole (X)
or
Life Imprisonment ()

PETER BILLINGTON
(Defendant)

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. a. Status of Case: Original Trial (X) Retrial/Resentencing ()
- b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime: The defendant shot and killed his mother, his father, and his 21-year-old sister after a disagreement over money and property.
2. How did the defendant plead? Guilty (X) Not Guilty ()
3. Was guilt determined with or without a jury? With () Without (X)
4. Separate Offenses:
 - a. Were other offenses tried in the same trial? Yes (X) No ()
 - b. If yes, list those offenses, disposition, and punishment:
3 counts of first degree murder each with a sentence of life without parole
5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes () No () N/A- PLEA
6. Did the defendant waive jury determination of punishment? Yes (X) No ()
7. a. Did the State file a notice of intent to seek the death penalty? Yes (X) No ()
- b. Did the State file a notice of intent to seek life imprisonment without parole? Yes (X) No ()

- c. Were the aggravating circumstances found supported by the evidence? Yes () No () N/A- PLEA
10. Mitigating Circumstances, T.C.A. § 39-13-204(j): N/A- PLEA
 - a. Were the mitigating circumstances raised by the evidence? Yes () No () N/A- PLEA
 - b. If so, what mitigating circumstances were raised by the evidence?

	Yes	No
(1) No significant prior criminal history	()	()
(2) Extreme mental or emotional disturbance	()	()
(3) Participation or consent by victim	()	()
(4) Belief that conduct justified	()	()
(5) Minor accomplice	()	()
(6) Extreme duress or substantial domination	()	()
(7) Youth/advanced age of defendant	()	()
(8) Mental disease or defect or intoxication	()	()
(9) Other (explain):	()	()

(c) Relate any significant facts about the mitigating circumstances that influence the punishment. N/A- PLEA

(d) If tried with a jury, was the jury instructed regarding all the circumstances indicated in 10(b) as mitigating circumstances? Yes () No () N/A- PLEA
If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted:

11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes () No () N/A- PLEA

- c. Did the State withdraw its notice of intent to seek the death penalty either formally or informally? Yes (X) No () GUILTY PLEA
- d. Who sentenced defendant? Judge (X) Jury ()
- e. What sentence was imposed? Death () Life Without Parole (X)
- f. If life imprisonment, was it imposed as a result of a hung jury? Yes () No () N/A- PLEA
8. Was victim impact evidence introduced at trial? Yes () No () N/A- PLEA
9. Aggravating Circumstances, T.C.A. § 39-13-204(i): N/A- PLEA
 - a. Were statutory aggravating circumstances found? Yes () No () N/A- PLEA
 - b. Which of the following statutory aggravating circumstances were instructed and which were found? (Please note the version of the statutory aggravating circumstance instructed in the blanks provided when applicable, i.e., the 1989 version or the 1995 version.)

N/A- PLEA	Instructed	Found
(1) Youth of the victim	()	()
(2) Prior convictions	()	()
(3) Risk of death to others	()	()
(4) Murder for remuneration	()	()
(5) Heinous, atrocious, or cruel	()	()
(6) To avoid arrest or prosecution	()	()
(7) Committed in conjunction with another felony	()	()
(8) Committed while in custody	()	()
(9) Victim was a member of law enforcement, etc.	()	()
(10) Victim was a judge, district attorney, etc.	()	()
(11) Victim was elected official, etc.	()	()
(12) Mass murder	()	()
(13) Mutilation of the body	()	()
(14) Elderly or particularly vulnerable victim	()	()
(15) Other	()	()

Relate any significant aspects of the aggravating circumstance(s) that influence the punishment.

12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes () No ()
If yes, explain:
13. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.): The sentence in this case was appropriate and consistent with other cases
14. Brief impression of the trial judge as to conduct and/or affect of defendant at trial and sentencing: The defendant's conduct and affect at sentencing were appropriate.

B. DATA CONCERNING THE DEFENDANT

1. Name Billington, Peter Dominic 2. Birth Date 5/25/77
Last, First Middle mo./day/year
3. Sex male 4. Marital status: Never Married (X)
5. Race Caucasian Married ()
6. Children: Number 0 Divorced ()
Ages: _____ Spouse Dec'd ()
- Other dependents: _____
7. Parents: Father - Living? Yes () No (X)
Mother - Living? Yes () No (X)
8. Education: Highest Grade or Level Completed: 12th grade
9. Intelligence level: Low (IQ below 70) _____
Med. (IQ 70 to 100) _____
High (IQ above 100) _____
Not known _____
10. a. Was the issue of defendant's mental retardation under T.C.A. § 39-13-203 raised? Yes () No (X)
- b. If so, did the court find that the defendant was mentally retarded as defined in T.C.A. § 39-13-203(a)? Yes () No ()
11. a. Was a psychiatric or psychological evaluation performed? Yes (X) No ()

b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation: No significant diagnosis.

12. Employment record of defendant at or near time of offense, including if known, type of job, pay, dates job held and reason for termination: Student and part-time job in fast food
13. Defendant's Military History, including type of discharge: None
14. a. Does the defendant have a record of prior convictions? Yes () No (X)
b. If yes, list the offenses, the dates of the offenses and the sentences imposed:
- | Offense | Date | Sentence |
|---------|------|----------|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
15. Was the defendant a resident of the community where the homicide occurred? Yes (X) No ()
16. Noteworthy physical or mental characteristics or disabilities of defendant: None
17. Other significant data about the defendant:

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

1. Age of victims 50, 48, 21 2. Sex M, F, F
3. Race of victims Caucasian 4. Marital Status: Never Married () () (X)
Married (X)(X) ()
5. Children: Number 2, 2, 0 Divorced () (X) ()
Ages 21/26, 21/26, --- Spouse Dec'd () (X) ()
Other dependents _____
6. Parents: 50 yr old Father - Living? Yes () No () Unknown (X)
Mother - Living? Yes () No () Unknown (X)
48 yr old Father - Living? Yes () No () Unknown (X)
Mother - Living? Yes () No () Unknown (X)
21 yr old Father - Living? Yes () No (X) Unknown ()
Mother - Living? Yes () No (X) Unknown ()
7. Education: Highest Grade or Level Completed unknown, unknown, working on masters
8. Employment at time of offense unemployed, coca-cola company, student/working in law office
9. Criminal record none (all 3)
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): The victims were the defendant's immediate family, which included his father, mother, and sister.
11. Was the victim a resident of the community where the homicide occurred? Yes (X) (all 3) No ()
12. Was the victim held hostage during the crime?
Yes - Less than one (1) hour
Yes - More than one (1) hour
X (all 3) No
- If yes, give details:
13. a. Describe the physical harm and/or injuries inflicted on the victim: All three victims received multiple gunshot wounds.
b. Was the victim tortured, state the nature of the torture: The 21 year old victim was not tortured and it is unknown if the 48 year old victim was tortured. The 50 year old father was shot and while the father was lying on the floor bleeding but still conscious the defendant went upstairs, reloaded his gun and came back downstairs and shot his father again in the head, killing him.

5

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14. Co-defendants:
a. Were there any co-defendants in the trial? Yes () No (X)
b. If yes, what conviction and sentence were imposed on them?
c. Nature of co-defendant's role in offense:
d. Any further comments concerning co-defendants:
15. Other Accomplices:
a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No (X)
b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:
- c. Did the accomplice(s) testify at the defendant's trial? Yes () No ()

D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant? 4 (Original 2 withdrew early in proceedings)
2. Name of counsel: Leland Davis And John Cavett
3. Date counsel secured: 8/28/03
4. How was counsel secured:
a. Retained by defendant ()
b. Appointed by court (X)(both)
c. Public defender ()
5. If counsel was appointed by court, was it because:
a. Defendant unable to afford counsel (X)
b. Defendant refused to secure counsel ()
c. Other (explain):

6. How many years has counsel practiced law?
a. 0 to 5 ()
b. 5 to 10 ()
c. Over 10 (X)(both)
7. What is the nature of counsel's practice?
a. Mostly civil ()
b. General ()
c. Mostly criminal (X)(both)
8. Did counsel serve throughout the trial? Yes () No (X)
9. If not, explain in detail: Counsel replaced original attorneys after they were allowed to withdraw.
10. Other significant data about defense representation:

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant? N/A - PLEA
- a. Under 10% ()
b. 10% - 25% ()
c. 25% - 50% ()
d. 50% - 75% ()
e. 75% - 90% ()
f. Over 90% ()
2. Were members of defendant's race represented on the jury? Yes () No ()
How many of defendant's race were jurors? N/A - PLEA
3. a. Was a change of venue requested? Yes () No (X)
b. If yes, was it granted? Yes () No ()
Reasons for change, if granted:

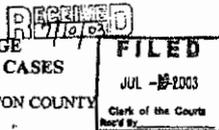
7

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Attachment 22

**REPORT OF TRIAL JUDGE
IN FIRST DEGREE MURDER CASES**

IN THE CRIMINAL COURT OF HAMILTON COUNTY



STATE OF TENNESSEE

Case No. 215403-405

Y. Sentence of Death ()
or
Life Without Parole ()
or
Life Imprisonment (X)

FRANK CASTEEL
(Defendant)

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. a. Status of Case: Original Trial () Retrial/Resentencing (X)
- b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime: The three victims went four-wheeling together and never returned. All three were shot and left dead in the woods and their four-wheelers were dumped in a separate location.
2. How did the defendant plead? Guilty () Not Guilty (X)
3. Was guilt determined with or without a jury? With (X) Without ()
4. Separate Offenses:
 - a. Were other offenses tried in the same trial? Yes (X) No ()
 - b. If yes, list those offenses, disposition, and punishment:
The defendant was found guilty of three first degree murders and received three life sentences. All of these sentences were ordered to run concurrently.
5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes (X) No ()
6. Did the defendant waive jury determination of punishment?
Yes () No () N/A
7. a. Did the State file a notice of intent to seek the death penalty?
Yes () No (X)
- b. Did the State file a notice of intent to seek life imprisonment without parole? Yes () No (X)

1

10. Mitigating Circumstances, T.C.A. § 39-13-204(j):
 - a. Were the mitigating circumstances raised by the evidence?
Yes () No () N/A
 - b. If so, what mitigating circumstances were raised by the evidence? N/A

	Yes	No
(1) No significant prior criminal history	()	()
(2) Extreme mental or emotional disturbance	()	()
(3) Participation or consent by victim	()	()
(4) Belief that conduct justified	()	()
(5) Minor accomplice	()	()
(6) Extreme duress or substantial domination	()	()
(7) Youth/advanced age of defendant	()	()
(8) Mental disease or defect or intoxication	()	()
(9) Other (explain):	()	()
 - c. Relate any significant facts about the mitigating circumstances that influence the punishment. N/A
 - d. If tried with a jury, was the jury instructed regarding all the circumstances indicated in 10(b) as mitigating circumstances?
Yes () No () N/A
If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted:
11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes () No () N/A
12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes () No (X)
If yes, explain:

3

- c. Did the State withdraw its notice of intent to seek the death penalty either formally or informally? Yes () No () N/A
- d. Who sentenced defendant? Judge (X) Jury ()
- e. What sentence was imposed? Death () Life Without Parole () Life (X)
- f. If life imprisonment, was it imposed as a result of a hung jury?
Yes () No (X)
8. Was victim impact evidence introduced at trial? Yes () No (X)
9. Aggravating Circumstances, T.C.A. § 39-13-204(i):
 - a. Were statutory aggravating circumstances found? Yes () No () N/A
 - b. Which of the following statutory aggravating circumstances were instructed and which were found? (Please note the version of the statutory aggravating circumstance instructed in the blanks provided when applicable, i.e., the 1989 version or the 1995 version.)

	Instructed	Found
(1) Youth of the victim	()	()
(2) Prior convictions	()	()
(3) Risk of death to others	()	()
(4) Murder for remuneration	()	()
(5) Heinous, atrocious, or cruel	()	()
(6) To avoid arrest or prosecution	()	()
(7) Committed in conjunction with another felony	()	()
(8) Committed while in custody	()	()
(9) Victim was a member of law enforcement, etc.	()	()
(10) Victim was a judge, district attorney, etc.	()	()
(11) Victim was elected official, etc.	()	()
(12) Mass murder	()	()
(13) Mutilation of the body	()	()
(14) Elderly or particularly vulnerable victim	()	()
- (15) Other _____ () ()
Relate any significant aspects of the aggravating circumstance(s) that influence the punishment. N/A

2

c. Were the aggravating circumstances found supported by the evidence? Yes () No () N/A

13. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.): The sentences in these cases are consistent with those imposed in similar cases that I have tried.
14. Brief impression of the trial judge as to conduct and/or affect of defendant at trial and sentencing: The defendant was well behaved throughout all stages of the trial.

B. DATA CONCERNING THE DEFENDANT

1. Name: Casteel, Frank 2. Birth Date: 03/02/1948
Last, First Middle mo/day/year
3. Sex: male 4. Marital status: Never Married ()
5. Race: Caucasian Married (X)
6. Children: Number 3 Divorced ()
Ages: 21, 34, 35 Spouse Dec'd ()
- Other dependents:
7. Parents: Father - Living? Yes () No (X)
Mother - Living? Yes (X) No ()
8. Education: Highest Grade or Level Completed: College
9. Intelligence level: Low (IQ below 70) _____
Med. (IQ 70 to 100) _____
High (IQ above 100) X
Not known _____
10. a. Was the issue of defendant's mental retardation under T.C.A. § 39-13-203 raised? Yes () No (X)
- b. If so, did the court find that the defendant was mentally retarded as defined in T.C.A. § 39-13-203(a)? Yes () No () N/A
11. a. Was a psychiatric or psychological evaluation performed?
Yes () No (X)
- b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation: N/A
12. Employment record of defendant at or near time of offense, including if known, type of job, pay, dates job held and reason for termination:
R. K. Haskew, Engineer, \$40,000 per year
13. Defendant's Military History, including type of discharge: N/A

4

14. a. Does the defendant have a record of prior convictions?
Yes () No (X)
- b. If yes, list the offenses, the dates of the offenses and the sentences imposed: N/A
15. Was the defendant a resident of the community where the homicide occurred? Yes (X) No ()
16. Noteworthy physical or mental characteristics or disabilities of defendant:

17. Other significant data about the defendant:

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

Victim 1- Earl Smock

1. Age of victim 23 2. Sex male
3. Race of victim caucasian 4. Marital Status: Never Married (X)
5. Children: Number _____ Married ()
Ages _____ Divorced ()
Other dependents _____ Spouse Dec'd (X)
6. Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes (X) No ()
7. Education: Highest Grade or Level Completed 12th grade
8. Employment at time of offense Air Force Staff Sergeant
9. Criminal record None
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): did not know each other
11. Was the victim a resident of the community where the homicide occurred?
Yes (X) No ()
12. Was the victim held hostage during the crime?
Yes - Less than one (1) hour _____
Yes - More than one (1) hour _____
X No

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9. Criminal record None
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): owned property in the same area but did not know each other
11. Was the victim a resident of the community where the homicide occurred?
Yes (X) No ()
12. Was the victim held hostage during the crime?
Yes - Less than one (1) hour _____
Yes - More than one (1) hour _____
X No
- If yes, give details: _____
13. a. Describe the physical harm and/or injuries inflicted on the victim:
The victim was shot and the body was left in the woods.
b. Was the victim tortured, state the nature of the torture: No

Victim 3- Kenneth Griffith

1. Age of victim 21 2. Sex male
3. Race of victim caucasian 4. Marital Status: Never Married ()
5. Children: Number 0 Married (X)
Ages _____ Divorced ()
Other dependents _____ Spouse Dec'd ()
6. Parents: Father - Living? Yes () No (X)
Mother - Living? Yes (X) No ()
7. Education: Highest Grade or Level Completed 12th grade

6

8. Employment at time of offense Air Force
9. Criminal record None
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): victim did not know the defendant
11. Was the victim a resident of the community where the homicide occurred?
Yes (X) No ()
12. Was the victim held hostage during the crime?
Yes - Less than one (1) hour _____
Yes - More than one (1) hour _____
X No
- If yes, give details: _____
13. a. Describe the physical harm and/or injuries inflicted on the victim:
The victim was shot and the body was left in the woods.
b. Was the victim tortured, state the nature of the torture: No
14. Co-defendants:
a. Were there any co-defendants in the trial? Yes () No (X)
b. If yes, what conviction and sentence were imposed on them?

c. Nature of co-defendant's role in offense:

d. Any further comments concerning co-defendants:

15. Other Accomplices:
a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No (X)
b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A
- c. Did the accomplice(s) testify at the defendant's trial? Yes () No () N/A

7

D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant? 1
(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)
2. Name of counsel: John Cavett
3. Date counsel secured: November 20, 2001
4. How was counsel secured:
a. Retained by defendant ()
b. Appointed by court (X)
c. Public defender ()
5. If counsel was appointed by court, was it because:
a. Defendant unable to afford counsel (X)
b. Defendant refused to secure counsel ()
c. Other (explain): _____
6. How many years has counsel practiced law?
a. 0 to 5 ()
b. 5 to 10 ()
c. Over 10 (X)
7. What is the nature of counsel's practice?
a. Mostly civil ()
b. General (X)
c. Mostly criminal ()
8. Did counsel serve throughout the trial? Yes (X) No ()
9. If not, explain in detail: _____
10. Other significant data about defense representation: I felt that Mr. Cavett was well prepared to try this case and felt that he did a good job in every phase of the trial.

8

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant?
 - a. Under 10% ()
 - b. 10% - 25% ()
 - c. 25% - 50% ()
 - d. 50% - 75% (X)
 - e. 75% - 90% ()
 - f. Over 90% ()
2. Were members of defendant's race represented on the jury? Yes (X) No ()
How many of defendant's race were jurors? 10
3. a. Was a change of venue requested? Yes (X) No ()
b. If yes, was it granted? Yes (X) No ()
Reasons for change, if granted: CHANGE OF VENIRE ONLY: DUE TO PUBLICITY

F. CHRONOLOGY OF CASE

- | | Elapsed Days |
|---|--------------|
| 1. Date of offense <u>7/9/88</u> | |
| 2. Date of arrest <u>4/15/97</u> | |
| 3. Date trial began <u>4/29/03 (RETRIAL)</u> | |
| 4. Date sentence imposed <u>5/7/03</u> | |
| 5. Date post-trial motions ruled on <u>6/16/03</u> | |
| 6. Date trial judge's report completed <u>7/08/03</u> | |
| *7. Dated received by Supreme Court | |
| *8. Date sentence review completed | |
| *9. Total elapsed days | |
| 10. Other | |

*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for such comments as either desired to make concerning its factual accuracy.

	D.A.	Defense Counsel
1. Comments are attached	()	()
2. Had no comments	()	()
3. Has not responded	()	()

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

Date July 8, 2003

James L. Weatherford
 Judge
 Court of _____ County
 Judicial District _____
James L. Weatherford, Senior Judge
 acting by designation and
 of the Circuit Judges of the
 of the State of Tennessee

Attachment 23

FILED

SEP 8 8 2014

Clerk of the Court

REPORT OF THE TRIAL JUDGE
IN FIRST DEGREE MURDER CASES¹

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY (DIVISION II)

STATE OF TENNESSEE

Case No. 2013-A-866

v. Sentence of Death ()

Or

Life Without Parole (X)

2 counts concurrent

Or

LORENZO JENKINS (Defendant) Life Imprisonment ()

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

- 1. a. Status of the Case: Original Trial (X) Retrial/Resentencing ()
- b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime:

Patrick Sullivan, 34; his wife Deborah Sullivan, 48; and their daughter Wendy Sullivan, 26, were stabbed to death by the defendant at the Sullivan family home in West Nashville. The two female victims were found inside the home; Mr. Sullivan's body was found in a shed in the yard.

Each victim suffered multiple stab wounds to the head and neck area; the State's statement of facts at the plea hearing indicated each victim had at least 15 stab wounds. Forensic testing indicated the wounds were consistent with coming from the same weapon; a police search of the home revealed a kitchen knife covered with blood and a broken blade; part of the blade was found near Patrick Sullivan's body. The defendant's blood was found throughout the crime scene.

After his arrest, the defendant was found in possession of drugs and jewelry from the Sullivan residence.

- 2. How did the defendant plead? Guilty (X) Not Guilty ()
- 3. Was guilt determined with or without a jury? With () Without (X)

¹ A separate report must be submitted for each defendant convicted under T.C.A. § 39-13-202 irrespective of the sentence received. This includes defendants who have pleaded guilty to first degree murder.

- 4. Separate Offenses:
 - a. Were other offenses tried in the same trial? Yes (X) No ()
 - b. If yes, list those offenses, disposition, and punishment: Defendant was charged with six counts of first degree murder: three counts of premeditated murder and three counts felony murder (murder in perpetration of robbery). Premeditated murder counts dismissed as part of plea.

Defendant pled guilty as charged to the felony murder counts related to the female victims and was sentenced to life without parole on each count. As to felony murder count regarding Mr. Sullivan, defendant pled guilty to second degree murder and received a 60-year sentence (agreed sentence outside the range). All sentences concurrent to each other but consecutive to petitioner's sentence for prior conviction.

- 5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes () No () [N/A: Plea]
- 6. Did the defendant waive jury determination of punishment? Yes (X) No ()
- 7. a. Did the State file a notice of intent to seek the death penalty? Yes (X) No ()
- b. Did the State file a notice of intent to seek life imprisonment without parole? Yes () No (X)
- c. Did the State withdraw its notice of intent to seek the death penalty, either formally or informally? Yes (X) (as part of plea) No ()
- d. Who sentenced the defendant? Judge (X) Jury ()
- e. What sentence was imposed? Death () Life Without Parole (X) Life ()
- f. If life imprisonment was imposed, was it imposed as a result of a hung jury? Yes () No (X)
- 8. Was victim impact evidence introduced at trial? Yes () No (X)
- 9. Aggravating Circumstances, T.C.A. § 39-13-204(i) Section omitted: no trial due to plea
- 10. Mitigating Circumstances, T.C.A. § 39-13-204(j) Section omitted: no trial due to plea
- 11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes () No () N/A: no death sentence
- 12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs, or alcohol which actually contributed to the offense? Yes (X) No () [Although unknown to the Court, there was substantial evidence of the defendant's use of alcohol and possibly controlled substances that day.]

B. DATA CONCERNING THE DEFENDANT²

- 1. Name: Jenkins, Lorenzo Kelvin 2. Birth Date: 30 June 1973
- 3. Sex: Male 4. Marital Status: Never Married (X) Married ()
- 5. Race: Black
- 6. Children: Number: 3 Divorced ()
- 7. Ages: 18, 13, 2 Spouse deceased ()
- 8. Parents: Father—living? Yes (X) No () Mother—living? Yes (X) No ()
- 9. Education: Highest Grade or Level Completed: 12
- 10. Intelligence Level: Low (IQ below 70) _____ Med. (IQ 70 to 100) X _____ High (IQ above 100) _____ Not known _____
- 10.a. Was the issue of defendant's intellectual disability under T.C.A. § 39-13-203 raised? Yes () No (X)
- b. If so, did the court find that the defendant had an intellectual disability as defined in T.C.A. § 39-13-203(a)? Yes () No (X)
- 11.a. Was a psychiatric or psychological evaluation performed? Yes (X) No ()
- b. If yes, summarize pertinent psychiatric or psychological information and/or diagnosis revealed by such evaluation: anxiety, depression, otherwise within normal limits
- 12. Employment record of defendant at or near time of offense, including (if known) type of job, pay, dates job held and reason for termination: Unknown
- 13. Defendant's military history, including type of discharge: US Navy - Dishonorable Discharge
- 14.a. Does the defendant have a record of prior convictions? Yes (X) No ()
- b. If yes, list the offenses, the dates of the offenses, and the sentences imposed:

Offense	Date	Sentence
1. Robbery	07/7/03	Conv: 16/04 3 years
2. Theft (10K to 60K)	05/1/10	Conv: 11/20/12 6 years
3. Aggravated Burglary	06/2/11/12	Conv: 11/20/12 6 years

² Defense counsel may omit any information that may, if disclosed, impair the client's interests.

15. Was the defendant a resident of the community where the homicide occurred?
 Yes (X) No () (The offense occurred in West Nashville, the defendant resided in Hendersonville.)
16. Noteworthy physical or mental characteristics or disabilities of defendant:
 Substance Abuse
17. Other significant data about the defendant:

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES¹

- Deborah Sullivan
 1. Age of victim: 48 2. Sex: Female
3. Race of victim: White 4. Marital Status: Never Married ()
 Married (X)
5. Children: Number: 2 (1 deceased) Divorced ()
 Ages: Spouse deceased (X)
 Husband killed in this incident
6. Parents: Father—living? Yes () No ()
 Mother—living? Yes () No ()
7. Education: Highest Grade or Level Completed:
 8. Employment at time of offense:
 9. Criminal record:
 10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, none, etc.):
11. Was the victim a resident of the community where the homicide occurred?
 Yes (X) No () (killed at her home)
12. Was the victim held hostage during the crime?
 Yes—Less than one (1) hour
 Yes—More than one (1) hour
 (X) No
 If yes, give details:
13. a. Describe the physical harm and/or injuries inflicted on the victim:
 Defendant stabbed victim multiple times with kitchen knife in the head and neck
- b. Was the victim tortured? If so, state the nature of the torture: No

¹ Information regarding Patrick Sullivan omitted; as to Mr. Sullivan, defendant pled guilty to second degree murder.

- Wendy Sullivan
1. Age of victim: 26 2. Sex: Female
3. Race of victim: White 4. Marital Status: Never Married ()
 Married ()
5. Children: Number: Divorced ()
 Ages: Spouse deceased ()
6. Parents: Father—living? Yes () No (X) killed in this incident
 Mother—living? Yes () No (X) killed in this incident
7. Education: Highest Grade or Level Completed:
 8. Employment at time of offense:
 9. Criminal record:
 10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, none, etc.):
11. Was the victim a resident of the community where the homicide occurred?
 Yes (X) No () (killed at her parents' home while visiting. She didn't reside there.)
12. Was the victim held hostage during the crime?
 Yes—Less than one (1) hour
 Yes—More than one (1) hour
 (X) No
13. a. Describe the physical harm and/or injuries inflicted on the victim:
 Defendant stabbed victim multiple times with kitchen knife in the head and neck
- b. Was the victim tortured? If so, state the nature of the torture: No
14. Co-defendants:
 a. Were there any co-defendants in the trial? Yes () No (X)
 b. If yes, what conviction(s) and sentence(s) were imposed on them? N/A
 c. Nature of co-defendant's role in offense: N/A
 d. Any additional comments concerning co-defendant(s): N/A
15. Other Accomplices:
 a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant?
 Yes () No (X)
 b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation, and the disposition of such charges, if known: N/A; defendant only person charged
 c. Did the accomplice(s) testify at the defendant's trial? Yes () No ()

[N/A: Plea]
 D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented the defendant? 2
 (If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report)
2. Name of counsel: Mike Eagle, Jim Simmons
3. Date counsel secured:
4. How was counsel secured:
 a. Retained by defendant ()
 b. Appointed by Court (X) (Mr. Simmons)
 c. Public Defender (X) (Mr. Eagle)
5. If counsel was appointed by court, was it because:
 a. Defendant unable to afford counsel (X)
 b. Defendant refused to secure counsel ()
 c. Other (explain) ()
6. How many years has counsel practiced law:
 a. 0 to 5 ()
 b. 5 to 10 ()
 c. Over 10 (X) (Both)
7. What is the nature of counsel's practice?
 a. Mostly civil ()
 b. General ()
 c. Mostly criminal (X) (Both)
8. Did counsel serve throughout the trial? Yes (X) (until plea) No ()
9. If not, explain in detail: N/A
10. Other significant data about defense representation:
 Mr. Eagle filed a motion to have the Public Defender's Office removed from the case due to the Office's caseload. The Court denied this motion but did appoint Mr. Simmons (private attorney) co-counsel.
- Counsel worked well with each other, the Court, and the defendant to bring this case to a resolution.

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant? N/A: No trial due to plea
 2. Were members of the defendant's race represented on the jury? N/A
 3. a. Was a change of venue requested? Yes () No (X)
 - b. If yes, was it granted? Yes () No () N/A
- Reasons for change, if granted: N/A

F. CHRONOLOGY OF CASE

	Elapsed Days
1. Date of offense: 10/22/2012	
2. Date of arrest: 11/9/2012	18
3. Date of plea: 8/29/2014	676
4. Date sentence imposed: 8/29/2014	676
5. Date post-trial motions ruled on: N/A	
6. Date trial judge's report completed: 9-18-14	
*7. Date received by Supreme Court	
*8. Date sentence review completed	
*9. Total elapsed days	
10. Other	

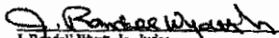
*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for such comments as either desired to make concerning its factual accuracy.

	State	Defense Counsel
1. Comments are attached	(J)	(J)
2. Had no comments	()	()
3. Has not responded	()	()

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

Date 9/18/2014


 J. Randall Wyatt, Jr., Judge
 Criminal Court for Davidson County
 20th Judicial District

Attachment 24

**REPORT OF TRIAL JUDGE
IN FIRST DEGREE MURDER CASES¹**

FILED
MAY 17 2010
Clerk of the Court

IN THE CRIMINAL COURT OF BRADLEY COUNTY

STATE OF TENNESSEE

Case No. 08-456

v. Sentence of Death ()
or
 MAURICE JOHNSON Life Without Parole (X)
 (Defendant) or
Life Imprisonment ()

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

- i. a. Status of Case: Original Trial (X) Retrial/Resentencing ()
- b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime:

The defendant and co-defendants robbed the victim, O.J. Blair; tied up victim's Blair, Higgins and Rogers and fatally shot each of the victims.

2. How did the defendant plead? Guilty () Not Guilty (X)
3. Was guilt determined with or without a jury? With (X) Without ()
4. Separate Offenses:
 - a. Were other offenses tried in the same trial? Yes (X) No ()
 - b. If yes, list those offenses, disposition, and punishment:

Especially Aggravated Robbery- defendant found guilty and sentenced to 20 years concurrent w/ life without parole

¹A separate report must be submitted for each defendant convicted under T.C.A. § 39-13-202 irrespective of the sentence received. This includes defendants who have pleaded guilty to first-degree murder.

5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes (X) No ()
6. Did the defendant waive jury determination of punishment? Yes () No (X)
7. a. Did the State file a notice of intent to seek the death penalty? Yes (X) No ()
- b. Did the State file a notice of intent to seek life imprisonment without parole? Yes (X) No ()
- c. Did the State withdraw its notice of intent to seek the death penalty either formally or informally? Yes () No (X)
- d. Who sentenced defendant? Judge () Jury (X)
- e. What sentence was imposed? Death () Life Without Parole (X) Life ()
- f. If life imprisonment, was it imposed as a result of a hung jury? Yes () No (X)
8. Was victim impact evidence introduced at trial? Yes (X) No ()
9. Aggravating Circumstances, T.C.A. § 39-13-204(j):
 - a. Were statutory aggravating circumstances found? Yes (X) No ()
 - b. Which of the following statutory aggravating circumstances were instructed and which were found? (Please note the version of the statutory aggravating circumstance instructed in the blanks provided when applicable, i.e., the 1989 version or the 1995 version.)

	Instructed	Found
(1) Youth of the victim	()	()
(2) Prior convictions	()	()
(3) Risk of death to others	()	()
(4) Murder for remuneration	()	()
(5) Heinous, atrocious, or cruel	(X)	(X)
(6) To avoid arrest or prosecution	()	()
(7) Committed in conjunction with another felony	()	()
(8) Committed while in custody	()	()
(9) Victim was a member of law enforcement, etc.	()	()
(10) Victim was a judge, district attorney, etc.	()	()
(11) Victim was elected official, etc.	()	()
(12) Mass murder	()	()
(13) Mutilation of the body	()	()

- (14) Elderly or particularly vulnerable victim () ()
- (15) Defendant Created Risk of Death to two Or more persons other than the victim (X) (X)

Other? _____

Relate any significant aspects of the aggravating circumstance(s) that influence the punishment.

c. Were the aggravating circumstances found supported by the evidence? Yes (X) No ()

10. Mitigating Circumstances, T.C.A. § 39-13-204(j):

- a. Were the mitigating circumstances raised by the evidence? Yes (X) No ()
- b. If so, what mitigating circumstances were raised by the evidence?

	Yes	No
(1) No significant prior criminal history	()	()
(2) Extreme mental or emotional disturbance	()	()
(3) Participation or consent by victim	()	()
(4) Belief that conduct justified	()	()
(5) Minor accomplice	(X)	()
(6) Extreme duress or substantial domination	()	()
(7) Youth/advanced age of defendant	()	()
(8) Mental disease or defect or intoxication	(X)	()
(9) Other (explain): ²	(X)	()

In addition to the catch all mitigating circumstance, the jury was instructed that they may consider residual doubt.

(c) Relate any significant facts about the mitigating circumstances that influence the punishment.

²In this space, the trial court should list by statutory designation any statutory aggravating factor that was instructed, but is not in the prior list.

³In the space provided, please list all nonstatutory mitigating factors raised by the evidence.

(d) If tried with a jury, was the jury instructed regarding all the circumstances indicated in 10(b) as mitigating circumstances? Yes () No (X)

If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted:

Only those circumstances supported by the proof were charged.

11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes (X) No ()
12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes (X) No ()

If yes, explain:

There was proof that the defendant had been drinking and using marijuana just prior to the murders. One of the witnesses indicated that the defendant told her he had never been that drunk before.

13. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.):

The sentence imposed is consistent with sentences imposed in similar cases tried before this court.

14. Brief impression of the trial judge as to conduct and/or affect of defendant at trial and sentencing:

Defendant's behavior was appropriate.

B. DATA CONCERNING THE DEFENDANT⁴

- Name Johnson Maurice A. 2. Birth Date: mo./day/year
Last, First Middle
3. Sex **MALE**
4. Marital status: Never Married (X)
Married ()
Divorced ()
Spouse Dec'd ()
5. Race: **BLACK**
6. Children: Number - 2 Ages - 19, 14
Other dependents: 0
7. Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes () No (X)
8. Education: Highest Grade or Level Completed: **Some college**
9. Intelligence level: Low (IQ below 70)
X Med. (IQ 70 to 100)
High (IQ above 100)
Not known
10. a. Was the issue of defendant's mental retardation under T.C.A. § 39-13-203 raised? Yes () No (X)
b. If so, did the court find that the defendant was mentally retarded as defined in T.C.A. § 39-13-203(a)? Yes () No ()
11. a. Was a psychiatric or psychological evaluation performed? Yes () No (X)

⁴Defense counsel may omit any information that may, if disclosed, impair the interests of the client.

- b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation:

12. Employment record of defendant at or near time of offense, including if known, type of job, pay, dates job held and reason for termination:

Defendant has some limited work experience in retail and food service. At the time of the offense his primary vocation was as a drug dealer.

13. Defendant's Military History, including type of discharge:

NONE

14. a. Does the defendant have a record of prior convictions?

Yes (X) No ()

- b. If yes, list the offenses, the dates of the offenses and the sentences imposed:

Various federal drug offenses; defendant currently serving a twenty-five year sentence in federal prison for a 2007 federal possession of cocaine offense.

15. Was the defendant a resident of the community where the homicide occurred? Yes () No (X)

16. Noteworthy physical or mental characteristics or disabilities of defendant:

17. Other significant data about the defendant:

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

****There were three victims in this case**

VICTIM BLAIR:

1. Age of victim: 2. Sex: **MALE**
3. Race of victim: **BLACK** 4. Marital Status: **Never Married (X)**
5. Children: Number- 0 Married ()
Ages- Divorced ()
Other dependents- Spouse Dec'd ()
6. Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes (X) No ()
7. Education: Highest Grade or Level Completed - **High School Graduate**
8. Employment at time of offense: **Unknown**
9. Criminal record: **Yes**
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.):
- Defendant and victim were acquaintances. They were involved in an altercation just prior to the murders.*
11. Was the victim a resident of the community where the homicide occurred? Yes (X) No ()
12. Was the victim held hostage during the crime?
X Yes - Less than one (1) hour
Yes - More than one (1) hour
No
- If yes, give details:
Victim was bound and held in home prior to being shot.
13. a. Describe the physical harm and/or injuries inflicted on the victim:
Victim was shot at close range.
b. Was the victim tortured, state the nature of the torture:
Victim was bound.

VICTIM HIGGINS:

- Age of victim: 2. Sex: **FEMALE**
3. Race of victim: **CAUCASION** 4. Marital Status: **Never Married (X)**
5. Children: Number- Married ()
Ages- Divorced ()
Other dependents- Spouse Dec'd ()
6. Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes (X) No ()
7. Education: Highest Grade or Level Completed - **High School Graduate**
8. Employment at time of offense: **Unknown**
9. Criminal record: **No**
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.):
- Defendant and victim were acquaintances. The victim does not appear to have been the target of the attack; but, shared an apartment with G.J. Blair, the victim of the robbery and was likely killed to eliminate her as a witness to the crime.*
11. Was the victim a resident of the community where the homicide occurred? Yes (X) No ()
12. Was the victim held hostage during the crime?
X Yes - Less than one (1) hour
Yes - More than one (1) hour
No
- If yes, give details:
Victim was bound and held in home prior to being shot.
13. a. Describe the physical harm and/or injuries inflicted on the victim:
Victim was shot at close range.
b. Was the victim tortured, state the nature of the torture:
Victim was bound and likely witnessed at least one of the other victims being shot.

11. Was the victim a resident of the community where the offense occurred?
Yes (X) No ()

12. Was the victim held hostage during the crime?
X Yes - Less than one (1) hour
Yes - More than one (1) hour
No

If yes, give details:

Victim was bound and held in home prior to being shot.

13. a. Describe the physical harm and/or injuries inflicted on the victim:
Victim was shot at close range.
b. Was the victim tortured, state the nature of the torture:
Victim was bound and likely witnessed the murder of at least one of the other victims.

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14. Co-defendants:

- a. Were there any co-defendants in the trial? Yes () No (X)
**** there are codefendants; but, they have yet to be tried.**
b. If yes, what conviction and sentence were imposed on them?
c. Nature of co-defendant's role in offense:
d. Any further comments concerning co-defendants:

15. Other Accomplices:

- a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No (X)
b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:

c. Did the accomplice(s) testify at the defendant's trial? Yes () No (X)

**** co-defendant called and invoked her Fifth Amendment privilege outside the presence of the jury.**

D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant? **TWO**
(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)
2. Name of counsel: **Steve Ward & Mitchell Bryant**
3. Date counsel secured: **Ward- 2/7/07; Bryant 12/1/08**
4. How was counsel secured: **appointed**

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- a. Retained by defendant ()
b. Appointed by court (X) Mitchell Bryant
c. Public defender (X) Steve Ward
5. If counsel was appointed by court, was it because:
a. Defendant unable to afford counsel (X)
b. Defendant refused to secure counsel ()
c. Other (explain):

6. How many years has counsel practiced law?

- a. 0 to 5 ()
b. 5 to 10 ()
c. Over 10 (X) BOTH

7. What is the nature of counsel's practice?

- a. Mostly civil ()
b. General (X) MITCHELL BRYANT
c. Mostly criminal (X) STEVE WARD

8. Did counsel serve throughout the trial? Yes (X) No ()

9. If not, explain in detail:

10. Other significant data about defense representation:

Prior to Bryant's appointment, another second chair attorney had been appointed. However, that counsel had to withdraw due to a conflict of interest involving his representation of a potential state witness.

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E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant?
a. Under 10% ()
b. 10% - 25% (X)
c. 25% - 50% ()
d. 50% - 75% ()
e. 75% - 90% ()
f. Over 90% ()
2. Were members of defendant's race represented on the jury? Yes (X) No ()
How many of defendant's race were jurors? **One**
3. Was a change of venue requested? Yes (X) No ()
[Change of venue was not specifically addressed under this indictment number; but, rather was raised in indictment number 06-614. Indictment 06-614 was dismissed and the issue of venue was never litigated.]
b. If yes, was it granted? Yes () No (X)
Reasons for change, if granted:

F. CHRONOLOGY OF CASE

- | | Elapsed Days |
|---|------------------|
| 1. Date of offense: | 2/14/99 |
| 2. Date of arrest: | 11/06 |
| 3. Date trial began: | 8/18/09 |
| 4. Date sentence imposed: | 8/25/09 11/20/09 |
| 5. Date post-trial motions ruled on: | 4/23/10 |
| 6. Date trial judge's report completed: | 5/12/10 |
| *7. Dated received by Supreme Court | |
| *8. Date sentence review completed | |
| *9. Total elapsed days | |
| 10. Other | |

*To be completed by Supreme Court

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Attachment 25

FILED
MAR 2 1963
SAMUEL L. HATHORN
CLERK
SUPREME COURT

25.04 REPORT OF TRIAL JUDGE - CAPITAL CASES*

IN THE CIRCUIT COURT OF THE STATE OF TENNESSEE

STATE OF TENNESSEE vs. PHILIP WAYNE ENLEY, JR. (Defendant)

Case No. 1914, 1915 and 1916
Sentence of Death ()
or
Life Imprisonment (X)
(3 life sentences)

A. DATA CONCERNING DEFENDANT

1. Name: Enley, Phillip Wayne 2. Birth Date: 1/17/53
Last First Middle No/Mo/Yr

3. Sex: M (X) 4. Marital Status: Never Married (X); Married ();
Divorced (); Spouse Deceased ()

5. Children: Number of Children: 0

Ages of Children: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, Over 18 (Circle Age of Each Child)

6. Father Living: Yes (X) No () 7. Mother Living: Yes (X) No ()

8. Education: Highest Grade Completed: (Circle One)
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

9. Intelligence Level: Low (IQ below 70) ()
Medium (IQ 70 to 100) (X) 79
High (IQ above 100) ()

10. Was a psychiatric or psychological evaluation performed? Yes (X) No ()

11. If examined, were character or behavior disorders found? Yes (X) No ()
If yes, please explain: Defendant found to be disorganized.

NOTE: This form is identical in substance to that required under SCR 47, but has been retyped to conserve space.

*A separate report must be submitted for each defendant convicted under P.C.A. 39-2401 as amended by Ch. 51, Public Acts of 1957, irrespective of punishment.

12. Was other pertinent psychiatric (and psychological) information was found? _____

13. Prior Work Record of Defendant:

Type Job Pay Dates Held Reason for Termination

- a. Wagon Construction, \$4.50/hr., 12/50-5/51 - lost transportation to work
- b. Construction, \$3.20/hr., 6/50-6/52 - lost and on parole time
- c. Wholesale delivery, \$10.00/day, 1/52-4/53 - no exact construction
- d. _____
- e. _____

14. List Any Noteworthy Physical Characteristics of the Defendant:

Vertical scar on forehead, scar on left arm near wrist

15. Defendant's Military History: none

16. Other Significant Data About the Defendant: Relied primarily by grandmother, Mrs. Darnett Rose

B. DATA CONCERNING TRIAL

- 1. Was the guilt determined with or without jury? With (X) Without ()
- 2. How did defendant plead? Guilty () Not Guilty (X)
- 3. Did the defendant waive jury determination of punishment? Yes () No (X)
- 4. What sentence was imposed? Death () Life Imprisonment (X)
- 5. Was life imprisonment imposed as a result of a "hung jury"? Yes () No (X)
- 6. Other significant data about the trial: tried with co-defendant
- 7. William Carroll
- 8. Were there any co-defendants in the trial? Yes (X) No ()
- 9. What conviction and sentence if any were imposed on co-defendants? _____
- 10. any comments concerning co-defendant? Co-defendant did not confess but this defendant did and implicated co-defendant.

C. OFFENSE-RELATED DATA

- 1. Were other separate (not lesser included) offenses tried in the same trial? Yes (X) No () If yes, list offenses: Assault with intent to commit murder in the first degree.
- 2. If other separate offenses were tried and resulted in punishment, list punishment: 20 years plus 3 years for use of firearm

3. Statutory aggravating circumstances found: Yes () No (X)

4. Which of the following statutory aggravating circumstances were instructed, and which were found?

	Instructed	Found
(a) The murder was committed against a person less than 12 years of age and the defendant was 18 years of age, or older.	()	()
(b) The defendant was previously convicted of one or more felonies, other than the present charge, which involve the use or threat of violence to the person.	()	()
(c) The defendant knowingly created a great risk of death to two or more persons, other than the victim murdered, during his act of murder.	(X)	()
(d) The defendant committed the murder for remuneration or the promise of remuneration, or employed another to commit the murder for remuneration or the promise of remuneration.	()	()
(e) The murder was especially heinous, atrocious, or cruel in that it involved torture or depravity of mind.	()	()
(f) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another.	()	()
(g) The murder was committed while the defendant was engaged in committing, or was an accomplice in the commission of, or was attempting to commit, or was fleeing after committing or attempting to commit, any first degree murder, arson, rape, robbery, burglary, larceny, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb.	()	()
(h) The murder was committed by the defendant while he was in lawful custody of in a place of lawful confinement or during his escape from lawful custody or from a place of lawful confinement.	()	()

(4) The murder was committed against any peace officer, correction official, corrections employee or fireman, who was engaged in the performance of his duties, and the defendant knew or reasonably should have known that such victim was peace officer, corrections official, corrections employee or fireman, engaged in the performance of his duties.

(5) The murder was committed against any present or former, judge, district attorney general or state attorney general, assistant district attorney general or assistant state attorney general due to or because of the exercise of his official duty or status and the defendant knew that the victim occupies or occupied said office.

(6) The murder was committed against a national, state, or local popularly elected official, due to or because of the official's lawful duties or status, and the defendant knew that the victim was such an official.

(7) "Mass murder" (X) ()

Select any significant aspects of the aggravating circumstances that influence the punishment: _____

(P.C.A. 39-2404, as amended by Ch. 31(5), Public Acts of 1957)

5. Were mitigating circumstances in evidence? Yes (X) No ()

6. Which mitigating circumstances were in evidence?

	Yes	No
(a) The defendant has no significant history of prior criminal activity.	(X)	()
(b) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.	()	(X)
(c) The victim was a participant in the defendant's conduct or consented to the act.	()	(X)
(d) The murder was committed under circumstances which the defendant reasonably believed to provide a moral justification for his conduct.	()	(X)
(e) The defendant was an accomplice in the murder committed by another person and the defendant's participation was relatively minor.	()	(X)
(f) The defendant acted under extreme duress or under the substantial domination of another person.	()	(X)
(g) The youth or advanced age of the defendant at the time of the crime.	(X)	()

- No (D)
- If answer is yes, what was the relationship?
 - Was the victim an employer or employee of defendant?
 - No (X)
 - Employer ()
 - Employee ()
 - Was the victim acquainted with the defendant?
 - No (X)
 - Casual Acquaintance ()
 - Friend ()
 - Was the victim local resident or transient in the community?
 - Resident (X)
 - Transient ()
 - Was the victim the same race as defendant? Yes (X) No ()
 - Was the victim the same sex as the defendant? Yes (D) No () (M 1 male, 2 fe-
 17. Was the victim held hostage during the crime?
 - No (X)
 - Yes - Less than an hour ()
 - Yes - More than an hour ()
 - Was the victim's reputation in the community?
 - Good ()
 - Fair ()
 - Unknown (X) (Venue
 changed)
 - Was the victim physically harmed or injured? Yes () No (X)
 If yes, state extent of harm or torture.
 - What was the age of the victim? Harold Katis, 36; Gary Katis, 31;
 and Diane Katis, 27.

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- If a weapon was used in commission of the crime, was it:
 - Poison ()
 - Motor vehicle ()
 - Blunt instrument ()
 - Sharp instrument ()
 - Firearm (X)
 - Other ()

- Does the defendant have a record of prior convictions? Yes (D) No ()
- If answer is yes, list the offenses, the dates of the offenses and the sentences imposed:

Offense	Date of Offense	Sentence Imposed
See attached Exhibit "A"		

- Was there evidence the defendant was under the influence of narcotics or dangerous drugs which directly contributed to the offense? Yes () No (X) but circumstantial evidence of use without evidence of actual contribution to the offense? Yes () No (X)
- Was there evidence the defendant was under the influence of alcohol which actually contributed to the offense? Yes () No (X)
- Was the defendant a local resident or transient in the community? Resident (X) Transient ()
- Other significant data about the offense: Defendant and co-defendant fired at six adults and four children under 11, killing three adults and injuring one adult.

D. REPRESENTATION OF DEFENDANT

- Date counsel secured: June 24, 1982 (both)
- How was counsel secured?
 - A. Initiated by defendant ()
 - B. Appointed by court (X)
 - C. Public defender ()
- If counsel was appointed by court, was it because:
 - A. Defendant unable to afford counsel? (X)
 - B. Defendant refused to secure counsel? ()
 - C. Other (explain) ()
- How many years has counsel practiced law?
 - A. 0 to 5 (X) both
 - B. 5 to 10 ()
 - C. Over 10 ()
- What is the nature of counsel's practice?
 - A. Mostly civil ()
 - B. General (X)
 - C. Mostly criminal ()

*If more than one counsel served, answer the above questions as to each counsel and attach to this report.

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FILED
 MAR 3 1982
 CLERK
 HAMMETT BARRICKER
 CLERK
 POLK COUNTY
 OREGON

26.04 REPORT OF TRIAL JUDGE: CAPITAL CASE

IN THE CIRCUIT COURT OF POLK COUNTY, OREGON

STATE OF OREGON Case No. 1916, 1915 and 1916

vs. Sentence of Death ()
 or
 WILLIAM CARROLL KELLEY (defendant) Life Imprisonment (X)
 (\$ Life sentences)

A. DATA CONCERNING DEFENDANT

- Name: Kelley, William Carroll Birth Date: 9/17/40
 Last First Middle W/ C/ R/
- Sex: M (X) F ()
- Marital Status: Never Married () Married (X)
 Divorced () Spouse Deceased ()
- Children: Number of Children: one
 Ages of Children: () 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
 15, 16, 17, 18, Over 18 (Circle Age of Each Child)
- Father Living: Yes (X) No () Mother Living: Yes (X) No ()
- Education: Highest Grade Completed: (Circle One)
 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19
- Intelligence Level: Low (IQ below 70) ()
 (If known) Medium (IQ 70 to 100) ()
 High (IQ above 100) () () estimated
- Was a psychiatric or psychological evaluation performed? Yes (X) No ()
- If examined, were character or behavior disorders found? Yes () No (X)
 If yes, please explain.

NOTE: This form is identical in substance to that required under SCR 47, but has been recyped to conserve space.

*A separate report must be submitted for each defendant convicted under ORCA. SCR 47 is repealed by OR. S. PUBLIC ACT OF 1977, Irrevocable of punishment.

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- What other pertinent psychiatric (and psychological) information was found? None
- Prior Work Record of Defendant:

Type Job	Pay	Dates Held	Reason for Termination
<u>Aladin Homes</u>	<u>\$3.50/hr.</u>	<u>1977-1981</u>	<u>lay-off</u>
- List Any Noteworthy Physical Characteristics of the Defendant: None
- Defendant's Military History: None
- Other Significant Data About the Defendant:

E. DATA CONCERNING TRIAL

- Was the guilt determined with or without jury? With (X) Without ()
- How did defendant plead? Guilty () Not Guilty (X)
- Did the defendant receive jury determination of punishment? Yes () No (X)
- What sentence was imposed? Death () Life Imprisonment (X)
- Was life imprisonment imposed as a result of a "hung jury"? Yes () No (X)
- Other significant data about the trial: Tried with co-defendant Phillip Wayne Kelley
- Were there any co-defendants in the trial? Yes (X) No ()
- What conviction and sentence if any were imposed on co-defendants? None
- Any comments concerning co-defendant: Co-defendant confessed and implicated this defendant.

C. OFFENSE-RELATED DATA

- Were other separate (not lesser included) offenses tried in the same trial? Yes (X) No () If yes, list offenses: Assault with the intent to commit murder in the first degree
- If other separate offenses were tried and resulted in punishment, list punishment: 20 years plus 5 years for non-of firearm

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- (a) The murder was committed against a person less than 12 years of age and the defendant was 18 years of age, or older. () ()
- (b) The defendant was previously convicted of one or more felonies, other than the present charge, which involve the use or threat of violence to the person. () ()
- (c) The defendant knowingly created a great risk of death to two or more persons, other than the victim murdered, during his act of murder. () ()
- (d) The defendant committed the murder for remuneration or the promise of remuneration, or employed another to commit the murder for remuneration or the promise of remuneration. () ()
- (e) The murder was especially heinous, atrocious, or cruel in that it involved torture or depravity of mind. () ()
- (f) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another. () ()
- (g) The murder was committed while the defendant was engaged in committing, or was an accomplice in the commission of, or was attempting to commit, or was fleeing after committing or attempting to commit, any first degree murder, arson, rape, robbery, burglary, larceny, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb. () ()
- (h) The murder was committed by the defendant while he was in lawful custody of in a place of lawful confinement or during his escape from lawful custody or from a place of lawful confinement. () ()

- (i) The capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was substantially impaired as a result of mental disease or defect or intoxication which was insufficient to establish a defense to the crime but which substantially affected his judgment. () ()
- (j) Other Character, background history, and physical condition. () ()

Relate any significant facts about the mitigating circumstance that influence the punishment imposition. Youth of defendant

- 7. If tried with a jury, was the jury instructed to consider the circumstances indicated in 6. as mitigating circumstances? Yes (X) No ()
- 8. Does the defendant have any physical or mental conditions which are significant? Yes () No (X)
- 9. Did you as "thirteenth juror" find that the defendant was guilty beyond a reasonable doubt? Yes (X) No ()
- 10. Was the victim related by blood or marriage to the defendant? Yes () No (X)
- 11. If answer is yes, what was the relationship?
- 12. Was the victim an employer or employee of defendant? No (X) Employee () Employer ()
- 13. Was the victim acquainted with the defendant? No (X) Casual Acquaintance () Friend ()
- 14. Was the victim local resident or transient in the community? Resident (X) Transient ()
- 15. Was the victim the same race as defendant? Yes (X) No ()
- 16. Was the victim the same sex as the defendant? Yes (X) No ()
- 17. Was the victim held hostage during the crime? No (X) Yes - Less than an hour () Yes - More than an hour ()
- 18. Was the victim's reputation in the community: Good () Bad () Unknown (X) (Venue changed)
- 19. Was the victim physically harmed or tortured? Yes () No (X) If yes, state extent of harm or torture:
- 20. What was the age of the victim? Martha Bellie, 26; Larry Bellie, 21; and Diane Bellie, 27.

- (k) The murder was committed against an employer or direct or indirect employee or former, judge, district attorney general or state attorney general, assistant district attorney general or assistant state attorney general due to or because of the exercise of his official duty or status and the defendant knew that the victim occupies or occupied said office. () ()
- (l) The murder was committed against a national, state, or local popularly elected official, due to or because of the official's lawful duties or status, and the defendant knew that the victim was such an official. () ()
- (m) "Mass Murder" (X) ()

Relate any significant aspects of the aggravating circumstances that influence the punishment:

(T.C.A. 39-2404, as amended by Ch. 31(2), Public Acts of 1977)

- 5. Were mitigating circumstances in evidence? Yes (X) No ()
- 6. Which mitigating circumstances were in evidence?

	Yes	No
(a) The defendant has no significant history of prior criminal activity:	(X)	()
(b) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance:	()	(X)
(c) The victim was a participant in the defendant's conduct or consented to the act:	()	(X)
(d) The murder was committed under circumstances which the defendant reasonably believed to provide a moral justification for his conduct:	()	(X)
(e) The defendant was an accomplice in the murder committed by another person and the defendant's participation was relatively minor:	()	(X)
(f) The defendant acted under extreme duress or under the substantial domination of another person:	(X)	()
(g) The youth or advanced age of the defendant at the time of the crime:	(X)	()

- 21. If a weapon was used in commission of the crime, was it:

Poison	()
Motor vehicle	()
Blunt instrument	()
Sharp instrument	()
Firearm	(X)
Other	()

- 22. Does the defendant have a record of prior convictions? Yes (X) No ()
- 23. If answer is yes, list the offenses, the dates of the offenses and the sentences imposed:

Offense	Date of Offense	Sentence Imposed
a.	See attached Exhibit A	
b.		
c.		

- 24. Was there evidence the defendant was under the influence of narcotics or dangerous drugs which actually contributed to the offense? Yes () No (X) but circumstantial evidence of use without evidence of...
- 25. Was there evidence the defendant was under the influence of alcohol actual consumption which actually contributed to the offense? Yes () No (X) contribution
- 26. Was the defendant a local resident or transient in the community? Resident (X) Transient () to offense.
- 27. Other significant facts about the offense: Defendant and co-defendant seized six adults and four children under 13. Killison threw adults and injuring one adult.

D. REPRESENTATION OF DEFENDANT

- 1. Date counsel secured: First 5/24/82 (second appointed mid-Sept., 1982)
- 2. How was counsel secured? A. Retained by defendant () B. Appointed by court (X) both C. Public Defender ()
- 3. If counsel was appointed by court, was it because:

A. Defendant unable to afford counsel? (X)
B. Defendant refused to secure counsel? ()
C. Other (explain): ()
- 4. How many years has counsel practiced law? A. 0 to 5 (X) B. 6 to 10 () C. over 10 ()
- 5. What is the nature of counsel's practice? A. Wholly civil () B. General (X) Both C. Wholly criminal ()

*If more than one counsel served, answer the above questions as to each counsel and attach to this report.

6. Did the same counsel serve throughout the trial? Yes () No ()
 7. If not, explain in detail: JERRY S. COLLEY served throughout with Delk Kennedy appointed to assist a week or so before trial and through the trial.
 8. Other significant facts about defense representation: JERRY S. COLLEY has most homicide defense experience of any attorney in the 11th Judicial Circuit - first homicide case for Delk Kennedy.

E. CRIMINAL CONSIDERATIONS

1. Was race raised by the defense as an issue in the trial? Yes () No (X)
 2. Did race otherwise appear as an issue in the trial? Yes () No (X)
 3. What percentage of the population of your county is the same race as the defendant?
 a. Under 10%.....()
 b. 10 to 25%.....()
 c. 25 to 50%.....()
 d. 50 to 75%.....()
 e. 75 to 90%.....(X)
 f. Over 90%.....()
 4. Were members of defendant's race represented on the jury? Yes (X) No ()
 How many of defendant's race were jurors? 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12
 5. If not, was there any evidence they were systematically excluded from the jury? Yes () No (X)
 6. Was there extensive publicity in the community concerning this case? Yes () No (X) Venue changed from original county.
 7. Was the jury instructed to disregard such publicity? Yes () No ()
 8. Was the jury instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when imposing sentence? Yes (X) No ()
 9. Was there any evidence that the jury was influenced by passion, prejudice, or any other arbitrary factor when imposing sentence? Yes () No (X)
 10. If answer is yes, what was that evidence?
 11. General comments of the Trial Judge concerning the appropriateness of the sentence imposed in this case: Capital punishment was justified, but life sentences were not really inexcusable.

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

March 1, 1962
 Date

Robert S. Colley
 Judge, CIRCUIT Court
 of GILES County

F. CHRONOLOGY OF CASE

	Date	Elapsed Days
1. Date of offense	6-23-61	0
2. Date of arrest	6-23-61	0
3. Date trial began	7-27-61	34
4. Date sentence imposed	7-27-61	34
5. Date post-trial motions ruled on	8-16-61	44
6. Date trial judge's report completed	2/1/62	251
7. Date received by Supreme Court		
8. Date sentence review completed		
9. Total elapsed days		
10. Other		

To be completed by Supreme Court. 167

6-23-61
Robert S. Colley

STATE OF TENNESSEE
 DEPARTMENT OF CORRECTION
 DIVISION OF PROBATION AND PAROLE
 715 BERRY BLDG. SUITE 200
 COLUMBIA, TENNESSEE 38401

November 1, 1962

Henry County Record Check

Re: William Carroll Kelley DOB: 8-17-60

3-12-79	Breach of Peace	City	24.50 OB
5-12-79	Public Profanity	City	49.50 OB
4-7-79	Assault and Battery	Gas Base	diminish cost to pros.
9-24-79	Dist. Private Property	City	38.75 OB
4-17-80	Breach of Peace by fighting	City	19.00 OB
7-14-80	Public Drunk	City	23.00 OB
6-4-80	Public Drunk	City	29.00 OB
6-25-80	Dr. w/o license	City	45.00 OB
5-3-82	Public Drunk	City	28.25 OB
6-21-82	Public Drunk	City	26.25 OB

Circuit # 1315 Forgery and Passing a Forged Instrument
 Don Rose Prosecutor/ 7-21-82 Arraigned

State Warrant reads: William Carroll Kelley did take check #6610177, being an unemployment check of Jessie L. Overton 2206 Circle Dr. Columbia, Tenn. from the mailbox of Jessie L. Overton. And take said check to Henry Package Store, Carvack Blvd, and sign the endorsement in the name of Jessie L. Overton and cash check at said package store. Check is in the amount of \$100.00.

Don Rose states that they have a signed confession and got the car's tag number.

This case is still pending.

Submitted by:
Howard Carlton
State Probation Office

Attachment 26

**REPORT OF TRIAL JUDGE
IN FIRST DEGREE MURDER CASES**
IN THE CRIMINAL COURT OF PUTNAM COUNTY

NOTARIAL PUBLIC
Warren Co. Indictment # F-8207

STATE OF TENNESSEE

Putnam Co. Case No. 01-0401-A
Warren Co. Indictment # F-8207

v. Sentence of Death ()
or
Life Without Parole (X)
RAYMOND DOUGLAS MYERS (Defendant)
or
Life Imprisonment ()

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. a. Status of Case: Original Trial (X) Retrial/Resentencing ()
- b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime: During the early morning hours of 7/30/99, three female victims were beaten and the victim's house set on fire. Although all the victims received potentially fatal wounds with a baseball bat and a wrench, the two minor victims actually died of smoke inhalation. The adult victim was beaten to death. The adult victim was supposedly going to give authorities information on the defendant's criminal activity. The defendant was the adult victim's live-in boyfriend.
2. How did the defendant plead? Guilty () Not Guilty (X)
3. Was guilt determined with or without a jury? With (X) Without ()
4. Separate Offenses:
 - a. Were other offenses tried in the same trial? Yes (X) No ()
 - b. If yes, list those offenses, disposition, and punishment: The defendant was found guilty of three first degree murder (four counts were merged to make two) and received three life without parole sentences. The defendant was also convicted of conspiracy to commit first degree murder but this was merged with one of the first degree murder convictions. The defendant was also convicted of aggravated arson and received 24 year sentence to be served at 100% pursuant to statute. All of these sentences.

- were ordered to run consecutively to each other and consecutively to a prior offense for which he was on bail at the time of these offenses.
5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes (X) No ()
 6. Did the defendant waive jury determination of punishment? Yes () No (X)
 7. a. Did the State file a notice of intent to seek the death penalty? Yes (X) No ()
 - b. Did the State file a notice of intent to seek life imprisonment without parole? Yes (X) No ()
 - c. Did the State withdraw its notice of intent to seek the death penalty either formally or informally? Yes (X) No ()
 - d. Who sentenced defendant? Judge () Jury (X)
 - e. What sentence was imposed? Death () Life Without Parole (X) three counts
 - f. If life imprisonment, was it imposed as a result of a hung jury? Yes () No () N/A
 8. Was victim impact evidence introduced at trial? Yes (X) No ()
 9. Aggravating Circumstances, T.C.A. § 39-13-204(j):
 - a. Were statutory aggravating circumstances found? Yes (X) No ()
 - b. Which of the following statutory aggravating circumstances were instructed and which were found? (Please note the version of the statutory aggravating circumstance instructed in the blanks provided when applicable, i.e., the 1989 version or the 1995 version.)

Victim Dianne Watts Count 1	Instructed	Found
(1) Youth of the victim	()	()
(2) Prior convictions, 1995	(X)	(X)
(3) Risk of death to others	()	()
(4) Murder for remuneration	()	()
(5) Heinous, atrocious, or cruel, 1995	(X)	()
(6) To avoid arrest or prosecution, 1995	(X)	(X)
(7) Committed in conjunction with another felony	()	()
(8) Committed while in custody	()	()
(9) Victim was a member of law enforcement, etc.	()	()
(10) Victim was a judge, district attorney, etc.	()	()
(11) Victim was elected official, etc.	()	()

(12) Mass murder, 1995	(X)	(X)
(13) Mutilation of the body	()	()
(14) Elderly or particularly vulnerable victim	()	()
(15) Other	()	()

Victim Jessica Watts Count 2	Instructed	Found
(1) Youth of the victim, 1995	(X)	(X)
(2) Prior convictions, 1995	(X)	()
(3) Risk of death to others	()	()
(4) Murder for remuneration	()	()
(5) Heinous, atrocious, or cruel, 1995	(X)	(X)
(6) To avoid arrest or prosecution, 1995	(X)	()
(7) Committed in conjunction with another felony, 1995	(X)	()
(8) Committed while in custody	()	()
(9) Victim was a member of law enforcement, etc.	()	()
(10) Victim was a judge, district attorney, etc.	()	()
(11) Victim was elected official, etc.	()	()
(12) Mass murder, 1995	(X)	(X)
(13) Mutilation of the body	()	()
(14) Elderly or particularly vulnerable victim	()	()
(15) Other	()	()

Victim Chelcie Smith Count 3	Instructed	Found
(1) Youth of the victim	()	()
(2) Prior convictions, 1995	(X)	()
(3) Risk of death to others	()	()
(4) Murder for remuneration	()	()
(5) Heinous, atrocious, or cruel, 1995	(X)	(X)
(6) To avoid arrest or prosecution, 1995	(X)	()
(7) Committed in conjunction with another felony, 1995	(X)	()
(8) Committed while in custody	()	()
(9) Victim was a member of law enforcement, etc.	()	()
(10) Victim was a judge, district attorney, etc.	()	()

(11) Victim was elected official, etc.	()	()
(12) Mass murder, 1995	(X)	(X)
(13) Mutilation of the body	()	()
(14) Elderly or particularly vulnerable victim	()	()
(15) Other	()	()

Victim Jessica Watts Count 4	Instructed	Found
(1) Youth of the victim, 1995	(X)	(X)
(2) Prior convictions, 1995	(X)	()
(3) Risk of death to others	()	()
(4) Murder for remuneration	()	()
(5) Heinous, atrocious, or cruel, 1995	(X)	()
(6) To avoid arrest or prosecution, 1995	(X)	(X)
(7) Committed in conjunction with another felony, 1995	()	()
(8) Committed while in custody	()	()
(9) Victim was a member of law enforcement, etc.	()	()
(10) Victim was a judge, district attorney, etc.	()	()
(11) Victim was elected official, etc.	()	()
(12) Mass murder, 1995	(X)	(X)
(13) Mutilation of the body	()	()
(14) Elderly or particularly vulnerable victim	()	()
(15) Other	()	()

Victim Chelcie Smith Count 5	Instructed	Found
(1) Youth of the victim	()	()
(2) Prior convictions, 1995	(X)	()
(3) Risk of death to others	()	()
(4) Murder for remuneration	()	()
(5) Heinous, atrocious, or cruel, 1995	(X)	(X)
(6) To avoid arrest or prosecution, 1995	(X)	(X)
(7) Committed in conjunction with another felony, 1995	(X)	()
(8) Committed while in custody	()	()
(9) Victim was a member of law enforcement, etc.	()	()
(10) Victim was a judge, district attorney, etc.	()	()

- (11) Victim was elected official, etc. () ()
 (12) Mass murder 1994 (X) (X)
 (13) Mutilation of the body () ()
 (14) Elderly or particularly vulnerable victim () ()
 (15) Other () ()

Relate any significant aspects of the aggravating circumstance(s) that influence the punishment.

c. Were the aggravating circumstances found supported by the evidence? Yes (X) No ()

10. Mitigating Circumstances, T.C.A. § 39-13-204(j):

a. Were the mitigating circumstances raised by the evidence? Yes (X) No ()

b. If so, what mitigating circumstances were raised by the evidence?

- | | Yes | No |
|---|-----|-----|
| (1) No significant prior criminal history | () | () |
| (2) Extreme mental or emotional disturbance | () | () |
| (3) Participation as co-conspirator | () | () |
| (4) Brief that conduct justified | () | () |
| (5) Minor accomplice | () | () |
| (6) Extreme duress or substantial domination | () | () |
| (7) Youth/advanced age of defendant | () | () |
| (8) Mental disease or defect or intoxication | () | () |
| (9) Other (explain): Whether the defendant did not receive encouragement from his family for an education, whether the defendant, having been raised by his father's parents and his uncle, was not provided a stable environment, whether the defendant's mother was an improper role model, for example, by teaching the defendant to use inflammatory language such as the phrase "I will kill you," on a regular basis without the requisite intent behind the statement, whether the defense witnesses were intimidated by the conduct of agents of the state, whether there is any criminal docket as to the defendant's aunt, whether the defendant is easily influenced and manipulated by others, including Johnny Lewis, whether the defendant has family and friends who love him and do not want to see him incarcerated for life without the possibility of parole, and the catch-all provision. | () | () |

the defendant, having been raised by his father's parents and his uncle, was not provided a stable environment, whether the defendant's mother was an improper role model, for example, by teaching the defendant to use inflammatory language such as the phrase "I will kill you," on a regular basis without the requisite intent behind the statement, whether the defense witnesses were intimidated by the conduct of agents of the state, whether there is any criminal docket as to the defendant's aunt, whether the defendant is easily influenced and manipulated by others, including Johnny Lewis, whether the defendant has family and friends who love him and do not want to see him incarcerated for life without the possibility of parole, and the catch-all provision.

(c) Relate any significant facts about the mitigating circumstances that influence the punishment.

- (g) If tried with a jury, was the jury instructed regarding all the circumstances indicated in 10(b) as mitigating circumstances? Yes (X) No ()
 If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted:

11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes () No () N/A
 12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes () No ()
 If yes, explain:
 13. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.): The sentence of the jury was appropriate to the proof and in the other cases I have tried.
 14. Brief impression of the trial judge as to conduct and/or affect of defendant at trial and sentencing: The defendant at all times appeared alert and attentive, participating in trial decisions with his attorney and investigator. Defendant showed no displeasure with his attorney's performance.

B. DATA CONCERNING THE DEFENDANT

1. Name: Myers, Raymond Douglas. 2. Birth Date: 06/16/1959
 Last, First Middle m./day/year
 3. Sex: male. 4. Marital status: Never Married ()
 5. Race/Caucasian Married (X)
 6. Children: Number 4 Divorced ()
 Ages: 8, 8, 17, 20 Spouse Dec'd ()
 Other dependents:

11. a. Was a psychiatric or psychological evaluation performed? Yes () No (X)

b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation:

12. Employment record of defendant at or near time of offense, including if known, type of job, pay, dates job held and reason for termination:
 Logging for various individuals.

13. Defendant's Military History, including type of discharge: N/A

14. a. Does the defendant have a record of prior convictions? Yes (X) No ()

b. If yes, list the offenses, the dates of the offenses and the sentences imposed:

- | Offense | Date | Sentence |
|------------------------|----------|---|
| 1. Public Intoxication | 10/27/81 | Fined \$10.00 and costs |
| 2. Strong Arm robbery | 10/27/81 | Amended to simple assault, 3 mo., suspended, serve 10 days, \$50 fine and costs |
| 3. Firearm Possession | 11/29/89 | Fined \$10.00 and costs. |

4. DUI 02/11/91 11 mo, 29 days, serve 48 hrs., \$250 fine and costs. Driver's license suspended 1 yr.
 5. Firearm Possession 02/07/00 6 mo., \$50 fine and costs. Forfeit weapon.
 6. Public Intoxication 02/07/99 \$10 fine and costs.
 7. Aggravated Assault 02/07/99 6 yrs., Range I
 15. Was the defendant a resident of the community where the homicide occurred? Yes (X) No ()
 16. Noteworthy physical or mental characteristics or disabilities of defendant:
 17. Other significant data about the defendant:

C. DATA CONCERNING VICTIM, CO-DEFENDANTS AND ACCOMPLICES

- Victim 1- Dianne Watts
 1. Age of victim: 42 2. Sex: female
 3. Race of victim: caucasian 4. Marital Status: Never Married ()
 5. Children: Number 2 Married ()
 Ages 10 and 19 Divorced ()
 Other dependents: Spouse Dec'd (X)
 6. Parents: Father - Living? Yes () No (X)
 Mother - Living? Yes () No (X)
 7. Education: Highest Grade or Level Completed
 8. Employment at time of offense: Disabled
 9. Criminal record: None Known
 10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): live-in significant other
 11. Was the victim a resident of the community where the homicide occurred? Yes (X) No ()

12. Was the victim held hostage during the crime?
 Yes - Less than one (1) hour
 Yes - More than one (1) hour
 No

If yes, give details: N/A
 13. a. Describe the physical harm and/or injuries inflicted on the victim:
The victim was beaten to death.
 b. Was the victim tortured, state the nature of the torture:

Victim 2- Jessica Watts

1. Age of victim 19 2. Sex female
 3. Race of victim caucasian 4. Marital Status: Never Married (X)
 5. Children: Number 0 Married ()
 Ages _____ Divorced ()
 Other dependents _____ Spouse Dec'd ()

6. Parents: Father - Living? Yes () No (X)
 Mother - Living? Yes () No (X) victim 1
 7. Education: Highest Grade or Level Completed 12th grade
 8. Employment at time of offense Student
 9. Criminal record None
 10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): daughter of victim 1 who was defendant's live-in significant other

11. Was the victim a resident of the community where the homicide occurred?
 Yes (X) No ()

12. Was the victim held hostage during the crime?
 Yes - Less than one (1) hour
 Yes - More than one (1) hour
 No

If yes, give details: N/A
 13. a. Describe the physical harm and/or injuries inflicted on the victim:
beaten in the head with a torque wrench and died of smoke inhalation while unconscious from beating
 b. Was the victim tortured, state the nature of the torture:

Victim 3- Chelsea Smith

1. Age of victim 13 2. Sex female
 3. Race of victim caucasian 4. Marital Status: Never Married (X)
 5. Children: Number 0 Married ()
 Ages _____ Divorced ()
 Other dependents _____ Spouse Dec'd ()

6. Parents: Father - Living? Yes (X) No ()
 Mother - Living? Yes (X) No ()
 7. Education: Highest Grade or Level Completed 7th grade
 8. Employment at time of offense student
 9. Criminal record None

10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): victim did not know the defendant

11. Was the victim a resident of the community where the homicide occurred?
 Yes (X) No ()

12. Was the victim held hostage during the crime?
 Yes - Less than one (1) hour
 Yes - More than one (1) hour
 No

If yes, give details: N/A
 13. a. Describe the physical harm and/or injuries inflicted on the victim:
beaten in the head with a torque wrench and died of smoke inhalation while unconscious from beating
 b. Was the victim tortured, state the nature of the torture:

14. Co-defendants:

- a. Were there any co-defendants in the trial? Yes (X) No ()
 b. If yes, what conviction and sentence were imposed on them?
Johnny Lee Lewis: Two counts of first degree murder receiving 20 years on each count; aggravated arson receiving a sentence of 25 years; all sentences consecutive (65 years); two co-defendants cases are still pending.
 c. Nature of co-defendant's role in offense:
Johnny Lewis assisted in the offense and the other codefendants conspired before and after
 d. Any further comments concerning co-defendants:
All defendants are being tried separately.

15. Other Accomplices:

- a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No (X)
 b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A

c. Did the accomplice(s) testify at the defendant's trial? Yes () No () N/A

D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant? 1
 (If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)
 2. Name of counsel: John Appman
 3. Date counsel secured: June 12, 2000
 4. How was counsel secured:
 a. Retained by defendant ()
 b. Appointed by court (X)
 c. Public defender ()
 5. If counsel was appointed by court, was it because:
 a. Defendant unable to afford counsel (X)
 b. Defendant refused to secure counsel ()
 c. Other (explain): _____
 6. How many years has counsel practiced law?
 a. 0 to 5 ()
 b. 5 to 10 ()
 c. Over 10 (X)

Originally, the defendant had two attorneys prior to the withdrawal of the death penalty notice.

7. What is the nature of counsel's practice?

- a. Mostly civil ()
 b. General ()
 c. Mostly criminal (X)
 8. Did counsel serve throughout the trial? Yes (X) No ()
 9. If not, explain in detail: _____

10. Other significant data about defense representation: Mr. Appman sought and received significant investigation, mitigation, fire investigation, etc. expert assistance on six parts orders. He received at least a "Volvo" if not a "Cadillac" defense.

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant?
 a. Under 10% ()
 b. 10% - 25% ()
 c. 25% - 50% ()
 d. 50% - 75% ()
 e. 75% - 90% (X)
 f. Over 90% ()
 2. Were members of defendant's race represented on the jury? Yes (X) No ()
 How many of defendant's race were jurors? 12
 3. a. Was a change of venue requested? Yes (X) No ()
 b. If yes, was it granted? Yes (X) No ()
 Reasons for change, if granted: racial publicity

F. CHRONOLOGY OF CASE

	Elapsed Days
1. Date of offense 7/30/99	0
2. Date of arrest 5/15/2000	
3. Date trial began 02/02/2002	
4. Date sentence imposed 02/11/2002	
5. Date post-trial motions ruled on 04/25/02	
6. Date trial judge's report completed	
*7. Dated received by Supreme Court	
*8. Date sentence review completed	
*9. Total elapsed days	
10. Other	

*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for such comments as either desired to make concerning its factual accuracy.

	D.A.	Defense Counsel
1. Comments are attached	()	()
2. Had no comments	()	()
3. Has not responded	()	()

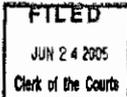
I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

5-21-02
Date

[Signature]
Judge
Court of Blaine County
Judicial District 13

(B) *[Signature]* - Supreme Ct. 5/15/02
for this was original by me 5/15/02

Attachment 27



REPORT OF TRIAL JUDGE
IN FIRST DEGREE MURDER CASES

IN THE CIRCUIT COURT OF RUTHERFORD COUNTY, TENNESSEE
AT MURFREESBORO

STATE OF TENNESSEE)
) Case No. 51621
)
 v.)
) Sentence of Death ()
) or
 PERCY PALMER,) Life Without Parole ()
) or
 Defendant.) Life Imprisonment (X)

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. a. Status of Case:
 Original Trial ()
 Retrial/Resentencing ()
 Plea Agreement (X)
 b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime:

On July 12, 2000, at approximately 2:22am, an officer was dispatched to the rear of K-Mart in reference to a possible drunk driver. Upon arriving at the K-Mart the officer found a vehicle with a white male, later identified as Troy Snell. The subject has been shot in the left temple. A t-shirt behind the victim's head had a name tag from Captain D's on it. It was noted the ignition key was to "on," but the battery was dead, all doors were unlocked except the driver's side, and a wallet, bottle and cigarette were found near the victim. An officer was dispatched to Captain D's when an exterminator called police after discovering two bodies in the walk-in cooler. The door to the cooler was open, and a black male subject (later identified as Bryan Spreight) was kneeling and folded over with a gunshot wound to the top of his head. A white male subject, later identified as Scott A. Meyers, was

laying on his left side facing the rear of the cooler. He was bound with an electrical cord and shot in the back of the head.

During the course of the investigation it was revealed that all three victims were shot with the same .22 caliber gun. There were no signs of struggle or forced entry. Two bags with the two evening deposits totaling \$1780 were missing. The restaurant's alarm system was off and all the doors were locked.

LeTonya Taylor and Percy Palmer were developed as suspects and were indicted on November 6, 2001 with three counts first degree murder, three counts felony murder, three counts especially aggravated kidnapping, and one count especially aggravated robbery. On January 26, 2005, Percy Palmer pled guilty in counts 4, 5 and 6 to felony murder. He received a TDOC sentence of life with the possibility of parole in each count. The counts are to run concurrent.

2. How did the defendant plead? Guilty (X) Not Guilty ()
 3. Was guilt determined with or without a jury? With () Without (X)
 4. Separate Offenses:
 a. Were other offenses tried in the same trial?
 Yes (X)
 No ()
 b. If yes, list those offenses, disposition, and punishment:
 Premeditated Murder (x3)—Dismissed
 Especially Aggravated Robbery (x1)—Dismissed
 Especially Aggravated Kidnapping (x3)—Dismissed
 5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes () No () N/A (X)
 6. Did the defendant waive jury determination of punishment?
 Yes (X) No ()
 7. a. Did the State file a notice of intent to seek the death penalty?
 Yes (X) No ()
 b. Did the State file a notice of intent to seek life imprisonment without

- parole? Yes (X) No ()
 c. Did the State withdraw its notice of intent to seek the death penalty either formally or informally? Yes () No (X)
 d. Who sentenced defendant? Judge (X) Jury ()
 e. What sentence was imposed?
 Death () Life Without Parole () Life With Parole (X)
 f. If life imprisonment, was it imposed as a result of a hung jury?
 Yes () No (X)
 8. Was victim impact evidence introduced at trial? Yes () No (X)
 9. Aggravating Circumstances, T.C.A. § 39-13-204(i): N/A
 a. Were statutory aggravating circumstances found?
 Yes () No () N/A (X)
 b. Which of the following statutory aggravating circumstances were instructed and which were found? (Please note the version of the statutory aggravating circumstance instructed in the blanks provided when applicable, i.e., the 1985 version or the 1995 version.)
 c. Relate any significant aspects of the aggravating circumstance(s) that influence the punishment: N/A
 d. Were the aggravating circumstances found supported by the evidence? Yes () No () N/A (X)
 10. Mitigating Circumstances, T.C.A. § 39-13-204(j): N/A
 a. Were the mitigating circumstances raised by the evidence?
 Yes () No () N/A (X)
 b. If so, what mitigating circumstances were raised by the evidence? N/A
 c. Relate any significant facts about the mitigating circumstances that influence the punishment: N/A
 d. If tried with a jury, was the jury instructed regarding all the circumstances indicated in 10(b) as mitigating circumstances?
 Yes () No () N/A (X)
 If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted: N/A
 11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes () No () N/A (X)

12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes () No () N/A (X)
 13. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.): The sentence is consistent with those imposed in similar cases.
 14. Brief impression of the trial judge as to conduct and/or affect of defendant at trial and sentencing: Mr. Palmer voluntarily accepted the plea agreement. He seemed to completely understand the procedure.

B. DATA CONCERNING THE DEFENDANT¹

1. Name Felner Percy Lee 2. Brth Date Feb. 3, 1980
 Last, First Middle mo./day/year
3. Sex Male 4. Marital status: Never Married (x)
 Married ()
5. Race Black Divorced ()
 6. Children: Number 2 Spouse Dec'd ()
 Ages: 7 & 8
 Other dependents: No
7. Parents: Father - Living? Yes (x) No ()
 Mother - Living? Yes (x) No ()
8. Education: Highest Grade or Level Completed: _____
9. Intelligence level: Low (IQ below 70) _____
 Med. (IQ 70 to 100) _____
 High (IQ above 100) _____
 Not known _____
10. a. Was the issue of defendant's mental retardation under T.C.A. § 39-13-203 raised? Yes (x) No ()
 b. If so, did the court find that the defendant was mentally retarded as defined in T.C.A. § 39-13-203(a)? Yes () No (x) *Motion struck upon plea*
11. a. Was a psychiatric or psychological evaluation performed? Yes (x) No ()
 b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation: Mild mental retardation, limited intellectual functioning
12. Employment record of defendant at or near time of offense, including if known, type of job, pay, dates job held and reason for termination:
Shoney's Restaurant (dishwasher) 2000 minimum wage
International Used Truck Center (cleaned trucks) 2000 minimum wage
Kentucky Fried Chicken (cook) 2000 minimum wage
Pillsbury Plant (sanitorial work) 2000

¹Defense counsel may omit any information that may, if disclosed, impair the interests of the client.

13. Defendant's Military History, including type of discharge:
N/A
14. a. Does the defendant have a record of prior convictions? Yes (x) No ()
 b. If yes, list the offenses, the dates of the offenses and the sentences imposed:
- | Offense | Date | Sentence |
|--------------------------------|--------------------|----------------|
| 1. <u>Theft</u> | <u>2001</u> | <u>1yr.</u> |
| 2. <u>Possession Marijuana</u> | <u>Late 1980's</u> | <u>Unknown</u> |
| 3. _____ | _____ | _____ |
| 4. _____ | _____ | _____ |
| 5. _____ | _____ | _____ |
| 6. _____ | _____ | _____ |
15. Was the defendant a resident of the community where the homicide occurred? Yes () No (x)
16. Noteworthy physical or mental characteristics or disabilities of defendant:
Many Tattoos
Mild mental retardation
17. Other significant data about the defendant:
Multigenerational dysfunction, abandoned as child, neglect

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

1. Age of victim 42 2. Sex M
 3. Race of victim W 4. Marital Status: Never Married ()
 Married (X)
 5. Children: Number 3 Divorced ()
 Ages 15, 12, 10 Spouse Dec'd ()
 Other dependents _____
6. Parents: Father - Living? Yes () No (X)
 Mother - Living? Yes (X) No ()
7. Education: Highest Grade or Level Completed UNKNOWN
8. Employment at time of offense CAPTAIN D'S RESTAURANT
9. Criminal record NONE
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): NONE
11. Was the victim a resident of the community where the homicide occurred? Yes () No (X)
12. Was the victim held hostage during the crime?
 X Yes - Less than one (1) hour
 Yes - More than one (1) hour _____
 No _____
- If yes, give details: DEFENDANT ENTERED CPATAIN D'S RESTAURANT AFTER RESTAURANT HAD CLOSED. DEFENDANTS ENTRANCE WAS UNKNOWN TO VICTIM WHO WAS CONFRONTED BY DEFENDANTS WITH GUN THEN TIED UP AND MADE TO KNEEL IN WALK IN COOLER. VICTIM WAS SHOT IN HEAD.
13. a. Describe the physical harm and/or injuries inflicted on the victim:
SINGLE GUNSHOT WOUND BY .22 CAL PISTOL
 b. Was the victim tortured, state the nature of the torture: NO OTHER INJURY OTHER THAN STATE IN 13a
14. Co-defendants:
 a. Were there any co-defendants in the trial? Yes (X) No ()
 b. If yes, what conviction and sentence were imposed on them?
3 COUNTS MURDER FIRST DEGREE (JURY VERDICT) LIFE WITHOUT PAROLE
2 COUNTS ESPECIALLY AGGRAVATED KIDNAPPING 20 YEARS 100%
1 COUNT ESPECIALLY AGGRAVATED ROBBERY 20 YEARS 100%

- c. Nature of co-defendant's role in offense: CO-DEFENDANT STATED MOTIVE FOR CRIME: 18 YEAR OLD VICTIM OWED HER MONEY FOR DRUGS. CO-DEFENDANT PARTICIPATED BY GETTING THEM IN RESTAURANT WHERE MONEY WAS TAKEN 3 RESTAURANT WORKERS WERE KILLED
- d. Any further comments concerning co-defendants:
 15. Other Accomplices:
 a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No ()
 b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:
 c. Did the accomplice(s) testify at the defendant's trial? Yes () No ()

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

1. Age of victim 29
 2. Sex M
 3. Race of victim B
 4. Marital Status: Never Married (X)
 5. Children: Number 1
Ages BELIEVE TO BE 13
Other dependents
 6. Parents: Father - Living? Yes () No () UNKNOWN
Mother - Living? Yes (X) No ()
 7. Education: Highest Grade or Level Completed UNKNOWN
 8. Employment at time of offense CAPTAIN D'S RESTAURANT
 9. Criminal record ARRESTED SIMPLE POSSESSION OF MARIJUANA 1998; ASSAULT 1999 (NOLLED)
 10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): NONE
 11. Was the victim a resident of the community where the homicide occurred? Yes () No (X)
 12. Was the victim held hostage during the crime?
X Yes - Less than one (1) hour
Yes - More than one (1) hour
No
- If yes, give details: DEFENDANT ENTERED CPATAIN D'S RESTAURANT AFTER RESTAURANT HAD CLOSED. DEFENDANTS ENTRANCE WAS UNKNOWN TO VICTIM WHO WAS CONFRONTED BY DEFENDANTS WITH GUN THEN TIED UP AND MADE TO KNEEL IN WALK IN COOLER. VICTIM WAS SHOT IN HEAD.
13. a. Describe the physical harm and/or injuries inflicted on the victim:
SINGLE GUNSHOT WOUND BY .22 CAL. PISTOL
 - b. Was the victim tortured, state the nature of the torture: NO OTHER INJURY OTHER THAN STATE IN 13a
14. Co-defendants:
 - a. Were there any co-defendants in the trial? Yes (X) No ()
 - b. If yes, what conviction and sentence were imposed on them?
3 COUNTS MURDER FIRST DEGREE (JURY VERDICT) LIFE WITHOUT PAROLE
2 COUNTS ESPECIALLY AGGRAVATED KIDNAPPING 20 YEARS 100%
1 COUNT ESPECIALLY AGGRAVATED ROBBERY 20 YEARS 100%

c. Nature of co-defendant's role in offense: CO-DEFENDANT STATED MOTIVE FOR CRIME: 18 YEAR OLD VICTIM OWED HER MONEY FOR DRUGS. CO-DEFENDANT PARTICIPATED BY GETTING THEM IN RESTAURANT WHERE MONEY WAS TAKEN 3 RESTAURANT WORKERS WERE KILLED

- d. Any further comments concerning co-defendants:
15. Other Accomplices:
 - a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No ()
 - b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:
 - c. Did the accomplice(s) testify at the defendant's trial?
Yes () No ()

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

1. Age of victim 18
 2. Sex M
 3. Race of victim W
 4. Marital Status: Never Married (X)
 5. Children: Number 0
Ages
Other dependents
 6. Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes (X) No ()
 7. Education: Highest Grade or Level Completed 11TH GRADE HIGH SCHOOL
 8. Employment at time of offense CAPTAIN D'S RESTAURANT
 9. Criminal record NONE KNOWN
 10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): CO-DEFENDANT STATED VCTIM OWED HER MONEY FOR DRUGS
 11. Was the victim a resident of the community where the homicide occurred? Yes (X) No ()
 12. Was the victim held hostage during the crime?
Yes - Less than one (1) hour
X Yes - More than one (1) hour
No
- If yes, give details: VICTIM CLOCKED OUT AT CAPTAIN D'S RESTAURANT AT 12:06 A.M. AND WAS FOUND IN HIS CAR A SHORT DISTANCE FROM THE RESTAURANT BY POLICE AT 2:25 A.M. HE WAS DECEASED FROM A SINGLE GUNSHOT WOUND.
13. a. Describe the physical harm and/or injuries inflicted on the victim:
SINGLE GUNSHOT WOUND BY .22 CAL. PISTOL TO RIGHT TEMPLE
 - b. Was the victim tortured, state the nature of the torture: NO OTHER INJURY OTHER THAN STATE IN 13a
14. Co-defendants:
 - a. Were there any co-defendants in the trial? Yes (X) No ()
 - b. If yes, what conviction and sentence were imposed on them?
3 COUNTS MURDER FIRST DEGREE (JURY VERDICT) LIFE WITHOUT PAROLE
2 COUNTS ESPECIALLY AGGRAVATED KIDNAPPING 20 YEARS 100%

1 COUNT ESPECIALLY AGGRAVATED ROBBERY 20 YEARS 100%

c. Nature of co-defendant's role in offense: CO-DEFENDANT STATED MOTIVE FOR CRIME: 18 YEAR OLD VICTIM OWED HER MONEY FOR DRUGS. CO-DEFENDANT PARTICIPATED BY GETTING THEM IN RESTAURANT WHERE MONEY WAS TAKEN 3 RESTAURANT WORKERS WERE KILLED

- d. Any further comments concerning co-defendants:
15. Other Accomplices:
 - a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No ()
 - b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:
 - c. Did the accomplice(s) testify at the defendant's trial?
Yes () No ()

D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant? 2
(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)
2. Name of counsel: James Simmons, Patrick McNally
3. Date counsel secured: February, 2002
4. How was counsel secured:
 - a. Retained by defendant ()
 - b. Appointed by court (x)
 - c. Public defender ()
5. If counsel was appointed by court, was it because:
 - a. Defendant unable to afford counsel (x)
 - b. Defendant refused to secure counsel ()
 - c. Other (explain): _____
6. How many years has counsel practiced law?
 - a. 0 to 5 ()
 - b. 5 to 10 ()
 - c. Over 10 (x)
7. What is the nature of counsel's practice?
 - a. Mostly civil ()
 - b. General ()
 - c. Mostly criminal (x)
8. Did counsel serve throughout the trial? Yes (x) No ()
9. If not, explain in detail: _____
10. Other significant data about defense representation: _____

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant? N/A

- a. Under 10% ()
- b. 10% - 25% ()
- c. 25% - 50% ()
- d. 50% - 75% ()
- e. 75% - 90% ()
- f. Over 90% ()

2. Were members of defendant's race represented on the jury? Yes () No () N/A
How many of defendant's race were jurors? _____
3. a. Was a change of venue requested? Yes (x) No ()
b. If yes, was it granted? Yes (x) No ()
Reasons for change, if granted: Publicity

Attachment 28

**REPORT OF TRIAL JUDGE
IN FIRST DEGREE MURDER CASES
IN THE CIRCUIT COURT OF COFFEE COUNTY**

FILED
JAN - 7 2019
Clerk of the Courts

STATE OF TENNESSEE

Case No. 38,306F

v. Sentence of Death ()
or
Life Without Parole (X)
or
Life Imprisonment ()
MATTHEW VICTOR PERKINS

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. a. Status of Case: Original Trial (X) Retrial/Resentencing ()
b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime: The defendant murdered his girlfriend and her two small children. He hid their bodies in bags in a closet.
2. How did the defendant plead? Guilty (X) Not Guilty ()
3. Was guilt determined with or without a jury? With () Without (X)
4. Separate Offenses: Three (3) Counts of First-Degree Murder
a. Were other offenses tried in the same trial? Yes () No (X)
b. If yes, list those offenses, disposition, and punishment:
5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes () No () N/A (X) (Plea)
6. Did the defendant waive jury determination of punishment? Yes () No () N/A (X) (Plea)
7. a. Did the State file a notice of intent to seek the death penalty? Yes (X) No ()

Relate any significant aspects of the aggravating circumstance(s) that influence the punishment.

c. Were the aggravating circumstances found supported by the evidence? Yes () No () N/A (X) (Plea)

10. Mitigating Circumstances, T.C.A. § 39-13-204(j): N/A (X) (Plea)
a. Were the mitigating circumstances raised by the evidence? Yes () No ()
b. If so, what mitigating circumstances were raised by the evidence?

	Yes	No
(1) No significant prior criminal history	()	()
(2) Extreme mental or emotional disturbance	()	()
(3) Participation as co-defendant or victim	()	()
(4) Belief that conduct justified	()	()
(5) Minor accomplice	()	()
(6) Extreme duress or substantial domination	()	()
(7) Youth/advanced age of defendant	()	()
(8) Mental disease or defect or intoxication	()	()
(9) Other (explain): 2	()	()

(c) Relate any significant facts about the mitigating circumstances that influence the punishment.

(d) If tried with a jury, was the jury instructed regarding all the circumstances indicated in 10(b) as mitigating circumstances? Yes () No ()

2 In the space provided, please list all nonstatutory mitigating factors raised by the evidence.

- b. Did the State file a notice of intent to seek life imprisonment without parole? Yes () No (X)
- c. Did the State withdraw its notice of intent to seek the death penalty either formally or informally? Yes (X) No () (Plea)
- d. Who sentenced defendant? Judge (X) Jury ()
- e. What sentence was imposed? Death () Life Without Parole (X)
- f. If life imprisonment, was it imposed as a result of a hung jury? Yes () No () N/A (X)

8. Was victim impact evidence introduced at trial? Yes () No () N/A (X) (Plea)

9. Aggravating Circumstances, T.C.A. § 39-13-204(i): N/A (X) (Plea)

- a. Were statutory aggravating circumstances found? Yes () No ()
- b. Which of the following statutory aggravating circumstances were instructed and which were found? (Please note the version of the statutory aggravating circumstance instructed in the blanks provided when applicable, i.e., the 1989 version or the 1995 version.)

	Instructed	Found
(1) Youth of the victim	()	()
(2) Prior convictions	()	()
(3) Risk of death to others	()	()
(4) Murder for remuneration	()	()
(5) Heinous, atrocious, or cruel	()	()
(6) To avoid arrest or prosecution	()	()
(7) Committed in conjunction with another felony	()	()
(8) Committed while in custody	()	()
(9) Victim was a member of law enforcement, etc.	()	()
(10) Victim was a judge, district attorney, etc.	()	()
(11) Victim was elected official, etc.	()	()
(12) Mass murder	()	()
(13) Mutilation of the body	()	()
(14) Elderly or particularly vulnerable victim	()	()
(15) Other:	()	()

In this space, the trial court should list by statutory designation any statutory aggravating factor that was instructed, but is not in the prior list.

If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted:

11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes () No () N/A (X)

12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes () No (X)
If yes, explain:

13. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.): The sentence was consistent with similar cases considering the issues presented. It was an agreed plea and sentence.

14. Brief impression of the trial judge as to conduct and/or effect of defendant at trial and sentencing: At the plea and pretrial proceedings, the defendant's conduct and effect were appropriate to the circumstances and without incident.

B. DATA CONCERNING THE DEFENDANT

1. Name Perkins, Matthew Victor 2. Birth Date 07/30/1980
Last, First Middle mo./day/year
3. Sex Male 4. Marital status: Never Married ()
5. Race Caucasian Married ()
6. Children: Number 2 Divorced (X)
Ages: 2, 12, 14 Spouse Dec'd ()
Other dependents: None
7. Parents: Father - Living? Yes () No () Unknown (X)
Mother - Living? Yes (X) No ()

8. Education: Highest Grade or Level Completed: 12th Grade
9. Intelligence level: Low (IQ below 70) _____
 Med (IQ 70 to 100) _____
 High (IQ above 100) _____
 Not known X
10. a. Was the issue of defendant's intellectual disability under T.C.A. § 39-13-203 raised? Yes () No (X)
- b. If so, did the court find that the defendant was intellectually disabled as defined in T.C.A. § 39-13-203(a)? Yes () No ()
11. a. Was a psychiatric or psychological evaluation performed? Yes (X) No ()
- b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation: Middle Tennessee Mental Health (4/27/11)
Post-Traumatic Stress Disorder
Joe S. Benn, Ph.D., P.T.S.D., Adjustment Disorder with Mixed Anxiety and Depressed Mood, Anxiety Disorder, NOS
12. Employment record of defendant at or near time of offense, including if known, type of job, pay, dates job held and reason for termination: Recruiter, U.S. Army, September 2008 through September 2010.
13. Defendant's Military History, including type of discharge: U.S. Army - 11 years, 3 months (DD 214 Attached) General under Other than Honorable Conditions
Deployed to Afghanistan and Iraq
14. a. Does the defendant have a record of prior convictions? Yes () No (X)
- b. If yes, list the offenses, the dates of the offenses and the sentences imposed:
- | Offense | Date | Sentence |
|----------|-------|----------|
| 1. _____ | _____ | _____ |
| 2. _____ | _____ | _____ |
| 3. _____ | _____ | _____ |
| 4. _____ | _____ | _____ |

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- Yes - More than one (1) hour
X No
- If yes, give details: _____
13. a. Describe the physical harm and/or injuries inflicted on the victim: This victim suffered knife wounds, including the slitting of her throat.
- b. Was the victim tortured, state the nature of the torture: Unknown
14. Co-defendants:
- a. Were there any co-defendants in the trial? Yes () No (X)
- b. If yes, what conviction and sentence were imposed on them? _____
- c. Nature of co-defendant's role in offense: N/A
- d. Any further comments concerning co-defendants: N/A
15. Other Accomplices:
- a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No (X)
- b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: N/A

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5. _____
6. _____
15. Was the defendant a resident of the community where the homicide occurred? Yes (X) No ()
16. Noteworthy physical or mental characteristics or disabilities of defendant: Disc dehydration at L4-5 Disc herniation at L3-4
Disc protrusion at L5-S1 level P.T.S.D./P.T.S.D. Adjustment Disorder with Mixed Anxiety and Depressed Mood; Anxiety Disorder NOS (as noted above).
17. Other significant data about the defendant: N/A

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

FOR VICTIM - STEPHANIE HERSHMAN

1. Age of victim 27 2. Sex Female
3. Race of victim Caucasian 4. Marital Status: Never Married ()
 Married ()
5. Children: Number 2 Married ()
 Ages 3 yrs. and 23 months Divorced (X)
 Other dependents 0 Spouse Dec'd ()
6. Parents: Father - Living? Yes () No () Unknown
 Mother - Living? Yes (X) No ()
7. Education: Highest Grade or Level Completed 12
8. Employment at time of offense Trade Envelope, Tullahoma, TN
9. Criminal record None
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): Boyfriend/girlfriend
11. Was the victim a resident of the community where the homicide occurred? Yes (X) No ()
12. Was the victim held hostage during the crime? Yes - Less than one (1) hour

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- family member, employer, friend, etc.): Mother's boyfriend
11. Was the victim a resident of the community where the homicide occurred? Yes (X) No ()
12. Was the victim held hostage during the crime? Yes - Less than one (1) hour
 Yes - More than one (1) hour
X No
- If yes, give details: _____
13. a. Describe the physical harm and/or injuries inflicted on the victim: This victim suffered multiple knife wounds, including the slitting of his throat. Victim also suffered bruising.
- b. Was the victim tortured, state the nature of the torture: Unknown
14. Co-defendants:
- a. Were there any co-defendants in the trial? Yes () No (X)

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- b. If yes, what conviction and sentence were imposed on them?

- c. Nature of co-defendant's role in offense:
N/A
- d. Any further comments concerning co-defendants:
N/A
15. Other Accomplices:
- a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No (X)
- b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:
N/A
- c. Did the accomplice(s) testify at the defendant's trial? Yes () No () N/A(X)

FOR VICTIM - JAYLON HERSHMAN

1. Age of victim 23 months 2. Sex Male
3. Race of victim Caucasian 4. Marital Status: Never Married (X)
5. Children: Number 0 Married ()
Ages NA Divorced ()
Other dependents 0 Spouse Dec'd ()
6. Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes () No (X)

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7. Education: Highest Grade or Level Completed NA
8. Employment at time of offense NA
9. Criminal record None
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): Mother's boyfriend
11. Was the victim a resident of the community where the homicide occurred? Yes (X) No ()
12. Was the victim held hostage during the crime?
Yes - Less than one (1) hour
Yes - More than one (1) hour
X No
If yes, give details: _____
13. a. Describe the physical harm and/or injuries inflicted on the victim: This victim endured beating which resulted in bruising. This victim also suffered multiple lacerations, including the slitting of his throat.
- b. Was the victim tortured, state the nature of the torture: Unknown
14. Co-defendants:
- a. Were there any co-defendants in the trial? Yes () No (X)
- b. If yes, what conviction and sentence were imposed on them?

- c. Nature of co-defendant's role in offense:
N/A
- d. Any further comments concerning co-defendants:
N/A

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15. Other Accomplices:
- a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No (X)
- b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:
N/A
- c. Did the accomplice(s) testify at the defendant's trial? Yes () No () N/A(X)

D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant? 2
(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)
2. Name of counsel: B. Campbell Smoot, Esq. and James A. Simmons, Esq.
3. Date counsel secured: B. Campbell Smoot, Esq. 2/9/11
James A. Simmons, Esq. 6/8/11
4. How was counsel secured:
- a. Retained by defendant ()
- b. Appointed by court (X) James A. Simmons, Esq.
- c. Public defender (X) B. Campbell Smoot, Esq.
5. If counsel was appointed by court, was it because:
- a. Defendant unable to afford counsel (X)
- b. Defendant refused to secure counsel ()
- c. Other (explain): _____
6. How many years has counsel practiced law?
- a. 0 to 5 ()
- b. 5 to 10 ()
- c. Over 10 (X) (Mr. Smoot and Mr. Simmons)
7. What is the nature of counsel's practice?

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- a. Mostly civil ()
- b. General ()
- c. Mostly criminal (X) (Mr. Smoot and Mr. Simmons)
8. Did counsel serve throughout the trial? Yes () No () N/A (X) (Plea)
9. If not, explain in detail: _____
10. Other significant data about defense representation: _____

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant?
- a. Under 10% ()
- b. 10% - 25% ()
- c. 25% - 50% ()
- d. 50% - 75% ()
- e. 75% - 90% ()
- f. Over 90% (X)
2. Were members of defendant's race represented on the jury?
Yes () No () N/A (X) (Plea)
- How many of defendant's race were jurors? N/A (Plea)
3. a. Was a change of venue requested? Yes () No (X)
- b. If yes, was it granted? Yes () No ()
- Reasons for change, if granted: _____

F. CHRONOLOGY OF CASE

	Elapsed Days
1. Date of offense <u>9/18/10</u>	
2. Date of arrest <u>9/23/10</u>	<u>5</u>
3. Date trial began <u>Plea 7/30/12</u>	<u>676</u>
4. Date sentence imposed <u>Plea 7/30/12</u>	<u>676</u>
5. Date post-trial motions ruled on <u>N/A (Plea)</u>	

- 6. Date trial Judge's report completed 1/2/2013
- *7. Dated received by Supreme Court _____
- *8. Date sentence review completed _____
- *9. Total elapsed days _____
- 10. Other _____

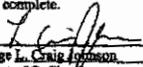
*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for such comments as either desired to make concerning its factual accuracy.

- | | D.A. | Defense Counsel |
|--------------------------|-------------------------------------|-------------------------------------|
| 1. Comments are attached | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Had no comments | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. Has not responded | <input type="checkbox"/> | <input type="checkbox"/> |

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

Date 1/2/13


 Judge L. Craig Johnson
 Court of Coffee County
 Judicial District 14th

Attachment 29

REPORT OF TRIAL JUDGE
IN FIRST DEGREE MURDER CASES
IN THE CRIMINAL COURT OF DAVIDSON COUNTY
DIVISION III

FILED
OCT 15 1989
Clerk of the Court

STATE OF TENNESSEE

Case No. 99-A-403

v. Sentence of Death ()
or
FREDRICK ROBINSON Life Without Parole (X)
(Defendant) Life Imprisonment ()

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. a. Status of Case: Original Trial () Retrial/Resentencing () Guilty Plea
b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime:

Defendant planned with co-defendant Nora Young to gain entry into victim's residence. Once inside, defendant Robinson shot and killed Paul Bailey, Shirley Stewart and Carlos Stewart. All victims were killed with multiple gunshot wounds from an automatic weapon. Defendant Robinson then fled and disposed of the gun. The next day, the defendant surrendered himself to police and admitted the shootings.

2. How did the defendant plead? Guilty (X) Not Guilty ()
3. Was guilt determined with or without a jury? With () Without (X)
Pled Guilty
4. Separate Offenses:
a. Were other offenses tried in the same trial? Yes () No ()
b. If yes, list those offenses, disposition, and punishment:
Defendant entered guilty pleas.
5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes () No () Not Applicable
6. Did the defendant waive jury determination of punishment? Yes () No () Not Applicable

¹A separate report must be submitted for each defendant convicted under T.C.A. § 39-13-201 irrespective of the sentence received. This includes defendants who have pleaded guilty to first-degree murder.

7. a. Did the State file a notice of intent to seek the death penalty? Yes () No (X)

The defendant entered guilty pleas before the State filed written notice, but had given verbal notice of its intent to do so.

- b. Did the State file a notice of intent to seek life imprisonment without parole? Yes () No () Not Applicable.
c. Did the State withdraw its notice of intent to seek the death penalty either formally or informally? Yes () No () Not Applicable
d. Who sentenced defendant? Judge () Jury () Plea
e. What sentence was imposed? Death () Life Without Parole (X)
3 Courts Concurrent
f. If life imprisonment, was it imposed as a result of a hung jury? Yes () No () Not Applicable
8. Was victim impact evidence introduced at trial? Yes () No () Not Applicable
9. Aggravating Circumstances, T.C.A. §39-13-204(j): Not Applicable
a. Were statutory aggravating circumstances found? Yes () No () Not Applicable

b. Which of the following statutory aggravating circumstances were instructed and which were found? (Please note the version of the statutory aggravating circumstance instructed in the blanks provided when applicable, i.e., the 1989 version or the 1993 version.)

	Found	Instructed
(1) Youth of the victim	()	()
(2) Prior convictions	()	()
(3) Risk of death to others	()	()
(4) Murder for remuneration	()	()
(5) Heinous, atrocious, or cruel	()	()
(6) To avoid arrest or prosecution	()	()
(7) Committed in conjunction with another felony	()	()
(8) Committed while in custody	()	()
(9) Victim was a member of law enforcement, etc.	()	()
(10) Victim was a judge, circuit attorney, etc.	()	()
(11) Victim was elected official, etc.	()	()
(12) Mass murder	()	()
(13) Mutilation of the body	()	()
(14) Elderly or particularly vulnerable victim	()	()
(15) Other	()	()

²In this space, the trial court should list by statutory designation any statutory aggravating factor that was instructed, but is not in the prior list.

Relate any significant aspects of the aggravating circumstance(s) that influenced the punishment.

The State would have probably given notice of (1) (12).

- c. Were the aggravating circumstances found supported by the evidence? Yes () No () Not Applicable

10. Mitigating Circumstances, T.C.A. §39-13-204(j): Not Applicable

- a. Were the mitigating circumstances raised by the evidence? Yes () No ()

b. If so, what mitigating circumstances were raised by the evidence?

- (1) No significant prior criminal history () ()
(2) Extreme mental or emotional disturbance () ()
(3) Participation or consent by victim () ()
(4) Belief that conduct justified () ()
(5) Mistake of fact () ()
(6) Extreme duress or substantial domination () ()
(7) Youth/adversity age of defendant () ()
(8) Mental disease or defect or intoxication () ()
(9) Other (explain): () ()

c. Relate any significant facts about the mitigating circumstances that influenced the punishment.

The defense would have probably given notice of 1, 2, & 4.

- d. If tried with a jury, was the jury instructed regarding all the circumstances indicated in 10(b) as mitigating circumstances? Yes () No () Not Applicable

If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted:

The defense would have probably given notice of 1, 2, & 4.

11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes () No () Not Applicable

12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes () No ()

³In the space provided, please list all nonstatutory mitigating factors raised by the evidence.

If yes, explain: Unknown.

13. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.):

Having prosecuted cases in which the death penalty is imposed for two or more murders committed at the same time, jurors often impose the severest punishment without extraordinary mitigating circumstances.

14. Brief impression of the trial judge as to conduct and/or affect of defendant at trial and sentencing:

During the guilty plea, the defendant was extremely polite and amenable. There was no concern about his understanding of the process.

B. DATA CONCERNING THE DEFENDANT

1. Name: Frederick Jerome Robinson, Jr. 2. Birth Date: 9-27-79
3. Sex: Male
4. Marital status: Never Married (X) Married ()
Divorced () Spouse Dec'd ()
5. Race: African American
6. Children: Number 1 Ages: 2
Other dependents:
7. Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes (X) No ()
8. Education: Highest Grade or Level Completed: 11th Grade
9. Intelligence level: Low (IQ below 70) _____
Med (IQ 70 to 100) X (1988, 1987, 1985)
High (IQ above 100) _____
Not known _____
10. a. Was the issue of defendant's mental retardation under T.C.A. § 39-13-203 raised? Yes () No (X)
- b. If no, did the court find that the defendant was mentally retarded as defined in T.C.A. § 39-13-203(a)? Yes () No ()
Not Applicable.
11. a. Was a psychiatric or psychological evaluation performed? Yes (X) No ()
- c. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation:

For this case, only a forensic evaluation was performed with findings that he was competent, non-committable, and that a defense of insanity could not be supported. Historically, other evaluations had more complete findings of ADHD, Adjustment Disorder with Depressed Mood, SED, Substance Abuse, Schizophrenia, Atypical Psychosis, Dysrhythmic Disorders.
12. Employment record of defendant at or near time of offense, including if known, type of job, pay, dates job held and reason for termination:
a. Casual only. No further information.
13. Defendant's Military History, including type of discharge:
None.

*This case counsel may seek any information that may, if disclosed, impair the interests of the client.

14. a. Does the defendant have a record of prior convictions?
Yes (X) No ()

d. If yes, list the offenses, the dates of the offenses and the sentences imposed: Juvenile record only.

Offense	Date	Sentence
a. Aggravated Robbery	1997	Committed to State Custody.
b. Poss. CS Resale	1997	Committed to State Custody.

*Defendant was on escape from a juvenile sentence when he committed these crimes.

15. Was the defendant a resident of the community where the homicide occurred? Yes (X) No ()

16. Noteworthy physical or mental characteristics or disabilities of defendant:

17. Other significant data about the defendant:

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

1. Age of victim 1: 53
Age of victim 2: 21
Age of victim 3: 20
2. Sex of victim 1: Female
Sex of victim 2: Male
Sex of victim 3: Male
3. Race of victim 1: African American
Race of victim 2: African American
Race of victim 3: African American
4. Marital Status - victim 1: Never Married () Married ()
Divorced (X) Spouse Dec'd ()
Marital Status - victim 2: Never Married () Married () ?
Divorced () Spouse Dec'd ()
Marital Status - victim 3: Never Married (X) Married ()
Divorced () Spouse Dec'd ()
5. Children - victim 1: Number: 6 Ages: All Adults
Other dependents:
Children - victim 2: Number: 0 Ages:
Other dependents:
Children - victim 3: Number: 0 Ages:
Other dependents:
6. Parents victim 1: Father - Living? Yes () No () ?
Mother - Living? Yes (X) No ()
Parents victim 2: Father - Living? Yes (X) No ()
Mother - Living? Yes () No (X) Killed with him.
Parents victim 3: Father - Living? Yes (X) No ()
Mother - Living? Yes () No (X)
7. Education: Highest Grade or Level Completed - victim 1: ?
Education: Highest Grade or Level Completed - victim 2: 9th grade
Education: Highest Grade or Level Completed - victim 3: 12th grade
8. Employment at time of offense - victim 1: Wasn't working.
Employment at time of offense - victim 2: Wasn't working.
Employment at time of offense - victim 3: ?

9. Criminal record - victim 1: Yes

Criminal record - victim 2: Multiple misdemeanors. Felony drug offenses pending were abated by death.

Criminal record - victim 3: Pending drug cases which were abated by death.

10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): Acquaintances. All victims.

11. Was the victim a resident of the community where the homicide occurred? Yes (X) No () All victims.

12. Was the victim held hostage during the crime?
Yes - Less than one (1) hour _____
Yes - More than one (1) hour _____
No X

If yes, give details: _____

13. a. Describe the physical harm and/or injuries inflicted on the victim:
Victim 1: Two (2) gunshot wounds. One (1) of the face and one (1) of the chest.

Victim 2: Multiple gunshot wounds with perforation of the brain, liver, and right lung.

Victim 3: Multiple gunshot wounds to head and chest.

- b. Was the victim tortured, state the nature of the torture: No.

14. Co-defendants:
a. Were there any co-defendants in the trial? Yes (X) No ()

b. If yes, what conviction and sentence were imposed on them?
Pending.

- c. Nature of co-defendant's role in offense:

Defendant's relative who had earlier pawned this defendant's handgun to victim's. Co-defendant obtained entry in to the residence and allowed defendant to enter. Co-defendant disposed of weapon.

- d. Any further comments concerning co-defendants:

15. Other Accomplices:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes (X) No ()

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:

Co-defendant's case is still pending.

c. Did the accomplice(s) testify at the defendant's trial? Yes () No (X)

D. REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant? 3
(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)

2. Name of counsel: Ralph Newman

3. Date counsel secured: 7-5-98

4. How was counsel secured:

- a. Retained by defendant ()
b. Appointed by court ()
c. Public defender (X)

5. If counsel was appointed by court, was it because:

- a. Defendant unable to afford counsel (X)
b. Defendant refused to secure counsel ()
c. Other

(explain): _____

6. How many years has counsel practiced law?

- a. 0 to 5 ()
b. 5 to 10 (X)
c. Over 10 ()

7. What is the nature of counsel's practice?

- a. Mostly civil ()
b. General ()
c. Mostly criminal (X)

8. Did counsel serve throughout the trial? Plea Yes (X) No ()

9. If not, explain in detail: _____

10. Other significant data about defense representation: _____

(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)

2. Name of counsel: John Lawson

3. Date counsel secured: 7-5-98

4. How was counsel secured:

- a. Retained by defendant ()
b. Appointed by court ()
c. Public defender (X)

5. If counsel was appointed by court, was it because:

- a. Defendant unable to afford counsel (X)
b. Defendant refused to secure counsel ()
c. Other

(explain): _____

6. How many years has counsel practiced law?

- a. 0 to 5 ()
b. 5 to 10 ()
c. Over 10 (X)

7. What is the nature of counsel's practice?

- a. Mostly civil ()
b. General ()
c. Mostly criminal (X)

8. Did counsel serve throughout the trial? Plea Yes (X) No ()

9. If not, explain in detail: _____

10. Other significant data about defense representation: _____

(If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.)

2. Name of counsel: Mike Eagle

3. Date counsel secured: 7-5-98

4. How was counsel secured:

- a. Retained by defendant ()
b. Appointed by court ()
c. Public defender (X)

5. If counsel was appointed by court, was it because:

- a. Defendant unable to afford counsel (X)
b. Defendant refused to secure counsel ()
c. Other

(explain): _____

6. How many years has counsel practiced law?

- a. 0 to 5 ()
b. 5 to 10 ()
c. Over 10 (X)

7. What is the nature of counsel's practice?

- a. Mostly civil ()
b. General ()
c. Mostly criminal (X)

8. Did counsel serve throughout the trial? Plea Yes (X) No ()

9. If not, explain in detail: _____

10. Other significant data about defense representation: _____

B. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant? Not Applicable.

- a. Under 10%
- b. 10% - 25%
- c. 25% - 50%
- d. 50% - 75%
- e. 75% - 90%
- f. Over 90%

2. Were members of defendant's race represented on the jury?
Yes No Not Applicable

How many of defendant's race were jurors? _____

3. a. Was a change of venue requested? Yes No Not Applicable

b. If yes, was it granted? Yes No

Reasons for change, if granted: _____

F. CHRONOLOGY OF CASE

Elapsed Days

1. Date of offense: 7-2-98
2. Date of arrest: 7-3-98
3. Date trial began: Files 6-17-99
4. Date sentence imposed: 6-17-99
5. Date post-trial motions ruled on: Not Applicable
6. Date trial judge's report completed: 10/6/99
- *7. Dated received by Supreme Court
- *8. Date sentence review completed
- *9. Total elapsed days
10. Other _____

*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for such comments as either desired to make concerning its factual accuracy.

	D.A.	Defense Counsel
1. Comments are included	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Had no comments	<input type="checkbox"/>	<input type="checkbox"/>
3. Has not responded	<input type="checkbox"/>	<input type="checkbox"/>

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

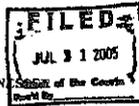
Date: 10/6/99

Cheryl Blackburn
 Judge
 Criminal Court of Davidson County
 20th Judicial District

Attachment 30

REPORT OF TRIAL JUDGE
IN FIRST DEGREE MURDER CASES

IN THE CIRCUIT COURT OF RUTHERFORD COUNTY, TENNESSEE



STATE OF TENNESSEE)
)
) Case No. 51621A
)
)
) Sentence of Death ()
) or
) Life Without Parole (X)
) or
) Life Imprisonment ()

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. a. Status of Case: Original Trial (X) Retrial/Resentencing ()
 b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime:

On July 12, 2000, at approximately 2:22am, an officer was dispatched to the rear of K-Mart in reference to a possible drunk driver. Upon arriving at the K-Mart the officer found a vehicle with a white male, later identified as Troy Snell. The subject has been shot in the left temple. A t-shirt behind the victim's head had a name tag from Captain D's on it. It was noted the ignition key was to "on," but the battery was dead, all doors were unlocked except the driver's side, and a wallet, bottle and cigarette were found near the victim. An officer was dispatched to Captain D's when an exterminator called police after discovering two bodies in the walk-in cooler. The door to the cooler was open, and a black male subject (later identified as Bryan Speight) was kneeling and folded over with a gunshot wound to the top of his head. A white male subject, later identified as Scott A. Meyers, was lying on his left side facing the rear of the cooler. He was bound with an electrical cord and shot in the back of the head.

During the course of the investigation it was revealed that all three victims were shot with the same .22 caliber gun. There were no signs of struggle or forced entry. Two bags with the two evening deposits totaling \$1780 were missing. The restaurant's alarm system was off and all the doors were locked.

LaTonya Taylor and Percy Palmer were developed as suspects and were indicted on November 6, 2001 with three counts first degree murder, three counts felony murder, three counts especially aggravated kidnapping, and one count especially aggravated robbery.

- | | | | |
|------|--|-----|-----|
| (6) | To avoid arrest or prosecution | (X) | (X) |
| (7) | Committed in conjunction with another felony | () | () |
| (8) | Committed while in custody | () | () |
| (9) | Victim was a member of law enforcement, etc. | () | () |
| (10) | Victim was a judge, district attorney, etc. | () | () |
| (11) | Victim was elected official, etc. | () | () |
| (12) | Mass murder - 3 Victims | (X) | (X) |
| (13) | Mutilation of the body | () | () |
| (14) | Elderly or particularly vulnerable victim | () | () |

2. How did the defendant plead? Guilty () Not Guilty (X)
3. Was guilt determined with or without a jury? With (X) Without ()
4. Separate Offenses:
 a. Were other offenses tried in the same trial? Yes (X) No ()
 b. If yes, list those offenses, disposition, and punishment:
 Premeditated Murder (x3)—Found guilty, 3 life sentences to run concurrent
 Especially Aggravated Robbery (x1)— Found guilty, 20 years to run consecutively to life sentences
 Especially Aggravated Kidnapping (x3)—Found guilty of 2 counts, not guilty to 1 count, 20 years each to run concurrent with each other and consecutively to life sentences.
5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes (X) No ()
6. Did the defendant waive jury determination of punishment?
 Yes () No (X)
7. a. Did the State file a notice of intent to seek the death penalty? Yes (X) No ()
 b. Did the State file a notice of intent to seek life imprisonment without parole? Yes (X) No ()
 c. Did the State withdraw its notice of intent to seek the death penalty either formally or informally? Yes () No (X)
 d. Who sentenced defendant? Judge () Jury (X)
 e. What sentence was imposed? Death () Life Without Parole (X)
 f. If life imprisonment, was it imposed as a result of a hung jury? Yes () No ()
8. Was victim impact evidence introduced at trial? Yes (X) No ()
9. Aggravating Circumstances, T.C.A. § 39-13-204(g):
 a. Were statutory aggravating circumstances found? Yes (X) No ()
 b. Which of the following statutory aggravating circumstances were instructed and which were found?
- | | Instructed | Found |
|----------------------------------|------------|-------|
| (1) Youth of the victim | () | () |
| (2) Prior convictions | (X) | (X) |
| (3) Risk of death to others | () | () |
| (4) Murder for remuneration | () | () |
| (5) Heinous, atrocious, or cruel | () | () |

- Relate any significant aspects of the aggravating circumstance(s) that influence the punishment: None
- c. Were the aggravating circumstances found supported by the evidence? Yes (X) No ()
10. Mitigating Circumstances, T.C.A. § 39-13-204(f):
 a. Were the mitigating circumstances raised by the evidence? Yes (X) No ()
 b. If so, what mitigating circumstances were raised by the evidence?
- | | Yes | No |
|--|-----|-----|
| (1) No significant prior criminal history | () | (X) |
| (2) Extreme mental or emotional disturbance | (X) | () |
| (3) Participation or consent by victim | (X) | () |
| (4) Belief that conduct justified | () | (X) |
| (5) Minor accomplice | (X) | () |
| (6) Extreme duress or substantial domination | () | (X) |
| (7) Youth/advanced age of defendant | () | (X) |
| (8) Mental disease or defect or intoxication | (X) | () |
| (9) Other (explain): See Below | (X) | () |
| (10) Behavior While Incarcerated | | |
| (11) Defendant's IQ | | |
| (12) Co-defendant's role in crime | | |
| (13) Defendant's mental health | | |
| (14) Defendant's childhood and family history | | |
| (15) Defendant's father's and mother's relationship | | |
| (16) Prior drug and alcohol abuse | | |
| (17) Defendant's education | | |
| (18) Defendants' emotional development | | |
| (19) Residual or lingering doubt | | |
| (20) Anything else the jurors observed during the case | | |
- (c) Relate any significant facts about the mitigating circumstances that influence the punishment: None
(d) If tried with a jury, was the jury instructed regarding all the circumstances indicated in 10(b) as mitigating circumstances?
 Yes () No (X)
 If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted: 1, 4, 5, & 7—Not relevant to this case.
11. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes () No () N/A (X)

12. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes (X) No ()
If yes, explain: She said she had been drinking and using drugs the entire day.
13. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.): The sentence was within reason.
14. Brief impression of the trial judge as to conduct and/or effect of defendant at trial and sentencing: She did not react to anything throughout the entire trial.

B. DATA CONCERNING THE DEFENDANT

1. Name: Taylor, LaTonya 2. Birth Date: 07/13/77
3. Sex: F 4. Marital status: Never Married (X)
5. Race: African American
6. Children: Number: 0
Ages: n/a
Other dependents: n/a
7. Parents: Father - Living? Yes (X) No ()
Mother - Living? Yes (X) No ()
8. Education: Highest Grade or Level Completed: 9th
9. Intelligence level: Low (IQ below 70): X
Med. (IQ 70 to 100): X
This was a contested issue.
10. a. Was the issue of defendant's mental retardation under T.C.A. § 39-13-203 raised? Yes (X) No ()
b. If so, did the court find that the defendant was mentally retarded as defined in T.C.A. § 39-13-203(a)? Yes () No (X)
11. a. Was a psychiatric or psychological evaluation performed? Yes (X) No ()
b. If yes, summarize pertinent psychiatric or psychological information

and/or diagnoses revealed by such evaluation: Mild mental retardation, antisocial personality disorder

12. Employment record of defendant at or near time of offense, including if known, type of job, pay, dates job held and reason for termination: Numerous fast food/restaurant jobs/ manual labor; terminated for a variety of reasons, including cash shortages, theft, poor performance
13. Defendant's Military History, including type of discharge: n/a
14. a. Does the defendant have a record of prior convictions? Yes (X) No ()
b. If yes, list the offense, the dates of the offenses and the sentences imposed:
- | Offense | Date | Sentence |
|--------------------|-----------------|----------|
| Aggravated Robbery | October 1, 2004 | 26 years |
15. Was the defendant a resident of the community where the homicide occurred? Yes (X) No ()
16. Noteworthy physical or mental characteristics or disabilities of defendant: Low IQ; weight, around 250 pounds
17. Other significant data about the defendant: n/a

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

1. Ages of victims: 18, 29, 42
2. Sex: males
3. Race of victims: Caucasian/African American/Caucasian
4. Marital Status: 42 year-old married, others never married
5. Children: 1 daughter for 42 year-old Other dependents: wife for 42 year-old
6. Parents: Father - Living? Yes except for 42 year-old
Mother - Living? All living
7. Education: Highest Grade or Level Completed: 18 year-old: 11th, 29 year-old: 12th, 42 year-old: 12th + college
8. Employment at time of offense: all employees of Captain D's
9. Criminal record: None known
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): acquaintance of 18 year-old, no relationship to others
11. Were the victims residents of the community where the homicide occurred? 42 year-old was not, others were.

5

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12. Were the victims held hostage during the crime? Yes, less than one hour. Defendant entered Captain D's after closing. Defendants' entrance was unknown to 42 year-old and 29 year-old victims, who were confronted by defendants with a gun and tied up and made to kneel in the walk-in cooler, where they were subsequently shot. The 18 year-old victim clocked out from Captain D's at 12:06am and was found in his car a short distance from the restaurant by police at 2:25am.
13. a. Describe the physical harm and/or injuries inflicted on the victim: Each victim suffered a single bullet shot to the head.
b. Were the victims tortured, state the nature of the torture: No
14. Co-defendants:
a. Were there any co-defendants in the trial? Yes (X) No ()
b. If yes, what conviction and sentence were imposed on them?
On January 26, 2005, Percy Palmer pled guilty in counts 4, 5 and 6 to felony murder. He received a TDOP sentence of life with the possibility of parole in each count. The counts are to run concurrent.
c. Nature of co-defendant's role in offense: Defendant stated the 18 year-old victim owed her money for drugs and got she and co-defendant inside Captain D's. Co-defendant participated from then on, but conflicting statements were made regarding who pulled the trigger in the three shootings.
d. Any further comments concerning co-defendants: None
15. Other Accomplices:
a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No (X)
b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known: n/a
c. Did the accomplice(s) testify at the defendant's trial? Yes () No (N)

REPRESENTATION OF THE DEFENDANT

1. How many attorneys represented defendant? 2
2. Name of counsel: Hershell Koger
3. Date counsel secured: November 2001
4. How was counsel secured:
a. Retained by defendant ()
b. Appointed by court (X)
c. Public defender ()
5. If counsel was appointed by court, was it because:
a. Defendant unable to afford counsel (X)

- b. Defendant refused to secure counsel ()
c. Other (explain):
6. How many years has counsel practiced law?
a. 0 to 5 ()
b. 5 to 10 (X)
c. Over 10 ()
7. What is the nature of counsel's practice?
a. Mostly civil ()
b. General ()
c. Mostly criminal (X)
8. Did counsel serve throughout the trial? Yes (X) No ()

1. Name of counsel: Paul Bruno
2. Date counsel secured: January 2002
4. How was counsel secured:
a. Retained by defendant ()
b. Appointed by court (X)
c. Public defender ()
5. If counsel was appointed by court, was it because:
a. Defendant unable to afford counsel (X)
b. Defendant refused to secure counsel ()
c. Other (explain):
6. How many years has counsel practiced law?
a. 0 to 5 ()
b. 5 to 10 (X)
c. Over 10 ()
7. What is the nature of counsel's practice?
a. Mostly civil ()
b. General ()
c. Mostly criminal (X)
8. Did counsel serve throughout the trial? Yes (X) No ()
9. Other significant data about defense representation: n/a

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county from which the jury was selected is the same race as the defendant?
a. Under 10% (X)
b. 10% - 25% ()
c. 25% - 50% ()
d. 50% - 75% ()
e. 75% - 90% ()

7

8

- f. Over 90% ()
2. Were members of defendant's race represented on the jury? Yes (X) No ()
How many of defendant's race were jurors? 2
3. a. Was a change of venue requested? Yes (X) No ()
b. If yes, was it granted? Yes (X) No ()
Reasons for change, if granted: Pre-trial publicity

F. CHRONOLOGY OF CASE

	Elapsed Days
1. Date of offense: 7/12/00	
2. Date of arrest: 7/19/01	375
3. Date trial began: 9/13/04	approximately 1155
4. Date sentence imposed: 9/28/04	15
5. Date post-trial motions ruled on: 1/24/05	approximately 90
6. Date trial judge's report completed: 7/18/05	approximately 180
*7. Dated received by Supreme Court	
*8. Date sentence review completed	
*9. Total elapsed days	
10. Other	

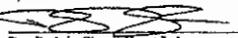
*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for such comments as either desired to make concerning its factual accuracy.

	D.A.	Defense Counsel
1. Comments are attached	()	()
2. Had no comments	(X)	(X)
3. Has not responded	()	()

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

Date 7/12/05


Don R. Ash, Circuit Court Judge
Rutherford County
16th Judicial District

Attachment 31

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EDMUND ZAGORSKI,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 3:99-1193
)	
RICKY BELL,)	
)	
Respondent.)	

TRANSCRIPT OF PROCEEDINGS
VOLUME I

BEFORE:	THE HONORABLE ALETA A. TRAUGER
DATE:	JULY 24, 2003
TIME:	9:00 A.M.

REPORTED BY:	BEVERLY E. "BECKY" COLE, RPR CCR OFFICIAL COURT REPORTER A-837 U.S. COURTHOUSE NASHVILLE, TN 37203 (615) 207-8171
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COPY

1 MS. LUSTRE: Respondent does not, Your Honor.

2 THE COURT: No, you are excused, Mr. Holt.

3 Thank you very much. Next witness?

4 MR. BOTTEI: We call Roger Livengood.

5 THE CLERK: Raise your right hand, please.

6 *(The oath was administered)*

7 THE CLERK: State your name for the record,
8 please.

9 THE WITNESS: Roger Livengood.

10 THE CLERK: Be seated.

11 ROGER LIVENGOOD,

12 having first been duly sworn,

13 was examined and testified as follows:

14 **DIRECT EXAMINATION**

15 BY MR. BOTTEI:

16 Q Mr. Livengood, you are the chief of police in
17 Centerville Tennessee; is that correct?

18 A Yes, sir.

19 Q How long have you held that position?

20 A Fifteen years.

21 Q And what was your position before that?

22 A I was lieutenant.

23 Q Lieutenant? Also in Centerville Police Department?

24 A Yes. I've been in Centerville Police Department 33
25 years.

1 Q Thirty-three years. Did you ever have any
2 encounters with Jimmy Blackwell?

3 A Yes, I did.

4 Q Did you ever arrest Jimmy Blackwell?

5 A Yes, I did.

6 Q When did you arrest him? Can you identify those
7 times for me?

8 A I don't remember the dates. But the first time I
9 arrested him was for contributing to delinquency of a minor,
10 and I think he had just turned 18. And not too long after
11 that we got him for simple possession of marijuana, and then
12 later I got him for possession for resale.

13 Q Were -- any of those cases that you investigated
14 with Blackwell, were they -- any of them prosecuted?

15 A Yes, all of them were.

16 Q Okay. I would like to ask you to refer to -- you
17 have a binder up there -- it would be number 2. There are
18 some documents in there relating to a court case against
19 Blackwell.

20 THE COURT: What county is Centerville in?

21 THE WITNESS: Hickman.

22 THE COURT: Hickman, okay.

23 BY MR. BOTTEI:

24 Q If you could just look through those documents?
25 Can you identify your involvement in that prosecution? I

1 think it's Exhibit Number 2.

2 A Yes, I was the arresting officer.

3 Q Okay. And what was your involvement in the
4 prosecution of that case besides the arresting officer? Did
5 you ever testify at trial?

6 A I testified, yes.

7 Q Okay. And do one of the documents there reflect
8 that you had submitted materials that appeared to be drugs
9 to the Tennessee Bureau of Investigation?

10 A Yes, sir.

11 Q And a report was issued to you concerning those
12 materials?

13 A Yes, sir.

14 Q Okay. And that report indicated what, if you
15 could --

16 A One bag contained 24.4 grams of marijuana, and the
17 other bag was Lidocaine.

18 Q And that was the basis for your prosecution in that
19 particular case?

20 A Yes.

21 Q Now, while working for the Centerville Police
22 Department did you receive any resistance from the Hickman
23 County Sheriff in trying to investigate drug cases in
24 Hickman County?

25 A Me personally?

1 Q Yes.

2 A No, not me personally.

3 Q Did you ever meet any resistance from Hickman
4 County in terms of trying to run undercover operations?

5 A There was -- I know of an undercover operation that
6 was -- I was told of an undercover operation that was messed
7 up by the Hickman County Sheriff's Department, but I was --

8 MS. LUSTRE: Objection, Your Honor, hearsay.

9 THE COURT: Sustained.

10 BY MR. BOTTEI:

11 Q Was that an investigation in which you were
12 personally involved?

13 A No.

14 Q Were you the chief of police at the time?

15 A No.

16 Q Did you have any information that the Hickman
17 County Sheriff or Frank Atkinson discouraged law enforcement
18 in the Bucksnot area?

19 MS. LUSTRE: Objection, Your Honor, without
20 foundation.

21 THE COURT: Sustained.

22 BY MR. BOTTEI:

23 Q Had you ever received any information that Frank
24 Atkinson had ordered members of his staff to stay away from
25 the Bucksnot area?

1 A Yes, sir.

2 MS. LUSTRE: Same objection, Your Honor.

3 THE COURT: You are going to have to lay a
4 foundation. That objection is sustained.

5 MR. BOTTEI: Okay.

6 BY MR. BOTTEI:

7 Q I'm going to move on here. Did you ever receive
8 information about Jimmy Blackwell being involved in a murder
9 in 1976?

10 A Yes, I did.

11 Q What was that information?

12 A I had an informant tell me that he saw Jimmy
13 Blackwell coming out of a logging road where a body had been
14 found.

15 Q When did that occur?

16 A Somebody showed me a article from a newspaper, but
17 I can't remember the date.

18 Q Okay. Why don't I mark these -- I would like to
19 mark two exhibits for identification purposes only of -- for
20 petitioner -- I'll mark as Petitioner's Exhibit 101 and 102.
21 Would you like a copy as well?

22 I'll let the record reflect that I have handed the
23 witness copies of what have been marked for identification
24 purposes as Petitioner's Exhibits 101 and 102.

25 Do those materials refresh your recollection as to

1 when this homicide had occurred?

2 A Yes, sir.

3 Q And when did that homicide occur?

4 A September 23rd, 1976.

5 Q Would it actually have occurred slightly before
6 then?

7 A Slightly before, yeah, a couple of days before the
8 paper came out.

9 Q And who was the individual that was found murdered?

10 MS. LUSTRE: Objection to relevance, Your
11 Honor.

12 THE COURT: What's the relevance of this?

13 MR. BOTTEI: He's testifying that he has
14 information that Jimmy Blackwell is the person that
15 committed this homicide in 1976.

16 THE COURT: And how are we going to link this
17 up with information not provided to defense attorneys?

18 MR. BOTTEI: Any information related to prior
19 charges of Mr. Blackwell related to any criminal activity of
20 Mr. Blackwell, anything that would have created --

21 THE COURT: Let's start with who this man told
22 any of this information to. So let see if there's any
23 link-up. At this time he's a lieutenant. At the time of
24 the murders --

25 MR. BOTTEI: Yes.

1 THE COURT: -- what was your rank in April of
2 '83?

3 THE WITNESS: I was lieutenant.

4 THE COURT: You were a lieutenant?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: At the Centerville Police
7 Department?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: All right. And whatever you
10 learned or whatever you heard about Mr. Blackwell's
11 involvement in this murder, who did you tell that
12 information to?

13 THE WITNESS: It was someone -- I don't
14 recall, but it was someone who was investigating the case,
15 so --

16 THE COURT: Investigating the murder case?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Okay. So you didn't tell Sheriff
19 Atkinson?

20 THE WITNESS: I don't think it was, no.

21 THE COURT: And you never told Ray Whitley,
22 the DA in -- for Robertson County?

23 THE WITNESS: No.

24 THE COURT: So you would have told someone in
25 what police department?

1 THE WITNESS: It would have been the sheriff's
2 department or the TBI.

3 THE COURT: And which sheriff's department.

4 THE WITNESS: It would have been the Hickman
5 County Sheriff's Department or TBI.

6 THE COURT: All right. You would have told
7 whoever was investigating this murder that somebody had told
8 you what you testified to?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: And that's the only person you
11 told?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: And do you know who that person
14 was?

15 THE WITNESS: No, ma'am, I don't.

16 THE COURT: Pretty tangential, Mr. Bottei.
17 I'll let you have a little rope.

18 MR. BOTTEI: I think the point is that if
19 Blackwell is involved in a murder in 1976, he has the
20 incentive afterwards in order to -- and the modus operandi
21 of this murder is very similar to the murder here. That he
22 has one -- this would link him to this murder as having
23 committed this homicide, number one, but it also creates
24 incentive for him to lie in order to keep people off his
25 track on the prior murder.

1 THE COURT: I'm give you a little rope.

2 MR. BOTTEI: I'll just cite Kyles vs. Whitley
3 from the Supreme Court on that, so I'm not coming out of
4 left field on that, Your Honor.

5 BY MR. BOTTEI:

6 Q Getting back to the prior questions, Officer --
7 Chief Livengood, you had received information from an
8 informant, you said?

9 A Yes.

10 Q And the informant had given you information which
11 said what about the homicide?

12 A Said that he was coming -- he was on the road, the
13 main road, and he saw Jimmy Blackwell coming out of the
14 woods from the road where the body was found.

15 Q Okay. Now, is that all that he said?

16 A That's all he said.

17 Q Okay. And I believe you've already testified that
18 you passed that along to whoever was investigating the case?

19 A Someone, yes.

20 Q Either the Tennessee Bureau of Investigation?

21 A Yes.

22 Q Or Hickman County?

23 A Or the DA's investigator, someone who was involved
24 in the case.

25 Q You don't recall exactly who you passed that along

1 to?

2 A No, I don't.

3 Q Now, Judge Trauger asked similar questions that I
4 was going to get to. But you never provided any of that
5 information directly to anyone representing Ed Zagorski; is
6 that correct? To an individual named Larry Wilks who was an
7 attorney in Springfield?

8 A No, it's a different case.

9 Q I understand that. I'm just clarifying that you
10 never --

11 A After I passed it, I just assumed they would handle
12 it -- need to handle it, and I let it go.

13 Q Okay. Just one second, Your Honor.

14 MR. BOTTEI: We have no further questions at
15 this time, Your Honor.

16 THE COURT: Cross-examination?

17 **CROSS-EXAMINATION**

18 BY MS. LUSTRE:

19 Q Thank you, Your Honor. Good afternoon,
20 Mr. Livengood.

21 A Good afternoon.

22 Q I just want to make sure that I understand. This
23 1976 murder, to your knowledge, has nothing whatsoever to do
24 with the Dotson, Porter murders in 1984?

25 A Not to my knowledge, no, ma'am.

1 THE COURT: Roger Farley. Is he here?

2 MS. HENRY: He's coming, Your Honor.

3 THE CLERK: Raise your right hand.

4 *(The oath was administered)*

5 THE CLERK: State your name for the record,
6 please.

7 THE WITNESS: Roger D. Farley.

8 THE CLERK: Be seated.

9 ROGER D. FARLEY,

10 having first been duly sworn,

11 was examined and testified as follows:

12 **DIRECT EXAMINATION**

13 BY MR. MINTON:

14 Q Your Honor, Mr. Farley has lived in Hickman County,
15 Tennessee for the past 38 years or so; is that correct, sir?

16 A Yes, sir.

17 Q Sir, did something just happen outside the
18 courtroom that makes you hesitant to testify here today?

19 A Yes, sir, I don't want to testify.

20 Q What happened?

21 A I have been intimidated by the sheriff.

22 Q What did he say to you?

23 A I don't -- I don't want to say anything, sir.

24 THE COURT: Are you talking about Sheriff
25 Atkinson?

1 THE WITNESS: Yes.

2 THE COURT: All right. Mr. Farley, I need to
3 know what he said to you, please.

4 THE WITNESS: You know, he's just
5 intimidating. You know, he's -- you know -- I don't want to
6 say anything, ma'am.

7 THE COURT: Did he say something to you? Did
8 he touch you?

9 THE WITNESS: No.

10 THE COURT: He did not touch you?

11 THE WITNESS: No.

12 THE COURT: Did he speak to you?

13 THE WITNESS: Yes, ma'am.

14 THE COURT: What did he say?

15 THE WITNESS: He -- there's just things -- I
16 don't want to say anything. I'm sorry.

17 THE COURT: You might have to testify before a
18 grand jury, Mr. Farley, because I will have to alert the
19 U.S. Attorney's Office to the fact that you were going to
20 testify and now you're not.

21 THE WITNESS: Okay.

22 THE COURT: And I have to alert them.

23 THE WITNESS: That will be fine, ma'am.

24 THE COURT: And they may investigate.

25 THE WITNESS: Okay.

1 THE COURT: And so -- but I'm not going to
2 make you say anything right now.

3 THE WITNESS: Okay. Thank you.

4 THE COURT: All right. You may step down.

5 MR. MINTON: Your Honor, may I ask Mr. Farley
6 some questions to see if I can get any information from him?

7 THE COURT: Well, yes. Mr. Farley, sit down
8 and see if -- counsel wants to ask you something.

9 BY MR. MINTON:

10 Q How long did you know Jimmy Blackwell?

11 A Thirty-eight years.

12 Q Where is Jimmy Blackwell today?

13 A He died.

14 Q Okay. Did you and Jimmy Blackwell engage in
15 illegal activity?

16 A Had we?

17 Q In the past? In the past?

18 A Yes, sir.

19 Q Did that include growing marijuana?

20 A Yes, sir.

21 Q Selling marijuana?

22 A Yes, sir.

23 Q Transporting marijuana?

24 A Yes, sir.

25 Q Did it include trafficking in guns?

1 A For me or him?

2 Q For you, sir?

3 A No, sir.

4 Q Did you ever see Mr. Blackwell traffic in guns?

5 A Yes, sir.

6 Q Were you all involved in moonshining?

7 A Yes, sir.

8 Q And during what period was that?

9 A From probably '78 until -- 10 years, 8, 10 years,
10 12 years.

11 Q Beginning in around 1978?

12 A Probably '77, '78, something like that.

13 Q How would you and Mr. Blackwell transport your
14 marijuana?

15 A In vehicles.

16 Q Did you ever get caught?

17 A Yes, sir.

18 Q Can you describe one of the incidents when you were
19 caught?

20 MS. LUSTRE: Your Honor, if we could have a
21 time frame on -- he said just describe an incident.

22 THE COURT: Can you put a time frame on it,
23 Counsel?

24 MR. MINTON: Sure.

25 BY MR. MINTON:

- 1 Q In or around 1980?
- 2 A I don't know that I got caught in 1980.
- 3 Q Okay. Were you ever caught transporting marijuana
4 and allowed to go on?
- 5 A I refuse to answer.
- 6 Q Did Jimmy Blackwell ever tell you that he murdered
7 a man around 1976 and left the body off of Dodd Hollow Road?
- 8 A Yes, sir.
- 9 Q What did he tell you about that?
- 10 A What did he tell me?
- 11 Q Right.
- 12 A Told me the man was found at the end of the road
13 with his pants down to his knees; he was shot in the head.
14 Or ankles, excuse me.
- 15 Q Your Honor, I would like to have the deputy hand
16 what's previously been marked for identification as
17 Petitioner's Exhibits 101 and 102?
- 18 A What do you want to know?
- 19 Q Well, the facts that you remember of the murder
20 that Blackwell told you?
- 21 A Yes, sir.
- 22 Q Are the facts recounted in that exhibit similar to
23 the facts of the murder that Blackwell told you about?
- 24 A Yes, sir.
- 25 Q And what are those facts?

1 A That a man was shot and killed at the end of the
2 road and he was left on an old logging road.

3 Q And his pants were dragged down around his ankles?

4 A Around his ankles.

5 Q He was shot in the back of the head?

6 A He was shot in the head. I'm not going to say the
7 back of the head.

8 THE COURT: When did he tell you this?

9 THE WITNESS: Around the time of this or after
10 it, a year or two after it. You know, I don't know. It's
11 been so long ago.

12 BY MR. MINTON:

13 Q Do you know where he told you that, where you all
14 were?

15 A I was at his house.

16 Q To your knowledge, was Blackwell ever arrested for
17 that murder?

18 A No, sir.

19 Q Did Jimmy Blackwell ever tell you that he was the
20 person that shot Porter and Dotson?

21 A Yes, sir.

22 Q And when did he tell you that?

23 A I can't give you a specific date because I don't
24 remember. It's been a long time ago.

25 Q Sure. And what did he say?

1 A It was just over a drug deal.

2 Q Do you know where you were when he told you that?

3 A My best --

4 THE COURT: Excuse me, where?

5 THE WITNESS: At his house.

6 BY MR. MINTON:

7 Q And to the best of your knowledge, was Blackwell
8 ever investigated or arrested for those murders?

9 A No, sir.

10 Q Did you ever see Jimmy Blackwell give Sheriff
11 Atkinson cash?

12 A I refuse to answer that question.

13 THE COURT: Are you refusing to answer the
14 question because it might incriminate you or because of your
15 encounter with Sheriff Atkinson out in the hallway?

16 THE WITNESS: That's the reason, ma'am.

17 THE COURT: Your encounter with Sheriff
18 Atkinson in the hallway?

19 THE WITNESS: Ma'am, I have got to live there,
20 and he will do whatever it takes to get even. He can walk
21 on water. I mean, you know, he does whatever he wants to do
22 and he gets by with what he wants to.

23 BY MR. MINTON:

24 Q Do you remember meeting with me and Paul Bottei at
25 your car lot about a month ago?

1 A Yes, sir.

2 Q Within the last month or so?

3 A I have.

4 Q And we talked about Sheriff Atkinson letting you
5 and Blackwell go when he caught you with marijuana?

6 A I don't want to answer any more questions, sir.

7 Q Thank you, Mr. Farley.

8 A Thank you.

9 THE COURT: Any cross?

10 MS. LUSTRE: Just briefly, Your Honor.

11 **CROSS-EXAMINATION**

12 BY MS. LUSTRE:

13 Q Mr. Farley, would it be fair to say that Jimmy
14 Blackwell was something of a braggart?

15 A If you know Jimmy Blackwell like I knew him,
16 usually what he told you was right.

17 Q Might he exaggerate, say, quantity of drugs, say,
18 you know, to look like he was a bigger man than he was: "I
19 can get you five pounds of marijuana" when maybe he could
20 only get a pound or less?

21 A He might get -- he might tell you he's got five
22 pounds but it will be three pounds.

23 Q So he was -- you are aware that he would at least
24 at times exaggerate his --

25 A Yes, ma'am.

1 REPORTER'S CERTIFICATE
2
3

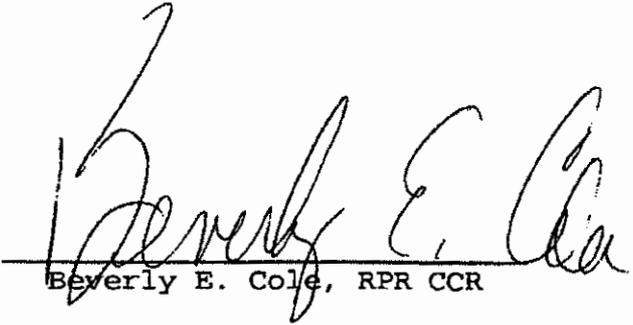
4 I, BEVERLY E. "BECKY" COLE, Official Court Reporter
5 For the United States District Court for the Middle District
6 of Tennessee, with offices at Nashville, do hereby certify:

7 That I reported on the stenotype shorthand machine
8 the proceedings held in open court on July 24 and 25, 2003,
9 in the matter of EDMUND ZAGORSKI vs. RICKY BELL, Case No.
10 3:99-1193;

11 That said proceedings in connection with the hearing
12 were reduced to typewritten form by me;

13 That the foregoing transcripts are a true and accurate
14 record of the proceedings to the best of my skills and
15 abilities;

16 This the 25th day of August, 2003.
17
18
19
20
21
22
23
24
25


Beverly E. Cole, RPR CCR

Attachment 32

RECEIVE 3-6-91

MAR 11 1991

BlkwlIFPD91 -0004

Dear Mr. Froese,

Federal Public Defender's Office
Nashville, Tennessee

I have found out I am under the old law, but here are other things that isn't right.

They are saying I ~~am~~ was on bond between Oct. 29, 1990 to Dec. 5, 1990. That is what they compute that is 37 days that I need for something to be done about so I can get credit for them.

I also need to tell you something about my case that I couldn't discuss on the phone. I guess it has never came up when I got ~~arrested~~ arrested on these charges, I worked with the law on ~~some~~ a lot of other cases, I was responsible for interstate drugs network to be caught. From Atlanta to Tenn. If you need to verify this contact A. T. F. agent Ernest Fracker in Columbia Tenn. I also work with them in locating marijuana fields, and making drug buys.

I am telling you this hoping it will help in my Rule 35 to be judge. If this gets out my life and my families will be in danger, There has been two men already killed over this!

I do want you to file my Rule 35, or whatever it is, whenever you think the time is right. Thanks

James Blackwell

The Marsha Dotson case has been dropped!!! and plans when I get out is to go to Calif. to my daughter and Salmane, we have talked it over and we are going to marry, and together over 9 yrs. and we love each other very much!

Attachment 33



Hickman County Times

Published Every Thursday — Read Every Day

Coble, Duck River, Murrells, Vernon, Bon Aqua, Swan, Only, Little Lot, Wright, Pleasantville, Farmers Exchange, Pinewood, Totty Bend, Grays Bend, Lyles, Shippo Bend, Centerville

Vol. 27 — No. 30

Centerville, Tennessee, 3/7/33, Thursday, September 23, 1976

County Population 13,315

7th Ave. North
Centerville, Tenn.
Phone 335-1000



Sheff, Frank Atkinson, Trooper Clyburn Hays, Sgt. W. C. Murrells, and Dr. B. L. Holladay view the body of an unidentified slain man who had been dumped in a small clearing at the intersection of the Highway 100 and Murrells-Only Road, just north of where that road intersects with the Keelefield Road some 400 yards down a side dirt road. The man was slain from the Murrells-Only Road, just north of where that road intersects with the Keelefield Road some 400 yards down a side dirt road. The man was slain from the Murrells-Only Road, just north of where that road intersects with the Keelefield Road some 400 yards down a side dirt road.

State Probe Under To Identify Slain

Authorities throughout Tennessee early this week joined local officers in an effort to determine the identity of a slaying victim whose body was found Sunday afternoon near Buckhorn.

Sheff, Frank Atkinson said the man, 25-35, had been shot in the head and neck in the right hand.

TBI Agent Richard Wright said it appeared the victim was shot elsewhere and brought to the site where the body was found.

The discovery was made by three hunters setting up deer stands off Murrells-Only Road. Atkinson and Wright believed the man was slain from the Murrells-Only Road, just north of where that road intersects with the Keelefield Road some 400 yards down a side dirt road. The man was slain from the Murrells-Only Road, just north of where that road intersects with the Keelefield Road some 400 yards down a side dirt road.

Branch Line Railroads Declared

As Blow To Economic Advance

Designation of certain railroads as Branch Lines could, at the bottom of the priority list, adversely affect the economic development of several cities in South Central Tennessee.

This was one of the points made by Don Darden, executive director of South Central Tennessee Development, during a public hearing in Memphis. The hearing was held by the Interstate Commerce Commission.

Electric Bills Will Be Earlier After Reading

H. A. Strelitz, general manager of the Memphis Electric Cooperative, announced that readings in October, electric bills will be sent approximately eight days after the meter is read.

Strelitz said the meter is now mailed from two to four weeks after the meter is read. Strelitz said this will mean many members will receive two electric bills in one month.

Strelitz said the cooperative will be paid within the same month for the one-time catch-up period.

Strelitz said the cooperative will be paid within the same month for the one-time catch-up period.

Beard To Attend Reception Here Friday Afternoon

Congressman Robin Beard will be in Centerville, Friday, September 24 at the First National Bank Conference Room at a reception at 1 p. m.

Times

SINGLE COPY

15¢

12 Pages

City's Bend, Grays Bend, Lyles, Shipp's Bend, Centerville

County Population 13,315 - Centerville Population 3,205

Officers Seek Slayer As Body Identified

With the victim identified authorities, this week were seeking the gunslayers of a Kentucky man whose body was found September 18 near Barkersburg.

Within hours of one week after the body was found, information was released that the victim, Harry Roger McKinney, 28, of Vanceburg, Ky., had been positively identified as the victim. He was a former employee of the General Motors Parts Division, according to Sheriff Frank Atkinson.

The identification was made by the Federal Bureau of Investigation's Identification Division at Washington, D. C., after extensive search through its fingerprint files. His prints were on file because he served

in the U. S. Navy. Services for McKinney were held at 11 Tuesday afternoon at Dickerson Funeral Home in Vanceburg.

The body of McKinney, father of four children, was found by deer hunters in a wooded area off Munnally-Donly Road, three miles south of Barkersburg east of Interstate 40.

Investigators said McKinney had been shot twice in the head and once in the right hand. An autopsy showed McKinney had been dead less than 24 hours when the body was found at 2:15 Saturday afternoon, September 18, Richard Wright, FBI agent said.

"Apparently he was shot somewhere else and brought here," Wright said.

McKinney's estranged wife, Mrs. Rochelle McKinney McKinney, Pontiac, Mich., was reported as saying her husband played a guitar and liked country music. "He always wanted to go to Nashville and the Grand Ole Opry," said Mrs. McKinney, who stated she left her husband in January after almost 10 years of marriage because of his drinking problem.

McKinney left the home of his mother in Vanceburg, a city of 2,700, which is located in Lewis County on the northwest tip of Kentucky, 20 miles from Clarksville. "With me plans to stop anywhere else" but at a friend's home in West Palm Beach, Fla., it was reported.

McKinney had been injured when a barbed wire overcame on him. He received a disability pension from the General Motors Parts Division in Pontiac, Michigan.

Hospital Board Adds Doctor; Talks Rate

The Hickman County Hospital and Nursing Home Board of Trustees, in a lengthy session Tuesday night, heard a complaint of racial discrimination, added another doctor to the medical staff and discussed the possibility of room rate and salary increases. The board also learned that the Tennessee Health Care Association was not happy with approximately 40 items evaluated by them at the nursing home.

A letter from Tennessee Commission of Human Development was read by Jerry Baird, Jr., hospital administrator, stating John Gray, a black minister, had filed a complaint of racial discrimination with the agency.

Baird said he had talked with Gray after receiving the letter and that Gray had told that he (Gray) did not feel that he was being discriminated against because of his race. He only wanted more money.

Jack Hester, chairman, upon looking at the list of employees and their wages, stated there were two other male orderlies employed longer than Gray and were making the same amount of money.

After much discussion it was the consensus of the board that

Shipp Studio Moves To Public Square

Shipp Studio will open tomorrow (Friday) at 8 a. m. in its new location at 101 South Public Square, formerly occupied by the Sears, Roebuck and Company retail store.

The studio has been quartered at 114 Church Street since its opening in Centerville in February, 1970, and the move is being made to gain more space for this expanding business.

The new location has been redesigned for the special requirements of a studio specializing in portraits, indoor and outdoors, wedding photography, with complete air retouching, passports, identification, custom framing, commercial photographs and laminating. The studio has acquired some of the most modern lighting out-

comes equipment to guarantee a high quality of work.

Joe H. Shipp, was a photographer long before he established the Shipp Studio. To tell how long would almost be like revealing his age. His pictures and those of his son, Ronnie, frequently appear in the Times. Joe, for many years was a local photographer for the Nashville newspaper, both father and son are still involved in the operation of the studio by their wives.

The Shipp's wish to express their appreciation for the patronage they have received from the people of Hickman and adjoining counties. We believe that in the new location, the studio can improve its service, including parking. The studio's telephone number is 229-3582.

Given Reception



S E P T E M B E R 3 0

1 861

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 THE LORD'S PRAYER
 Our Father which art in Heaven, Hallowed be thy name. Thy Kingdom come, Thy will be done on earth, as it is in Heaven. Give us this day our daily bread. And lead us not into temptation, but deliver us from the evil one. For thine is the Kingdom, and the Power, and the Glory, forever and ever. Amen.
 EDITOR'S NOTE
 Letters to the Editor must bear the name, address and phone number. All letters should be typewritten, and the editor reserves the right to edit any letter for clarity. Anonymous letters or poems will not be printed.

- ### Blood Gifts
- (Continued from Page 1)
- Laurette Holt, Jean Martin, Sam Warren, Joyce Tucker, Shirley Hawkins, Frances Campbell, Carlisle E. Heiner, 2411 Jack Rivers, Gary H. Harrington, Raymond Bryant, Jerry Davidson, John W. Gray, Judy McWilliams, Patricia Harrington, Daisy Beard, Daisy Hester, Joanne Stewart, Jerry R. Baird, Jr., Penny Hensley, Droney Clark, Ray Griffin, Dorothy King, Dorothy Brown, Deborah Tins, Johnny East, Galen Hudgins, Sharon Mangum, Janie Kelly, Albie Cardon, Carl A. Edwards, Danny Edwards, Alanie M. Rhee, Martha Grimes, Dwight Bates, Julie Strick, George E. Deason, Cheryl Cunningham, Elmer Grimes, Charles R. Hester, Debbie Hensley, Pam Sullivan, Dennis Copher, Annette Barber, Harold Choate, Yerry

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JOHN EARL CA
 Phone 229-2470

Are You One of The
 Two Thousand Unregistered
 Voters In Hickman County
Wake Up!
 Register To Vote
 Oct. 3, 1976

Attachment 34

1 taken from Mr. Zagorski by Sheriff Emery, Detective Perry, and
2 the Assistant District Attorney, Dee Gay, at the jail.

3 THE COURT: I am familiar with that. I believe
4 that was set forth in your motion.

5 MR. WILKS: Yes, sir. And the District Attorney
6 has responded to our discovery request by letter and said that
7 the length of this statement was too long to set out in
8 writing. So we do not have a transcription of this statement
9 to attach to our motion. As Your Honor knows, there was
10 counsel present for the State; there was not counsel present
11 for the defendant, even though on the same date counsel was
12 appointed. We're not exactly sure which came first, whether
13 the statement was taken and counsel appointed for the
14 defendant later or not. But nevertheless, a statement was
15 taken from the defendant.

16 At this time, Your Honor, I think, as the Court
17 knows, the defendant had, while involved in a shootout with
18 police in the State of Ohio, been wounded. He was ambulatory
19 but, nevertheless, he was subjected to an interrogation at the
20 jail. At this point in time, Your Honor, my discovery records
21 do not reflect a waiver from the defendant as to this
22 statement. The State may have that in its files, but as yet I
23 cannot find a copy in mine that I have received by discovery
24 from the State.

25 The State, Your Honor -- and I would like to cite a

1 all, Sheriff?

2 A. Since '72, some ten or twelve years.

3 Q. Did you have occasion to go to the State of Ohio to
4 meet a person named Edmund George Zagorski?

5 A. Yes, sir.

6 Q. When did you meet with Mr. Zagorski?

7 A. The first time was near the end of May. Then the
8 second time was when I went to pick him up. I believe it was
9 on the 27th, the day we talked to him at the hospital. We
10 brought him back here the 31st.

11 Q. You did talk to him at the hospital on May the
12 27th?

13 A. Yes, sir.

14 Q. Who was with you when you spoke with him?

15 A. Detective Stollard from Ohio -- Ironton, and Perry.

16 Q. Ronnie Perry?

17 A. Ronnie Perry from my office, and I believe there
18 was another officer from up there present in the room, but I
19 don't recall his name.

20 Q. Was Mr. Zagorski advised of his constitutional
21 rights according to the Miranda decision before you spoke with
22 him?

23 A. Yes, that's the first thing we did.

24 Q. Did he fill out an admonition and waiver form?

25 A. Yes, sir.

1 ask him any questions about anything?

2 A. The only one I recall asking at all was did he know
3 a Myers, some Myers fellow that came up in the investigation.
4 I just happened to think about it, and I just asked him if he
5 knew of anybody by that name, and he replied that he didn't.

6 Q. That was it?

7 A. That was it.

8 Q. When did you arrive here in Robertson County from
9 that trip?

10 A. As I recall, somewhere around nine or ten o'clock
11 that night, the 31st of May.

12 Q. The night of the 31st?

13 A. Yes, sir.

14 Q. The next day, was there any meeting arranged with
15 Mr. Zagorski and other people?

16 A. Yes. He was concerned over the money. At this
17 point we contacted Dee Gay to meet with him.

18 Q. Dee Gay, the Assistant District Attorney?

19 A. Yes, sir, and myself and Ronnie Perry talked to him
20 in my office.

21 Q. What time of day or night was this conversation or
22 meeting?

23 A. As I recall, it was in the morning, nine or ten
24 o'clock.

25 Q. When this meeting commenced, had Mr. Zagorski been

1 appointed an attorney?

2 A. No, he came up later on a special arraignment.

3 Q. Who came up later?

4 A. Zagorski came up to the -- he was brought up later
5 for special arraignment and to appoint him attorneys.

6 Q. Later after the meeting?

7 A. Yes, sir.

8 Q. There was a meeting?

9 A. Yes.

10 Q. Just tell the Judge how the meeting got started.

11 A. The Assistant District Attorney, Dee Gay, asked Mr.
12 Zagorski and myself and Ronnie Perry had he been advised of
13 his rights and he said that he -- Ed Zagorski replied that he
14 had been advised of his rights and understood them. He said,
15 you understand that you have the right to have an attorney
16 present for questioning, and he said, yes, that he did. And
17 he -- Dee Gay asked him if he wanted to tell us about it, and
18 Zagorski replied that we already had his statement. And Dee
19 Gay told him at this time that he had no opportunity to
20 discuss it with myself or Ronnie Perry about what we had
21 talked to him about, and he was just there to give him an
22 opportunity -- if he wanted to tell him, that he wasn't
23 familiar with the statement, which at that point we had
24 nothing.

25 He said, well, he didn't feel that he needed to

1 answer any questions about the case at that time, you know,
2 that he would probably talk to an attorney later.

3 Q. Well, let me ask you; what were his words?

4 A. Okay, he advised us at this point that he would
5 talk to us about his background. Dee Gay, as I recall, asked
6 him would he just give us some information about his
7 background.

8 Q. Was any discussion had between Mr. Gay or Mr.
9 Zagorski about whether or not the murders were going to be
10 talked about?

11 A. Dee Gay told him, you know, if you don't want to
12 answer anything about that, we just want to get some general
13 information from you. You can stop answering at any time; he
14 told him this at that point again; that you can stop answering
15 at any time; that we need to get some information about your
16 background.

17 Q. Was it made clear, Sheriff Emery, to Mr. Zagorski
18 that you weren't going to ask, or Mr. Gay wasn't going to ask
19 any questions about the murders?

20 A. That's correct.

21 Q. Was that satisfactory to Mr. Zagorski?

22 A. Yes, sir.

23 Q. What did he say?

24 A. He said, fine, he would answer the questions; that
25 he understood that he didn't have to answer anything without

1 an attorney.

2 Q. Well, were questions asked about his background or
3 his past?

4 A. It was asked about Jimmy Blackwell, if he knew him.
5 He advised us that he had done dope deals with Jimmy
6 Blackwell. At this point Mr. Zagorski appeared to be very
7 angry with Mr. Blackwell, and Dee Gay was not aware of why.
8 Mr. Zagorski had read the affidavit on the warrant.

9 Q. The arrest warrant?

10 A. The arrest warrant, which named Jimmy Blackwell as
11 giving certain information. Mr. Zagorski made -- said that he
12 had done the dope deals with Blackwell before, and he had
13 known him a pretty good while. We talked on about general
14 information, where he had been. He went into some things
15 about mercenaries.

16 Q. What did he say?

17 A. That he had been dropped off by plane, parachuted
18 into Hickman County, and he was thinking about going to some
19 type of mercenary school in the Columbia, Tennessee area; that
20 he had heard there was one there.

21 Q. Did he tell you where he had come from?

22 A. He said that he had been a riverboat -- a boat
23 pilot in Louisiana, and he had been a mercenary since about
24 1980; that he came up here for some training, extra training.

25 Q. Did you ask him who he was a mercenary with?

1 A. Yes, and he said he didn't want to answer that, and
2 we didn't question him any more about who it was. We asked
3 him about Blackwell and some of the people that just came up
4 casually in our investigation. This had been going on two or
5 three weeks prior to picking him up. It evidently wasn't
6 worthy of taking notes on. He either said he didn't know them
7 and that was the end of it.

8 Q. How did you get to talking about drugs, Sheriff?

9 A. Okay, he was talking about the mercenaries, and he
10 said the way mercenaries finance their operation is mostly
11 through drugs, through the sale of drugs; that they bring them
12 back from the country they're working in and sell them to help
13 finance. And then he said there was other ways to finance
14 them. He didn't elaborate on that, and we didn't question him
15 on it. But somewhere during that point of the conversation he
16 said something to the effect, I might as well make it easy on
17 you.

18 Q. Before you say that, let me ask you about what you
19 mentioned earlier in your testimony. You said that he
20 apparently was mad at Jimmy Blackwell. How did that come out?

21 A. When we were talking about Blackwell, he blurted
22 out, makes me mad that Jimmy would betray me over the knife
23 case. That was in the affidavit.

24 Q. What's the knife case?

25 A. The knife case was this boot type knife,

1 double-edged knife, the scabbard that the knife goes in.

2 Q. What did that have to do with anything?

3 A. It was in the affidavit that was found at the scene
4 of ...

5 Q. Where the bodies were found?

6 A. Bodies were found.

7 Q. Mr. Zagorski had read the affidavit?

8 A. Yes, sir.

9 Q. So what did he say about that?

10 A. What he blurted out at this point was that it made
11 him mad that Jimmy would betray me over the knife case.

12 Q. Then where did the conversation lead?

13 A. Okay, he said that, I might as well make it easy on
14 you, or something to that effect. At this point, Dee Gay
15 stopped him.

16 Q. Why?

17 A. He stopped him and advised him that he didn't have
18 to answer any of that without an attorney present.

19 Q. What did Mr. Zagorski say?

20 A. He continued to talk.

21 Q. What did he say?

22 A. He said, I might as well make it easy on you.

23 Q. On who?

24 A. Make it easy for us; that he would just go ahead
25 and tell us, you know.

1 charge here?

2 A. Yes, sir.

3 MR. WHITLEY: Your Honor, I'd like to make this rap
4 sheet part of the record.

5 THE COURT: All right.

6
7 (Whereupon, Exhibit No. 2 was marked and
8 filed.)

9
10 THE COURT: Anything else, General?

11 MR. WHITLEY: Your Honor, that's all of my direct.

12 CROSS EXAMINATION

13 BY MR. WILKS

14 Q. Now, Sheriff Emery, with regard to the June 1, 1983
15 statement from the defendant, I understood your direct
16 testimony to be that you weren't going to ask him any
17 questions about the homicide. Is that right?

18 A. Yes, sir.

19 Q. Now, this interrogation, it took place in your
20 office?

21 A. Yes, sir.

22 Q. Was the defendant shackled?

23 A. I imagine -- he might have had leg irons on, yes,
24 sir.

25 Q. Did he also have the wrist or belly chains on at

1 that time?

2 A. I don't recall if he had one or both on at that
3 time.

4 Q. I believe you returned from Ohio on May the 31st.
5 Is that right?

6 A. Yes, sir.

7 Q. About what time did you all return?

8 A. It was, I believe, nine or ten o'clock when we got
9 in.

10 Q. At night?

11 A. Yes, sir.

12 Q. Nine or ten p.m. on May the 31st. At that time was
13 the defendant placed in a special cell at the jail that you
14 had prepared for him?

15 A. I don't recall if he was put in that. It might
16 have not been finished hardly when we got back.

17 Q. Where would he have been put, if he was not put in
18 the special cell?

19 A. One of the drunk tanks, more than likely, if we did
20 not have that cell finished.

21 Q. So he was segregated from the rest of the
22 population?

23 A. He was segregated, yes, sir.

24 Q. Now, I believe that you have relied on an execution
25 and waiver from your May 27 or 28 interrogation of the

1 Q. Now, Sheriff, if you would, come down to
2 approximately the middle of the page where it says, (Reading)

3 Emery: Okay, now that you know what your
4 rights are, let's turn on the tape recorder.

5 There. See what you want to answer.

6 Do you have that place with me?

7 A. Yes, sir.

8 Q. Mr. Zagorki's response was, (Reading)

9 I wasn't going to make no statements or
10 answer any questions.

11 Is that correct?

12 A. Yes, sir.

13 Q. Next line, (Reading)

14 Mr. Emery: You don't want to answer any
15 questions at all?

16 Mr. Zagorski: If you will (inaudible).

17 It's pretty serious (inaudible).

18 Mr. Emery: Yes, sir.

19 Mr. Zagorski: It's not that I'm trying to
20 get -- hard to get along with, but --

21 Mr. Perry: I know what you mean, Buddie.

22 I know what you mean.

23 There are several questions there that really aren't relevant
24 to this inquiry. If you would turn to the second page, about
25 a third of the way down where Mr. Emery asks -- I believe you

1 asked Mr. Zagorski a question, from where. Do you find that
2 line?

3 A. What did you say now?

4 Q. On the second page, about a third of the way down.

5 A. Yeah.

6 Q. Mr. Zagorski responds, (Reading)

7 Well, I better not. There is other people
8 involved and I better not answer any
9 questions (inaudible).

10 A. Yes.

11 Q. That's correct, is it not?

12 A. Yes, sir.

13 Q. This is after he has executed a waiver. Is that
14 correct?

15 A. Yes, sir.

16 Q. If you would, help me by reading the next thing
17 that you said.

18 A. (Reading)

19 Jimmy Blackwell and Salli picked you up?

20 Q. And Mr. Zagorski responded, (Reading)

21 Who, Jimmy Blackwell? See, I knew there
22 would be questions like that (inaudible).

23 Well, like I said, I really should not talk
24 about it.

25 Is that correct?

1 A. Yes, sir.

2 Q. Would you read the next thing that you said?

3 A. (Reading)

4 Well, I'm really not dealing in the homicide.

5 I'm just asking you some questions. It's

6 your right to remain silent.

7 Q. Mr. Zagorski responded, (Reading)

8 Like I said, I guess I really should talk

9 to a lawyer (inaudible).

10 Is that correct?

11 A. Yes, sir.

12 Q. Isn't it true that the questioning should have
13 stopped at that time?

14 A. Well, at the front part of this -- part of it
15 there, what he said there, and they couldn't read in the tape,
16 was the fact that, you know, we wanted just basically some
17 information about his history; not anything doing with the
18 murder, and he agreed to answer that. All these questions
19 were dealing with how he got to Hickman County, nothing about
20 the murder or anything after the date he got there; just how
21 he got to Hickman County from Louisiana.

22 Q. So the same -- you're saying the same thing
23 occurred on June the 1st, that you and District Attorney Gay
24 and Mr. Perry advised him, we're not going to ask any
25 questions about the murder; we just want some background

1 information?

2 A. Yes, we tried to find out -- as you can see, he
3 didn't answer anything about Blackwell much in there.

4 Q. But as I understand your direct testimony, you said
5 that Mr. Zagorski stated to you and Mr. Gay and Mr. Perry on
6 June the 1st that he didn't want to answer any questions
7 without a lawyer being present?

8 A. Yes, sir.

9 Q. Nevertheless, the interrogation continued after
10 that?

11 A. We asked him if he would answer questions about his
12 background. We had nothing on him.

13 Q. But you continued to ask him questions. Is that
14 correct?

15 A. Yes, sir.

16 Q. After he made that statement?

17 A. After he agreed that he would talk to us about
18 those type questions.

19 Q. What I'm saying is, you continued to insist on
20 asking him these sort of questions, even after he had asked
21 for a lawyer. Is that correct?

22 A. No, we didn't insist on asking him anything. He
23 agreed to that because he was apparently the type of character
24 that, you know, well, I'll answer those questions or, you
25 know, I just don't want to deal in this, and that's the type

1 question we proceeded with.

2 Q. But I understood your testimony on direct to be
3 that he said he didn't want to -- at least on one occasion in
4 your interview he said, I don't want to answer any questions
5 about the murder without a lawyer being present. Is that
6 right?

7 A. Yes, sir.

8 Q. Nevertheless -- let me back up and ask you one
9 other question. Isn't it also true that he said that he
10 didn't want to answer any questions without a lawyer being
11 present, just like he did on May the 27th when he said, I
12 guess I should -- I probably should talk to a lawyer.

13 A. No, not on the first; not any questions, no.

14 Q. You've said that the interrogation on June the 1st
15 started about nine or ten o'clock. Is that right?

16 A. As I recall.

17 Q. How long did it go on?

18 A. Maybe an hour or less.

19 Q. What time did Mr. Zagorski come to the courthouse?
20 Do you recall?

21 A. No, sir, I don't. I believe it was one o'clock,
22 but I'm not sure.

23 Q. Were you and Mr. Gay and Mr. Perry all three
24 present during the course of the conversation?

25 A. Yes, sir.

1 his background and how he ended up in Hickman County, and he
2 rambled a lot about mercenaries and boats and this type thing.
3 It was a lot of that went on during the thing.

4 Q. Did he ever, during the course of your conversation
5 with him on June the 1st, specifically refuse to answer any
6 specific questions?

7 A. There was things he said, even after he started in
8 on this, like who was with him, you know, after he told us
9 this. He would say, I don't want to answer that. He wouldn't
10 answer anything else about it.

11 Q. Would you continue to ask him questions after he
12 had refused to respond to your question?

13 A. No, he never refused to respond to any particular
14 question. He was told, like I said, three or four times that
15 he had the right to stop at any time or not answer any
16 question he didn't want to. When it was a question he didn't
17 want to answer, he just flat told us he didn't want to answer
18 it. Dee Gay asked him, if you're not involved in the murder,
19 why don't you tell us who done it then? He said, I didn't say
20 I wasn't involved in the murder.

21 Q. I thought you weren't going to ask him any
22 questions about the murder?

23 A. This was -- that's right, on the front. After the
24 third time -- when he started to talk about it -- at the point
25 he said, I want to make it easy on you -- I'll just make it

1 easy on you and tell you then, Dee Gay stopped him. He
2 interrupted him and told him, you know, if you're going into
3 the murder, you have the right to talk to your attorneys
4 first. He said, I'll just go ahead and make it easy on you.

5 Q. Why didn't you all stop and execute a written
6 waiver?

7 A. We already had one, you know, that he had signed
8 that he had been read his rights and knew what his rights
9 were, and he had been told numerous times he had the right to
10 have an attorney there before he answered any questions;
11 verbally, he was told numerous times.

12 Q. But you all three knew this was a murder case?

13 A. Yes, sir.

14 Q. You knew that the defendant didn't have an attorney
15 appointed yet, according to the timing that you've given us?

16 A. Yes, sir.

17 Q. You knew that it had been since May the 27th or
18 28th since he had executed any kind of waiver, and you knew
19 that during that conversation at Cabell-Huntington Hospital on
20 the 27th that he had specifically asked for a lawyer. So why
21 didn't you stop and get a written waiver on June the 1st?

22 A. Because we were satisfied with a clear conscious he
23 knew what his rights were, and he was told the part about the
24 attorney numerous times.

25 Q. Sheriff Emery, is it true that there was some

1 THE COURT: Were there other statements?

2 MR. WILKS: Yes, sir, there were two other possible
3 statements, Your Honor. Your Honor, would you prefer to rule
4 on each statement as it comes up or wait until the end and
5 make one ruling?

6 THE COURT: I believe I'd rather wait.

7 MR. WILKS: Yes, sir. Your Honor, the next area of
8 inquiry in our motion to suppress statements concerns July the
9 27th, 1983, and August the 1st, 1983, and possibly on some
10 other occasions, but we're not sure. The defendant was
11 interrogated by Detective Perry. Your Honor, these contacts
12 occurred clearly after counsel had been appointed for the
13 defendant. They took place without any notice being given to
14 counsel for the defendant. They occurred at the jail. They
15 occurred at a time the defendant was in solitary confinement
16 in the jail in an eight by eight foot steel room. It occurred
17 at a time when the heat in the jail, all over the jail, was
18 almost unbearable, but it was particularly so where the
19 defendant was kept because he was, in fact, segregated from
20 the rest of the population, and had been for a significant
21 period of time. There was little, if any, ventilation.

22 The Sheriff's Department had been kind enough to
23 provide a small fan that blew through about an eight inch area
24 where there were steel bars, and everywhere else surrounding
25 the defendant was steel, solid steel. It was a time when the

1 A. Yes, sir, he had a bullet-proof vest on.

2 Q. Were these the reasons he was placed in this

3 isolation cell in Robertson County?

4 A. Part of them, yes, sir.

5 Q. Did Judge Pellegrin, the Criminal Court Judge at

6 that time, know that he was placed in an isolation cell?

7 A. Yes, sir, I believe he did.

8 Q. What occasioned you to talk to Mr. Zagorski on July

9 the 27th of 1983?

10 A. I previously received two notes from Mr. Zagorski

11 saying that he wanted either to see myself or the Sheriff.

12 Q. From whom did you receive the notes?

13 A. They were put in our -- we've got a box downstairs

14 that we get messages and notes, and they were put in that box.

15 Q. When did you receive the notes?

16 A. When did I receive them? I believe it was July

17 22nd.

18 Q. At the time you received the notes, had you

19 initiated any contact with Mr. Zagorski?

20 A. At the time I received them?

21 Q. Right.

22 A. No, sir.

23 Q. Had the Sheriff, to your knowledge?

24 A. No, sir.

25 Q. Had any law enforcement officer sent word to Mr.

1 Zagorski that you wanted to talk to him?

2 A. No, sir.

3 Q. I've got two scraps of paper here with some writing
4 on it. See if you can identify those.

5 A. Those are the notes received from Mr. Zagorski.

6 Q. The first one says what?

7 A. (Reading) I need to see the Sheriff or Ron Perry,
8 Ed Z or E.D.Z.

9 Q. What does the next one say?

10 A. (Reading) I need to talk with Ron Perry or the
11 Sheriff. It's got, E.D.Z. on it.

12 Q. Did you receive both of these notes at the same
13 time?

14 A. Yes, sir, I got them out of the box at the same
15 time.

16 Q. Is that the first time you were aware of them?

17 A. Yes, sir.

18 MR. WHITLEY: I'd like to make these a collective
19 exhibit and hand them to Your Honor.

20 THE COURT: All right.

21

22 (Whereupon, Exhibit No. 3, collective, was
23 marked and filed.)

24

25 Q. When you received these notes on July the 22nd, Mr.

1 Perry, did you go and see Mr. Zagorski that day?
2 A. No, sir, not on that day, I didn't.
3 Q. You went to see him on July the 27th?
4 A. Yes, sir.
5 Q. Why did you wait from the 22nd until the 27th to
6 see him?
7 A. I really hadn't got no good reason for it; just
8 being busy.
9 Q. No particular reason?
10 A. No particular reason.
11 Q. Did you have any idea what he wanted with you?
12 A. None whatsoever.
13 Q. What happened when you went to see him?
14 A. Well, I believe it was before the preliminary
15 hearing in General Sessions Court. I was at the District
16 Attorney's Office, and I got a phone call from the jailer-
17 saying that Ed wanted to talk to me before we went to court.
18 Q. Ed Zagorski did?
19 A. Yes, sir. He said it was real important. So I
20 went back down to the jail and went in the lower cell block
21 into Ed's cell and asked him what he needed. He asked me,
22 said, what's going to happen today? I said, well, we've got
23 to show proof, and then it will probably be bound over to the
24 Grand Jury. He said, are my lawyers going to be there? I
25 said, yes. He said, well, I'll tell you what I'll do -- if

1 you'll let me pick the type execution and the day of
2 execution, I'll confess to these murders. I told him, I said,
3 look, man, you need to stop right here and go talk to your
4 lawyers; don't be doing stuff like this right now. He said,
5 well, he didn't need to talk to his lawyers; he knowed what he
6 wanted to say. I said, well, I think you need to talk to
7 them. He said, well, them men wasn't killed up here. I said,
8 they wasn't?

9 Q. He said what?

10 A. He said, those two men weren't killed up here.

11 Q. Weren't killed up here?

12 A. I said, they wasn't? He said, no, they were killed
13 down in Hickman County and Boiling Springs. That was about
14 the extent of the conversation.

15 Q. Well, did you ask him any questions?

16 A. Not that I can remember.

17 Q. Did he provide any other information, other than
18 the fact that the men weren't killed up here; they were killed
19 in Boiling Springs?

20 A. Not that I can remember at that time.

21 Q. Did you have another occasion to talk to Mr.
22 Zagorski?

23 A. Yes, sir, I did.

24 Q. When was that?

25 A. I believe it was on -- I forgot that date.

1 Q. Mr. Wilks mentioned earlier the date of August the
2 1st. Does that help you?

3 A. Yeah, I believe that's correct, August the 1st.

4 Q. Tell the Judge how that came about?

5 A. Well, I was in the office and the jailer called me
6 and told me that Ed was wanting to talk to me. He said it was
7 pretty important again. I said, well, I'll be down in a few
8 minutes. I went downstairs and they got him out. We went in
9 the Lieutenant's office and sat down and started talking.

10 Q. What did he say?

11 A. He was wanting to talk about the murders again. He
12 said that he wasn't the trigger man in the murders, but he did
13 have something to do with them. He said that he just set them
14 up; said he was hired by a man from -- no, it was a man from
15 Florida that was the trigger man, and all he done was drove
16 them to the spot in Boiling Springs. He got out of the car,
17 Porter and Dotson got out of the car, and they were shot.

18 Q. Did he say how they were brought up here?

19 A. He said they were put in plastic bags and carried
20 up here.

21 Q. Did he say what his job was with regard to the
22 murders?

23 A. Just set the murders up. He said that Dale
24 Dotson's killing was a mistake. He said the person he was
25 hired to kill was Jimmy Porter.

1 Q. Did he say why?

2 A. He said it was drug related. That was all he would
3 say.

4 Q. Did he say how long it took for them to be killed?

5 A. About five seconds. That's what he said.

6 Q. Well, again, on this August 1st date, did you ask
7 Mr. Zagorski any questions?

8 A. None that I can think of.

9 Q. The second time that you went down to see Mr.
10 Zagorski, did he acknowledge that he had sent for you?

11 A. I did ask him a question. I said, was you wanting
12 to see me? He said, yeah. He said, you're a hard man to get
13 ahold of.

14 MR. WHITLEY: That's all I have on direct, Your
15 Honor.

16 CROSS EXAMINATION

17 BY MR. WILKS:

18 Q. Detective Perry, you were present when the
19 defendant, Ed Zagorski, executed a waiver in West Virginia?

20 A. Uh-huh.

21 Q. When Ed Zagorski got ahold of you - or whatever
22 occurred on July the 27th and August the 1st - and left you
23 those notes, when you went in the cell or the office to talk
24 to Ed Zagorski, were you still relying on that waiver
25 executed?

1 A. Well, I wasn't really interrogating him or
2 anything, but if I had been interrogating him, I would have
3 relied on that waiver.

4 Q. After you asked Mr. Zagorski what can I do for you
5 or whatever, did you ever at any time ask him any other
6 question on July the 27th?

7 A. July the 27th?

8 Q. Yes, that's the first statement.

9 A. As far as asking him any questions, I can't recall
10 that I did. The only thing I done on that day was told him
11 that he really needed to talk to his lawyers before he made
12 any kind of statements to me like that.

13 Q. It's my understanding -- and you correct me if I'm
14 wrong -- isn't it true that he said that he wanted to be
15 executed on Halloween night at midnight, and he would confess
16 to these statements?

17 A. (Responded in the negative.)

18 Q. That's not correct?

19 A. I didn't hear it, if it is.

20 Q. Let me ask you again then: what were his exact
21 words when he said something about if I could name my
22 execution?

23 A. He told me, he said, you know, Ron, I'd confess to
24 these murders if you all would do one thing for me; if you all
25 would let me pick the type of execution and the date and time

1 of execution. I told him, I said, you need to start talking
2 to your lawyers, Ed; you don't need to be telling me stuff
3 like that.

4 Q. He didn't say he wanted to be shot by firing squad
5 at midnight on Halloween night?

6 A. No, not to me, he didn't.

7 Q. Now, let's go back in time for just a moment. You
8 understand that Ed Zagorski had been incarcerated in the
9 Robertson County jail since May the 31st?

10 A. Uh-huh.

11 Q. That he had been incarcerated in that eight by
12 eight foot special cell since May the 31st or as soon
13 thereafter as it was completed. Do you remember if it was
14 completed when he first came there?

15 A. I don't think it was.

16 Q. Do you know how long it was before he would have
17 been moved into that cell?

18 A. It wouldn't have been long.

19 Q. A day or two, at most?

20 A. I can't say for sure, but I don't think it was
21 long.

22 Q. Give or take a day from June the 1st, Ed Zagorski
23 had been segregated from the rest of the population in the
24 jail. Is that right?

25 A. Yes, sir.

1 defendant as a high security risk. Is that correct?

2 A. Yes, sir.

3 Q. Isn't it true that no one but Ed Zagorski has ever
4 been in that eight by eight foot cell at the jail?

5 A. It was built --

6 Q. Just for him?

7 A. It was built so we would have a security cell.
8 We're presently in a Federal suit, and we didn't have any
9 isolation cell; therefore, we cannot have disciplinary
10 hearings or anything on any prisoners. We had started on it.
11 It was already a cell isolated by separate doors, so we
12 decided we'd just put the steel around it and make one, and we
13 did need it, in particular, at that time.

14 Q. So he's the only man that's ever stayed in that
15 cell?

16 A. No, we've had others in there since he's been gone.

17 Q. Since he's left?

18 A. Yes, sir.

19 Q. And, basically, he was in solitary confinement,
20 wasn't he?

21 A. Well, yes, he was the only one in there.

22 Q. He never received any sunshine, except the day that
23 he came up here to the preliminary hearing while he was
24 incarcerated?

25 A. Yes, sir.

Attachment 35

1 that we took out of a jacket pocket at the hospital. He was
2 wanting to know if we could get that back. I told him or
3 Sheriff Emery told him that we would have to arrange a meeting
4 between you or the D.A.'s office and him, and they could
5 discuss the money. As far as we were concerned, it was going
6 to be held as evidence.

7 Q. What occurred then when you got back to Robertson
8 County?

9 A. We got back late that night on May 31st. The next
10 morning, I arranged a meeting between General Gay, Mr.
11 Zagorski, myself, and Sheriff Emery.

12 Q. What date would that have been?

13 A. That would have been June 1st.

14 Q. Where was that meeting held?

15 A. The meeting was held in Sheriff Emery's office at
16 the Sheriff's Office.

17 Q. Who was present at that meeting?

18 A. Myself, General Gay, Sheriff Emery, Edmund
19 Zagorski, and a guard on the door - I believe it was Herbert
20 Dodd.

21 Q. Tell the Judge and the jury about what happened
22 then.

23 A. On that day when the meeting started, General Gay
24 asked Mr. Zagorski if he knew his rights and understood what
25 his rights were. Mr. Zagorski replied that he had already had

1 his rights read to him and he did understand what they were.
2 General Gay asked him if he minded talking -- General Gay
3 explained the charges to him that we had against him, and did
4 he mind if we asked him about the murders. Mr. Zagorski
5 replied that he didn't really want to talk about the murders
6 at that time. He'd kind of like to talk to a lawyer first.
7 At that time General Gay asked Mr. Zagorski if he minded
8 talking about his past. Mr. Zagorski said, no. He said back
9 between 1978 and 1980 he --

10 Q. Stop right there. Was he given any advice before
11 he went any further?

12 A. Yes, sir, he was told that he didn't have to talk
13 to us at all. It was on his free will that he did.

14 Q. Was he advised that he had the right to talk to an
15 attorney?

16 A. Yes, sir, he was.

17 Q. What was the substance of the conversation at that
18 time?

19 A. Mr. Zagorski stated that between 1978 and 1980 he
20 did a lot of boating and sailing off of Louisiana. In 1980 he
21 began mercenary training. He said he came to Tennessee to
22 attend a mercenary training school somewhere close to
23 Columbia, Tennessee, but didn't say where it was. He said
24 that he -- he said he was planning on attending a mercenary
25 school close to Columbia, but never did attend it. He was

1 then asked if he knew Jimmy Blackwell. He said, yes, he did.
2 He acted like he was kind of disappointed. He said, I thought
3 Jimmy was one of my friends, but I don't guess he was. He
4 should have kept silent about the knife and the knife case and
5 other things he told.

6 Q. Let's stop right there just a second. When he was
7 talking about the mercenary, did he give the name of any of
8 his associates?

9 A. No, sir, he wouldn't give the name of any of his
10 associates.

11 Q. Was he asked to?

12 A. Yes, sir.

13 Q. Did he talk about how his organization was
14 financed?

15 A. Yes, sir, he was asked how a mercenary organization
16 would finance themselves, and he said that it was a lot of
17 ways to do it, but the biggest way to do it was through drug
18 transactions.

19 Q. Is that when he talked about Jimmy Blackwell?

20 A. Yes, sir.

21 Q. Please repeat again what he said.

22 A. He was asked if he knew Jimmy Blackwell, and he
23 said, yes, he did. He said that he thought Jimmy was his
24 friend, and that he thought Jimmy should have remained silent
25 about the knife case and other information that he told us.

1 Q. At the time that you had talked with him down there
2 at the Sheriff's Office, had he read the arrest warrant?

3 A. Yes, sir, he had.

4 Q. What was the substance of the conversation after
5 this was brought up?

6 A. At that time Mr. Zagorski paused and he said, well,
7 I think I'll just make it easy on you all and tell you what I
8 know about the murders. At that time he was stopped, asked
9 him again if he knew what his rights were, and that he didn't
10 have to talk to us until he talked to a lawyer, and that he
11 could stop talking at any time if he was going to talk to us
12 about the murders until he talked to a lawyer.

13 Q. Do you remember him making any other comments
14 before he stated that?

15 A. No, I don't.

16 Q. Then what did he tell you?

17 A. He said he met Dale Dotson at Lakeland Trout Farm
18 in Hickman County. He said he set up a drug transaction
19 between himself and Dale Dotson.

20 Q. What was the substance of that particular
21 arrangement?

22 A. Mr. Dotson was to buy two hundred pounds of
23 marijuana from him for a hundred and fifty dollars a pound.

24 Q. He said two hundred pounds?

25 A. That's what he said.

1 Q. Okay.

2 A. He said on April 23rd he met Dale Dotson and
3 another man, who was later identified to him as Jimmy Porter,
4 at Spot, which is located just outside of Bucksport. He said
5 Mr. Dotson and Mr. Porter were driving a red Datsun pick-up
6 truck with a camper topper on it, and he and another one of
7 his mercenary friends had another car there. He said they
8 left. He and his mercenary friend got in their car and Porter
9 and Dotson followed them in the pick-up truck. He said they
10 got on I-40, drove towards Nashville. When they got to
11 Dickson, they picked up another car that had two more
12 mercenary friends in it. They drove to Nashville, got on I-65
13 headed north towards Kentucky and stopped about eight miles
14 south of the Kentucky line on I-65.

15 Q. Would that have been in Robertson County?

16 A. That would have been in Robertson County.

17 Q. What did he say happened at that point?

18 A. He said at that point everybody exited their
19 vehicles and were standing on the side of the road, and one of
20 his mercenary friends told him to take Porter and Dotson's
21 pick-up truck and go to the Welcome Center and wait. He also
22 said that one of his mercenary friends took his .308 rifle
23 with suppressor and his web gear, and they went off into the
24 woods as he was driving off.

25 Q. What did he say his job was?

1 A. He said he was to go to the Welcome Center and
2 stand by there in case any of the F.B.I. or any police agency
3 showed up, he was supposed to come back and take care of them,
4 meaning kill them.

5 Q. He did say kill?

6 A. Yes, sir.

7 Q. What did he say happened next?

8 A. He said he stayed there somewhere between thirty
9 and forty-five minutes, and then his mercenary friends showed
10 up there. They gave him five thousand dollars, his web gear
11 and his suppressor, and his rifle back, and told him to take
12 the pick-up truck and leave. He said that he did that and
13 drove to Ironton. Before he got to Ironton, he let one of his
14 mercenary friends off, I believe it was in Lexington. I'm not
15 sure on that.

16 Q. Did he say that he was given any other property,
17 belonging to anybody else, any other weapons?

18 A. Yes, sir, he said he was given a .357 magnum Colt.

19 Q. Now, tell the jury what web gear is.

20 A. Web gear is just a military type belt, which would
21 hold a canteen, ammo pouches, just stuff that you would use in
22 the military.

23 Q. Would he ever reveal the names of his associates in
24 this particular event?

25 A. No, sir, he wouldn't.

1 Q. What did he say that he did up in Ohio?

2 A. He said he met with James Rodney Bruce and was
3 going to stay there for a little while. He said he spent
4 approximately forty thousand dollars up there.

5 Q. He did say forty thousand dollars?

6 A. Yes, sir.

7 Q. Did he tell you what he bought up there?

8 A. He said he bought a lot of weapons, ammunition,
9 horses, a truck, and two motorcycles; numerous things.

10 Q. Was he asked about the red pick-up truck that he
11 drove up there and why he got it?

12 A. Yes, sir, he was. He was asked why he drove the
13 red pick-up truck which Porter and Dotson occupied, instead of
14 going off in his vehicle. He said that it was common in large
15 drug transactions to exchange vehicles between the people that
16 were making the transaction, and he didn't think nothing about
17 it.

18 Q. Was he again asked to name his associates?

19 A. Yes, sir, he was. He was asked, if he wasn't
20 involved in the murders, would he name his associates. He
21 said, no, he couldn't name his associates. He also stated
22 that he didn't say that he wasn't involved in the murders.

23 Q. Was there any talk about the money?

24 A. Yes, sir, there was. He asked General Gay if he
25 could have his money back; that was his, that he had earned

1

2 Q. Detective Perry, did you have another occasion to
3 talk to the defendant, Mr. Zagorski, after June 1st when you
4 first talked to him?

5 A. Yes, sir, I did. I had an occasion to talk to Mr.
6 Zagorski on June 27th in the morning. We were preparing for a
7 preliminary hearing. I was in General Gay's office, and Mr.
8 Zagorski got word to the jailers that he wanted to speak to
9 myself or Sheriff Emery. The jailer, in turn, called me at
10 General Gay's office, and I returned to the Sheriff's Office.
11 I went into the maximum security cell or just outside of it
12 where Mr. Zagorski was being held and asked him what he
13 wanted.

14 Q. Did you talk with him then?

15 A. Yes, I did. I talked with him, and it was very
16 brief; probably about three minutes. He said that he and two
17 other men had been hired to kill Jimmy Porter, and that John
18 Dale Dotson's death was a mistake.

19 Q. Did he tell you anything else about the murders?

20 A. Said the murders occurred in Boiling Springs, which
21 is just outside of Bucksport.

22 Q. Is that in Hickman County?

23 A. I believe it's in Humphries County.

24 Q. Did he talk with you any more about the murders at
25 that time?

1 A. No, sir, at that time, he didn't.

2 Q. Did you have another occasion to talk with the
3 defendant, Mr. Zagorski?

4 A. Yes, sir, I did.

5 Q. Tell the Judge and the jury about those
6 circumstances and what happened.

7 A. I got word from the jailer again on another date.
8 I believe it was July 1st. I'm not sure on the date.

9 Q. Was it sometime in August after the preliminary
10 hearing?

11 A. Yeah, it was after the preliminary hearing. I went
12 to Lieutenant Wilson's office downstairs. Mr. Zagorski was
13 brought into Lieutenant Wilson's office, and we sat down and
14 started talking. I asked him, I said, well, what do you need,
15 Ed? He said, as I told you, myself and two other men were
16 hired to murder Jimmy Porter. He said, one of the men is from
17 Florida, but he wouldn't name the man. He said that he picked
18 the two defendants up, and they drove to a place on the side
19 of the road in Boiling Springs. He exited the vehicle that
20 they were in. Then Jimmy Porter and Dale Dotson exited the
21 vehicle, and within five seconds after they exited the car,
22 they were shot to death. Said then their bodies were put in
23 plastic bags and brought up here in Robertson County and
24 dumped.

25 Q. Did you or any other law enforcement official in

1 Robertson County, during the searches up here, find any bags?

2 A. None.

3 Q. How wide a search did you conduct?

4 A. We conducted a very thorough search of the crime
5 scene, and probably five to six hundred yards around the crime
6 scene in every direction.

7 Q. Did you find any bags from the Ohio authorities of
8 this type, bloody bags?

9 A. No, sir.

10 Q. When you went up to Ohio, did you go through and
11 check thoroughly the red Datsun pick-up truck?

12 A. Yes, sir, myself and Sheriff Emery did.

13 Q. Why did you do that?

14 A. To check for bloodstains.

15 Q. Tell the jury about your investigation into that.

16 A. When we went to inspect the red Datsun pick-up
17 truck, I took several pictures of it. It had carpet in the
18 back with padding under it. We inspected the carpet and did
19 not find but one place that it was stained. We cut that stain
20 from the carpet, cut the carpet out, and the padding also was
21 stained, so we cut the carpet padding out, too. I sent both
22 to the crime lab.

23 Q. Where exactly was this carpet?

24 A. It was in the bed of the truck at the back end of
25 it.

1 don't know -- because maybe their activities or interest were
2 in the marijuana area. But have you noticed throughout the
3 course of this trial who initiated the marijuana talk? That
4 man. Or have you noticed that the talk turns to marijuana
5 around that man?

6 Don't forget this when you go back there to
7 deliberate, that the law applies to everybody everywhere, no
8 matter if it's on the street, no matter if it's on the church,
9 at the church, at the store, the courthouse, country club,
10 even the 113 mile marker in Robertson County. The law applies
11 everywhere. First degree murder is first degree murder no
12 matter where it is. Don't forget that.

13 When you go back there to deliberate, consider the
14 different accounts of the murders that Mr. Zagorski gave to
15 different people at different times. To Martha Beasley he
16 said that he was there at the murders and that he knew who did
17 it and that his job was to blow away any officers that came.
18 You recall what he stated to Rodney Bruce. He summed it up in
19 two simple words, zip, zip. And the three statements he made
20 to Detective Perry about the incident. The first statement
21 was made after Mr. Zagorski had read the arrest warrant and he
22 explained why some of his belongings were found here in
23 Robertson County.

24 You remember that first statement that he gave
25 Detective Perry. He testified that he met the men down the

1 Bucksnort area with another unidentified cohort of his. Mr.
2 Porter and Mr. Dotson were in their red pick-up truck. They
3 caravanned up to Dickson and met two more of Mr. Zagorski's
4 unidentified cohorts. All three of them came up to Robertson
5 County, and they just happened to stop eight miles south of
6 the Kentucky state line, which is right around the 113 mile
7 marker.

8 Mr. Zagorski told Detective Perry that he was
9 ordered to go to a rest stop up in Kentucky and to blow away
10 any officers that came. I don't know what good he could do in
11 Kentucky blowing away officers up there, when Kentucky is at
12 least eight miles north. But somehow somebody got his web
13 gear, somebody got his .308 with a suppressor on it that
14 really doesn't make much difference anyway, and they went in
15 the woods in Robertson County with John Dale Dotson and Jimmy
16 Porter.

17 After that time, you recall he told Detective Perry
18 that his cohorts gave him five thousand dollars and told him
19 to take that red pick-up truck, and gave him the .357 magnum.
20 That's close to being the truth. That's close.

21 You recall he also told Detective Perry that there
22 are different ways to finance a mercenary organization;
23 primarily, the main way, was through drug deals. You recall
24 what he said to Detective Perry about Jimmy Blackwell. He
25 said he was mad at Jimmy Blackwell. He betrayed him about the

1 knife case, that he should keep silent. One time he said,
2 okay, I'll make it easy on you. Another time he told
3 Detective Perry during the course of that interview something
4 to the effect that, I didn't say that I wasn't involved in the
5 murders.

6 Then you recall the substance of another statement
7 that Detective Perry testified to, a conversation that he had
8 on July 27th with Mr. Zagorski after Mr. Zagorski stated that
9 he wanted to talk to him. Mr. Zagorski implicated himself in
10 a murder for hire situation during that conversation. You
11 recall that. He stated basically that he and two other men
12 were involved in the murders and that he was hired to kill Mr.
13 Porter. He stated that Mr. Dotson's death was a mistake and
14 that he wasn't to have been killed. Murder for hire. He also
15 testified that the murders occurred in Red Boiling Springs.

16 Detective Perry also testified to the substance of
17 another conversation on August 1st where Mr. Zagorski further
18 implicated himself in a murder for hire situation. Mr.
19 Zagorski indicated that the murders occurred again in Boiling
20 Springs, and after Mr. Dotson and Mr. Porter were killed, they
21 were brought up here in Robertson County in plastic bags and
22 dumped here. He further indicated to Detective Perry at that
23 time that Mr. Porter and Dotson got out of their vehicle, and
24 you recall he said they were killed within five seconds after
25 the car stopped. Five seconds after the car stopped.

1 unless we have met that burden. I'm not going to talk about
2 that anymore.

3 He talked about some of the things that Mr. Gay
4 said to you in his opening argument to you earlier this
5 morning. He talked about Mr. Gay saying that the proof showed
6 that they drove to Robertson County, that they walked into the
7 woods, that there was no marijuana, and that the victims, Mr.
8 Porter and Mr. Dotson, were executed by the defendant. Well,
9 is that backed up by proof or is that backed up by theory or
10 probability? Just ask yourselves that question. Mr. Walton
11 asked you some questions earlier. I might ask you some
12 questions later on myself.

13 But remember the, aside from all the other
14 testimony that you've heard in this case, and I'm not just
15 wanting to eliminate that simply because I don't mention it,
16 but remember that Mr. Zagorski, when he got down here from
17 Ohio after he had waived extradition to come back to
18 Tennessee, told General Gay and Detective Perry and the
19 Sheriff, Sheriff Emery, that yes, we met down in Hickman
20 County, just like Marsha Dotson and Jimmy Blackwell said that
21 they were supposed to -- they overheard the conversation. We
22 met down there in Hickman County. They, Dotson and Porter,
23 were in Porter's pick-up truck. I was with another mercenary.
24 We drove through Nashville, drove up toward the Kentucky line.
25 Somewhere along the line we picked up another vehicle with

1 mercenaries in it. That was out of Mr. Zagorski's very own
2 lips. That's in view of all the hard, hard evidence that we
3 have introduced here as exhibits.

4 Mr. Gay said they walked into the scene where they
5 were murdered. All right. You heard the testimony of
6 Detective Henderson wherein he said with a four-wheel drive
7 truck on the May the 6th of 1983, the Sheriff's Office went
8 back there and got mired up, had to have the four-wheel drive
9 truck pulled out.

10 Now, you all have been living in the state of
11 Tennessee for a long time, most of you; probably all of you.
12 Last spring, reflecting on your own common knowledge and
13 experience, was a very, very, very wet spring, extremely wet
14 in the spring, looked like it was never going to stop raining.
15 You remember that, I'm sure. Later on in the summer, it
16 looked like we were never going to get any rain. It was an
17 odd year.

18 At the time these people were murdered by Mr.
19 Zagorski, we were in a wet spring. What did Mr. Baggett say,
20 there's no way to get back to where the bodies were, unless
21 you went through three fences, went through a locked gate, or
22 went way down the road somewhere and crossed a gate. No, I
23 didn't see any signs of tire tracks or anything at all. No
24 evidence whatsoever that any kind of vehicle whatsoever got
25 back there to dump two dead bodies here in Robertson County.

1 Ladies and gentlemen, when you retire to consider
2 your verdict, you should consider each count separately. As
3 to count number one and count number two, you will first
4 determine whether the defendant is guilty of first degree
5 murder. If you find the defendant not guilty of first degree
6 murder as charged in count number one and count number two of
7 the indictment, or if you have a reasonable doubt thereof,
8 then your verdict must be "not guilty" as to first degree
9 murder, and then you will proceed to determine his guilt or
10 innocence of the lesser included offenses.

11 If you find the defendant not guilty of any of the
12 lesser included offenses or if you have a reasonable doubt
13 thereof, then your verdict must be "not guilty."

14 I will now proceed to explain to you what in law it
15 takes to constitute the offenses charged in this indictment.

16 First degree murder. Any person who willfully,
17 deliberately, maliciously, and with premeditation kills
18 another person is guilty of murder in the first degree.

19 For you to find the defendant guilty of murder in
20 the first degree, the State must have proven beyond a
21 reasonable doubt:

22 1. That the defendant unlawfully killed the
23 alleged victim;

24 2. That the killing was malicious; that is, that
25 the defendant was of the state of mind to do the alleged

1 wrongful act without legal justification or excuse. If it is
2 shown beyond a reasonable doubt that the alleged victim was
3 killed, the killing is presumed to be malicious in the absence
4 of evidence that would rebut the implied presumption;

5 3. That the killing was willful; that is, that the
6 defendant must have intended to take the life of the alleged
7 victim;

8 4. That the killing was deliberate; that is, with
9 cool purpose; and

10 5. That the killing was premeditated. This means
11 that the intent to kill must have been formed prior to the act
12 itself. Such intent or design to kill may be conceived and
13 deliberately formed in an instant. It is not necessary that
14 the purpose to kill pre-exist in the mind of the accused for
15 any definite period of time, It is sufficient that it
16 preceded the act, however short the interval. The mental
17 state of the accused at the time he allegedly instigated the
18 act which resulted in the alleged death of the deceased must
19 be carefully considered in order to determine whether the
20 accused was sufficiently free from excitement and passion as
21 to be capable of premeditation. Passion does not always
22 reduce the crime below murder in the first degree, since a
23 person may deliberate, may premeditate, and may intend to kill
24 after premeditation and deliberation, although prompted and to
25 a large extent controlled by passion at the time. If the

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(Whereupon, at 6:46 p.m. the jury retired
to begin its deliberations.)

THE COURT: Court will be in recess pending
deliberations of the jury.

(Whereupon, at 6:50 p.m. the jury returned
to open court.)

THE FOREMAN: Your Honor, we were wondering if it
would be possible that we get a good definition, explanation,
of what would constitute a mitigating circumstance?

THE COURT: Mitigating circumstances are within
your province, if there are any. You have heard the evidence
of the case, and no additional evidence was produced at the
sentence hearing, so you may consider all of the evidence that
was presented in the entire case. The law sets out certain
mitigating circumstances which have no particular
applicability in this case, but you're not limited to those,
so you can consider any mitigating circumstances that in your
judgment would comply with the instructions given.

THE FOREMAN: I think, what we're trying to get at
is just what is the meaning of the word mitigating?

THE COURT: Mitigating would mean any circumstance

1 which would have a tendency to lessen the aggravation, which
2 would have any tendency to -- (Pause) -- give a reason for the
3 act. I cannot think of a better definition right now, except
4 that it's opposed to aggravating and would have a tendency to
5 lessen or tend -- not "to", necessarily, but tend to justify,
6 and to take away any of the aggravation of the circumstance.

7 THE FOREMAN: Thank you, Your Honor.

8
9 (Whereupon, at 6:52 p.m. the jury
10 returned to the jury room to continue
11 its deliberations.)

12
13 (Whereupon, at 8:52 p.m. the jury returned
14 to open court to report its verdict.)

15
16 THE COURT: Have you reached a sentence?

17 THE FOREMAN: Yes, Your Honor, we have.

18 THE COURT: Is it unanimous?

19 THE FOREMAN: Yes, Your Honor, it is.

20 THE COURT: All right, would you read the sentence,
21 please?

22 THE FOREMAN: Your Honor, do I have to read the
23 whole page or just the sentence?

24 THE COURT: Just the part of the sentence.

25 THE FOREMAN: We, the jury, unanimously find that

Attachment 36

STATEMENT

Date June 1, 1983

Interview with Edmund E. Zagorski Jr.

On June 1, 1983 Dee Gay, Sheriff Ted Emery and Ronnie Perry had a interview with Edmund G. Zagorski Jr. at the Robertson Co. Sheriffs Department concerning the murders of John D. Dotson and Jimmy Porter. This would be the second interview with Mr. Zagorski.

Dee started the interview by asking Mr. Zagorski if he knew what his rights were and if he understood his rights. Mr. Zagorski replied that he had already had his rights read to him and that he did understand what they were.

Dee then ask Mr. Zagorski if he wanted to talk to him about the murders of Porter and Dotson. Zagorski said that he had rather talk to his lawyer befor he made any coment about the murders. Dee told him that was fine.

Dee then ask him if he mindd ff he talked to him about his past. Mr. Zagorski said that he would talk to Dee about his past.

Dee explained the charges aganist Mr. Zagorski to him and the penalty for the charges if convicted. Mr. Zagorski replied that he wasnt afraid to die, that he had served hid purpose and that his job was done.

Y Zagorski then said, Ok yall got me pretty good so Im gona make it easy on yall. Ill tell you what I know about the murders.

Dee then explained to Zagorski that he didnt have to talk to us until he talked to his lawyer and Zagorski replied that he wanted to tell us what he new. Many times durring the following conversation Zagorski was told, or ask if he wanted to stop and talk to his lawyer.

Dee told Zagorski if he wanted to talk about the murders to start with the first time that he met Porter and Dotson. He said that he never saw Porter until the day that the deal was suposeto go down, but that he had met with Dotson on several different occasions at the Lakeland Trout Farm in Hickman Co. Tenn. He said that Blackwell had introduced Dale Dotson to him there. Zagorski also said that Blackwell was the one that set the dope deal up for him and that all he Bid was contact his peopl and tell them when to come. He also said that Blackwell didnt have and monatary intrest in the deal. Zagorski said that on May 23, 1983 he met Porter and Dotson around 6:00pm. He said that Porter and Dotson were in Porters Red Dotsun pickup and that he and one of his mercinary freinds met them in Spott and that Porter and Dotson followed them in their truck. He said they picked up a tail car on I-40 just North of Bucksnot and a Backup car at the Dickson exit. They all drove up I-40 to Nashville and then got on I-65 and went North. They stoped just South of the state line on the North bound side of I-65 and everyone got out of their vchicles. He said that one of his frcinds took his HK-91 rifle and his webb geer and told him to take Porters truck and go

Interview with Ed Zagorski.

to the welcome center on the north side of the interstate and wait for hem. He also said that if there was any trouble he was to come back and take care of it. He said that he waited for about 30 minutes and his friends came to the welcome center and met him. They gave him his rifle and webb gear back and \$5,000.00 dollars. They told him to take Porters truck and leave. He said he took the truck and drove to Lexington Ky. where he let one of his people out then he drove to Ohio.

Zagorski was ask how much money he spent while he was in Ohio and he said that he had spent approximatley \$40,000.00 dollars there. He said that he had bought 2 trucks, 2 motercycles, 2 horses and a lot of guns and amunition.

Dee then said to Zagorski, if your not involved in the murders why dont you tell us who is. Zagorski replied "I didnt say I didnt have anything to do with the murders." *****

THIS COMPLETED THIS INTERVIEW.

Attachment 37

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

RECEIVED FOR ENTRY
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APR 15 1983

BY D. A. Suter
DEPUTY CLERK

SAMUEL E. DOUGLAS, et al.,)
vs.)
TED EMERY, et. al.)

No. 81-3826
rec'd 4/13/83
JUDGE WISEMAN

AGREED ORDER

Samuel E. Douglas, Ricky Clinard, Michael Dean and the class they represent, Ted Emery, P.R. West and Ricky Suter enter into this agreement disposing of some but not all of the issues in Mr. Douglas' individual claim against Messrs. Emery, West and Suter and in the intervenors' complaint in this cause.

This order is not intended to resolve any issues not specifically addressed by the order and reserves all remaining issues for further order or for trial.

The class of plaintiffs which is protected by the permanent injunction of Section 2 of this order is: all persons who are now or who in the future will be confined in the Robertson County Jail.

1) Mr. Douglas agrees to dismiss his claim for compensatory and punitive damages against the defendants Emery, West and Suter.

2) Defendants Emery, West, and Suter agree to the imposition of a permanent injunction, binding themselves, their employees, agents and successors in office:

a) Defendants are enjoined from conducting disciplinary hearings or imposing disciplinary sanctions pursuant to procedure

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not consistent with at least the minimal protections required by Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L.Ed2d 935 (1974). This shall include but not be limited to: advance written notice of the claimed violation, at least 24 hours prior to the hearing; a written statement of the fact finders as to the evidence relied upon and the reasons for the disciplinary action; the opportunity to call witnesses and to present documentary evidence in the inmate's defense at the hearing when doing so would not be unduly hazardous to institutional safety or correctional goals. Inmates should also have the opportunity to seek the aid of a fellow inmate to assist in the preparation and presentation of their cases. Hearings should be conducted by an impartial tribunal.

b) Defendants are enjoined from failing to provide each resident of the jail with a list of that conduct which is a violation of the rules and which could result in the imposition of disciplinary sanctions. This list should include the specific disciplinary sanctions which may be imposed for the specific conduct.

c) Defendants are enjoined from placing an inmate in disciplinary segregation in the drunk tank or elsewhere for any except the most severe misconduct.

✓ (d) Defendants are enjoined from placing an inmate in disciplinary or administrative segregation indefinitely.

✓ (e) Defendants are enjoined from placing an inmate in disciplinary or administrative segregation for more than ten days. This does not include inmates who are segregated at their own request.

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f) Defendants are enjoined from punishing any inmate, either officially or unofficially, by refusing to provide him or her with medical treatment, by failing to provide him or her with the same food and in the same quantity as is provided other inmates, by corporal punishment, beating or use of physical restraints, by eliminating mail privileges, visits with attorneys or with other visitors, or with failing to provide the inmate with any personal items normally provided to other inmates.

g) Defendants are enjoined from failing to make a notary available to inmates at least once a day, five days per week, to notarize any documents or papers requested by the inmates.

h) Defendants are enjoined from refusing to allow an attorney to visit any inmate or from in any way interfering with the privacy or confidentiality of the visit.

i) Subject to the addition of at least one staff person on the evening shift, defendants are enjoined from failing to allow each inmate at least one hour of visiting per week with family and/or friends.

j) Subject to the addition of at least one staff person on the evening shift, defendants are enjoined from failing to allow each inmate at least one fifteen minute phone call per week. Unless and until such additional staff is added, defendants are enjoined from failing to provide each inmate at least one five minute phone call per week.

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k) Defendants are enjoined from inspecting for contraband incoming mail from courts, attorneys, or public officials except when the mail is opened and inspected in the presence of the inmate.

l) Defendants are enjoined from failing to collect outgoing mail or failing to deliver incoming mail without unnecessary delay.

m) Defendants are enjoined from censoring inmate mail, both incoming and outgoing, except where there is probable cause to justify the action; in this context, censoring shall be defined as examining the verbal content of mail or any written communication or prohibiting objectionable verbal and written communication being received by the inmate or being placed in the mail to the person to whom it is addressed.

n) Defendants are enjoined from failing to develop and maintain written policy regarding mail censorship. They are further enjoined from promulgating or maintaining any regulation which does not further an important and substantial governmental interest unrelated to the suppression of expression (e.g. detecting escape plans which threaten security and/or the well being of the staff and/or inmates) or from promulgating or maintaining a regulation which is greater than necessary to protect the governmental interest involved.

o) Defendants are enjoined from failing to notify an inmate if a letter he or she wrote or a letter addressed to him or her is rejected and from failing to give the author a reasonable opportunity to protest the decision.

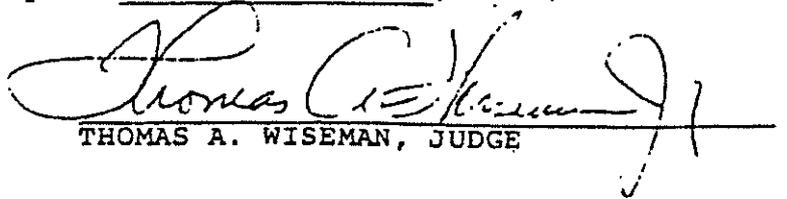
p) Defendants are enjoined from failing to provide postage for two free personal letters per week for inmates with less than \$2.00 in their jail accounts. Defendants are further enjoined from failing

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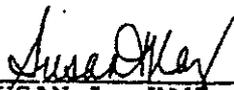
to provide those inmates with less than \$2.00 in their account with postage for all legal or official mail.

3) Defendants Emery, West, and Suter are given fifteen (15) days to file additional pleadings as necessary in this case.

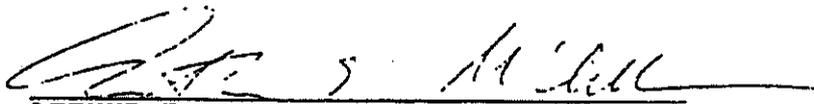
ENTER this the _____ day of _____, 1983.


THOMAS A. WISEMAN, JUDGE

Approved for Entry:


SUSAN L. KAY

Attorney for Plaintiffs


ARTHUR E. MCCLELLAN

Attorney for Defendants Emery, West and Suter

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been delivered to William O'Bryan on this 13th day of April, 1983.



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Attachment 38

FILED

APR 13 1983

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE

DISTRICT OF TENNESSEE

NASHVILLE DIVISION

BY _____
DEPUTY CLERK

SAMUEL E. DOUGLAS,)
)
 ET. AL.)
)
 v.)
)
 TED EMERY,)
)
 ET. AL.)

No. 81-3826

JUDGE WISEMAN

*Exhibit #30
Zagerski v State
11/30/95*

FILED
SEP 12 1996
Clerk of the Courts
Rec'd By _____

DEPENDANTS EMERY, WEST AND SUTER'S FIRST SET OF
STIPULATIONS

Sheriff Ted Emery, Chief Deputy P.R. West, and Jailer Ricky Suter stipulate to the following facts which may be used as evidence in the case of Douglas, et.al. v. Emery, et.al. No. 81-3826, as pertinent to both the original complaint and the intervenor's complaint:

1. The Robertson County Jail is located in Springfield, Robertson County, Tennessee. (hereinafter referred to as the jail.)

2. The jail was constructed in 1967. It serves as the local detention and penal facility as well as the offices of the Sheriff's department.

3. The physical structure has remained essentially unchanged since 1967.

4. The jail is a two story structure. The first floor consists of an attorney interview room, a booking room, the central control area for the jail, the visiting area, several offices, one cell block and two drunk tanks. The second floor

of the jail consists of the sheriff's offices, the jail kitchen, and a cell block.

5.) The first floor of the jail is underground on the front side of the jail. It is above ground only at the back of the jail.

6.) The two drunk tanks are identical. They each measure 12-1/2 feet by 8 feet. There is a continuous sheet of metal on three walls of the cell, used as bunks. There is no window or other access of natural light into the cell. The door to the cell is solid metal with only a small window in the door through which one can look into the cell.

7.) There is no shower in either of the drunk tanks. Each drunk tank has a toilet and sink. The toilet is directly below the sink.

8.) Persons incarcerated in the drunk tank must be taken out of their cell, and walked through the jail to the showers. They are permitted to shower once a day.

9.) In addition to holding inebriated persons, the drunk tanks also house juvenile boys and girls, and inmates being segregated from general population. Additionally, if there are more than two women incarcerated in the jail, they must be housed in the drunk tank.

10.) The drunk tanks are separated from each other by sight but not by sound.

11.) The cell blocks on the first and second floor are identical, each measuring 56-1/4 feet by 28-1/4 feet. The second floor cell block is, in fact, directly above the first floor cell block. Each cell block consists of 9 cells, 8 feet

by 8 feet each, a central hall, a dayroom and a shower. The cells have four metal planks which serve as bunks, double bunked on each side of the cell, and a toilet and sink. The sink is directly on top of the toilet. In addition, there is a drain in the center of the floor.

12.) Around the entire cellblock is a walk.

13.) There are no solid walls within the cell block or between the cell block and the walk (with the exception of the women's cell). All divisions are made with barred walls or doors.

14.) The first cell on the right side of the cell block is different than the other cells in the block. There are only two bunks, double bunked, in each of these cells. In addition, each of these cells has a small metal table with two metal benches and a shower. On the first floor, this cell is surrounded by barred walls and doors, similar to every other cell, and for purposes of cell assignment, it is used interchangeably with the other cells. The cell on the second floor is the Women's Cell. It has solid metal walls on the side of the cell which abuts the hallway and on the side which abuts a male cell. One wall which abuts the outside walkway is totally barred. The other wall abutting the walkway is partially barred and partially solid metal.

15.) The women's cell is separated by sight but not by sound from the men's cells.

16.) The "day room" has two metal tables with metal benches. All of these are bolted to the floor. There is no other furniture in the day room. The day room is 8 feet by 24 feet.

17.) There is no natural light in the cell blocks.

18.) The doors to the individual cells within the cell block were, at one time, controlled by an electric door lock system. That system is now broken and totally inoperative. The doors to all the cells within the cell block are, therefore, kept open 24 hours per day. All residents of the cell block, with the exception of those in the women's cell, have 24 hour access to all the other cells in the cell block, with the exception of the women's cell. The cell designed identically to the women's cell in the first floor cell block is kept open 24 hours per day and is in all other respects, treated as a general population cell.

19.) There is only one door exit from each of the cell blocks. This door is operated by a manual door lock. There is no other means of exiting the cell block.

20.) The plumbing in the jail is old. Water is turned on and off by means of push buttons rather than twist faucets. It is very difficult and time consuming to obtain parts to repair it.

21.) The plumbing fixtures are frequently broken, causing water to back up in the cell and creating a problem of standing water in the cell.

22.) To the extent possible, male pretrial detainees are housed in the first floor cell block and male convicted prisoners are housed in the second floor cell block.

23.) When an individual is booked into the jail, the jailer determines whether the individual fits within one of seven classifications. These include: pretrial detainee, sentenced offender, juvenile, female, and inebriate. The in-

dividual is classified to a cell area according to this list. Within any given classification, however, cell placement is done on a random basis. Thus, for instance, a male pretrial detainee may share a cell with any other male pretrial detainee.

24.) There is likewise, no system for assigning cells for convicted prisoners.

25.) Women, both pretrial detainees and convicted prisoners, are housed in the second floor women's cell. There is room only for two women in that cell at any time. If there are more than two women in the jail, the additional women must be housed in a drunk tank.

26.) Juveniles are assigned to the Women's Cell if there are no incarcerated women. If there are incarcerated women, juveniles are placed in the drunk tank. If there are both juvenile boys and juvenile girls incarcerated at any one time, juvenile boys are assigned to one drunk tank and juvenile girls are assigned to the other. When there are women, juvenile boys and juvenile girls in the jail, there is no place in which to house drunks or other prisoners who need to be segregated from the general population for their own protection or for disciplinary purposes.

27.) If there are women and either juvenile boys or juvenile girls in the jail, there is no room to house drunks and other persons who need to be segregated.

28.) Persons who are being segregated, either for their own protection or for disciplinary purposes are single celled in the drunk tank.

29.) When juveniles and/or drunks are present, they have

first priority to the drunk tank. Therefore, if both drunk tanks are needed for juveniles and/or drunks, the persons who have been segregated for disciplinary purposes or for their own protection must be returned to the general population.

30.) An inmate may be segregated for any one of four reasons: 1) at his or her own request and for his or her own protection; 2) because the jail staff feels the person should be segregated for his or her own protection; 3) as punishment for violation of a disciplinary rule, or 4) for administrative purposes.

31.) If there is an assault in a cell block, the person who was the victim of the assault may be put into segregation for his or her protection.

32.) If an inmate voluntarily goes into segregation for his or her own protection, he or she will be moved out of segregation when the drunk tank is needed for drunks, juveniles, or added women. A male may then be transferred to the other cell block. If he has problems in the second cell block, there is no place to send him. A female must go back to the women's cell.

33.) There are no on site visits by any medical professionals - doctors, nurses, paramedics or physicians' assistants. The only medical training which the jailers have is that each jailer has passed the Red Cross First Aid course. The lieutenant responsible for the jail is an emergency medical technician.

34.) The only means for an inmate to get medical attention is to complain to the jailer or to the lieutenant in charge of the jail. The jailer, or the lieutenant, then decides whether there is an emergency which requires immediate attention, whether

the person should go to sick call or whether the inmate's complaint should be ignored.

35.) Sick call is a referral to a local doctor for medical attention. Inmates who have requested medical attention and who the jailer or lieutenant has determined need to be seen by the doctor are brought in a group to the doctor's office for sick call. Sick call occurs one time per week.

36.) Although the jail has standard first aid supplies, there is no other emergency medical equipment in the jail, e.g. defibrillator, oxygen masks.

37.) When a jailer determines that there is a medical emergency, he makes the decision whether to contact the nearest Sheriff's Department vehicle or whether to call for an ambulance. If the lieutenant is at the jail, he will make this decision rather than the jailer.

38.) There is no room in the jail designed for medical examinations or treatment.

39.) Medication is kept in the central control area of the jail. It is dispensed by the jailers.

40.) No medication is dispensed, even that brought in by the inmate on arrival, until one of the doctors on contract with the jail authorizes the dispensation of the medication.

41.) There are a total of six persons employed to run the jail. Five are jailers. There is never more than one jailer on duty at the jail at one time. There is also a lieutenant who is in charge of operation of the facility. He is usually on the premises during the day shift. On the evening and night shift, there is only one person - a jailer - who staffs the jail.

42.) The jailer has responsibility for booking people into the jail, releasing all persons who are scheduled to be released, handling medical problems, arranging telephone calls, supervising visitation, taking persons from the drunk tank to the shower, and in all respects, running the jail and supervising the inmates.

43.) The number of times which a jailer can walk through the cell blocks depends on the amount of time needed for all of these other duties.

44.) There is no prescribed number of times or specific times at which the jailer must make rounds of the cell blocks.

45.) The jailer is normally stationed at the central control area.

46.) There is no way you can see the cell blocks or drunk tanks from the central control area. There is no visual electronic surveillance equipment.

47.) In the central control area, there are speakers through which the person on duty can theoretically listen to the cell blocks. As a practical matter, it is virtually impossible to hear anything above the din of the radios and television. There is no speaker in the central control area through which the person on duty can hear the drunk tanks.

48.) If there is violence between inmates in a cell, the jailer or lieutenant would only know about it if he happened to be walking through the jail or if he could overhear the noise from the central control area or from any other place in which he happened to be carrying out his duties.

49.) If the jailer who is alone on duty hears a disruption

or violence in the cell block, he is expected to investigate. If the situation is such that he cannot control it, he secures and locks off the cell block and returns to the central control area to call the Sheriff's patrol cars or the Springfield Police Department.

50.) The only means available for a jailer alone on duty to stop a disturbance or assault in a cell block is for the aggressor or aggressors to voluntarily agree to desist, for the jailer to enter and lock himself into the cell block and to physically attempt to stop the problem, or to lock off the cell block and call for help.

✓ 51.) None of the inmates receive any supervised or structured exercise, either indoors or outdoors.

✓ 52.) There is no facility for indoor exercise. There is currently no space for outdoor exercise.

✓ 53.) Pretrial detainees remain in the cell block 24 hours per day, unless they go to court, use the telephone, have a visit, or go to the doctor.

54.) People in the drunk tank spend 24 hours per day in their cell, except for their daily shower, unless they go to court, use the telephone, have a visitor, or go to the doctor.

55.) Women also spend 24 hours per day in their cell with the exceptions noted in ¶53.

56.) Convicted prisoners have the opportunity to work outside the jail. On March 29, 1983, 8 of 15 convicted persons worked outside the jail.

57.) There are no supervised or structured activities at all for pretrial detainees. There are no supervised or structured activities other than work for the convicted prisoners.

58.) Visitation is conducted Wednesday and Sunday, for three hours on each day.

59.) There are no contact visits or visits at times other than visiting hours except in emergency situations. The jail staff on duty determines whether there is an emergency.

60.) Visitation is conducted in a two sided visiting booth. The visitor sits in a stool in one room and the inmate sits in a stool in an adjoining room. There is a small glass plate between the rooms through which the inmates and visitor see each other.

61.) Two visits are conducted simultaneously. The two visitors and the two corresponding inmates sit approximately one foot from each other. There is no opportunity for privacy.

62.) Visits last between five and fifteen minutes, depending on the number of visitors waiting to see inmates. The jailer attempts to permit every visitor to see the inmate for whom he or she is waiting.

63.) There is no legal material provided by the jail or Sheriff's Department for the inmates of the jail, either pre-trial detainees or convicted persons.

64.) If an inmate wishes to speak with his or her lawyer, s/he must ask the jailer to call the lawyer for him or her.

65.) Trustees are selected by the chief deputy and the sheriff and are usually contract prisoners from the Department of Correction

66.) Trustees are responsible for all the food preparation in the jail.

67.) There is no automatic or electric dishwasher in the jail. All eating and cooking implements must be washed by hand.

This task is done by the trustees.

68.) The kitchen has never been inspected by any official from any local or state department of health.

69.) There is no automatic sprinkler system in the jail. There are no oxygen masks to be used in an emergency.

70.) In the event of a fire or other emergency which required evacuation, inmates in the first floor cell block would have to go through the manual lock door to the cell block and two other electric lock doors. Inmates in the second floor would have to go through the manual lock door to the cell block and at least one other electric or manual lock door.

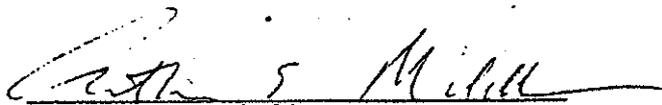
71.) If the one manual lock exit from the cell block is blocked for any reason during a disaster which requires evacuation, all persons in the cell block would be trapped.

72.) For persons to be evacuated from the women's cell during an emergency, someone would have to enter the cell block through the only exit and manually open the door to the women's cell.

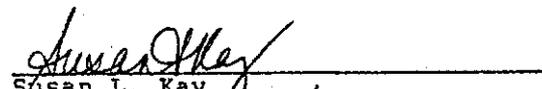
73.) The staff of the jail is insufficient to evacuate the building as swiftly as necessary in an emergency. The jailer would have to contact either the Sheriff's patrol or the Springfield police department for additional manpower.

74.) The dispatcher who is on duty in the Sheriff's department has no correctional training and is not considered by the Sheriff's department to be part of the jail staff.

Approved for entry:



Arthur E. McClellan
Attorney for Defendants
Emery, West, and Suter


Susan L. Kay
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been delivered to William O'Bryan on this 13 day of April, 1983.



Attachment 39

TO: Vanderbilt Legal Clinic, Nashville, Tennessee
FROM: Anthony S. Kuharich, Jail Consultant, South Holland,
Illinois
SUBJECT: Inspection of Robertson County Jail, Springfield,
Tennessee
DATE: May 10, 1983

STATEMENT OF PROBLEM

Inmates at the Robertson County Jail filed a class action complaint for declaratory and injunctive relief in the United States District Court for the Middle District of Tennessee, Nashville Division on April 13, 1983 against the Sheriff, Chief Deputy, Chief Jailer, and County Executive of Robertson County in their official capacities. The Plaintiffs claim their rights, secured under the First, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution were violated. They contend they "are being and will continue to be subjected to illegal, unsafe, unconstitutional, and dehumanizing conditions" which "exist as a result of the willful and intentional acts, practises, policies, instructions and omissions of the defendants."

The Vanderbilt Legal Clinic is representing the Plaintiffs in this action and requested Consultant to inspect this jail facility and submit a timely and objective report of findings and recommendations.

METHOD AND SCOPE OF STUDY

Consultant conducted an on-site visitation of this jail on May 10, 1983 and made direct observations of its physical facility and operations. This was augmented by personal interviews with the

following persons: Chief Deputy Sheriff Paul R. West; Chief Jailer Lieutenant Wilson; and Jailer William Roach.

The following reports, document, records, and forms were also examined and studied:

INTERVENORS' COMPLAINT-CLASS ACTION, Douglas, et. al. v. Ted Emery, et. al., No. 81-3826, Judge Wiseman, U. S. District Court, MD Tennessee, Nashville, Division, filed April 15, 1983.

DEFENDANTS EMERY, WEST and SUTER'S FIRST SET OF STIPULATIONS, Douglas, et. al. v. Ted Emery, et. al. No. 81-3826.

AGREED ORDER, Douglas, et. al. v. Ted Emery, et. al., No. 81-3826.

Inspection Report, Robertson County Jail, submitted by Tennessee Corrections Institute, Nashville, Tennessee, November 18, 1980.

Reinspection Report, Robertson County Jail, September 16, 1981, Tennessee Corrections Institute.

Inspection Report, Robertson County Jail, December 2, 1982, Tennessee Corrections Institute.

Jail Policy and Procedures Manual, Robertson County Jail, 1983.

Rules For Inmates, Robertson County Jail and Workhouse.

Robertson County Jail Admission Forms.

MINIMUM STANDARDS FOR LOCAL CORRECTIONAL FACILITIES, Tennessee Corrections Institute, Nashville, 1982 (hereinafter referred to as Tennessee Standards)

STANDARDS FOR ADULT LOCAL DETENTION FACILITIES, American Correctional Association, Second Edition, April, 1981. (hereinafter referred to as ACA Standards)

FEDERAL STANDARDS FOR PRISONS AND JAILS, U. S. Department of Justice, Washington, D. C., December 16, 1980. (hereinafter referred to as Federal Standards)

PHYSICAL PLANT

The offices of the Robertson County Sheriff's Department and the county jail are located in a two-story brick and concrete

structure which was constructed in 1967.

The first floor of this building is underground on the front side of the jail. It is above ground only at the back of the facility.

The jail consists of an attorney interview room, a prisoner reception area, a control center, the visiting area, a cell block and two drunk tanks on the first floor, and a cell block and the jail kitchen on the second floor.

Cell Blocks

The cell blocks are identical in every respect. One is located above the other. Each has one (1) double-occupancy cell, eight (8) four-cunk cells, and a dayroom.

Each cell block has a semi-outside cell formation. There is a jailer inspection corridor behind the cells inside the outer wall of the building around each cell block. The rear of the cells have grille bars, allowing the jailer to visually supervise the inmates and their activities.

Each cell block has a dayroom and three (3) multiple-occupancy cells on the left side and six (6) multiple-occupancy cells on the right. They face and open into a 3'8" wide corridor which is located in the center and extends the entire length of the cell block. The only entrance door into each cell block opens into this corridor. This is also the only exit door from each cell block.

Cells

Eight (8) cells in each cell block on both floors have four

(4) bunks each and 64 square feet of floor space (8' x 8'), which includes the areas occupied by the metal bunks and the combination toilet and wash basin fixture. The bunks and the toilet fixture take up approximately 33 square feet of floor space. When four (4) prisoners occupy a cell, they have about 31 square feet of floor space or 7.75 square feet per inmate when all are out of their bunks at the same time.

The first cell on the right side in each cell block on both floors has two (2) bunks and 64 square feet of floor space (8' x 8'), which includes the areas occupied by the metal bunks, the combination toilet and wash basin fixture, a small metal table with two metal benches, and a shower. In these cells two (2) inmates each have approximately 15 square feet of floor space when both are out of their bunks at the same time.

The double-occupancy cell on the second floor is used to house female prisoners.

Tennessee Standards require that multiple-occupancy cells provide a minimum of forty (40) square feet of clear floor space for each occupant in the sleeping area.

ACA Standards require that multiple-occupancy rooms provide a minimum floor area of fifty (50) square feet per occupant in the sleeping area.

Federal Standards require that multiple-occupancy rooms provide a minimum of sixty (60) square feet of floor space per inmate (excluding activity area).

Cell Door Lock System

The electric door lock system for the doors to the individual

cells within the cell blocks is currently inoperative and, therefore, cell door are kept open 24 hours per day. All residents of the cell block, with the exception of the women's cell in the second floor cell block, have 24 hour access to all other cells and the dayroom in the cell block.

Dayrooms

Each cell block has a dayroom which has 192 square feet of floor space (24' x 8'). It contains two metal tables with attached benches, a combination toilet and wash basin fixture, and two showers. Due to the inoperative door locking system the inmates in a cell block have 24 hour access to the dayroom.

The dayrooms can be used for dining, writing, reading, and table games.

Tennessee Standards require a minimum of thirty-five (35) square feet of floor space per prisoner in a dayroom.

ACA and Federal Standards also require a minimum of thirty-five (35) square feet of floor space per prisoner in a dayroom.

Each dayroom in this facility, according to the standards, has sufficient space to accommodate five (5) prisoners at a time.

Drunk Tanks

Two drunk tanks are located adjacent to each other on the first floor. They are separated from each other by sight but not by sound. Each has 100 square feet of floor space (12½' x 8'). On three walls of each tank is a continuous concrete bunk which is 24" wide and 12" above the floor. Each tank has a combination toilet and wash-basin and a floor drain.

There is no natural light in these tanks. They have solid metal doors with small glass view panels for visual observation of the occupants by the staff.

They have no shower facilities. Inmates housed in these tanks are permitted to shower once a day. They are taken by the staff to shower facilities in other areas of the jail.

Due to poor jail design and inadequate inmate housing units, these drunk tanks may also house other than inebriated persons. They are used to house juvenile males and females, inmates in need of administrative segregation and disciplinary detention, and adult female prisoners if there are more than two (2) in the facility.

Plumbing

Due to the age of this jail, there are some plumbing problems. Valves are broken and leaking and need to be replaced. Some toilet fixtures are broken causing water to back up in the cells. The Chief Deputy Sheriff stated that all efforts are being made to obtain appropriate valves and replace broken toilets with modern stainless steel fixtures.

Air Circulation

This facility has no air conditioning. The staff admitted that there is no air circulation.

Tennessee, ACA, and Federal Standards require circulation of at least ten (10) cubic feet per minute of fresh or purified air for each person occupying the facility. The Chief Deputy Sheriff stated that this problem will be corrected with forced air ventilation.

Lighting

The two cell blocks and the two drunk tanks have no access to natural light.

There is an insufficient amount of artificial light in the cell blocks.

Tennessee, ACA, and Federal Standards state that all housing and activity areas shall provide for, at a minimum, lighting of at least thirty (30) footcandles, to be measured three (3) feet off the floor. These standards also require access to natural light in the housing and activity areas.

Medical Examination or Treatment Facility

There is no room in this jail designed for medical examination or treatment. A doctor does not visit the jail to conduct sick call. It is conducted at a local doctor's office once a week. If an inmate claims illness at any time, the jailer makes appropriate arrangements for the inmate to be taken to the doctor's office or to the local hospital.

Tennessee Standards make it mandatory that space or provisions shall be provided where a physician may conduct sick call, examine patients in privacy and render routine medical treatment.

This standard is supported by the following court decision:

Jones v. Wittenberg, 440 F. Supp. 60 (N.D. Ohio, 1977)
- Required to have rooms and equipment for physical exams, treatment or medical emergencies and minor injuries and illness, quarters for inmates to remain safely as part of general population and adequate space for dental exams and treatment

Visiting

Two visits are conducted simultaneously. This arrangement does not allow for privacy. It is recommended that the dividers on the visitors' side and the inmates' side are three (3) feet wide and extend to the ceiling. It is further recommended that acoustical tile is installed in the appropriate areas on both the visitor and inmate sides to permit for more private conversation between visiting parties.

Program and Activity Space

This facility has no multi-purpose room for inmate activities such as religious services, educational programs, meetings, library services, group counseling, etc.

A multi-purpose room is required by Tennessee, ACA, and Federal Standards.

There are no indoor or outdoor physical exercise areas for the prisoners in this jail.

Tennessee, ACA, and Federal Standards require that adequate indoor and outdoor space is provided for inmate exercise.

Inmates in this jail spend all their time (24 hours per day) in their housing units - cells, dayrooms, or drunk tanks - without adequate exercise. For the most part they spend their time sleeping and watching television. A constructive recreational program which permits strenuous exercise helps to lower tensions and reduce disciplinary, physical, and mental health problems.

The following four Federal Court decisions from among many address this issue:

Cambell v. Cauthron, 623 F. 2nd 503 (6th Circuit 1980)
Each inmate confined in his cell more than 16 hours per day is to have one hour of out-of-cell exercise. Walking the corridor does not constitute exercise.

Cambell v. McGruder, 580 F. 2nd 521 (D.D. Cir. 1978)
Jail must provide prisoners recreation, including prisoners in maximum security.

Johnson v. Lark, 365 F. Supp. 269, 302 (E.D. MO 1973)
Absence of outdoor exercise contributes to a finding of cruel and unusual punishment.

Rhem v. Malcolm, 371 F. Supp 594 (S.D. NY 1974)
Daily exercise is essential to health.

Some sentenced prisoners work outside of the jail and only spend their non-working hours in their living units. On March 29, 1983, eight (8) of the fifteen (15) sentenced inmates worked outside of the jail.

This facility was originally designed for the maximum security confinement of a large number of prisoners supervised by a small staff with minimal contact between personnel and inmates. It was constructed at a time when emphasis was placed solely on security, custody and prisoner control. Space for correctional services and programs or physical exercise was not considered essential for the physical and mental well-being of the inmates.

This jail is a "human warehouse" where most prisoners languish in enforced idleness, boredom, and despair. Many inmates spend the greater portion of each 24 hour day lying on their bunks. They are required to spend all their time in their housing units. There is no communication with staff, and they have nothing constructive to do.

INMATE SAFETY

Each cell block has only one exit. This presents a serious problem concerning the safety of the inmates because even the most minimal fire could and does cause immediate danger to human life from smoke and toxic gases.

The State of Local Fire Prevention Bureau should conduct an indepth inspection of this facility to ensure that it has an adequate fire detection and suppression system and an effective fire evacuation plan to implement in the event of a fire.

Tennessee and ACA Standards require that at least two separate means of exit from each cell block area are provided to ensure the safety of the prisoners and staff members.

FOOD SERVICE

Trustees are responsible for all food preparation and handling in this jail. The Sheriff's wife orders the food and prepares the menus.

It is recommended that the dietician at the local hospital is requested to periodically review the menus to ensure that they are nutritionally adequate and that the food served is sufficient as to quality and quantity.

The following court decision addresses this issue:

Mitchell v. Untreiner, 421 F. Supp. 886 (N.D. Fla. 1976)
-There should be a trained dietician, nutritionist, or food service director to regularly review the menus, preparation and service.

All persons involved in food preparation and handling must be medically examined.

The following are court decisions which address the issues

relative to medical examinations of food handlers:

Ahrens v. Thomas, 434 F. Supp. 873, 903 (W.D. MD 1977)
All individuals involved in preparation, handling, or service of food shall meet minimum public health standards for restaurant employees. The jail kitchen shall be inspected monthly by the health department.

Cambell v. McGruder, 416 F. Supp. 100, 105-06 (D. DC 1975)
All food handlers must be examined at least once every 30 days.

Mitchell v. Untreiner, 421 F. Supp. 886, 900 (N.D. Fla. 1976)
No one shall handle food in the kitchen without being medically screened and supervised by someone who is also medically screened.

Taylor v. Sterrett, 344 F. Supp. 411, 423 (N.D. TX 1972)
Food handlers must be examined by a licensed physician

ADMINISTRATION

Sheriff Ted Emery is a constitutionally elected law enforcement officer who, at the same time, is legally responsible for the administration and operation of the Robertson County Jail.

The Sheriff appointed Lt. Wilson the Chief Jailer and delegated to him the requisite authority for the efficient operation and management of this facility. His responsibilities include coordination of security, programs, support functions and services, and proper staff deployment.

The goals of the administration and operation of a jail should be: 1. protection of society; 2. humane care of inmates; and 3. provision of services required to maintain the physical, social and emotional health of inmates.

The ultimate goal is to ensure that all who pass through the jail will leave no worse than when they entered, and perhaps better.

The poor design and physical limitations of this facility seriously hamper the administration in their attempts to achieve

these goals.

PERSONNEL

The current jail staff consists of a Chief Jailer and five (5) Jailers. The Chief Jailer is on duty from 8:00 am to 4:00 pm Monday through Friday. There is one (1) Jailer on duty during each eight (8) hour shift per day and seven days per week.

This jail does not have sufficient staff. One Jailer cannot adequately respond to the needs of this facility and approximately thirty-five (35) inmates during any eight-hour shift.

Staffing levels are dependent upon a variety of factors. One important element is facility design and layout. It dictates the number of security posts and the number of persons required to man each post. Another is the size of the prisoner population as well as what is done to and for the inmates. In other words, the number and nature of the programs and services made available to them. New prisoners are booked, individuals are escorted to and from court hearings, inmates are released, attorney and family visits are scheduled, prisoners are transferred to and from other facilities, meals are served, inmates are taken to the doctor's office or hospital for medical services, telephone programs are conducted, etc.

Each staffing plan should provide full coverage of security posts and visual supervision of inmates. Back-up assistance should be immediately available if an emergency arises. Staff in inmate living areas should be able to prevent opportunities for any abuses anticipated in a jail population. Sufficient personnel should be available to supervise inmate programs and services.

Jailers should be stationed near inmate living units to prevent inmate misbehavior and avoid disorders as well as respond quickly to emergencies. There should be frequent interpersonal communication between Jailers and inmates.

Tennessee, ACA, and Federal Standards require that jail officer posts are located in or immediately adjacent to inmate living areas to permit officers to hear and respond promptly to calls for help or emergency situations.

The following court decisions address this issue:

Parker v. Gladwell, No. C74-391 (N.D. Ohio 1976)
One (1) guard must be physically present in cell area at all times.

Ahrens v. Thomas, 434 F. Supp. 573 (W.D. MO. 1977)
Mandates twenty-four (24) hour supervision.

Hamilton v. Love, 326 F. Supp. 1182, 1196 (E.D. AR 1971)
There should be one staff member patrolling on each cell floor in the immediate area of every detainee on a 24 hour basis.

To ensure the protection of the public and the safety of the staff and inmates and more effectively operate this jail, nine and a half (9.5) additional personnel must be employed. This facility should have the following positions:

<u>No. of Posts</u>	<u>Position</u>	<u>No. Days Per Week</u>	<u>No. Shifts Per Day</u>	<u>Total Staff</u>
1	Chief Jailer	5	1	1
1	Male Jailer - First Floor	7	3	4.5
1	Male Jailer - Second Floor	7	3	4.5
1	Female Jailer	7	3	4.5
1	Counselor	5	1	1
	Total Staff			15.5

This staff level is designed for adequate staff relief, proper visual supervision and surveillance of prisoners and their activities, programs and services. This personnel should only work in the jail

and not be required to perform any functions or duties outside of the jail.

The following is a simple arithmetical formula used in the majority of jails to determine the number of jailers needed to man a 24-hour and 7-day per week post:

365 days is used as the base year. Since a jail officer must be on duty 365 days a year and is required to man each post each 24 hours or three (3) 8-hour shifts, the total man days required coverage is 1095 (365 x 3). A 40-hour week employee in this jail works 239 days a year. This figure is arrived at by subtracting 2 days per week or 104 days (the work week is 5 days) plus 10 vacation days and 12 sick leave days from the base figure of 1095. (104 + 10 + 12 = 126) (365 - 126 = 239) 1095 man days divided by 239 equals 4.5 which is the number of Jailers required to man a 24-hour and 7-day per week post and provide necessary coverage for staff on leave. In Robertson County the Jailers do not get any time off for working on holidays.

Role of the Jail Officer

The Jailer occupies one of the most sensitive and perhaps the most critical position in this facility. Male and female jailers must be employed to respond to the needs of both male and female inmates. They have the most direct and continuous contact with the inmates and the greatest impact on them. The line officer has the responsibility to prevent inmates from harming each other or themselves. He/she must develop the interpersonal skills required to adequately communicate with the prisoners. The Jailer must be people-oriented, aware of inmates' legitimate needs and rights, exercise a

non-judicial attitude toward them, and respect them as human beings. American law and justice require no less than this.

When the jail officer works with prisoners as people, he/she will assist them to develop a more favorable attitude toward authority and a better ability to get along with others. His/her own respect for the law is the best example that he/she can give to prisoners. The jail officer must be properly equipped and motivated to create an atmosphere conducive to prisoner change in the jail facility.

Today's jailer should be a sophisticated participant in the corrective process. He/she must be a professional who possesses knowledge, understanding, judgement, tolerance, and wide-ranging competence. His/her work goes on 24 hours a day and every day of the year.

The most important component in any jail is its security staff. Jail operations and management are no longer solely dependent upon steel bars and cages, locking devices and other hardware. It requires sufficient trained staff with personal and professional qualifications to properly supervise human beings in custody.

Jailers must be qualified to handle all aspects of inmate supervision including booking, security, sanitation, work assignments, discipline, mail delivery, laundry exchange, prisoner counts, key control, inmate visits, prisoner and cell searches, telephone programs and other activities, etc., and assist inmates toward self improvement.

The jailer is no longer viewed as an individual who merely guards prisoners. It should not be just a job. He/she is not simply a keeper of the keys and the bodies.

The following are some Federal Court decisions concerning inmate supervision by jail personnel:

Parker v. Gladwell, No. C74-391 (N.D. Ohio, 1976)
Court required staff on duty in cell areas at all times.

Hamilton v. Covington, 445 F. Supp 195 (W.D. Ark. 1978)
Due owed by Sheriff to provide adequate security in the jail.
Liability may exist for deaths and injuries in unattended jail.

Stevens v. County of Dutchess, 445 F. Supp. 89 (S.D. NY. 1977)
Sheriff liable if prisoner-on-prisoner attack occurred under
conditions of inadequate supervision in the jail.

Alberti v. Sheriff of Harris County, 406 F. Supp. 649
(S.D. Texas, 1975)
Sufficient jail staff shall be hired to provide one jailer
for every twenty (20) inmates.

Rhem v. Malcolm, 371 F. Supp. 594, 628 (S.D. NY. 1974)
Where the lack of staff causes violation of rights to be free
from mistreatment and to be protected from harm, court may
order staff increase.

This facility also houses both adult and juvenile female inmates.
They must be supervised by female jail officers. This jail must
employ full time female jailers to not only supervise female prisoners
but also serve as back-up officers for male staff and perform other
jail duties. The following is a court decision which addresses this
issue:

Hamilton v. Love, 328 F. Supp. 1132, 1196 (E.D. Ark. 1971)
There should be one staff member patrolling on each cell floor
in the immediate area of every detainee on a 24-hour basis.
One female staff member must be on duty 24 hours a day.

Due to fiscal conditions, no one wants to spend money on a
new jail, on jail renovation, or on additional jail staff. Conse-
quently, many jails are in poor physical conditions, overcrowded,
and understaffed. When these issues were presented to Federal
Courts, they provided direct answers. The following three Federal
Court decisions:

Jones v. Wittenberg, 330 F. Supp. 707 (N.D. Ohio, 1971)
Hamilton v. Love, 328 F. Supp. 1195-97 (E.D. Ark. 1971)
Lack of money and lack of staff are not adequate to condone
a constitutional violation. Jailers can work only with what

they have. But when what they are provided with necessarily results in constitutional violation, the court may order jail authorities to hire the staff necessary to remedy the violation and of course responsible public authorities to provide the necessary funds.

Jackson v. Bishop, 404 F. 2nd 571, 580 (CA3 1968)
Humane considerations and constitutional requirements are not, in this day, to be measured or limited by dollar considerations.

STAFF TRAINING

The Chief Jailer and the five Jail Officers have been certified by the Tennessee Correctional Institute. All jail staff received twenty (20) hours of in-service training and forty (40) hours of basic training conducted by the Tennessee Correctional Institute. They are also required to annually participate in an additional forty (40) hour in-service refresher training program conducted by the Institute.

The topics discussed in the Institute training programs are listed in the Tennessee Minimum Standards Manual and in this Consultant's opinion are appropriate in every respect.

The Chief Jailer has never attended the two-weeks Jail Management training program conducted by the National Institute of Corrections (NIC) in Boulder, Colorado. This course is offered without any cost to the County including all traveling and per diem expenses. It is recommended that the Chief Jail immediately apply to NIC for participation in this training program.

The ultimate responsibility for the success or failure of jail administration and operation falls upon those who staff the facility. The primary objective of staff training and development are to develop knowledge, attitudes, and skills required for effective

job performance and career advancement.

In a recent address, Chief Justice Warren Burger of the U. S. Supreme Court stated that the operations of a jail or correctional facility "is no place for amateurs. It calls for substantial professional training and the highest order of sensitivity, beginning at the guard level."

CLASSIFICATION

Classification is a procedure for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and programs according to their needs and existing resources. It provides for more effective management of the different categories of inmates.

A prime requisite of efficient jail administration is knowledge of the inmate population. The persons admitted into a jail should be evaluated in terms of personal, social, medical, and criminal history. A routine interview to simply secure identifying data is inadequate. The classification system should be designed to:

- 1) limit the more damaging aspects of jail experience; and
- 2) provide data to aid in the management of individual needs.

Due to the physical limitations of this jail facility, the different categories of prisoners cannot be adequately separated. They are separated by sex, and juveniles are separated from adults. The pretrial detainees are supposed to be housed in the first floor cell block, while the sentenced are supposed to occupy the second floor cell block. However, this is not the case. Unfortunately, due to problems among pretrial detainees as well as difficulties among sentenced offenders and the lack of other living units in

in this facility, sentenced and unsentenced are housed together in both cell blocks.

The double-occupancy cell on the second floor is for the female offenders. It is used to house either sentenced or unsentenced females alone or together depending upon who is in custody at any given time.

The following are Federal Court decisions which address the issues of housing pretrial detainees and convicted persons:

Mitchell v. Untreiner, 421 F. Supp. 886, 899 (N.D. Fl. 1976).
No pretrial detainees may be housed in the same cell with a convicted person.

Moore v. Janing, 427 F. Supp. 567, 571 (D. ME 1976).
Housing of convicts and detainees together contributes to finding of unconstitutionality. Detainees may not be subjected to restrictions unrelated to securing appearance at trial and maintaining internal order and security.

The drunk tanks are used to house 1) inebriates; 2) adult females if there are more than two in the jail; 3) juvenile females if the female cell is occupied; 4) juvenile males if the female cell is occupied; 5) adult males in need of administrative segregation; and 6) adult males requiring disciplinary detention.

The housing of juveniles and females in the drunk tanks is dehumanizing and cruel and unusual punishment.

The following Federal Court decisions may have an impact on this issue:

Rhem v. Malcolm, 371 F. Supp. 594, 623, 625 (S.D. NY 1974)
Detainees may not be confined under conditions more rigorous than a convicted prisoner. Detainees retain all rights except where necessary to assure their appearance at trial, and conditions must be least restrictive means to achieve that end.

Smith v. Sampson, 349 F. Supp. 268, 271 (D NH 1972).
Difference in state interest mandates detainees be treated better than convicts. Least restrictive alternative principles applies to detainees.

This Consultant recommends that this jail employ a trained correctional counselor whose functions would be to (1) interview all persons who are in the jail for more than one day and evaluate them in terms of criminal, medical, and social history, (2) assist in the classification process and provide data to aid in the management of inmates in custody, and (3) provide follow-up casework services for inmates where indicated. Many inmates received in a jail have personal and family problems. A counselor could assist them with their problems and help to reduce their tensions, anxieties, and frustrations. They could improve inmate morale and behavior.

CONCLUSION

The Robertson County Jail is an obsolete, antiquated and inadequate detention/correction facility. It houses pretrial detainees. It also serves as a local correctional institution for persons sentenced by the local courts and for convicted offenders sentenced to the Tennessee Department of Corrections who are serving their sentences in this jail pursuant to a contract between the Robertson County Jail and the Corrections Department.

The inmate housing units consist of two cell blocks each with nine (9) multiple-occupancy cells and a dayroom and two drunk tanks. The cells and dayrooms do not have sufficient space to meet state and national standards. There are no cell blocks with any single cells which are essential in any jail for the housing of the majority of inmates to ensure the safety of staff and inmates. Faulty design does not permit the adequate separation of the different categories of prisoners, such as the sentenced from the unsentenced, felons from misdemeanants, youth offenders from older violators, violent from

nonviolent, males from females, juveniles from adults, persons requiring administrative segregation or disciplinary detention from those in the general population, etc. Currently, the drunk tanks are used to house females, juveniles, and prisoners in need of protective custody or disciplinary detention. This is totally unacceptable practise. The jail administration cannot be faulted for this because they do not have a constitutional jail to adequately respond to the needs of the persons placed in their custody.

This facility has no multi-purpose rooms and no indoor or outdoor physical exercise areas. Consequently, inmates spend all their time in their cells or drunk tanks in idleness, boredom, and despair. Sleeping and watching television is their only activity. This is a "human warehouse" with very little concern for the physical and mental well-being of the inmates. There are no correctional programs or activities. It is anticipated that under existing dehumanizing conditions of confinement the prisoners released from this facility are much worse than when they entered.

There is an insufficient number of staff, and prisoners are left for extended periods without any visual supervision or surveillance by jail officers which may result in some prisoners physically and sexually abusing other inmates. There is little communication between staff and inmates. Additional jail officers would permit inmates to have more visits and telephone calls. Hopefully other activities would be instituted to reduce the amount of idleness. A professional correctional counselor should be employed to assist prisoners with their personal problems.

Robertson County should immediately begin planning for the

construction of a new local detention/correction facility which would meet the requirements of jail standards and court decisions.

An atmosphere of openness and cooperation with this Consultant was maintained throughout this on-site visitation, and no overt hostility or covert efforts to conceal information was detected at any point.

This report could not have been accomplished without the cooperation and assistance of all individuals interviewed and the reports and documents made available to the Consultant. This Consultant is grateful for all contributions to the successful completion of this effort.

The recommendations presented in this report are intended to be both comprehensive and pragmatic. They are consistent with accepted standards and guidelines relating to the operation and management of local jails, their physical facilities, programs and services.

In summary, the Robertson County Jail is a woefully inadequate facility, and its present operation is hampered by very serious understaffing, which results in conditions that are unsafe for staff and inmates, counter-productive as an element of the county's criminal justice system, and in violation of some inmates' rights.

Respectfully submitted,

Anthony S. Kuharich
Anthony S. Kuharich
Jail Consultant

PERSONAL RESUME

Anthony S. Kuharich, 17048 Wausau Avenue, South Holland, Illinois
60473; Phone No. 312/596-6541.

Date of Birth: January 15, 1913, South Bend, Indiana. Oldest of four
children born to Martin and Theresa Kuharich nee: Alterman.

Marital History: Married Irene M. Mich, April 20, 1940, South Bend,
Indiana. One son, Martin A., born March 11, 1949, Hammond, Indiana;
graduated University of Notre Dame, 1971; married; two children.

Educational History: January, 1931 - Graduated, Central Senior High
School, South Bend, Indiana.

June, 1935 - BA - Education - University of
Notre Dame.

June, 1941 - MA - History - University of
Notre Dame.

June, 1954 - MSIR - Social and Industrial Relations,
Loyola University of Chicago, Illinois.

Educational Honors: June, 1961 - Honorary Doctor of Laws Degree (LLD)
Atlanta Law School, Atlanta, Georgia.

Present Employment: February, 1977 - Jail Consultant, National Institute
of Corrections (U. S. Department of Justice
Agency) Boulder, Colorado. (Part-time)

Prior Employment: January, 1976 - May, 1982; Adjunct Professor,
Department of Criminal Justice, Loyola University
of Chicago, Illinois (Part-time).

August 4, 1974 - February 12, 1977; Executive
Assistant, Metropolitan Correctional Center,
Chicago, Illinois, U. S. Bureau of Prisons. (Retired)

January, 1975 - April, 1978; Instructor, Corrections
Program, Chicago State University, Chicago,
Illinois. (Part-time)

January to July, 1974; Jail Consultant, American
Correctional Association, College Park, Maryland.

March 2, 1970 - January 2, 1974; Chief, Bureau of
Detention Standards and Services, Illinois Depart-
ment of Corrections, Springfield, Illinois.

Sept. 6 to Dec. 19, 1973; Instructor, Criminology,
MacMurray College, Jacksonville, Illinois (Part-time).

July 7, 1969 - February 28, 1970; Jail Administrator,
Wayne County Jail, Detroit, Michigan. Resigned to
accept employment in Illinois Department of
Corrections.

Attachment 40

1 A An extension cord.

2 Q Where does the extension cord run?

3 A Across the outer walkway.

4 Q The catwalk you told us about?

5 A Yes.

6 Q Have you ever been in the cell block area during the
7 summer?

8 A Yes, sir.

9 Q On the hot days, how high would you estimate that the
10 temperature gets?

11 A It would, I guess, be over 100; if it had been 100 outside,
12 it would be that hot or hotter in there.

13 Q If you were putting in an adjective or adverb to describe
14 the heat in there for the inmates, how would you describe it?

15 A It would be very hot.

16 Q Make them fairly uncomfortable?

17 A Yes, sir.

18 Q Does the jail staff have any way to reduce the temperature
19 once it gets that high?

20 A Just through the ventilation system. What we have, the
21 overhead vents that pull the air through -- circulation system

22 Q How effective is that?

23 A Well, I don't know how effective it's going to be during
24 hot weather. We found they have been inoperative since the
25 jail was built. There was some up there and the motors were

1 burned out and nobody knew they existed until late last year.
2 We discovered a switch and a way -- they repaired those.
3 During hot weather, I have no idea how effective they are.

4 Q Are you familiar with the plumbing at the jail?

5 A Yes.

6 Q Do you ever experience problems with the plumbing?

7 A Yes.

8 Q Describe some of those problems.

9 A Well, basically, the valves to the commode and washbasin
10 is push button type, something you can't turn and leave open.
11 These type valves you push and cut back off are rather
12 expensive and hard to find. Some of the shower buttons run
13 as high as two or three hundred dollars just for a valve,
14 and it takes sometimes two or three months to obtain them.
15 We have trouble with drainage then. They evidently were too
16 small to begin with and the prisoners will throw articles
17 in there and stop it up and it will flood from time to time.

18 Q If the toilet gets stopped up, how long typically does
19 it take to repair?

20 A We make repairs as quick as we can get someone down
21 there right now. As I said, it happens from time to time.
22 It's just a matter -- as it stops up or something happens --
23 to try to get someone in. If it's a problem with a shower,
24 like parts are involved, sometimes it may take two or three
25 months.

1 would be an incident report or something.

2 Q About the fans, you testified that the prisoners or
3 inmates are allowed fans, personal fans?

4 A Yes, sir.

5 Q In the past even with the use of the personal fans, does
6 the temperature still rise up in the hundred degree range
7 in the summertime?

8 A Yes, sir.

9 THE COURT: Wait just a minute, before we
10 leave those wires running across the catwalk. I understood
11 you to say that you thought it would constitute a safety
12 hazard if outlets were provided inside the cells. A
13 suggestion has been made that conduit PVC pipe with some
14 plug outlets be run just outside the cells in the catwalk.
15 Is that feasible or not?

16 THE WITNESS: Possibly could come from overhead,
17 up and over and back down; it's possible they could.

18 MR. PINCKNEY, continuing:

19 Q Plug into it?

20 A Yes, sir, it could be.

21 Q The ventilation system, again, you testified you discovered
22 a switch that can be used?

23 A There was also the motors, it never was used or burned out
24 when it was put in. We repaired that last fall. How much
25 difference -- that, I think, was the problem, one of the main

1 reasons there was no air at all. The fan blowing would do
 2 no good because the air was not coming through the jail itself.
 3 And this changed the circulation of it considerably. As far
 4 as how much, I have no idea until hot weather gets here.

5 Q How did you discover that ventilation system?

6 A We asked the electricians to check on this and they got
 7 up on the roof and we told them where you could see where the
 8 vents were on the roof. And they went up and checked among
 9 some things and said it was inoperative since the jail was
 10 there probably.

11 Q What problems had you to have the electrician come in?

12 A The heat, the Grand Jury.

13 Q That kind.

14 A Both kinds.

15 Q Part of your testimony on cross-examination involved the
 16 named plaintiff in this case, Mr. Douglass.

17 Would you mind explaining to us his specific request for
 18 an attorney?

19 A No, he didn't request an attorney. He requested the
 20 Tennessee Code. You're talking about the most recent request
 21 by Douglas?

22 A Right.

23 Q He wanted access to the legal library, not an attorney.

24 Q He didn't ask to see Ms. Kay?

25 A No.

PERMAD CO., DAYTON, O., 61281 FORM 748

Attachment 41

Juveniles Occupy Dingy Drunk Tank At Robertson Jail

By DWIGHT LEWIS

Tennessean Staff Correspondent

SPRINGFIELD, Tenn. — Two juveniles, one serving time for concealing stolen property and the other for being drunk, spent the past weekend in the Robertson County Jail's drunk tank.

The particularly dingy cell housing the two 17-year-olds has three concrete bunks, an ancient topless commode with a sink on top, and a hazardous-looking makeshift lamp with exposed wiring.

"We fixed this ourselves," the youngster serving a 60-day sentence for concealing stolen property said proudly as he pulled an electric cord to show how the lamp was turned on and off.

THE CONDITION of the drunk tank cell — with paint peeling off its walls — is like that of most other cells at the jail, which was built in 1967.

Its physical condition and the fact that juveniles are housed in the drunk tank are just two of the things that probably will come under fire when a Tennessee Corrections Institute annual report on county jails is released tomorrow.

"We've got nothing to hide," said P.R. West, chief deputy at the Robertson County Jail.

"We can't change it anyway."

West's comment came exactly two days after the chief of correctional facilities inspection for the Tennessee Corrections Institute said conditions under which many Tennessee county jails operate is a blatant violation of human rights.

L.E. (BUDDY) ROYSTON said there are minimum standards for jails in Tennessee and those that comply get \$8 a day per inmate to house state prisoners. Those not complying get \$6 a day.

"There's nothing we can do about the physical plant here," West said. "But administratively, we comply with the standards."

One of the minimum standards in Tennessee is that "there shall be separation — by sight and sound — among males and females, adults and juveniles."

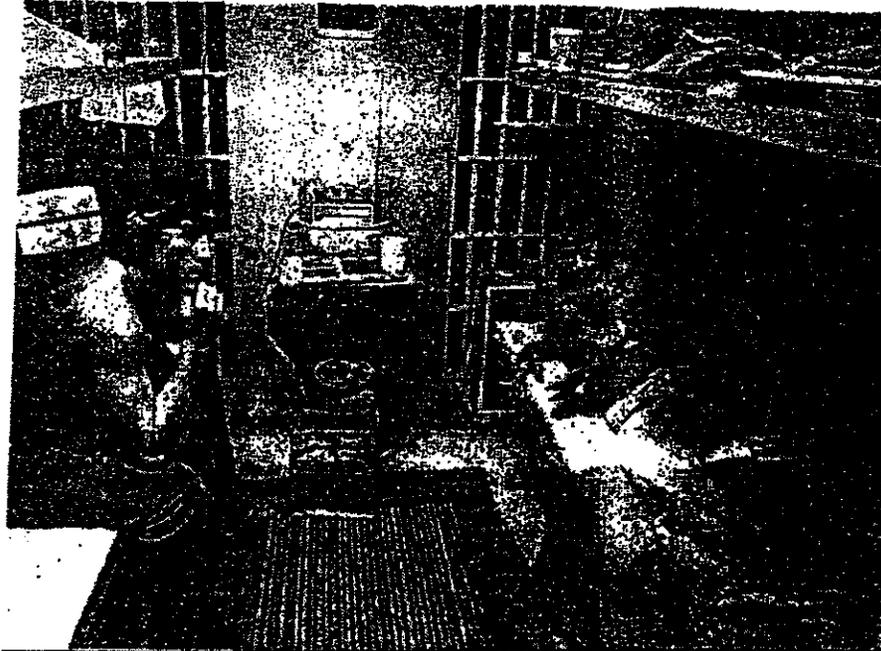
"When adequate space is not available for secure separation, consideration shall be given to the boarding of prisoners in another facility that can securely house them," the regulations read.

"THE WOMEN that we get are segregated from the men by sight, but not by sound," West said. "Our main problems here are that we need better quarters to house women, juveniles and problem prisoners."

He said those prisoners who need to be isolated from other prisoners are often thrown in the second drunk tank.

Sometimes — especially on weekends — as many as five juveniles are housed in the drunk tank where the two 17-year-olds were found when a Tennessean reporter-photographer team toured the Robertson County Jail.

(Turn to Page 4, Column 3)



— Staff photo by Dan Loftin

Exercise Facilities Lacking

SPRINGFIELD, Tenn. — Howard Jackson, left, and Franklin Knight, two Robertson County Jail inmates, spend long hours in their cell with nothing to do but talk and read since the jail has no exercise facilities except for so-called "day rooms" where inmates eat at picnic tables.

Robertson County Jail Houses Juveniles in Dingy Drunk Tank

(Continued From Page One)

"A LACK OF funds is the problem you have with making improvements," West said.

"We've met with some of the County Commission members, and there's the possibility of renovating the present jail or even building a new one.

"You can ask for funds all day out that doesn't mean you are going to get them. We've fulfilled our obligation. But right now there are no funds available to do any renovating.

"We've also made available a copy of the state's minimum standards for jails to the County Commission."

Robertson County Executive Emerson Meggs verified that the Robertson County Commission members have been made aware of certain minimum standards for county jails across the state.

"I'VE BEEN in office about two months and we've begun a study to see what the state is doing and also what other counties are doing," said Meggs, who added:

"I'm not going to admit to anything, except to say we're studying the situation and then we'll make a determination what we might do locally."

During Sunday's tour of the Robertson County facility, two inmates — one the jail cook — were being housed in the jail's laundry room.

In addition to the washer and dryer, there were bunk beds for each of the two prisoners and shelves overhead to store their belongings.

PRISONERS — except for those housed in the drunk tanks and women — normally eat in what are called day rooms. The day rooms are a little larger than regular living cells, having two picnic type tables and a bench on either side of the table. The day rooms also serve as exercise areas.

There was no exercise area for the juveniles nor for the female inmates at the jail.

"If we get three to four women or five juveniles, we're hurting," said Jimmy Jones, a jailer.

Royston, the chief of correctional facilities inspection, said he does not like to see makeshift housing arrangements.

IT IS NOT a good idea to have juveniles sleeping on concrete bunks, he said.

"Housing juveniles in jails is a big issue these days," Royston said.

Another seemingly potential problem at the Robertson County Jail is the fact that the jailer has to open manually certain cell doors with keys to let inmates come and go.

"Yes, if there was a fire we would have to let them out this way," Jones said.

Royston said most of Tennessee's jails conduct no fire drills

and have no evacuation diagrams despite the Maury County blaze more than five years ago that killed 42 persons. The comment came after yesterday's jail fire that killed 27 inmates in Biloxi, Miss.

ROYSTON SAID 89% of Tennessee jails conduct no fire drills and only 38% have mapped out evacuation procedures.

"What happened today in Biloxi was tragic; what happened five years ago at the Maury County jail was tragic," he said yesterday. "While these tragedies will occur, you can't help but wonder what preventive measures could be used. What are we not doing that we should be doing?"

"I am outraged that 27 people are dead today who weren't dead yesterday."

He said recent figures show 46% of Tennessee's jails do not have more than one exit, 59% have drafted no plans in case of emergencies and only 61% have smoke and heat detectors.

THE INSPECTOR said there is still polyurethane in many jails.

"You would think that after 42 people die, they would be in there the next day tearing all that stuff out," said Royston. "That's what you'd think, but it isn't so."

"We have made some improvements in the last five years but there's still a long way to go."



Concrete Slab for a Bed

SPRINGFIELD, Tenn. — Separated from adult offenders, a juvenile housed in the Robertson County Jail's drunk tank sits on a concrete bunk where he sleeps. He must also use the filthy commode and sink unit in the cell.

Attachment 42

1 A Yes, ma'am.

2 Q In the drunk tank, is the temperature monitored in the
3 drunk tank also?

4 A Well, you walk in to check it.

5 Q Is there a thermostat for the drunk tank?

6 A No, ma'am.

7 Q So there's no way to control the temperature in there?

8 A I believe that one is controlled by the one that's
9 next to the control office or outside the control office
10 that throws the heat in there. I believe that's correct.

11 Q Are you sure about that?

12 A Not sure, no.

13 Q Have you ever tried to change the temperature in the
14 drunk tank?

15 A No, ma'am.

16 Q Are there any electrical outlets in the drunk tank?

17 A No, ma'am, not that I'm aware of.

18 Q So there is no way for somebody in there to have a TV
19 or radio?

20 A That's correct; no, ma'am.

21 Q What about lighting in the drunk tank?

22 A There's just a lighting fixture at the top of it, square
23 lighting fixture; it's somewhat dim.

24 Q Would you say there's enough light in there to read?

25 A To read?

- 1 Q Without hurting your eyes.
- 2 A It would probably hurt your eyes somewhat.
- 3 Q Are you housing juveniles in the jail anymore?
- 4 A For the most part, no, ma'am. It's very hard to.
- 5 Q You say for the most part, what juveniles are you housing
6 in the facility?
- 7 A Recently, none. The most recent one was probably -- I
8 couldn't give you an exact time -- it's been a pretty good
9 while ago. He was waiting to be transferred further.
- 10 Q Even recently you've had to hold juveniles there?
- 11 A Ma'am, at this time, -I believe it's our policy not to
12 even house them anymore.
- 13 Q Do you use the drunk tank also for punitive segregation
14 of inmates?
- 15 A No, ma'am.
- 16 Q Where do you house inmates that are punitively being
17 segregated?
- 18 A I don't recall doing that to anybody, putting them
19 in punitive segregation since I've been there.
- 20 Q Do you have any way to effectively separate inmates that
21 are more violent than inmates who are less violent?
- 22 A What?
- 23 Q More violent inmates than less violent inmates?
- 24 A One floor to the other.
- 25 Q But then they would be in with other non-violent people?

Attachment 43

SEP 20 1983

DG

IN THE CRIMINAL COURT FOR ROBERTSON COUNTY, TENNESSEE, AT
SPRINGFIELD

STATE OF TENNESSEE)
VS.) RULE NO. _____
EDMUND GEORGE ZAGORSKI)

MOTION TO BE REMOVED FROM SOLITARY CONFINEMENT

COMES the Defendant, Edmund George Zagorski, by and through his attorneys and most respectfully moves the court that appropriate Order enter ordering the Sheriff of Robertson County to remove the Defendant from solitary confinement and that he be allowed to be incarcerated with the general population at the Robertson County Jail, or in the alternative that the Defendant be removed and incarcerated in the nearest sufficient jail in the State or in the alternative, to the State Penitentiary pursuant to State vs Grey 602 S.W. 2d 259, Tennessee Criminal Appeals, 1980, and in support thereof would state as follows:

subsequent transfer to nearest county jail - not given.

I

That the Defendant has been incarcerated in solitary confinement in the Robertson County Jail since the 6th day of June, 1983. That his cell is totally and completely enclosed from floor to ceiling with sheets of steel, that the only door to Defendant's cell is heavy steel with only a small peep-hole through the door. That the cell that the Defendant is incarcerated in is approximately eight by eight feet in size and within the cell there are two steel bunk beds, a commode and wash basin, a shower stall and a steel desk. That there is only a small amount of walking space within the small cell to which the Defendant is confined. That the only time the Defendant has been removed from the above described cell since his incarceration has been when he is handcuffed and shackled, both hand and both feet, and this has only been when his attorneys have been present and the occasions when it was necessary for him to seek

medical attention, or make an appearance in court. That his cell has no air conditioning or ventilation and he is unable to communicate verbally with the other prisoners or with anyone except the jailer who brings him his food. That there is no room for the Defendant to have any form of exercise or fresh air, no daylight and the only light in his cell is a small artificial light in the cell.

II

That since being incarcerated, the Defendant has experienced migraine headaches and has become so disturbed that he has acted irrationally and has struck the heavy steel surrounding his cell with his fist causing injuries to the Defendant. That said condition has caused the Defendant to be so mentally disturbed that it has been necessary that emergency medical treatment be given to him and he has been placed under heavy sedation. That the Defendant has been taken to the emergency room of Jesse Holman Jones Hospital on two occasions, once for treatment of excessive medication and once for treatment of electrical shock resulting from contact with an electrical cord.

III

That the conditions as set out above constitute severe, cruel, and inhuman treatment in that the Defendant is caged like a wild animal, all of which is in total violation of the Defendant's constitutional rights.

IV

That said incarceration of the Defendant as above set out is in violation of an agreed order entered in the U. S. District Court for the Middle District of Tennessee, Nashville Division. In the case of Samuel E. Douglas, et al vs. Ted Emery, et al which in part reads as follows:

"Defendants are enjoined from placing an inmate in disciplinary or administrative segregation for more than ten days. This does not include inmates who are segregated at their own request..."

v

That the incarceration of the Defendant as above set out requires the invocation of Tennessee Code Annotated 41-4-121 et seq.

WHEREFORE, your Defendant most respectfully moves the Court that he be removed from solitary confinement and placed in the general population at the Robertson County Jail or in the alternative, that he be removed to the nearest sufficient jail in the state or in the alternative to the State Penitentiary, pursuant to State vs. Grey 602 S.W. 2d 259 (Tennessee Criminal Appeals, 1980) and that the Defendant be granted an expedited hearing upon this motion.

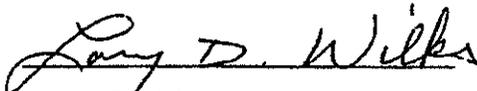

James E. Walton


Larry D. Wilks

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Be Removed From Solitary Confinement has been delivered to the Honorable Dee Gay, Assistant District Attorney General, at his office located on Fifth Avenue, Springfield, Tennessee, on this the 20th day of Sept., 1983.


Larry D. Wilks

Attachment 44

Stuart Grassian, M.D.
401 Beacon Street
Chestnut Hill, MA. 02467
Phone: 617-244-3315
Fax: 617-244-2792

PSYCHIATRIC EFFECTS OF SOLITARY CONFINEMENT

My name is Dr. Stuart Grassian. I am a Board Certified Psychiatrist and have been on the faculty of the Harvard Medical School since 1974. I have very substantial experience in evaluating the psychiatric effects of solitary confinement, and have been retained in class action suits concerning this issue in the states of Massachusetts, New York, Kentucky, and California, and have also evaluated and testified regarding the effects of such conditions in other lawsuits in Massachusetts, Texas, Georgia and Florida.

I have been on the teaching staff of Beth Israel Hospital continually since 1977, and have been from time to time on the faculty of major medical meetings, including the American Academy of Psychiatry and Law, and the American Psychiatric Association Institute on Hospital and Community Psychiatry. I have lectured on the subject of the psychiatric effects of solitary confinement in various settings, including Beth Israel Hospital/Harvard Medical School. I have published two articles on the subject of the psychological effects of solitary confinement, and am in the process of preparing a third article on this subject, based upon clinical data compiled as part of my involvement as a psychiatric expert in Madrid v. Gomez, a class action suit concerning conditions at Pelican Bay State Prison, California's "supermax" prison facility.

In addition to my involvement in these cases concerning the effects of solitary confinement, I have also been retained as an expert in other areas of civil litigation, especially involving the psychological effects of trauma and childhood sexual abuse. In the past several years, I have been involved in continuing research regarding the effects of childhood sexual abuse and the manner in which memory of such abuse is maintained over the years; one paper stemming from this research has been submitted for publication, and a revised version will be incorporated as a chapter of a book, Trauma and Memory, to be published by Harvard University Press. I have also lectured on these subjects at various academic conferences. I am Board subspecialty certified by the ABPN in Forensic Psychiatry.

The information which follows is based upon my experience, research, and testimony. All of it has appeared either in previously published material and/or in court testimony and opinions of various State and Federal courts.

I. Summary of Opinions.

In my opinion, solitary confinement -- that is, confinement of a prisoner alone in a cell for all or nearly all of the day, with minimal environmental stimulation and minimal opportunity for social interaction -- can cause severe psychiatric harm. This harm includes a specific syndrome which has been reported by many clinicians in a variety of settings, all of which have in common features of inadequate, noxious and/or restricted environmental and social stimulation. In more severe cases, this syndrome is associated with agitation, self-destructive behavior, and overt psychotic disorganization.

In addition, solitary confinement often results in severe exacerbation of a previously existing mental condition, or in the appearance of a mental illness where none had been observed before. Even among inmates who do not develop overt psychiatric illness as a result of confinement in solitary, such confinement almost inevitably imposes significant psychological pain during the period of isolated confinement and often significantly impairs the inmate's capacity to adapt successfully to the broader prison environment.

Moreover, although many of the acute symptoms suffered by inmates are likely to subside upon termination of solitary confinement, many -- including some who did not become overtly psychiatrically ill during their confinement in solitary -- will likely suffer permanent harm as a result of such confinement. This harm is most commonly manifested by a continued intolerance of social interaction, a handicap which often prevents the inmate from successfully readjusting to the broader social environment of general population in prison and, perhaps more significantly, often severely impairs the inmate's capacity to reintegrate into the broader community upon release from imprisonment.

In my experience, many inmates housed in such stringent conditions are extremely fearful of acknowledging the psychological harm or stress they are experiencing as a result of such confinement. This reluctance of inmates in solitary confinement is in substantial measure a response to the perception that such confinement is an overt attempt by authorities to "break them down" psychologically, and in my experience, tends to be more severe when the inmate experiences the stringencies of his confinement as being the product of an arbitrary exercise of power, rather than the fair result of an inherently reasonable process. Furthermore, in solitary confinement settings, mental health screening interviews are often conducted at the cell front, rather than in a private setting, and inmates are generally quite reluctant to disclose psychological distress in the context of such an interview, since such conversation would inevitably be heard by other inmates in adjacent cells, exposing them to possible stigma and humiliation in front of their fellow inmates.

Lastly, the adverse impact of punitively imposed solitary confinement will generally be far more severe than the effect of such confinement when it is imposed for administrative purposes, since by intent, punitive solitary confinement imposes

stringencies and deprivations which are in excess of those which are minimally required to maintain an inmate in segregated confinement; such stringencies often include limitations on programming, occupational and educational opportunities, visitation, use of telephone, television and radio access, and access to reading materials, among others. Conversely, inmates housed in segregation for administrative reasons -- such as for the protection of the inmate himself from possible harm by other inmates -- will often retain access to these many of the same opportunities and privileges as provided to inmates housed in congregate housing.

Indeed, the insitutional policies which create different conditions in administrative segregation, as opposed to punitive segregation, reflect an important underlying reality -- that "institutional security" actually is employed to mean two very different things. The narrower usage of the term reflects concerns about the safety of the individual inmate being housed, as well as the safety of those with whom he has contact. The broader use of the term, however, is fundamentally unbounded -- or at least, has boundaries which are not really distinguishable from the the broad purposes of any system of criminal justice. The harsh stringencies which are employed in punitive segregation reflect institutional assumptions that the harshly painful deprivations associated with a sentence to punitive solitary confinement, will serve as a deterrence to other inmates who might be tempted to break institutional rules. This rationale for imposing pain on an offender -- the rationale that the punishment of this offender by his society might deter other possible offenders -- is simply a rationale for any system of criminal justice and punishment. A fifteen year sentence of punitive solitary confinement is an imposition of pain of staggering proportions. If, in response to one offense, both the prison institution and the broader society can each impose so heavy a burden of harm and pain upon the putative offender in order to deter other possible future offenders, then it seems to be an inescapable conclusion that this putative offender is, indeed being exposed to double jeopardy.

II. SOLITARY CONFINEMENT CAN CAUSE SEVERE PSYCHIATRIC HARM

A. Solitary Confinement Can Cause a Specific Psychiatric Syndrome.

During the course of my involvement as an expert. I have had the opportunity to evaluate the psychiatric effects of solitary confinement in well over 100 prisoners in various state and federal penitentiaries. I have observed that for many of the inmates so housed, incarceration in solitary caused either severe exacerbation or recurrence of preexisting illness, or caused the appearance of an acute mental illness in individuals who had previously been free of any such illness.

I became aware of the particular toxicity of solitary confinement when I first had the opportunity to evaluate prisoners in solitary confinement as a result of my involvement in a class action lawsuit in Massachusetts, Libby v. Hogan, which challenged conditions in solitary confinement at the maximum security State

challenged conditions in solitary confinement at the maximum security State Penitentiary in Walpole, Massachusetts. The clinical observations I made in the course of my involvement in that lawsuit, coupled with my research into the medical literature concerning this issue, have formed the basis of two articles I have since published on this topic in peer-reviewed journals. These are: 1. Grassian, S.(1983),"Psychopathological Effects of Solitary Confinement". American Journal of Psychiatry; 140, 1450-1454. 2. Grassian, S. and Friedman, N. (1986), "Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement". International Journal of Law and Psychiatry, 8, 49-65. These articles are included as Appendices E and F of this declaration. Moreover, my subsequent professional experience has included observations of similar phenomena in many other solitary confinement settings.

When I initially agreed to evaluate the Walpole prisoners, I had not yet reviewed the literature on the psychiatric effects of solitary confinement and, indeed, I was somewhat skeptical; I expected that inmates would feign illness and exaggerate whatever psychiatric symptomatology they suffered. I discovered, however, something very different. Contrary to my expectations, the prisoners appeared to be extremely defensive about the psychiatric problems they were suffering in SHU; they tended to rationalize away their symptoms, avoid talking about them, or deny or distort their existence, all in an apparent effort to minimize the significance of their reactions to isolation. Numerous interviews began with statements such as "solitary doesn't bother me" or "some of the guys can't take it -- not me", or even with the mention of a symptom and a simultaneous denial of its significance: "As soon as I got in I started cutting my wrists. I figured it was the only way to get out of here."

As my interviews progressed, these facile accounts gave way to descriptions of experiences which were very worrisome. For example, one inmate was unable to describe the events of the several days surrounding his wrist-slashing, nor could he describe his thoughts or feelings at the time. Similarly, the prisoner who said he could "take it" eventually came to describe panic, fears of suffocation, and paranoid distortions which he suffered while in isolation. Moreover, the specific psychiatric symptoms reported were strikingly consistent among the inmates:

1. The Specific Psychiatric Syndrome Associated with Solitary Confinement.

a. Hyperresponsivity to External Stimuli

More than half the prisoners reported a progressive inability to tolerate ordinary stimuli. For example, "You get sensitive to noise -- the plumbing system. Someone in the tier above me pushes the button on the faucet ... its too loud, gets on your nerves. I can't stand it. I start to holler."

b. Perceptual Distortions, Illusions, and Hallucinations

Almost a third of the prisoners described hearing voices, often in whispers,

Almost a third of the prisoners described hearing voices, often in whispers, often saying frightening things to them. There were also reports of noises taking on increasing meaning and frightening significance. For example, "I hear noises, can't identify them -- starts to sound like sticks beating men, but I'm pretty sure no one is being beaten ... I'm not sure." These perceptual changes at times became more complex and personalized: "They come by with four trays; the first has big pancakes. I think I am going to get them. Then someone comes up and gives me tiny ones -- they get real small, like silver dollars. I seem to see movements -- real fast motions in front of me. Then seems like they are doing things behind your back -- can't quite see them. Did someone just hit me? I dwell on it for hours."

c. Panic Attacks

Well over half the inmates interviewed described severe panic attacks while in SHU.

d. Difficulties with Thinking, Concentration and Memory

Many reported symptoms of difficulty in concentration and memory; for example, "I can't concentrate, can't read ... Your mind's narcotized. Sometimes can't grasp words in my mind that I know. Get stuck, have to think of another word. Memory's going. You feel like you are losing something you might not get back." In some cases this problem was far more severe, leading to acute psychotic, confusional states. One prisoner had slashed his wrists during such a state and his confusion and disorientation had actually been noted in his medical record.

e. Intrusive Obsessional Thoughts: Emergence of Primitive Aggressive Ruminations

Almost half the prisoners reported the emergence of primitive aggressive fantasies of revenge, torture, and mutilation of the prison guards. In each case, the fantasies were described as entirely unwelcome, frightening and uncontrollable. For example, "I try to sleep 16 hours a day, block out my thoughts -- muscles tense -- think of torturing and killing the guards -- lasts a couple of hours. I can't stop it. Bothers me. Have to keep control. This makes me think I'm flipping my mind ... I get panicky -- thoughts come back -- pictured throwing a guard in lime -- eats away at his skin, his flesh -- torture him -- try to block it out, but I can't."

f. Overt Paranoia

Almost half the prisoners interviewed reported paranoid and persecutory fears. Some of these persecutory fears were short of overt psychotic disorganization. For example: "Sometimes get paranoid -- think they meant something else. Like a remark about Italians. Dwell on it for hours. Get frantic. Like when they push buttons on the sink. Think they did it just to annoy me." In other cases this paranoia deteriorated into overt psychosis: "Spaced out. Hear singing,

cases this paranoia deteriorated into overt psychosis: "Spaced out. Hear singing, people's voices, 'Cut your wrists and go to Bridgewater and the Celtics are playing tonight.' I doubt myself. Is it real? ... I suspect they are putting drugs in my food, they are putting drugs in my cell ... The Reverend, the priest -- even you -- you're all in cahoots in the Scared Straight Program."

g. Problems With Impulse Control

Slightly less than half of the prisoners reported episodes of loss of impulse control with random violence: "I snap off the handle over absolutely nothing. Have torn up mail and pictures, throw things around. Try to control it. Know it only hurts myself." Several of these prisoners reported impulsive self-mutilation; "I cut my wrists many times in isolation. Now it seems crazy. But every time I did it, I wasn't thinking -- lost control -- cut myself without knowing what I was doing."

2. This Syndrome has the Characteristics of an Acute Organic Brain Syndrome -- a Delirium.

Clearly, these symptoms were very dramatic, and they moreover appeared to form a discrete syndrome -- that is, a constellation of symptoms occurring together and with a characteristic course over time, thus suggestive of a discreet illness. Moreover, this syndrome was strikingly distinct from the more common array of functional psychiatric illnesses -- indeed, some of the symptoms described above are found in virtually none of these disorders: Acute dissociative, confusional psychoses are a rare phenomenon in psychiatry; random, impulsive violence in the context of such confusional state is even more unusual. Moreover, the type and extent of perceptual disturbances seen in this syndrome are exceedingly uncommon among the functional psychiatric illnesses. For example, loss of perceptual constancy (objects becoming larger and smaller, seeming to "melt" or change form, sounds becoming louder and softer, etc.) is very rare, and when found is far more commonly associated with neurologic illness (especially seizure disorders and brain tumors affecting sensory integration areas of the brain) than with primary psychiatric illness. (When seen in primary psychiatric illness, it is basically only seen in especially severe, insidious, early onset schizophrenia -- the kind of schizophrenic illness which has always been thought to clinically "feel" like a fundamentally biological/neurologic disease.)

In addition, functional psychiatric illness very rarely presents with such severe and florid perceptual distortions, illusions, and hallucinations simultaneously affecting multiple perceptual modalities -- auditory, visual, olfactory, tactile, kinesthetic. (In fact, in the more common psychotic illnesses such as schizophrenia and psychotic depression, auditory hallucinations are by far the most common type, visual hallucinations come a distant second, and hallucinations in all other modalities are actually very uncommon; moreover, combined modality hallucinations -- other than the combination of auditory with visual -- are exceedingly rare.)

Similarly, hyperresponsivity to external stimuli with a dysesthetic

Similarly, hyperresponsivity to external stimuli with a dysesthetic (subjectively painful) response to such stimuli, is likewise rare; in fact it is exceedingly rare, so rare that appearance of this symptom also would tend to suggest an organic -- brain dysfunction -- etiology. (This symptom is similar, for example, to the experience many people have during a febrile illness of finding any touching of their body exceedingly unpleasant or the inability of a patient with a headache to tolerate an even ordinary volume of sound, or the inability of some pregnant women to tolerate even ordinary smells without becoming nauseated.)

Thus, the fact that all of these quite unusual symptoms ran together in the same syndrome was itself a clear confirmation of the distinct nature of this syndrome. While this syndrome is strikingly atypical for the functional psychiatric illnesses, it is in fact quite characteristic of an acute organic brain syndrome -- that is, delirium, a syndrome characterized by a decreased level of alertness, EEG abnormalities, and by the same perceptual and cognitive disturbances, fearfulness, paranoia, and the same agitation and random, impulsive and self-destructive behavior which I observed in the Walpole population.

Moreover, delirium is a syndrome which is known to result from the type of conditions -- including restricted environmental stimulation -- which are characteristic of solitary confinement; even the EEG abnormalities characteristic of delirium have been observed in individuals exposed to conditions of sensory deprivation. By now, the potentially catastrophic effects of restricted environmental stimulation have been the subject of a voluminous medical literature; annual international symposia are being held on the subject, and the issue has even found its way into the popular media. (This literature is summarized in the appendices to this letter.)

B. Psychiatric Disturbances Occurring in Other Settings of Restricted Environmental Stimulation

My involvement in class-action lawsuits in New York State, California and Kentucky has yielded observations of the effects of solitary confinement which are quite parallel to my observations at Walpole. (The findings at Pelican Bay State Prison, California, are discussed at Paragraphs 73-77 of this affidavit, and those at the Federal Correctional Institute at Lexington, Kentucky are found in paragraph 78.)

In addition, earlier published reports on the effects of solitary confinement describe findings which are quite similar to my observations at Walpole. In addition, a pattern of psychiatric disturbances similar to those I found at Walpole have been seen in a variety of other -- non-prison -- settings, all of which, however, share in common features of restricted environmental stimulation:

These latter have included observations of prisoners of war, of hostages, of patients with impairment of their sensory apparatus (for example, hearing or visually impaired patients), of patients confined in the intensive care unit, of patients undergoing long term immobilization in hospital (e.g. spinal traction patients), of observations of psychiatric difficulties suffered by explorers (for example, Arctic and

observations of psychiatric difficulties suffered by explorers (for example, Arctic and Antarctic exploration by individuals and small groups) and of observations of difficulties encountered by pilots during solo jet flight.

In all of these situations, despite the multiple differences which exist between them, the very same syndrome emerges. The literature documenting this fact is well-known, rich and detailed. It is reviewed in the Appendices to this declaration.

C. The Historical Experience With Solitary Confinement: The Nineteenth Century Experience.

1. The Origin of the American Penitentiary and the Nineteenth Century German Experience.

Preindustrial societies often did not make any fundamental distinction between deviant behavior seen as the product of "criminal intent" as opposed to behavior seen as stemming from "mental illness." For such societies, deviant behavior -- whatever its origins -- was a social evil that was deeply feared and cruelly punished.

But in the early nineteenth century, a surge of great social optimism swept over America, and perhaps an overly optimistic faith in the possibility of rehabilitation of persons whose behavior was deviant. Not coincidentally, this spirit gave rise virtually simultaneously to two great social reform movements in the United States: the development of large mental hospitals and the construction of the first large penitentiaries.

Both of these institutions were founded upon the premise that psychological and social deviance was largely a result of the evils and stresses of "modern society", and both held a fundamental belief that healing would naturally occur if the deviant individual was removed from the evils of the larger society, and thus enabled to come to know his own true nature.

In the case of the mental hospital, this belief gave rise to the concept of a healing, pastoral, therapeutic community. But in the case of the penitentiary, an additional safeguard was obviously required; the inmates clearly had to be protected, not only from the evil influences of the broader society, but also from the evil influences of each other. The proper approach thus appeared to be to give each inmate the opportunity to live a life alone, like a penitent monk in his own monastic cell.

Thus, the earliest American penitentiaries were, generally, systems of rigid solitary confinement. Extravagant attention was paid to the design of these institutions, to ensure the absolute and total isolation of the offender from any "evil and corrupting influences." The Philadelphia Prison, completed in 1829, was particularly conscientious in this regard:

The arrangements ... guaranteed that convicts would avoid all contamination and follow a path to reform. Inmates remained in

contamination and follow a path to reform. Inmates remained in solitary cells for eating, sleeping and working. ... No precaution against contamination was excessive. Officials placed a hood over the head of a new prisoner when marching him to his cell so he would not see or be seen by other inmates. ... Thrown upon his own innate sentiments, with no evil example to lead him astray, ... the criminal would start his rehabilitation. Then, after a period of total isolation, without companions, books, or tools, ... (he) would return to the community cured of vice and idleness, to take his place as a responsible citizen. (Rothman, pp 86-87)

The American penitentiary, and the Philadelphia System, became world-famous; no important visitor to the United States neglected to tour its penitentiaries and to bring back their principles for emulation in Europe. Some such as de Tocqueville of France and Nicholas Julius from Prussia came specifically for that purpose (Rothman p. 91). de Tocqueville wrote of the utter, "perfect" desolation of the American penitentiary, of the "profound silence" within its "vast walls," likening it to the silence of death. (Rothman, p. 97)

2. Psychological Effects of Severe Isolation

The openness with which these institutions were held up to public scrutiny led in time to open concern about the psychological effects of such confinement. During a tour of the United States in 1842, Charles Dickens wrote with pathos of the Philadelphia Prison:

The system here is rigid, strict and hopeless solitary confinement Over the head and face of every prisoner who comes into this melancholy house, a black hood is drawn, and in this dark shroud, ... he is led to the cell from which he never again comes forth, until his whole term of imprisonment had expired. He is a man buried alive ... dead to everything but torturing anxieties and horrible despair. ...

The first man I saw ... answered ... always with a strange kind of pause ... he gazed about him and in the act of doing so fell into a strange stare as if he had forgotten something.

In another cell was a German ... a more dejected, broken-hearted, wretched creature, it would be difficult to imagine.

There was a sailor. ... Why does he stare at his hands and pick the flesh open, upon the fingers, and raise his eyes for an instant ... to those bare walls ... ? (quoted in Liederman, p. 66)

American concern about the effects of rigid solitary confinement began as early as the 1830's. Statistical comparisons began to be made between the Philadelphia system and its chief competitor -- the Auburn system prevailing in New

York State at Auburn and Sing-Sing penitentiaries. The latter system also utilized solitary confinement, but less rigidly; inmates left their cells to work together in workshops and exercise in a common courtyard, although here, too, absolute and strict silence was maintained at all times. Statistical comparisons began to generate evidence that "it was unnatural ... to leave men in solitary, day after day, year after year; indeed, it was so unnatural that it bred insanity." (Rothman, p. 87). The Philadelphia Prison appeared to have a higher incidence, not only of insanity, but also of physical disease and death than its New York State counterparts.

Meanwhile, the American system had been emulated in many major European prisons, such as at Halle, Germany. Although the Americans had been the world leaders in instituting rigid solitary confinement in their penitentiary system, German clinicians eventually assumed the task of documenting its effects, ultimately leading to its demise.

Between 1854 and 1909, 37 articles appeared in German scientific journals on the subject of psychotic disturbances among prisoners, summarizing years of work and hundreds of cases. A major review of this literature was published in 1913; (Nitsche, 1913). A summary and synthesis of this rather large body of work appears as an appendix to this declaration.

But it should be noted that interest in the problem was not purely academic; psychotic disturbances among prisoners were of such frequency in these prisons that they attracted administrative as well as clinical concern, and great effort was made to explain this disturbing incidence. Thus, the literature covered a variety of issues, speculating for example, on the "moral degeneracy" of the prison population, some authors by comparing the psychopathology of those who committed "crimes of passion" with those who committed "crimes against property," or by detailing the incidence of the major diagnostic categories of the time (e.g., "circular insanity," "alcoholic psychoses," epilepsy, general paresis, etc.) among the prison population.

However, multiple reports based on careful clinical observation suggested that a substantial majority of these prison psychoses were direct reactions to the conditions of imprisonment itself. Gradually a clinically distinguishable syndrome of acute reactive prison psychoses began to be defined. Different variables were considered in attempting to explain the etiology of these reactive prison psychoses, including, for example, long versus short duration of imprisonment, or imprisonment of those already convicted versus imprisonment while awaiting trial. However, the most consistent factor described, reported in over half the total literature, was solitary confinement.

D. The Twentieth Century Experience: Prisoners of War, "Brain Washing", and Experimental Research.

1. Prisoners of War and "Brainwashing".

Unfortunately, other than some anecdotal reports, there was little discussion of the psychological effects of solitary confinement in the medical literature during the first half of the twentieth century. Undoubtedly, this was in part a consequence of the disastrous earlier experience with such confinement. As statistical evidence accumulated during the nineteenth century that solitary confinement produced a very disturbing incidence of insanity, physical disease and death, the system had fallen into disrepute, and with this, it had changed from an open, optimistic experiment in social reform into a hidden, secretive means of punishment and control.

Its devastating psychological impact, however, did not change, a fact which became suddenly and very painfully evident in the 1950's as the American public began hearing the frightening and dramatic reports of "brainwashing" of American prisoners of war in Korea -- reports that alterations in the sensory environment were being intentionally imposed upon these prisoners in a seemingly Orwellian attempt to profoundly disrupt their psychological equilibrium. (Biderman and Zimmer, 1961).

By the 1950's, reports had already appeared of major psychiatric disturbances among survivors of prolonged solitary confinement in war (e.g., Burney, 1952), but during the decade of the Korean War, major attention was riveted on the occurrence of these disturbances, not only in war, but in a variety of other settings as well.

In 1956, the Group for the Advancement of Psychiatry (GAP) held a symposium -- "Factors Used to Increase the Susceptibility of Individuals to Forceful Indoctrination" -- to study methods used by the Chinese and Russian Communists to "indoctrinate" and "break the will" of political prisoners and prisoners of war.

Dr. M. Meltzer, former Chief Medical Officer at Alcatraz Federal Penitentiary, contributed his observations of psychiatric disturbances among prisoners exposed to punitive solitary confinement at Alcatraz. These prisoners were rarely confined for periods beyond one week. (Meltzer, 1956) Despite this, Dr. Meltzer described acute psychotic breakdowns among prisoners so confined; his descriptions closely paralleled the observations at Walpole: "The motor effects ranged from occasional tense pacing, restlessness and sense of inner tension with noise making, yelling, banging and assaultiveness at one extreme, to a kind of regressed, dissociated, withdrawn hypnoid and reverie-like state at the other ... (The) sense of self, the ego and the ego boundary phenomena are profoundly affected by the isolation." (Meltzer, p. 98)

In the same symposium, Dr. John Lilly of the National Institute of Mental Health noted that despite the importance of other factors which tended to "weaken personalities and make them more susceptible to [forced indoctrination]" -- such as semi-starvation, physical pain and injury, and sleep deprivation -- social and sensory isolation was still the central pathogenic factor in such confinement. (Meltzer, p. 89)

2. Experimental Research on Sensory Deprivation.

An experimental model was therefore designed to study the effect of restricted environmental stimulation (RES); this research, conducted during the 1950's and early 1960's, primarily at Harvard and McGill University Medical Centers, was in fact funded in large part by the United States Government -- and especially by the Department of Defense and U.S. Central Intelligence Agency. This research is described in an appendix to this declaration. Its relevant conclusions can, however, be described relatively briefly:

In these studies (Brownfield, 1965; Solomon, et al., 1961), subjects were placed in a situation designed to maximally reduce perceptually informative external stimuli (e.g., light-proof, sound-proof rooms, cardboard tubes surrounding the arms and hands to reduce proprioceptive and tactile sensation, and so on). The research revealed that characteristic symptoms generally developed in such settings. These symptoms included perceptual distortions and illusions in multiple spheres, vivid fantasies, often accompanied by strikingly vivid hallucinations in multiple spheres, derealization experiences, and hyperresponsivity to external stimuli. What was also clear, however, was that while some subjects tolerated such experiences well, many did not, and a characteristic syndrome was observed, including not only the above symptoms, but also included cognitive impairment, massive free-floating anxiety, extreme motor restlessness, emergence of primitive aggressive fantasies which were often accompanied by fearful hallucinations, and with decreasing capacity to maintain an observing, reality-testing ego function. In some cases, an overt psychosis supervened with persecutory delusions and, in some cases, a marked dissociative, catatonic-like stupor (delirium) with mutism developed. EEG recordings confirmed the presence of abnormalities typical of stupor and delirium.

These findings clearly demonstrated that this experimental model did reproduce the findings in the non-experimental situations, including the findings among prisoners of War held in solitary confinement.

E. Factors Affecting Response to Sensory Restriction and Solitary Confinement.

Much of the subsequent research in this area attempted to delineate variables which might explain these differing outcomes. These variables can be divided into two categories: 1) differences among various conditions of perceptual deprivation, and 2) differences in preexisting psychological functioning among individuals experiencing such conditions:

1. Differing Conditions of Isolation.

One of the factors commonly cited in the literature as related to outcome is differences in the intensity and duration of the sensory deprivation experience; more severe sensory restriction, the presence of noxious stimulation, and longer duration of the sensory deprivation experience, have all been associated with an increased

risk of adverse psychiatric consequences.

In my experience, while conditions experienced by inmates in various prison solitary confinement settings generally bear some similarities (e.g. a cell of roughly 50-80 square feet, approximately 22 1/2 hours/day locked in the cell, with about one hour/day 5-7 days/week of exercise yard), in other respects, the conditions are fairly variable. For example, some cells have barred doors, which allow better ventilation, sound transmission and visual connection with the outside environment than do mesh steel doors; solid steel doors are the most restrictive -- especially when they are either hinged or slide shut with almost no air gap from the wall. Moreover, administrative conditions regarding the amount and circumstances of visitation, the availability of reading material, radio, and television, and so forth, are all factors which vary from institution to institution, and even from time to time within a given institution.

2. The Perceived Intent of the Isolation Experience

In addition to the factors described above, another critical factor in determining the effect of isolation, appears to be the perceived intent of the isolation. Experimental research has demonstrated that an individual who receives clues which cause him to experience the isolation situation as potentially threatening, is far more likely to develop adverse psychiatric reactions to the isolation experience; conversely, if the subject has reason to believe the situation is likely to be benign, he will be far more likely to tolerate or even enjoy it. Among the latter group of subjects who tolerated isolation well, many reported pleasant or, at least, nonthreatening, visual imagery, fantasy and hallucinatory experiences, often associated with a state of hypnotic reverie: "His mind may begin to wander, engage in daydreams, slip off into hypnogogic reveries with their attendant vivid pictorial images ... he may be quietly having sexual or other pleasurable thoughts." (Wright & Abbey, 1965, pg. 6.)

This finding is perhaps not surprising. It appears that sensory restriction produces perceptual disturbances and illusions, which are analogous to those produced by hallucinogenic drugs -- and clearly, while there are some individuals who could be said to have volunteered to undergo such hallucinatory, psychotic-like experiences, it must be almost uniformly terrifying to be forced involuntarily to undergo an experience similar to that induced by hallucinogenic drugs.

3. Individual Differences in Response.

Many studies have demonstrated that there is great variability among individuals in regard to their capacity to tolerate a given condition of sensory restriction. This variability helps to provide further insight into the nature of the toxic effect of such isolation conditions, and provides striking corroboration of the fact that such environmental stimulation, especially when of prolonged duration, is toxic to brain functioning, and causes symptoms characteristic of stupor and delirium.

Generally, individuals with mature, healthy personality functioning and with intact central nervous system functioning -- and of at least average intelligence -- have been found to have greater ability to tolerate such isolation situations, while individuals with primitive or psychopathic functioning, individuals with borderline cognitive capacities, impulse-ridden individuals and individuals whose internal cognitive/emotional life is chaotic or fearful, are especially at risk for severe psychopathologic reactions to such isolation. (Appendix C describes these studies in more detail.)

Moreover, there is clear evidence that in a situation of restricted environmental stimulation, preexisting central nervous system dysfunction is a major predisposing factor to the development of adverse psychiatric reactions and of overt delirium. For example, in one study of patients suffering visual deprivation following eye surgery (eye-patched patients), those patients with pre-existing central nervous system dysfunction were found to be at especially high risk to develop symptoms of delirium. (Ziskind et.al 1960). Moreover, the presence of a preexisting personality disorder or impairment of psychosocial functioning was associated with increased risk of incapacitating fearfulness, paranoia, agitation and irrational aggression towards staff (Klein & Moses 1974). (A more extensive review of this literature is contained in Appendix A to this letter.)

In addition, individuals may at times be exposed to situations which cause impairment of central nervous system functioning. Such situations -- especially if they impair the individual's state of alertness, for example, sleep deprivation, abnormal sleep-wake cycles, or the use of sedating medication -- will substantially increase the individual's vulnerability to the development of delirium. Delirium among post-surgical patients, and the so-called "ICU Psychoses" are examples of this phenomenon. (Appendix A discusses this issue in more detail.) And one of the characteristic difficulties experienced by inmates in solitary confinement is, in fact, abnormal sleep-wake cycles and impaired sleep.

a. Findings at Pelican Bay State Prison.

These findings received further corroboration in my observations of inmates at Pelican Bay State Prison, California. In 1991-92, as part of my participation in Madrid v. Gomez -- a class-action lawsuit challenging conditions at Pelican Bay State Prison, a new "supermax" facility in California -- I evaluated 50 inmates housed in the Special Housing Unit (SHU) at the institution, and prepared a lengthy report to the Federal Court of my findings. (Much of the literature review and historical material in the present declaration is taken from my Madrid declaration.) Many of the inmates I evaluated there suffered severe psychiatric disturbances while housed in Pelican Bay SHU -- either springing up *de novo* while so incarcerated, or representing a recurrence or severe exacerbation of preexisting illness. Of the 50 inmates I evaluated, at least 17 were actively psychotic and/or acutely suicidal and urgently in need of acute hospital treatment, and 23 others suffered serious psychopathological reactions to solitary confinement, including in several cases, periods of psychotic disorganization.

The clinical data at Pelican Bay also added striking corroboration that the severe and prolonged restriction of environmental stimulation in solitary confinement is toxic to brain functioning, by demonstrating that the most severe, florid psychiatric illnesses resulting from solitary confinement tend to be suffered by those individuals with preexisting brain dysfunction. As noted before, I have observed a high incidence of preexisting central nervous system dysfunction among inmates I have evaluated in solitary confinement settings. This was also the case at Pelican Bay, and statistical analysis of the Pelican Bay data quite dramatically demonstrated that inmates with such preexisting vulnerability were the most likely to develop overt confusional, agitated, hallucinatory psychoses as a result of SHU confinement.

**b. Attention Deficit and Antisocial
Personality Disorders**

In addition, research regarding Attention Deficit Disorder and Antisocial Personality Disorder demonstrate that these conditions are similarly associated with a particular inability to tolerate restricted environmental stimulation. There is in fact increasing evidence that childhood impulsivity and Attention Deficit Hyperactivity Disorder bear some relationship to Antisocial Personality Disorder, that both are characterized by impulsivity and stimulation-seeking behavior, and that both involve biologically based abnormalities in central nervous system functioning. Moreover, the clinical literature demonstrates that individuals with Antisocial Personality Disorder are especially intolerant of restricted environmental stimulation. For example, Quay (1965) characterized the psychopathic individual as pathologically "stimulation seeking ... impulsive ... (and) unable to tolerate routine and boredom." (Appendix B contains a more detailed discussion.)

Given the exigencies of conducting clinical observations of inmates in solitary confinement, it is not surprising that little systematic attempt has been made to elucidate the underlying psychological characteristics of those most at risk for developing severe psychopathological reactions to such isolation. However, among the clinical reports on Ganser's Syndrome (a related condition) in nonprison populations are several studies of patients in psychiatric hospitals. These patients were, of course, available for extensive psychological assessment and observation, and these reports described the majority of these patients as suffering long-standing hysterical character disorders, having problems with severe impulsivity, childhood truancy, and antisocial behavior patterns. (Appendix B contains a more detailed discussion.)

Thus, the medical literature demonstrates that individuals whose internal emotional life is chaotic and impulse-ridden, and individuals with central nervous system dysfunction, may be especially prone to psychopathological reactions to restricted environmental stimulation. Yet among the prison population, it is quite likely that these are the very individuals who are especially prone to committing infractions that result in stricter incarceration, including severe isolation and solitary confinement.

c. Effects on Psychologically More Resilient Inmates: Baraldini v. Meese and Hameed v. Coughlin

In 1988, in the course of my involvement in Baraldini v. Meese, a class action challenging the confinement of a small group of women in a subterranean security housing unit at the Federal Penitentiary in Lexington, Kentucky, I had the opportunity to interview several women who were in confinement in this facility. These women had been convicted of having committed politically motivated crimes, were all highly educated, and had a history of relatively strong psychological functioning prior to their confinement. None of these women developed the florid confusional psychosis described earlier in this affidavit, yet each of them demonstrated significant psychopathological reactions to their prolonged confinement in a setting of severe environmental and social isolation. These included perceptual disturbances, free-floating anxiety and panic attacks. These inmates also uniformly described severe difficulties in thinking, concentration and memory; for example, one inmate reported that she was able to perform tasks requiring some mental effort -- such as reading or writing -- only for about the first three hours of the morning after she awoke; by then, her mind had become so slowed down, so much "in a fog", that she was entirely unable to maintain any meaningful attention or expend any meaningful mental effort.

In addition, in 1993, I evaluated Bashir Hameed, an inmate who had also been incarcerated in the SHU at Shawangunk C.F. and who had brought suit -- Hameed v. Coughlin, 89 CV 578 (NDNY) -- concerning his incarceration there. As I described in my testimony in that case, Mr. Hameed is an individual who evidenced strong prior psychological adjustment, and no prior psychiatric history, yet became significantly ill as a result of his SHU confinement.

F. Long Term Effects of Solitary and Small Group Confinement.

Long-term studies of veterans of P.O.W. camps and of kidnapping and hostage situations have demonstrated that while many of the acute symptoms I outlined above tend to subside after release from confinement, there are also long-term effects which may persist for decades. These not only include persistent symptoms of posttraumatic stress (such as flashbacks, chronic hypervigilance, and a pervasive sense of hopelessness), but also lasting personality changes -- especially including a continuing pattern of intolerance of social interaction, leaving the individual socially impoverished and withdrawn, subtly angry and fearful when forced into social interaction. (This literature is reviewed in Appendix D to this declaration.)

In addition, from time to time I have had the opportunity to evaluate individuals who had been incarcerated in solitary confinement several years previously; I have found the same pattern of personality change described above -- these individuals had become strikingly socially impoverished and experienced

intense irritation with social interaction, patterns dramatically different from their functioning prior to solitary confinement.

III Conclusions

The restriction of environmental stimulation and social isolation associated with confinement in solitary are strikingly toxic to mental functioning, producing a stuporous condition associated with perceptual and cognitive impairment and affective disturbances. In more severe cases, inmates so confined have developed florid delirium -- a confusional psychoses with intense agitation, fearfulness, and disorganization. But even those inmates who are more psychologically resilient inevitably suffer severe psychological pain as a result of such confinement, especially when the confinement is prolonged, and especially when the individual experiences this confinement as being the product of an arbitrary exercise of power and intimidation. Moreover, the harm caused by such confinement may result in prolonged or permanent psychiatric disability, including impairments which may seriously reduce the inmate's capacity to reintegrate into the broader community upon release from prison.

Many of the prisoners who are housed in long-term solitary confinement are undoubtedly a danger to the community and to the Corrections Offices charged with their custody. But for many, they are a danger, not because they are coldly ruthless, but because they are volatile, impulse-ridden, and internally disorganized.

As noted earlier in this statement, modern societies made a fundamental moral division between socially deviant behavior which was seen as a product of evil intent, and that behavior seen as a product of illness. Yet this bifurcation has never been as simple as might at first glance appear. Socially deviant behavior can in fact be described along a spectrum of intent. At one end are those whose behavior is quite "instrumental" - ruthless, carefully planned and rational; at the other, are individuals whose socially deviant behavior is the product of unchecked emotional impulse, internal chaos, and often of psychiatric or neurologic illness.

It is a great irony that as one passes through the levels of incarceration -- from the minimum to the maximum security institutions, and then to the solitary confinement sections of those institutions -- one does not pass deeper and deeper into a subpopulation of the most ruthlessly calculating criminals. Instead, ironically and tragically, one comes full circle back to those who are emotionally fragile and, often, severely mentally ill. The laws and practices which have established and perpetuated this tragedy deeply offend any sense of common human decency.

Stuart Grassian, M.D.

APPENDICES

- A. Reports of Psychiatric Disturbances in Conditions of Restricted Environmental Stimulation.**
- B. The Nineteenth Century German Experience with Solitary Confinement: Ganser's Syndrome.**
- C. Experimental Research on the Psychiatric Consequences of Profound Sensory Deprivation: Factors Influencing Vulnerability to Harm.**
- D. Reports of the Long-Term Effects of Solitary Confinement in Former Hostages and in Prisoners of War.**

APPENDIX A

REPORTS OF PSYCHIATRIC DISTURBANCES IN OTHER CONDITIONS OF RESTRICTED ENVIRONMENTAL STIMULATION

The psychopathologic syndrome which I have described in the body of this declaration is found in other settings besides isolation in civil prisons. Some of these settings involve small group, rather than solitary isolation, and the studies have demonstrated that isolated groups comprising two individuals may be the most pathogenic of all. These studies also suggest that those individuals with below average intelligence and poor psychosocial adjustment prior to isolation developed more severe psychiatric difficulties during isolation in some studies, such disturbances persisted in one year follow-up after reentry.

Aviation

Bennett (1961) described psychiatric disturbances among pilots of the British Royal Air Force who had been exposed in-flight to periods of restricted auditory and visual stimulation. All of the groups he described became significantly anxious--many suffering full-blown panic attacks--and many experienced unusual sensations which they were very reluctant to describe. The most severely disturbed groups refused to expose themselves further to the isolation conditions of these flights; at all levels of impairment, however, anxiety was common (both panic and free-floating anxiety). Pilots reported anxiety symptoms such as feeling "hot and tense and powerless" (Bennett, p. 162) and "nervous and afraid" (ibid, p. 164). Feelings of derealization, feelings of detachment from reality, and perceptual distortions were described. Some of these perceptual distortions were dangerous (e.g., having the impression that the aircraft was turning when it was not) and resulted in serious errors in judgment (e.g., making the aircraft spiral dangerously downward after attempting to "correct" for what was incorrectly perceived as a turning aircraft). Clark & Graybiel (1957) described strikingly similar symptoms among United States Navy pilots exposed to periods of in-flight isolation. Among pilots who flew alone, at high altitude, (i.e., in a situation of monotonous visual and

sensory stimulation) and flying with a minimum of pilot activity, over one third experienced frightening feelings of unreality and became severely anxious.

Small Group Confinement

Many studies--both anecdotal and experimental--have been made of individuals confined together in small groups; groups thus described have ranged in size from two to approximately sixty individuals, the larger groups include reports of men isolated on a Pacific island, submarine inhabitants, Antarctic explorers, etc. (see Zubek, 1969). The most consistent finding was of dramatically increased levels of hostility, interpersonal conflict and paranoia (Zubek, p. 377). Individuals exposed to such conditions also tend to become irrationally territorial, staking out "areas of exclusive or special use, [and] acting with hostility to trespasses by others." (Zubek, p. 380)

Confined groups comprising just two individuals may be the most pathogenic of all, associated with especially high rates of mutual paranoia and violent hostility. Admiral Byrd believed it to be extremely unsafe to staff an Antarctic base unit with just two men:

It doesn't take two men long to find each other out . . . the time comes . . . when even his [campmate's] unformed thoughts can be anticipated, his pet ideas become a meaningless drool, and the way he blows out a pressure lamp or drops his boots on the floor or eats his food becomes a rasping annoyance. . . . Men who have lived in the Canadian bush know well what happens to trappers paired off this way . . . During my first winter at Little America I walked for hours with a man who was on the verge of murder or suicide over imaginary persecutions by another man who had been his devoted friend. (Quoted in Zubek, 1969, p.381).

Many men confined in Antarctic stations have experienced near psychotic states, creating a danger to all inhabitants of the work station (Zubek, 1969). The pathogenicity of such dyadic groups was confirmed in an experimental study involving volunteer sailors living and working together in dyadic pairs, socially isolated from the world for a period of ten days. Under such conditions, the sailors developed evidence of subjective distress, inability to concentrate, a breakdown of inner controls on behavior, hostility, and increasing schizoid withdrawal from social contact (Cole, J.D., 1967).

Polar Habitation

Psychiatric disturbances have been described in Arctic and Antarctic inhabitants (explorers, researchers and their support staff), spending varying periods in winter isolation. In these regions, winters last for up to nine months with weather conditions so cold (-100F) that leaving the confines of the indoors is dangerous. Typically, teams of work groups have fewer than 50 members who spend up to two years working in small quarters. Small group isolation conditions at

these stations have been compared to life in prisons by at least one researcher: "... the isolation imposed by the harsh environment [of the Antarctic] is rarely experienced outside penal conditions" (Biersner & Hogan, 1984, p. 491).

In a review of the literature on the psychological adjustment to Antarctic living, Rothblum (1990) described a staff wintering over at a British Antarctic station; those of the staff who adjusted best tended to be socially mature, intelligent, reserved and trusting individuals. Similarly, French, United States and Australian studies revealed that intelligence and previous social adjustment predicted a decreased risk for psychiatric disturbance among workers at Antarctic stations. On the other hand, lack of respect for authority and aggression were important markers for poor isolation adjustment (Mullin & Connery, 1959).

Similarly, Wright, Chylinski, Sisler and Quarrington (1967) correlated outcome measures with psychological testing obtained prior to work station assignment. They found specifically that persons with antisocial and psychotic tendencies were poor risks for efficient functioning in conditions of isolation.

As a result of these disturbing findings among Antarctic workers, systematic efforts have been made to provide psychological screening of potential station employees and to ameliorate the isolation conditions prevailing in such stations (Cochrane & Freeman, 1989). Despite these efforts, significant psychiatric disturbances have continued to be observed (Natini & Shurley, 1974). The fact that these individuals were confined in small groups rather than alone was not found to prevent these disturbances; indeed, one of the central pathogenic factors cited in this literature has been the interpersonal tension and hostility generated by small group confinement (Biersner & Hogan, 1984).

Strange & Klein (1974) and Rothblum (1990) described a "winter-over syndrome" including progressively worsening depression, hostility, sleep disturbance, impaired cognitive functioning and paranoia during small group winter confinement in the Antarctic. Strikingly similar findings were reported by the United States Navy Medical Neuropsychiatric Research Unit, which found high incidence of sleep disturbance, depression, anxiety, aggression, somatic complaints, and a progressive impoverishment of social relationships as the winter progressed (Gunderson, 1963; Gunderson & Nelson, 1963). Psychiatric problems worsened as the length of time in this confinement increased; in one study of a group of Japanese winter-stationed in the Antarctic periodic psychological testing revealed increasing levels of anxiety and depression as the winter progressed (Rothblum, 1990). Similar findings have been described among a group of Americans stationed in the Antarctic (Gunderson & Nelson, 1963).

In a review of the literature on the psychological adjustment to Arctic life, Cochrane and Freeman (1989) describe a syndrome which parallels the Antarctic literature: sleep disturbances, apathy, irritability, cognitive dysfunction, hallucinations, depression and anxiety were widely reported as a result of the small group isolation endured by inhabitants. They also reported "depression, irritability, easily provoked anger which may escalate into dramatic and florid acting out and,

not surprisingly, a breakdown in relationships with other members of the group . . . insomnia, pallor, loss of interest, psychomotor retardation, paranoid ideation, non-specific hallucinations of light flashes and sudden movements" (p. 887) Many individuals became intolerant of social contact, and fearful of reentering society. Even when Arctic workers were adequately preselected by psychological screening, trained and supported, sleep difficulties, apathy and irritability persisted.

Studies on reintegration into the home environment after Antarctic living even one year after reintegration, found persisting problems and symptoms, including sleep disturbances, cognitive slowing, emotional withdrawal, resentment of authority, indecisiveness and poor communication (Rothblum, 1990).

Biersner & Hogan (1984) summarized the findings related to personality variables in the Arctic and Antarctic workers:

Individuals with high needs for novelty and new sensations . . . who are emotionally unstable, or who are unconcerned with social approval seem unsuited for . . . such environments. The opposite [traits are found in] those who adjust well (p.495)

Explorers: Solo Voyages

Anecdotal reports of shipwrecked sailors and individuals accomplishing long solo sea voyages have generally described "disturbances in attention and in organization of thought, labile and extreme affect, hallucinations and delusions" (Zubek, 1969, p. 7). Dramatic anecdotal reports have appeared from time to time. Some of these were summarized in a review article by Dr. Philip Solomon, one of the lead scientists in the Harvard Medical School/Boston City Hospital group:

"Christine Ritter in her very sensitive document 'A Woman in the Polar Night,' reported that at times she saw a monster . . . [and] experienced depersonalization to the extent that she thought she and her companions were dissolving in moonlight 'as though it were eating us up' . . . The Spitzbergen hunters use the term ran (strangeness) to describe these experiences . . ."

Tales of the sea have provided many accounts of hallucinatory phenomena. John Slocum sailed alone around the world . . . [In the South Atlantic] he suddenly saw a man, who at first he thought to be a pirate, take over the tiller . . .

Walter Gibson, a soldier in the British Indian Army, was on a ship torpedoed in the Indian Ocean by the Japanese in World War II . . . [The shipwrecked survivors] reported that "all of us at various stages in that first week became a prey to hallucinations" . . . [As the weeks passed] the feeling of comradeship disappeared and the men began to find themselves "watching our fellows covertly and suspiciously." Murder, suicide and cannibalism followed as social controls dissolved.

Medical Conditions

1. Eye Patched Patients

Restricted environmental stimulation conditions also occur post-operatively and in certain medical conditions: in a study of 100 American patients with macular degeneration of the retina (Holroyd, Rabins, Finkelstein, Nicholson, Chase & Wisniewski, 1992), a high percentage of such patients experienced disturbing visual hallucinations. Those patients who were relatively cognitively limited, those who were socially isolated and those with simultaneous sensory impairment in another modality (e.g., hearing-impaired patients) fared worst. But other factors, including the presence of concomitant medical illness, did not appear to affect the incidence of hallucinations.

In an especially relevant study of eye patched patients, Klein & Moses (1974) determined that psychologically well-adjusted patients (as assessed prior to surgery) tended not to develop visual hallucinations during the period when their eyes were patched, whereas those suffering preexisting personality disturbances did tend to develop such hallucinations. Among those patients who did develop hallucinations, almost half developed complex hallucinations involving human figures and with a content suggesting serious preoccupations with themes of depression and anxiety. Moreover, among those patients who had both preexisting personality disturbances and difficulty with their premorbid psychosocial adjustment, eye patching produced severe psychiatric symptomatology, including: paranoid thoughts about being poisoned, physically harmed or attacked; psychomotor agitation; interpersonal aggressiveness; inability to comply with staff directives; fearful visual hallucinations, and incapacitating anxiety. In this most disturbed group, symptoms had not remitted when observed one week after their eye patches were removed.

Other studies have also found patients to suffer from perceptual distortions, thinking disturbances and mood changes following the visual deprivation that is part of post-operative recovery in eye surgery (Ziskind, 1958; Ziskind, Jones, Filante & Goldberg, 1960). Furthermore, Ziskind et. al., (1960) noted that: "In patients with . . . brain damage, there were also deliriod symptoms, e.g., confusion, disorientation, memory impairment, vivid hallucinations [and disorganized] hyperkinetic activity" (p. 894). Finally, in Jackson's (1969) extensive literature review of hospitalized eye patched patients, psychiatric disturbance was commonly found. These patients suffered from unusual emotional, cognitive and sensory-perceptual disturbances, similar to those previously described.

2. Poliomyelitis

Polio patients confined to tank-type respirators have become psychotic as a direct result of such confinement; moreover, they became more ill, with more florid hallucinations and delusions, at night when sensory input was diminished. The same florid hallucinatory, delusional psychosis has been found in other patients similarly confined in tank respirators (Liederman, et. al., 1958).

3. Cardiac Patients

Patients with decompensated heart disease are at times placed on very strict bed rest; some of these patients have developed acute confusional, paranoid, hallucinatory psychoses, especially at night during periods of decreased sensory input (Liederman, et. al., 1958).

Studies of post-operative open heart surgery patients who were bed confined--their visual stimulation restricted to looking up at a white-tiled hospital room ceiling--revealed a high rate of disordered thinking, visual and auditory hallucinations and disorientation (Egerton & Kay, 1964; Kornfeld, Zimberg & Maim, 1965; Lazarus & Hagens, 1968; Wilson, 1972). There is an extremely disturbing incidence of psychosis following open heart surgery, ranging in various studies from 14 to 30 percent (Lee & Ball, 1975). Upon recovery these patients described their post-operative environment as a major pathogenic factor in producing their psychiatric illness (Kornfeld et. al., 1965). Perceptual disturbances and emotional lability, as well as paranoia, depression and obsessive-compulsive reactions to the restrictive post-operative environment have been documented in other studies as well (Ellis, 1972; Goldstein, 1976; Lee & Ball, 1975; Thomson, 1973).

4. Hearing Impaired Individuals

Another condition of restricted environmental stimulation leading to psychiatric disturbance involves the hearing impaired. Studies of the deaf (Altshuler, 1971; Houston & Royse, 1954) consistently find significantly higher rates of paranoia in these individuals. High rates of paranoia have been reported in both the developmentally hearing impaired as well as those who became deaf in later life (Zimbardo, Andersen & Kabat, 1981). Experimentally induced deafness in psychiatrically unimpaired adults also produced paranoia (Zimbardo, et. al., 1981).

5. Other Medical Patients

Disorientation and delusional psychoses have also been reported among immobilized orthopedic patients and in patients postsurgically bed-confined (Liederman, et. al., 1958). Nursing researchers (Downs, 1974) have studied this phenomenon and have concluded that frightening hallucinatory experiences "are probably far more widespread than has been reported" (Downs p. 434).

6. Occupational Situations

McFarland and Moore (1957) reported in the New England Journal of Medicine on a study of fifty long-distance truck drivers; of these, thirty experienced vivid visual hallucinations; some became disoriented, "as in a dream."

7. Animals

As noted in the body of this declaration, many prisoners confined in solitary report become intolerant of normal levels of environmental--especially social--

stimulation. These reports receive experimental confirmation in laboratory research on animals. Such research demonstrates that sensory deprivation produces an intolerance to normal levels of environmental stimulation; animals exposed to sensory deprivation conditions became overly aroused--"hyperexcitable"--when exposed to normal levels of environmental stimulation, often resulting in severe behavioral disturbances (Riestin, 1961). Other studies have demonstrated that such animals often display diffuse, frenzied, random activity, and social withdrawal, and are prone to psychophysiologic illnesses (e.g., peptic ulcers) when exposed to environmental stress (Zubek, 1969).

Barnes (1959) produced agitation in mice and rats after a few days of isolation, a report which corroborated previous studies with rats. Others (Matsumoto, Cai, Satoh, Ohta & Watanabe, 1991) have also found that isolation induced aggressive behavior in mice (e.g., biting attacks). Further, social isolation has been demonstrated to produce profound and lasting psychological effects in primates. Washburn and Rumbaugh (1991) note that over 400 published investigations of the effects of social isolation on primates show such deleterious effects as self-mutilation and disturbances in perception and learning. They found that in adult rhesus monkeys even brief periods of social isolation produce compromised cognitive processing. McKinney, Suomi and Harlow (1971) produced symptoms of depression in rhesus monkeys by confining them for 30 days. They concluded that solitary "confinement produced greater destructive behavioral effects in less time and with fewer individual differences among subjects than did total social isolation, previously [demonstrated to be] the most powerful technique for producing psychopathological behavior among monkey subjects" (p. 1317). Induced depression through confinement has been reported in both young and mature monkeys (Harlow & Suomi, 1974). Finally, isolation-produced fear in dogs has been clearly demonstrated (Thompson & Meizack, 1956).

APPENDIX B

THE NINETEENTH CENTURY GERMAN EXPERIENCE WITH SOLITARY CONFINEMENT . . .

Between 1854 and 1909, thirty-seven articles appeared in the German medical literature on the subject of psychotic disturbances among prisoners, summarizing years of work and many hundreds of cases. A major review of this literature was published in 1912 (Nitsche, 1912) Solitary confinement was the single most important factor identified in the etiology of these psychotic illnesses.

Indeed, the first report on the subject of prison psychoses was that of Delbruck (1854), Chief Physician at the Prison at Halle, in which "the frequency of mental disturbances was at last so great that it attracted the attention of the

authorities." (Nitsche, p.1). Delbruck's report concluded that:

Prolonged absolute isolation has a very injurious effect on the body and mind and that it seems to predispose to hallucinations He advised the immediate termination of solitary confinement. (Nitsche, p. 2).

In 1863, Gutsch reported on 84 cases of "The Psychosis of Solitary Confinement" and described vivid hallucinations and persecutory delusions, apprehensiveness, psychomotor excitation, sudden onset of the syndrome, and rapid recovery upon termination of solitary confinement. Many of these individuals developed "suicidal and maniacal outbursts." (Nitsche, p. 8)

In 1871, in a report on 15 cases of acute reactive psychoses, some of which apparently occurred within hours of incarceration in solitary, Reich described, in addition to hallucinosis and persecutory delusions, severe anxiety leading to "motor excitement The patient becomes noisy, screams, runs aimlessly about, destroys and ruins everything that comes in his way." He also described an acute confusional state accompanying these symptoms, sudden cessation of symptoms, recovery, and subsequent amnesia for the events of the psychosis:

"The gaze is staring, vacant, indefinite. . . consciousness becomes more and more clouded . . . and later there is amnesia for all events during this time . . . He frequently awakens as from a dream" (Nitsche, pp. 32-33)

In a statistical summary, Knecht reported in 1881 on the diagnostic assessment of 186 inmates at the "insane department" of the prison at Waldheim, and concluded that over half the total were reactive manifestations to solitary confinement. The majority of these inmates fell insane within two years of confinement in solitary. (Nitsche, p. 17)

In 1884, Sommer reported on 111 cases describing an acute, reactive, hallucinatory, anxious, confusional state associated with solitary confinement, emphasizing the "excited outbursts" and "vicious assaults" of these patients. His patients' illness began with difficulty in concentration, and hyperresponsivity to minor "inexplicable" external stimuli. These "elementary disturbances of the sensorium (i.e., the five senses)" were seen as leading to "elementary hallucinations" which became more numerous, eventually including auditory, visual and olfactory hallucinations, and eventually becoming incorporated with fearful persecutory delusions. (Nitsche, pp. 12-16)

In 1889, Kirn described 129 cases of psychosis among the inmates at the county jail at Freiburg, concluding that in 50 of those cases, "solitary confinement can be definitely considered as the etiological factor, (and these) show a certain characteristic stamp" (Nitsche, p. 21) including persecutory delusions and hallucinations in multiple spheres (auditory, visual olfactory, tactile). He also noted that these symptoms often precipitated at night:

The patient is suddenly surprised at night by hallucinatory experiences which bring on an anxious excitement. These manifestations become constant from now on, in many cases

occurring only at night, in others also in the daytime. Attentive patients not infrequently hear at first a humming and buzzing in their ears, unpleasant noises and inarticulate sounds which they cannot understand until finally they hear well differentiated sounds and distinct words and sentences The visual hallucinations are very vivid. (Nitsche, p. 24)

In 1888, Moeli contributed a description of Vorbereiden -- "the symptom of approximate answers"¹. Ten years later Ganser contributed to the literature the elucidation of a syndrome which included Moeli's symptom. (Ganser, 1898) As Arieti points out, Ganser's Syndrome became well-known -- indeed, almost a codification of the whole body of literature on the prison psychoses. Ganser provided a comprehensive and well-elucidated synthesis of symptoms, most of which had been previously described elsewhere. The syndrome he described included, (in addition to Vorbereiden), vivid visual and auditory hallucinations, a distinct clouding of consciousness, sudden cessation of symptoms, "as from a dream" and "a more or less complete amnesia for the events during the period of clouded consciousness." Ganser's most original description was of "hysterical stigmata" within the syndrome, including conversion symptoms -- especially, total analgesia. (Arieti, 1974, Vol. II, pp. 710-712)

Some of the German authors failed to note whether the inmates they were describing were housed in solitary confinement and, unfortunately, Ganser was one of these, stating only that his were "prisoners awaiting trial." However, Langard, in 1901, also reporting on observations of accused prisoners awaiting trial, described an acute violent hallucinatory confusion with persecutory delusions, and specifically stated that this syndrome occurred exclusively among those who awaited trial in solitary confinement. (Nitsche, p. 32)

Also in 1901, Raecke similarly reported on prisoners awaiting trial and described the full syndrome of Ganser, including Vorbereiden; he specifically condemned solitary confinement as responsible for the syndrome (Nitsche, p. 34). He described his cases as beginning with apathy, progressing to "inability to concentrate, a feeling of incapacity to think," and even catatonic features, including negativism, stupor, and mutism. (Nitsche, pp. 33-35)

In another report written the same year, Skliar reported on 60 case histories of which he identified 21 as acute prison psychoses caused by solitary confinement. While Vorbereiden was not noted, most of the other symptoms described by Ganser and Raecke were noted, including: massive anxiety, fearful auditory and visual hallucinations -- in severe cases, hallucinations of smell, taste, and "general sensation" as well -- persecutory delusions, senseless agitation and violence, confusion and disorientation. The psychosis developed rapidly -- at times within

¹ Vorbereiden is a rather remarkable symptom of deranged and confused thought processes in which the individual's response to a question suggests that he grasped the gist of the question, and his answer is clearly relevant to the question, and is related to the obvious correct answer, yet still oddly manages to be incorrect. An example would be: Q: "How many colors are there in the flag of the United States?" A: "Four." Q: "What are they?" A: "Yellow."

hours of incarceration in solitary confinement. Catatonic symptomatology was also noted (Nitsche, pp. 35-36).

The German literature reported only on prisoners who suffered gross psychotic symptomatology, some of whom were observed in hospitals or "insane departments" of prisons; thus, these reports generally described only syndromal expressions that rose to the level of overt psychosis. The German reports do, however, powerfully demonstrate the existence of a particular, clinically distinguishable psychiatric syndrome associated with solitary confinement. These multiple reports described a syndrome which included:

1. Massive free-floating anxiety
2. "Disturbances of the Sensorium", including --
 - a. Hyperresponsivity to external stimuli
 - b. Vivid hallucinations in multiple spheres (including auditory, visual, olfactory, gustatory and tactile modalities); in some reports, these began as simple "elementary" hallucinations and progressed to complex, formed hallucinations.
3. Persecutory delusions, often incorporating coexistent complex hallucinations.
4. Acute confusional states. In some reports, these were seen as beginning with simple inattention and difficulty in concentration. In others, the onset was described as sudden. The confusional state and disorientation was in several reports described as resembling a dissociative, dream-like state, at times involving features of a catatonic stupor, including negativism and mutism, and upon recovery leaving a residual amnesia for the events of the confusional state. Ganser and others observed hysterical conversion symptoms during this confusional state.
5. Vorbereiden: An infrequent finding, mostly described in conjunction with a confusional, hallucinatory state.
6. Motor excitement, often associated with sudden, violent destructive outbursts.
7. Characteristic course of the illness:
 - a. Onset was described by some authors as sudden, by others as heralded by a progression beginning with sensory disturbances and/or inattention and difficulty in concentration.
 - b. In many cases, rapid subsidence of acute symptoms upon termination of solitary confinement.

The German reports were generally based upon prisoners who had been hospitalized because of their psychotic illness; in contrast, the population reported upon in the Walpole study was not preselected by overt psychiatric status; despite this, all of the major symptoms reported by the German clinicians were observed in the Walpole population, except for Vorbereiden and hysterical conversion

symptoms. In addition, less severe forms of the isolation syndrome were observed in the Walpole population, including:

- Perceptual distortions and loss of perceptual constancy, in some cases without hallucinations.
- Ideas of reference and paranoid ideation short of overt delusions.
- Emergence of primitive aggressive fantasies which remained ego-dystonic and with reality-testing preserved.
- Disturbances of memory and attention short of overt dis-orientation and confusional state.
- Derealization experiences without massive dissociative regression.

Since Ganser's report has become the twentieth century's clearest memory of a much vaster body of literature, it is also of interest to review the literature describing observations of Ganser's Syndrome in non-prison populations. Several of these reports have been studies of patients in psychiatric hospitals suffering from this syndrome. Since these patients were hospitalized, it was possible to obtain more extensive evaluation and testing of their status. Several reports (Ingraham & Moriarity, 1967; May, Voegelé & Padino, 1960; Tyndel, 1956; Weiner & Braiman, 1955) described a majority of the patients studied as suffering long standing hysterical conversion symptoms. Impulsivity, childhood truancy, and antisocial behavior were also commonly described. These findings suggest also that antisocial behavior patterns and psychopathic personality disorder may bear a close relationship to primitive hysterical personality disorder, a relationship which has been described by other authors as well (e.g., Woodruff, Goodwin & Gaze 1974).

APPENDIX C

EXPERIMENTAL RESEARCH ON THE PSYCHIATRIC CONSEQUENCE OF PROFOUND SENSORY DEPRIVATION: FACTORS INFLUENCING VULNERABILITY TO PSYCHIATRIC HARM

As noted in the body of this declaration, laboratory research has demonstrated that experimentally-induced sensory deprivation has major psychological effects, and can precipitate severe psychiatric illness (see e.g. Brownfield, 1965; Solomon 1961). This research generally involves short periods of relatively marked perceptual deprivation generally of a few hours in duration. Much of the research in this area attempted to delineate factors, in addition to the duration and intensity of sensory restriction, which might account for these differing outcomes; the factors which have been elucidated include two which are especially relevant to this discussion, and may help to explain the particular malignancy of sensory deprivation in solitary confinement:

The Influence of Expectation

Orne and Scheibe (1964) suggested that a subject's reaction to participation in a sensory deprivation experiment could be profoundly manipulated by external

cues imposed by the experimenter:

[These] dramatic effects could be a function of the demand characteristics of the experimental situation There is evidence that preparing a subject for probable hallucinations significantly affects the frequency of hallucinations. Such devices as "panic buttons" in experiments . . . are in a sense eloquent instructions. The use of such a device increases the subject's expectation that something intolerable may occur, and with it, the likelihood of a bad experience. (p. 4)

In their own experiment, Orme and Scheibe exposed two groups of subjects to identical conditions of sensory deprivation. The experimental group's introduction to the experiment included the presence of a medical "Emergency Tray," and instructions about a "Panic Button." As predicted, the experimental group became significantly more symptomatic in measures of cognitive impairment and restlessness, and also more symptomatic in every other measure -- including perceptual aberrations, anxiety, and spatial disorientation.

In a related manner, prisoners in solitary confinement generally view such confinement as threatening and punitive, and often as a deliberate attempt to make them "crack up" or "break my spirit." In light of this, it is not surprising that the only recent report suggesting no major ill effect of solitary confinement (Walters, 1963) utilized prisoners who volunteered to spend 4 days in solitary confinement.

Individual Differences in Response

Several authors have directed attention to the fact that within a given experimental format, massive differences in response can be observed among individual subjects. Often subjects who tolerated the experimental situation well reported pleasant, or at least non-threatening, visual imagery, fantasy, and hallucinatory experiences:

His mind may begin to wander, engage in daydreams, slip off into hypnagogic reveries with their attendant vivid pictorial images . . . he may be quietly having sexual and other pleasurable thoughts.
(Wright & Abbey, 1965, p. 6)

On the other hand:

Another subject in the same situation may deal with it in quite another manner. He may soon complain of all manner of things; . . . the bed is causing him a backache, his mind is a blank, . . . intense boredom, tenseness, depressive feelings or of having unpleasant thoughts or picture-like images that disturb him.
(Goldberger, 1966, p. 777)

In response to these concerns about the incidence of psychopathological reactions to sensory deprivation, an important thrust of the experimentation in this area has been, by prescreening, to select as subjects only those persons demonstrating, by some measure, psychological strength and capacity to tolerate regression. The theoretical premise of such work has been, as Goldberger (1966)

states:

In the sensory deprivation experiments, it is the ego's autonomy from the drives that is predominately involved . . . Differences in drive-discharge thresholds, phantasy, and daydream capacity, capacity for what Kris has termed "regression in the service of the ego" are other theoretically relevant structural dimensions accounting for differences in isolation behavior. (p. 778)

These ideas have been subjected to experimental verification, which has corroborated that same individuals tolerate such isolation better than others. For example, Wright and Abbey (1965) using the Rohrshach Test for prescreening, concluded that:

[The Rohrshach] manifestations of an individual's defense and control mechanisms . . . appears to be a reliable measure for predicting whether or not an individual will be effective in controlling the drive-dominated responses that might emerge during his period of reduced sensory stimulation. (Wright & Abbey, 1965, p. 37)

Anecdotal reports in a similar vein appear from time to time in the literature. Freedman and Greenblatt (1960) mention one subject who became panicky during sensory deprivation and stated he had been diagnosed "borderline psychotic" (p. 1489). Curtis reports on a psychotic paranoid reaction in one subject who suffered delusions for several days afterwards, and severe anxiety and depression lasting several weeks; personality test prescreening had suggested "poor adjustment, hostility, lack of insight, and insecurity in interpersonal relationships" (Curtis & Zuckerman, 1968, p. 256).

Grunebaum, Freeman, and Greenblatt (1960), prescreened 43 subjects and identified 7 as suffering "personality deviations." Two of these subjects, who were diagnosed as borderline, developed frightening, aggressive fantasies, paranoia, and difficulty in reality testing; one of them prematurely terminated the experiment. Two others were diagnosed as psychopathic; both forced the premature termination of the experiment by disruptive behavior.

Azima and Kramer (1956), using interview techniques and formal psychological test data, studied the effects of 2 to 6 days of sensory deprivation on hospitalized psychiatric patients. Among the previously non-psychotic patients they studied, two developed overt paranoid psychoses during the experiment, ultimately necessitating electroshock treatment. These particular individuals appeared to have been unable to tolerate the emergence of aggressive fantasies and images during the sensory deprivation experience.

Effects of Sensory Deprivation on Antisocial Personality Disorder:

Individuals with psychopathic personality disorder are probably among the least tolerant of sensory deprivation. Quay (1965) actually described the essential core of psychopathic

pathology as a pathological inability to tolerate restricted environmental stimulation:

The psychopath is almost universally characterized as pathologically stimulus seeking and highly impulsive He is unable to tolerate routine and boredom (His) outbursts frequently appear to be motivated by little more than a need for thrill and excitement It is the impulsivity and lack of even minimal tolerance for sameness which appear to be the primary and distinctive features of the disorder. (p. 180)

He goes on to argue that psychopathic individuals may chronically exist in a state of relative stimulus deprivation:

Highly impulsive psychopathic behavior [may be seen] in terms of stimulation seeking pathology. Decreased reactivity and/or rapid adaptation [to environmental stimuli] . . . produce in these persons an affective state . . . close to that produced by sensory deprivation in the normal individual.

He argues that behavioral impulsivity in such individuals may be an effort at coping with this condition of relative sensory deprivation which they experience:

It may be possible to view much of the impulsivity of the psychopath, his need to create excitement and adventure, his thrill seeking behavior, and his inability to tolerate routine and boredom as a manifestation of an inordinate need for an increased or changing pattern of stimulation." (p. 181)

In a later study, directly comparing psychopathic inmates with non-psychopathic controls, Emmons & Webb (1974) corroborated these findings; the psychopathic inmates scored significantly higher on measures of boredom susceptibility and of impulsivity. The authors concluded that psychopaths are pathologically stimulation seeking and incapable of tolerating isolation conditions.

In a large scale study of criminal offenders suffering from mental illness, Cota & Hodgins (1990) noted that the prevalence rate of severe mental illness is higher among incarcerated offenders than among the general population; and that, compared with non-mentally ill inmates, the mentally ill inmates were more likely to be housed in solitary. (p. 271) Moreover many of these mentally ill inmates suffered from a combination of psychiatric disorders predisposing them to both psychotic breakdown and to extreme impulsivity (often including substance abuse). (p. 272). Such individuals tended to be highly impulsive, lacking in internal controls, and tended to engage in self-abusive and self-destructive behavior in the prison setting, and especially so when housed in solitary.

Many of the inmates placed in solitary confinement are thus likely to be among the least capable of tolerating the experience, and among the most likely to suffer behavioral deterioration as a consequence of such confinement.

APPENDIX D

REPORTS OF THE LONG-TERM EFFECTS OF SOLITARY CONFINEMENT IN FORMER POLITICAL PRISONERS AND IN PRISONERS OF WAR: SOLITARY CONFINEMENT AS A MEANS OF "BRAIN WASHING" AND "INDOCTRINATING"

Although concerns about the psychiatric effects of solitary confinement among prisoners of war were raised in the medical literature at least as early as post World War II, this issue reached massive public exposure only after the fearful news of "brainwashing" among American prisoners of war in Korea. As is well known, the 1950's were an era of tremendous fear of Communism and of the attempts by Communist States to "indoctrinate" people into their ideology. As noted in the body of this declaration, in the 1950's the U.S. Department of Defense and Central Intelligence Agency sponsored a great deal of research on these issues; Hinkle and Wolff (1956) published results of extensive research done by them for the Department of Defense. The paper documented interrogation techniques of the Soviet KGB in regard to the incarceration of political prisoners, and the Chinese communists' imprisonment of American prisoners of war in Korea.

The report indicated that the KGB operated detention prisons, many of which were "modern . . . well built and spotlessly clean . . . (with) attached medical facilities and rooms for the care of sick detainees. An exercise yard is a standard facility. Incarceration in these prisons is almost universally in solitary confinement in a cell approximately 10' x 6' in size. An almost invariable feature of the management of any important suspect under detention is a period of total isolation in a detention cell." (p. 126)

This isolation was seen as a central feature of the imprisonment. "The effects upon prisoners of the regimen in the isolation cell are striking . . . A major aspect of this prison experience is isolation . . . (In the cells) his internal as well as external life is disrupted (and) . . . he develops a predictable group of symptoms, which might almost be called 'disease syndrome.'" This syndrome develops over time.

He becomes increasingly anxious and restless and his sleep is disturbed . . . The period of anxiety, hyperactivity, and apparent adjustment to the isolation routine usually continues from 1 to 3 weeks . . . The prisoner becomes increasingly dejected and dependent. He gradually gives up all spontaneous activity within his cell and ceases to care about personal appearance and actions. Finally, he sits and stares with a vacant expression, perhaps endlessly twisting a button on his coat. He allows himself to become dirty and disheveled . . . He goes through the motions of his prison routine automatically, as if he were in a daze . . . Ultimately, he seems to lose many of the restraints of ordinary behavior. He may soil himself; he weeps; he mutters . . . It usually takes from 4 to 6 weeks to produce this phenomenon in a newly

imprisoned man . . . His sleep is disturbed by nightmares. Ultimately he may reach a state of depression in which he ceases to care about his personal appearance and behavior and pays very little attention to his surroundings. In this state the prisoner may have illusory experiences. A distant sound in the corridor sounds like someone calling his name. The rattle of a footstep may be interpreted as a key in the lock opening the cell. Some prisoners may become delirious and have visual hallucinations.

Not all men who first experience total isolation react in precisely this manner. In some, the symptoms are less conspicuous. In others, dejection and other despondence earlier, or later. Still others, and especially those with preexisting personality disturbances, may become frankly psychotic. (p. 129)

The authors note that the procedures in the Chinese detention camps are somewhat more complex. Prisoners there underwent an initial period of isolation similar to that found in the Soviet prisons. (p. 153) In the second phase, however they were housed in extremely tight quarters within "group cells" comprising approximately eight prisoners. Under the tensions and hostilities created in this environment, brutality of prisoners against other prisoners was almost inevitable and was, according to the authors, apparently an intended result of this "group cell" confinement. (p. 159)

There are many long-term studies of American prisoners of war; unfortunately, the factor of solitary confinement has not generally been separated out in these studies. However, one relatively recent study of Korean POWs describe long-term effects including interpersonal withdrawal and suspiciousness, confusion, chronic depression and apathy towards environmental stimuli. Irritability, restlessness, cognitive impairment and psychosomatic ailments were extremely common in the group, most of whom had suffered periods of incarceration in solitary confinement at the hands of the Chinese. This report also included a case report of one individual exposed to harsh conditions of solitary confinement for more than 16 months; 30 years after release, he continued suffering sleep disturbances, nightmares, fearfulness, interpersonal suspicion and withdrawal, severe anxiety and severe depression. These former prisoners also had psychosomatic ailments including gastrointestinal disturbances, chronic headaches and obsessive ruminations. They tended to become confused and thus cognitively impaired and were emotionally volatile and explosive.

In a more recent study, Sutker et al. (1991) studied former prisoners of war in the Korean conflict, approximately 40 years after their release from confinement. Solitary confinement was cited as one of the severe stressors in this group. These former prisoners demonstrated persistent anxiety, psychosomatic ailments, suspiciousness, confusion, and depression. They tended to be estranged and detached from social interaction, suffered from obsessional ruminations, and tended to become confused and cognitively impaired, suffering memory and concentration difficulties which affected their cognitive performance on formal testing.

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- Ziskind, E., Jones, H., Filante, W., & Goldberg, J. (1960). Observations on mental symptoms in eye patched patients: Hypnagogic symptoms in sensory deprivation. American Journal of Psychiatry, 116, 893-900.
- Zubek, J.P. (1969). Sensory deprivation: Fifteen years of research. New York: Appleton-Century-Crofts.

Stuart Grassian, M.D.
401 Beacon Street
Chestnut Hill, MA 02467
817-244-3315
Fax: 817-244-2782

Born: June 29, 1946
Married, 3 Children

MAJOR PROFESSIONAL ACTIVITIES

- 1963-1967 Harvard Club Scholar, Harvard University, Cambridge, MA
- 1967 B.A. Cum Laude, Harvard University, Cambridge, MA
- 1967-1969 NIMH Fellow in Sociology, Brandeis University, Waltham, MA
- 1969 M.A., Sociology, Brandeis University, Waltham, MA
- 1970 NSF Fellow in Psychiatry, Bellevue Hospital, NY
- 1973 M.D., New York University School of Medicine, NY
- 1973-1974 Intern (Medicine), New York University Medical Center, NY
- 1974-1977 Resident in Psychiatry, Beth Israel Hospital, Boston, MA
- 1977 - Private practice in Psychiatry: Cambridge, MA (1977-1979),
Chestnut Hill, MA (1979-), Stoneham, MA (1980-)
- 1977-1978 Clinical Director, Inpatient Service, Dorchester Mental Health
Center, Boston, MA
- 1978-1980 Director, Inpatient Service, WestRosPark Mental Health Center,
Boston, MA
- 1979-1983 Medical Staff, Lecturer, Glover Memorial Hospital, Needham, MA
- 1980-1984 Attending Psychiatrist, Adult & Adolescent Inpatient Services, New
England Memorial Hospital, Stoneham, MA
- 1980-1983 Director, Adult & Adolescent Inpatient Services, Department of
Psychiatry, New England Memorial Hospital, Stoneham, MA
- 1983-1984 Attending Psychiatrist, Addictions Treatment Unit, New England
Memorial Hospital, Stoneham, MA

1987-1993 Supervising Psychiatrist, Outpatient Department, New England Memorial Hospital, Stoneham, MA

1992-1994 Psychiatric Director, Partnership Recovery Center, Melrose-Wakefield Hospital, Melrose, MA (Day treatment program for Addiction rehabilitation)

CONSULTATIONS, AFFILIATIONS

- 1979 Massachusetts Correctional Legal Services. (Psychiatric Effects of Solitary Confinement, Psychiatric Effects of Strip Search Procedures)
- 1980 Massachusetts Civil Liberties Union. (Psychiatric Effects of Strip Search Procedures, Psychiatric Effects of Solitary Confinement)
- 1993 Massachusetts Department of Corrections, Stress Management Unit. (Occupational Stress among Correctional Staff)
- 1995 Consultation to Psychiatric Expert/Special Master. Madrid v Gomez Federal District Court, Northern District, CA #C-90-3094TEH. (Psychiatric Effects of Solitary Confinement)
- 1995 - Consultant to Massachusetts Professional Recovery Committee, and to Substance Abuse Rehabilitation Program of the Massachusetts Board of Registration in Nursing. (Addictive Disorders, Impaired professionals)
- 1997 Botech Corporation, Cambridge, MA. (Effects of Solitary Confinement)
- 1998 Psychiatric Expert in Compliance Monitoring: Eng v Coombe Federal District Court, Western District, NY, CIV #80-385-S. (Effects of Solitary Confinement)

MEDICAL LICENSURE

1974 - Massachusetts License #37749

BOARD CERTIFICATION

1979 Board Certified in Psychiatry

1994 Diplomate Certificate in Addiction Psychiatry

1996 Diplomate Certificate in Forensic Psychiatry

PROFESSIONAL SOCIETY/COMMITTEE/STAFF MEMBERSHIPS

1974 - Member, Massachusetts Psychiatric Society

COMMITTEE MEMBERSHIPS

Inpatient Psychiatry Committee (1981-1984)

Private Practice Committee (1992-1995)

Chair, Presidents Task Force on Managed Care (1993-1994)

Steering Committee, Managed Care Retreat (1993-1994)

1974 - Member, American Psychiatric Association

1974-1977 Resident in Psychiatry, Beth Israel Hospital, Boston, MA

1977 - Courtesy Staff, Beth Israel Hospital, Boston, MA

Assistant in Psychiatry (1977-1991)

Associate in Psychiatry (1991-present)

1980-1999 Active Staff, Boston Regional Medical Center, Stoneham, MA

COMMITTEE MEMBERSHIPS

Credentials Committee (1986-1990)

Chair, Bylaws Committee (1987-1990)

Medical Staff Executive Committee (1989-1992)

Chief of Staff (1990-1992)

Board of Trustees (1990-1992)

1992 - Active/Courtesy Staff, Melrose-Wakefield Hospital, Melrose, MA

1993 - Psychiatric Network of Massachusetts

COMMITTEE MEMBERSHIPS

Steering Committee (1993-1994)

Chairman, Board of Directors (1994-1995)

TEACHING APPOINTMENTS, PRESENTATIONS

- 1967 Teaching Fellow, Harvard Graduate School of Education, Cambridge, MA
- 1967-1969 Teaching Fellow, Department of Sociology, Brandeis University, Waltham, MA
- 1973 Clinical Fellow in Psychiatry, New York University Medical Center, New York, NY
- 1974-1977 Clinical Fellow in Psychiatry, Harvard Medical School, Boston, MA
- 1975-1978 Consultant and Lecturer, Human Resources Institute, Brookline, MA
- 1977 - Clinical Instructor, Department of Psychiatry, Harvard Medical School, Boston, MA
- 1978 Assistant Clinical Professor, Department of Psychiatry, Tufts University Medical Center, Boston, MA
- 1987 Faculty, Third International Conference on Restricted Environmental Stimulation, New York, NY: "Effect of Rest in Solitary Confinement and Psychiatric Seclusion"
- 1987 Guest Lecturer, Suffolk University School of Law, Boston, MA: "Commitability and the Right to Refuse Treatment"
- 1988 Faculty, 32nd Institute on Hospital and Community Psychiatry, Boston, MA
- 1990 Massachusetts Bar Association Symposium, Boston, MA: "Drugs and Alcohol on Campus"
- 1992 - Faculty, American Academy of Psychiatry and Law, Boston, MA: "Effects of Childhood Sexual Abuse"
- 1993 Faculty, Massachusetts Department of Corrections Stress Unit, Statewide Seminar, MA: "Stress Awareness for Managers"
- 1993 Massachusetts Continuing Legal Education Seminar, Boston, MA: "Psychiatric Effects of Physical and Sexual Assault"
- 1994 Massachusetts Academy of Trial Attorneys Seminar, Boston, MA: "Psychiatric Evaluation of Victims of Violent Crime"

TEACHING APPOINTMENTS PRESENTATIONS (continued)

- 1994 Beth Israel Hospital/Harvard Medical School, Boston, MA: "Psychiatric Consequences of Solitary Confinement; 'Effects of Sensory Deprivation and Social Isolation in a Vulnerable Population'"
- 1994 Massachusetts Medical Society, Committee on Managed Care, Waltham, MA: "Ethics of Managed Care"
- 1994 Prison Psychiatric Group, Albany, NY: "Criminality and Mental Illness, Revisited: Disorders of Volition". (Lecture sponsored by Pfizer Pharmaceuticals)
- 1995 Suffolk University Advanced Legal Studies, Boston, MA: "Sexual Abuse: Memory, Truth and Proof"
- 1995 Massachusetts Association of Trial Attorneys Seminar, Boston, MA: "Premises Liability/Negligent Security: Psychiatric Testimony and the Role of the Psychiatric Expert"
- 1996 New England Society for the Study of Dissociation, McLean Hospital, Belmont, MA: "Impact of Forensic Issues on Treating Victims of Violence"
- 1996 Harvard Medical School, Children's Hospital Family Violence Seminar, Boston, MA: "Trauma and Memory"
- 1996 Trauma and Memory: An International Research Conference, Durham, NH: "Factors Distinguishing True and False Memory Of Childhood Sexual Abuse"
- 1996 Trauma and Memory: An International Research Conference, Durham, NH: "Memory of Sexual Abuse by a Parish Priest"
- 1997 Correctional Association of New York, NY: "Psychiatric Effects of Solitary Confinement on Prisoners"
- 1998 Massachusetts Board of Registration In Medicine and Northeastern University Conference, Substance Abuse and The Licensed Professional, Boston, MA: "Addictions and Compulsions: Disorders of Volition"

MEDIA, PUBLIC AFFAIRS PRESENTATIONS

- 1988 NBC-TV, Today Show "Small Group Confinement of Female Political Prisoners at the Federal Penitentiary in Lexington, KY"
- 1990 NPR-TV, News Interview Program: "Psychiatric Effects of Small Group Confinement"
- 1990 PBS-TV, Point of View "Through the Wire", Documentary regarding women confined for politically motivated crimes
- 1991 WBZ-TV, Boston, MA: Channel 4 Nightly News "Statute of Limitations on Cases of Childhood Sexual Abuse"
- 1992 Boston Globe, New York Times, etc.: "Effects of Childhood Sexual Abuse by a Catholic Priest"
- 1992 Boston Globe, New York Times, San Francisco Chronicle, Los Angeles Times, etc.: "Psychiatric Effects of Solitary Confinement"
- 1993 New England Cable News, Newton, MA: Commentator regarding insanity defense in Kenneth Sequin trial
- 1993 Massachusetts House of Representatives, Judiciary Committee testimony: Proposed change in Statute of Limitations in cases of childhood sexual abuse
- 1993 CBS-TV, 60 Minutes "Pelican Bay - Psychiatric Effects of Solitary Confinement in California's High-Tech Maximum Security Prison"
- 1993 New England Cable News, Newton, MA: News Night "False Memory and Recovered Memory of Childhood Sexual Abuse"
- 1993 WCVB-TV, Boston, MA: Chronicle "Sentencing of Father Porter - The Effect on the Victims"
- 1994 WHDH-TV, Boston, MA: Boston Common "False Memory Syndrome"
- 1994 FOX-TV, Boston, MA: At Issue "Psychiatric Effects of Solitary Confinement"
- 1996 New England Cable News, Newton, MA: News Night "The Insanity Defense"

MEDIA, PUBLIC AFFAIRS PRESENTATIONS (continued)

- 1998 ABC-TV, Nightline with Ted Koppel; Primetime Live "Crime and Punishment"
- 1998 WBZ-TV, Boston, MA: Channel 4 Nightly News "Perpetrators of Sexual Abuse: Dangers to the Community"
- 1999 ABC-TV, 20/20 "Effects of Solitary Confinement"

MAJOR INTERESTS IN FORENSIC PSYCHIATRY

1. Psychiatric Effects of Solitary Confinement

Psychiatric expert in large number of cases including several large class action and other multiple plaintiff lawsuits in Federal and State Courts in California, Massachusetts, New York State and in Washington, D.C. Decisions in some of those cases, and my published findings, have been cited in Federal Appellate decisions, and have also generated significant national media interest.

2. Strip Search Procedures, Sexual and Physical Assault

Psychiatric expert in a number of cases in Federal and Massachusetts state courts. Testimony has been cited by the Federal Appeals Court in Cole v Snow. Psychiatric expert in cases of rape, sexual and physical assault.

3. Addictive Disorders

Testimony in a number of criminal and civil cases. My testimony in a highly publicized case, In re Cockrum, helped to establish that an individual who was otherwise highly competent, was still – by virtue of the effects of addictive illness – incompetent to act in his own behalf in appealing his murder conviction.

4. Childhood Sexual Abuse

Substantial experience in evaluating the effects of childhood sexual abuse, and the processing over time of memories of that abuse. Among other experiences, I have been a psychiatric expert in a number of high profile cases involving sexual abuse by clergy, including the case of *Father James Porter* – a priest accused of sexually abusing more than one hundred children.

5. Civil Rights Issues

Expert in a number of cases regarding racial and sexual harassment in employment and housing situations, including cases brought by Civil Rights Division of the United States Department of Justice, and by Greater Boston Legal Services.

RESEARCH INTERESTS & PUBLICATIONS IN PSYCHIATRY & LAW

"Psychopathological Effects of Solitary Confinement", Am J Psychiatry 140:11, 1983.

"Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement", Int'l J. Law & Psychiatry 8:49, 1986.

"Commitability, Competence and the Right to Refuse Treatment", Unpublished manuscript.

Psychiatric Consequences of Strip Search Procedures. -- In process.

"Psychiatric and Addictive Problems in Survivors of Childhood Sexual Abuse Perpetrated by Father Porter." Principal Investigator, Beth Israel Hospital, Department of Psychiatry, Boston, MA.

"Recovery of Memory of Childhood Sexual Abuse and Creation of False Memories; Can These Processes be Distinguished?", in process.

Stuart Grassian, M.D.

401 Beacon Street
Chestnut Hill, MA 02467
817-244-3315
fax: 817-244-2782

List of cases over past five years in which Stuart Grassian, M.D. has testified in deposition or at trial.

Adams v Town of Wareham, US District Court, MA, #94-11448-DPW.

Arqueta v MBTA, Suffolk Superior Court, MA, 1994.

Brown v Croatti, Middlesex Superior Court, MA, #94-3985.

California v Scully, Superior Court, Sonoma County, Santa Rosa, CA, 3/97.

Clujia v Rigney, Federal Court, Boston, MA, 1998.

Charles v Durkan, US District Court, Rome, GA, #4:94-CV-01170HLM.

In re Cockrum, Federal District Court, Eastern District, Texas 6:93-CV-230, 1994.

Commonwealth v Bloom, Norfolk S.S. Superior Court, Crim No. 102871. (trial)

Commonwealth v Early, Middlesex Superior Court, MA, 1994.

Coupe v Jaco Electronics, Inc., et al, US District Court, MA, #96-12207-REK, 1998.

Cox v HCHP, MA, #95-020-11303, 1998.

Demeritt, Nina, Dept. of Industrial Accidents, 3/96.

Doe, et al v Dynawatch, Inc., et al, Suffolk Superior Court, CA, #93-0816.

Doe v Pittsfield Courtesy Bus Co & Zarvis, Berkshire Superior Court, MA, #93-0361.

Dwyer v DuBols et al, Suffolk Superior Court, #SUPC95-05162.

Eng et al v Coombe et al, Federal District Court, Western District, NY, CIV #80-385-S, 1997.

Eres, Noelle, Superior County, San Francisco, CA, 3/97.

Gagner.

Hameed v Coughlin, Federal District Court, Albany, NY, 1994.

Kelly v Marcantonio, Federal District Court, Providence, RI, 12/96.

King v Holiday Inn, Suffolk Superior Court, MA, 1994.

Kirby v Khalavj, Middlesex Superior Court, MA, MICV92-05290, 1996.

Lascock v DuBois, CIV 93-12236-Z.

Lee v Coughlin, 93 CIV 8417 (SS), 6/96.

Madrid v Gomez, Federal District Court, Northern District, CA, #C-90-3094TEH, 1996.

McClary v Coughlin, US District Court, Western District, NY, 90CV501A, 10/97.
(trial)

McNemar v Commonwealth of Mass. et al, Suffolk S.S. Superior Court, MA
C.A.93-7103G, 11/97. (trial)

People v Heath & Spenser, Greene County Superior Court, NY, 5/97.

People v Ng, Orange County Superior Court, #94ZF0195.

Perri v Coughlin, US District Court, Western District, NY, 1998.

Smith v O'Connell, Federal District Court, Providence, RI, 12/96.

Staziak v Petrolane Gas Service, Commonwealth of Mass., DIA #4637392,
1994.

Torres v DuBois, Suffolk Superior Court, MA, CIV #94-0270-E.

US v Peer, US District Court, Rutland, VT, 5.94-CV-316.

Valentin v Murphy, Federal District Court, CT, 1999.

Zimmerman v Direct USDC, D. Mass., 97-CV-12810GAO.

Attachment 45

Larry This was at the Preliminary Hearing was that the same time?
Perry That was after. That was after the Preliminary Hearing.
Larry I've never had such a hard time keeping up with dates.
Jim They're all running together.
Perry The day of the Preliminary Hearing he just more or less just..
he..I believe that was the day he was talking about if he could
set a date and way of execution.
Larry Yea. He was wanting to see the District Attorney. He was
wanting to see Dee that day. He kept trying to tell Joe and I
it's alright, he just wanted to talk to Dee and get this thing
over with. He was just tired of being in jail for one thing.
Perry I'm sure he is. I mean you take a man that's used to being out
in the woods and how he lived out in the woods...how he lived
out in the woods, what, three or four weeks? Lived out in the
woods up there. You take a man that's used to being outside
and was going and coming as he pleased. I know if they put me
back there I'd go nuts.
Jim Let's see. He's told you essentially two different stories..
One about the road up here and two friends of his took them out
in the woods and he went up to the rest station?
Perry Some mercenary friends. He didn't say two and he didn't say
five.
Jim Oh, he said mercenary friends.
Perry Mercenary friends.
Jim And then the other story was that down at Boiling Springs and
when they got out of the truck, his friends shot, he wasn't the
trigger man, and that they were hired to kill them. Did he say
why they were hired to kill them?
Perry (Inaudible)
Jim GD
Larry He hadn't ever given you the name of anybody else that you know
of that helped him do any of this?
Perry I even asked him about Blackwell. I asked him if Jimmy Blackwell
was in on this. And he looked at me and smiled and said, "I
wished he was".

Attachment 46

Zagorski Edmund
 PATIENT'S NAME
 5-31-83
 DATE

CASE NO. _____
 ADDRESS _____
 INSURANCE _____
 REFERRED BY _____
 OCCUPATION Trailer
 DOB _____ SEX _____ S.M.W.O. _____

DATE			VISITS AND FINDINGS	ACCOUNT RECORD		
MO.	DAY	YR.		CHARGE	PAID	BALANCE
5	31	83	Draining bullet wound proximal to right elbow - no evidence of infection few sutures nearer right shoulder apparently placed on W. Va 2 days ago Rx - P 76 PR 160/100 tubide normal heart nl lungs clear tx - Cyclozen 250, II tid (30)			
6	2	83	Very little drainage from bullet wound suture line still clean, no Cyclozen			
6	4	83	Sutures removed, no infection, no more drainage from bullet wound - crusts pres. Continue Cyclozen one more day then A.C. Recheck and if necessary.			
6	18	83	Haldol 1mg (42) erythematous rash on both arms - likely due to nerves			
7	7	83	Note by L. Lobo M.D. 1340 Hal Green Blvd Huntwood W. Va - 25701 Has cleared from gunshot wounds, awaiting trial.			
7	3	83	Nervous - seen in ER Valium 10 IM Valium 10 q.o. t. o. n tid (24)			
7	8	83	Valium 10mg T or II tid (50)			
7	18	83	ER - Dr. Hayes - Dx Endiety Reaction, isolated 50%			
7	23	83	marked headache, went to jail plot 100/70, P-6 Eye pupils R R E R to L L. Tx Valium 5mg P-antihistamine 25mg			
7	27	83	ketanal 30mg PR (18)			
7	28	83	Esic 2 tablets tid (18)			
8	2	83	admitted in jail - generalized headache few days, nausea, anorexia, cough day Rx - P 72 PR 130/80 heart nl lungs clear, abdomen soft marked tenderness epigastric area Dx - possible Ulcer tx - Mubain 10 IM			
8	3	83	Zantac 150 bid (20)			
8	5	83	Mylanta 2 capsules daily 20 capsules Evaluated in jail - still has generalized headache, anorexia, Zantac also held PR 130/80 Heart nl lungs clear, tenderness tx - 2 boxes of as + II tid (50) Mepergan tablets 7th of headache (18)			

CASE NO. _____

PATIENT'S NAME Zayaschi, Edmund

DATE			SUBSEQUENT VISITS AND FINDINGS	ACCOUNT RECORD		
MO.	DAY	YR.		CHARGE	PAID	BALANCE
8	8	83	Still cannot eat. - headache from no me. longer vomiting. drinking water, juice, apple sauce BP 120/80 Heart of lungs clear, abdomen soft very little tenderness Rx - Cort & brax, Mepergan 100 Valium 10 IM			
8	15	83	Mepergan 100 q 4h prn (18) <u>Spinal tracks (5)</u>			
8	22	83	Mepergan 100 q 4h prn (18)			
8	23	83	brax 10 ac + 10 h (50) Serax 100 q 4h (18)			
8	27	83	Tylenol #4 (18)			
8	29	83	Headache Tylenol does not work as well as Mepergan, some nausea has been eating solid food couple weeks BP 172 BP 120/80 Heart of lungs clear, abdomen soft some tenderness epigastric area Rx - Cort Tylenol #4, brax Valium 10, Provan 25 IM			
9	2	83	Talking back & crying about back. Seem to talk about talking med. - slight rash about neck Rx - Provan 50 mg qd. Distal lower limb. Dr. Hayes DX Intercostal Neuralgia			
9	7	83	Synalges BC q 4h prn.			
9	13	83	Tylenol #4			
9	17	83	Tylenol #4			
9	20	83	Shocked by wire from electrical fan to evening X-ray in the normal. In bed Valium 10 at evening. But states did not relieve pain. Complains with not being able move legs but has turned over. Kidneys will not move but drinking plenty of water. Epigastric. Complains with low back pain before area is ever touched. Dr. V. Muske drawn lumbar spine Rx - Valium 10 IM Provan 25 IM brax 10 ac + 10 h (50) Dona, T q 4h + T h (30)			
9	30	83	Tylenol #4 ac + h (50)			
10	1	83	Not able to get up at all. Pain doubled. Don't hurt on floor. No partial response. Rx - Serax 100			
10	6	83	Continue even, being transferred to the nursing unit June 10. Still unable to move both BP 120/80 Heart of lungs clear some muscle spasm between scapulae. Very little or no muscle spasm low back. Valium 10 IM			

CASE NO. _____ PATIENT'S NAME _____

Attachment 47

MEDICARE PATIENT

S.S. OR I.D. NO. **1253**

PATIENT NAME (LAST, FIRST, M.I.) **Zagorski Edward George** HOME PHONE _____ ADMISSION DATE **7/3/83** A.M. **12:53** HOSPITAL NO. **834568**

PATIENT ADDRESS - STREET **500 Willow St** CITY **Spfld** STATE **TR** ZIP _____ AGE **87** DATE OF BIRTH **11/1/1895** SEX **M** MARITAL STATUS F M S W O

EMPLOYER NAME _____ ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ EMPLOYER PHONE _____ COMPENSATION YES NO

NEXT OF KIN (LAST, FIRST, M.I.) _____ ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ PHONE _____

NAME OF BLUE CROSS AND/OR BLUE SHIELD PLAN _____ GROUP NO. _____ CONTRACT NO. _____ EFFECTIVE DATE _____ SUBSCRIBER FAMILY MEMBER DEPENDENT COMPREHENSIVE

OTHER HOSPITALIZATION INSURANCE NAME _____ ADDRESS _____ CERT. OR POLICY NO. _____ GROUP NO. _____ EFFECTIVE DATE _____

FAMILY DOCTOR **Webster** NOTIFIED YES NO E. R. DOCTOR **COX** DOCTOR NOTIFIED YES NO DOCTOR RESPONDED YES NO DOCTOR ARRIVED YES NO BROUGHT BY: SELF POLICE FIRE RELATIVE OTHER

EMERGENCY ROOM CHARGES (DOES NOT INCLUDE FEE OF ATTENDING PHYSICIAN)				OTHER SERVICES RENDERED	
ITEM	CHARGE	ITEM	CHARGE	DOCTOR'S FEE	<input type="checkbox"/>
EMERGENCY ROOM		DRUGS		RESPIRATORY THERAPY	<input type="checkbox"/>
ANESTHETIC		TETANUS TOXOID		X-RAY	<input type="checkbox"/>
ANTISEPTIC		Librium 100mg IM		LABORATORY	<input type="checkbox"/>
DRESSINGS				PHYSICAL THERAPY	<input type="checkbox"/>
E.R. TRAY					<input type="checkbox"/>
SUTURES					<input type="checkbox"/>
				TOTAL CHARGES	

BRIEF HISTORY

CONDITION ON ADMISSION: GOOD FAIR POOR HEMORRHAGE CONSCIOUS UNCONSCIOUS COMA ORIENTED IN TIME & PLACE CONFUSED **98/54** **96/20** **138/90**

IF ACCIDENT STATE WHERE, WHEN AND HOW INJURED, IF ILLNESS, DESCRIBE:
c/o uncontrollable rage et anger lacerations on knuckles of hands

RELATIVE NOTIFIED _____
 POLICE NOTIFIED _____
 CORONER NOTIFIED _____
 BY WHOM _____

ALLERGIES
 NO YES (SPECIFY) **Haldol 1 mg tid**

NURSE'S SIGNATURE **D. Picciullo** OFFICER'S SIGNATURE **Danny Cooksey** STAFF **Sgt** DISTRICT **74**

PHYSICIAN'S REPORT

PHYSICAL EXAM. AND TREATMENT
pt. sweating anxious. Knuckles of both hands sore almost from sitting well.
4 Knuckles each to Betadine
Librium 100mg q. M.

TETANUS TOXOID _____ cc TETANUS ANTITOXIN TEST _____ cc TETANUS ANTITOXIN _____ UNITS

DIAGNOSIS **Acute Anxiety -**

CONDITION ON DISCHARGE GOOD FAIR POOR HEMORRHAGE UNCONSCIOUS CONSCIOUS COMA ORIENTED IN TIME & PLACE CONFUSED RATIONAL OTHER (SPECIFY)

DISPOSITION OF CASE ADMITTED ADMISSION REFUSED/RELEASE SIGNED HOME WITH INSTRUCTIONS OTHER (SPECIFY) **Back to PCJ** **1:15 AM**

INSTRUCTIONS TO PATIENT:
Follow up with regular doctor -

A.R. Cox M.D.
 PHYSICIAN'S SIGNATURE

AKR
 PATIENT'S SIGNATURE

MEDICARE PATIENT

U.S. OR.H.I.B. NO.

PATIENT NAME: EAST, FIRST, M.I. Zuporski Edward J HOME PHONE _____ ADMISSION DATE 7/3/83 HOSPITAL NO. 83-4598

PATIENT ADDRESS: STREET 500 Willard CITY Spfld STATE TN ZIP _____ AGE 27 DATE OF BIRTH 10/2/56 SEX M MARITAL STATUS M COMPENSATION YES NO

EMPLOYER NAME _____ ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ EMPLOYER PHONE _____ PHONE _____

NEXT OF KIN (LAST, FIRST, M.I.) None ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ PHONE _____

NAME OF BLUE CROSS AND/OR BLUE SHIELD PLAN _____ GROUP NO. _____ CONTRACT NO. _____ EFFECTIVE DATE _____ SUBSCRIBER FAMILY MEMBER DEPENDENT COMPREHENSIVE

OTHER HOSPITALIZATION INSURANCE NAME _____ ADDRESS _____ CERT. OR POLICY NO. _____ GROUP NO. _____ EFFECTIVE DATE _____

FAMILY DOCTOR Webster NOTIFIED YES NO E. R. DOCTOR Robertson DOCTOR NOTIFIED YES NO DOCTOR RESPONDED YES NO DOCTOR ARRIVED YES NO BROUGHT BY SELF POLICE FIRE RELATIVE OTHER

EMERGENCY ROOM CHARGES (DOES NOT INCLUDE FEE OF ATTENDING PHYSICIAN)				OTHER SERVICES RENDERED	
ITEM	CHARGE	ITEM	CHARGE	DOCTOR'S FEE	<input type="checkbox"/>
EMERGENCY ROOM		DRUGS		RESPIRATORY THERAPY	<input type="checkbox"/>
ANESTHETIC		TETANUS TOXOID		X-RAY	<input type="checkbox"/>
ANTISEPTIC		Valium 10mg IM		LABORATORY	<input type="checkbox"/>
DRESSINGS		205 RSH		PHYSICAL THERAPY	<input type="checkbox"/>
E.R. TRAY		Deltoid			<input type="checkbox"/>
SUTURES					<input type="checkbox"/>
				TOTAL CHARGES	

Ambrulatory BRIEF HISTORY

CONDITION ON ADMISSION: GOOD FAIR POOR HEMORRHAGE CONSCIOUS UNCONSCIOUS COMA ORIENTED IN TIME & PLACE COMPUSED RATIONAL OTHER (SPECIFY) _____ TEMP 98.8 P 76 R 20 Sp 130/80

IF ACCIDENT STATE WHERE, WHEN AND HOW INJURED, IF ILLNESS, DESCRIBE:

States nervous

Saw W FR last nite (11 a.m.) for uncontrollable rage

RELATIVE NOTIFIED _____
POLICE NOTIFIED _____
CORONER NOTIFIED _____
BY WHOM _____

Medc - valium pra, poss drug abuse

ALLERGIES NO YES (SPECIFY) NKA

NURSE'S SIGNATURE M. White OFFICER'S SIGNATURE [Signature] STATE TN DISTRICT _____

PHYSICAL EXAM. AND TREATMENT

Heart normal, lungs clear.

Valium 10, IM.

Valium 10 @ 8:0 T to R side (24)

TETANUS TOXOID _____ cc TETANUS ANTITOXIN TEST _____ cc TETANUS ANTITOXIN _____ UNITS

DIAGNOSIS Acute Anxiety

CONDITION ON DISCHARGE GOOD FAIR POOR HEMORRHAGE UNCONSCIOUS CONSCIOUS RATIONAL COMA ORIENTED IN TIME & PLACE COMPUSED OTHER (SPECIFY) _____

DISPOSITION OF CASE ADMITTED ADMISSION REFUSED/RELEASE SIGNED HOME WITH INSTRUCTIONS OTHER (SPECIFY) 205 Ambrulatory

INSTRUCTIONS TO PATIENT:

Return to Robertson Co jail

R.H. Webster M.D. 7-3-83 EJ Zuporski

PHYSICIAN'S SIGNATURE DATE PATIENT'S SIGNATURE

6000

Attachment 48



A pool was a great relief to this livestock on property just off the new Industrial Drive as temperatures reached 100 in



Only the approach of a cameraman set the animals in flight from the cooling waters. But, they soon returned to the pool,

Robertson County this past week.

a refreshing dip even for humans suffering in the heat.

Heat Reaches 100 Degrees; Crops Damaged

Robertson Countians suffered through another sweltering summer heat wave last week as the temperature reached the 100° mark, according to records kept by the Highland Rim Experiment Station.

Official readings showed temperatures hovering in the upper 90's from Wednesday through Monday of last week. The official reading for Friday, however, broke the 100° mark. Both Cumberland Electric Membership Corp. and Springfield Electric estimate that large quantities of electricity were consumed during the heat wave, though actual figures for power usage in July are not yet available.

A significant amount of crop and livestock damage has been reported in the county, according to County Agent Don Malbee.

"The corn crop has suffered an extreme loss due to the hot, dry weather," said Malbee. "Corn was especially hard hit because it was in the critical stage of silking and tasseling."

Malbee said the local tobacco crop also suffered from the heat. Burley tobacco, which is especially susceptible to heat stress, burned under last week's hot conditions. Some amount of sun scald was also reported for dark fired tobacco.

Though the dark variety generally withstands heat stress better.

Livestock also suffered in the heat. At least one dairyman in the county reported a loss of three dairy cows from heat-related stress.

Due to the heat wave, the Mid-Cumberland Community Action Agency is encouraging income eligible persons to contact the local Neighborhood Center where electric fans are available.

In order for a household to qualify for this assistance, an-

ual income of the total household must be at or below 150% of the official poverty guidelines and a member of the household must have a medical condition which necessitates assistance.

Forms for medical statements, which must be verified by a physician, a nurse, a medical social worker or a public health official, may be obtained from the County M.C.C.A.A. Neighborhood Services Center.

Maximum assistance is \$100 per household including the purchase of a fan.

Attachment 49

State Crop Disaster Aid Sought By Alexander

ROBERTSON COUNTY TIMES
SEPTEMBER 8, 1983, page 5a

Mar Alexander Friested Secretary of the John R. Block to a statewide agricultural disaster area in Tennessee crop losses in excess of \$428 million are expected as a result of the summer drought.

Half of the state's soybean crop - the state's number one farm crop - has been lost due to adverse weather conditions, Commissioner Walker reported to the governor. Based on a current price of \$8.50 per bushel, the estimated production loss of 23,040,000 bushels of soybeans would mean a dollar loss of \$195,840,000 to Tennessee farmers.

Completed a statewide survey of agricultural producers and brought that information to federal officials in a report with representatives from eight-stricken states at

Walker said other losses include \$8 million to the state's sorghum crop and severe damage to fall hay crops and pastures. Hay production is expected to be about one-fourth of the normal crop, and pasture losses are averaging more than 60% across the state.

Corn losses range from a low of 15% to a high of 90% in counties across the state, with a statewide average loss of 57%. The estimated financial loss to Tennessee farmers in corn production is \$100,620,000.

Burley tobacco has been affected more severely than the dark types, Walker said. The county-by-county survey found losses ranging from 15% to 70% and a statewide average of 41%.

Based on last year's season average price the loss to tobacco crops in Tennessee would amount to \$87.6 million. Although cotton is generally considered a hot weather crop,

this year's extreme conditions are expected to reduce the yield by an average of 46% statewide and will cost cotton growers an estimated \$34,104,000.

Walker said other losses include \$8 million to the state's sorghum crop and severe damage to fall hay crops and pastures. Hay production is expected to be about one-fourth of the normal crop, and pasture losses are averaging more than 60% across the state.

"Nearly 700,000 cattle and more than 100,000 hogs are receiving additional supplements due to the hot, dry conditions," Commissioner Walker reported. "More than 100,000 broilers have died this summer due to the weather conditions. Milk production also has dropped considerably due to the heat."

Walker said vegetable crops, particularly those in the Cumberland Plateau area, will have yields from 30% to 60% below normal as a result of the extended drought and extreme heat.

In the survey, each county

emergency board was asked to recommend what type of USDA assistance would be beneficial. Emergency credit was recommended by 73 of Tennessee's 95 counties. Fifty-nine counties recommended feed assistance, and 35 recommended the emergency conservation programs.

Weatherwise, 1983 has been a disaster for Tennessee farmers, Walker pointed out.

"The 1983 crop year got off to a slow start as a result of the

overly abundant rain occurring during April and May," the commission said. "Also, a freeze in late May delayed planting of corn, damaged fruits and vegetables, and adversely affected tobacco beds and small

Walker said some livestock producers began selling cattle in August due to pasture conditions.

Prospects are likely to prove, he concluded.

Attachment 50

U.S. DEPARTMENT OF
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL WEATHER SERVICE

WS FORM E-15
12-79

RECORD OF RIVER AND CLIMATOLOGICAL OBSERVATIONS

STATION (Climatological)
KINGFIELD EXPERIMENT
STATE **OHIO**

(River Station, if different)
MONTH **JULY** YEAR **1983**
RIVER **OHIO**

COUNTY **ROBERTSON**
STANDARD TIME IN USE **CD**
TEMP. PRECIPITATION
6:00 AM 6:00 AM

ELEVATION OF RIVER **Ft.** FLOOD STAGE **Ft.** NORMAL POOL STAGE **Ft.**

TEMPERATURE F. 24 HRS. ENDING AT OBSERVATION	TEMP. 6:00 AM	PRECIPITATION 6:00 AM	24-HR. AMOUNTS		PRECIPITATION												WEATHER (Calendar Day) <small>Mark "X" for all types occurring each day.</small>	RIVER STAGE																				
			Min., tenths and hundredths	Max., tenths	A.M.	NOON	P.M.	Ft.												GAGE READING AT A.M.	CONDITION	TENDENCY																
								1	2	3	4	5	6	7	8	9		10	11				12	1	2	3	4	5	6	7	8	9	10	11	12			
MAX.																																						
	86	71	.24																																			
	92	68	.13																																			
	90	62	70																																			
	88	71	.02																																			
	89	68	.90																																			
	83	62	68																																			
	75	54	55																																			
	78	54	64																																			
	87	65	65																																			
	86	62	63																																			
	89	62	66																																			
	90	66	68																																			
	91	68	70																																			
	92	70	72																																			
	92	71	71																																			
	92	70	70																																			
	92	70	73																																			
	92	68	68																																			
	92	68	71																																			
	95	71	75																																			
	97	73	76																																			
	100	76	76																																			
	99	76	77																																			
	98	77	77																																			
	97	68	70	1.53																																		
	85	68	68	.10																																		
	87	65	65																																			
	91	65	72																																			
	92	69	71																																			
	91	68	69																																			
	92	69	70																																			
	92	69	70																																			
SUM	2.92		2.59																																			

CONDITION OF RIVER AT GAGE
E. Ice gone below gage.
F. Shun ice.
G. Floating ice.
H. Ice gone above gage.

CHECK BAR (For reference only) NORMAL CK. BAR READING DATE

0 2.92 2.59 X

SUPERVISING OFFICE
Lawson M. Safley

STATION INDEX NO.
NASHVILLE TENN.
40-8562-3

Station: SPRINGFIELD EXP STN
 State: TN County: ROBERTSON Standard Time: CENTRAL

Record of Climatological Observations

** These data are quality controlled and may not be identical to the original observations **

Observation Time Temperature: 0600 Precipitation: 0600
 (LST) Evaporation: Soil: 9900

P r e l i m i n a r y	Y e a r	M o n t h	D a y	Temperature (°F)			Precipitation (see **)			24 Hour Wind Movement (miles)	Evaporation Amount of Evaporation (Inches & hundredths)	Soil Temperature (°F)					
				24 hrs. ending at observation time		at O b s e r v a t i o n	24 Hour Amounts ending at observation time		At Observation Time			4 inch depth			8 inch depth		
				Max.	Min.		Rain, melted snow, etc. (Inches & hundredths)	Snow, ice pellets (Inches & tenths)				Snow, ice pellets, hail, ice on ground (Inches)	Ground Cover (see *)	Max.	Min.	Ground Cover (see *)	Max.
1983	08	1	93	70	71	0	0	0	0	0	0	98	30				
1983	08	2	90	66	66	0	0	0	0	0	0	95	78				
1983	08	3	90	66	68	0	0	0	0	0	0	96	77				
1983	08	4	93	68	73	0	0	0	0	0	0	97	76				
1983	08	5	94	71	73	0	0	0	0	0	0	98	79				
1983	08	6	97	71	71	T	0	0	0	0	0	100	79				
1983	08	7	97	60	68	0.15	0	0	0	0	0	101	77				
1983	08	8	89	67	68	0	0	0	0	0	0	92	77				
1983	08	9	94	68	69	0	0	0	0	0	0	98	76				
1983	08	10	94	68	69	0	0	0	0	0	0	97	79				
1983	08	11	96	69	76	0	0	0	0	0	0	98	77				
1983	08	12	99	64	64	0.19	0	0	0	0	0	98	74				
1983	08	13	79	58	59	0	0	0	0	0	0	84	70				
1983	08	14	84	51	53	0	0	0	0	0	0	92	69				
1983	08	15	90	53	70	0	0	0	0	0	0	95	70				
1983	08	16	89	70	70	0	0	0	0	0	0	97	75				
1983	08	17	90	70	71	0	0	0	0	0	0	91	76				
1983	08	18	93	71	72	0.07	0	0	0	0	0	94	77				
1983	08	19	91	69	69	0.05	0	0	0	0	0	90	76				
1983	08	20	97	69	71	0	0	0	0	0	0	98	75				
1983	08	21	100	71	74	0	0	0	0	0	0	99	80				
1983	08	22	97	74	76	0	0	0	0	0	0	97	82				
1983	08	23	100	70	71	0	0	0	0	0	0	97	80				
1983	08	24	97	71	72	0	0	0	0	0	0	99	80				
1983	08	25	98	71	72	T	0	0	0	0	0	97	80				
1983	08	26	96	72	73	0	0	0	0	0	0	97	80				
1983	08	27	95	73	75	0	0	0	0	0	0	96	31				
1983	08	28	97	74	74	0	0	0	0	0	0	97	80				
1983	08	29	93	67	67	0.64	0	0	0	0	0	91	76				
1983	08	30	90	64	64	0	0	0	0	0	0	92	74				
1983	08	31	93	64	67	0	0	0	0	0	0	95	73				
Summary				93.5	67.4		1.10	0									

The ** flags in Preliminary indicate the data have not completed processing and quality control and may not be identical to the original observation

All 9's (e.g. 999999, 99999.9, etc.) in the data column indicate that the value was not received or is missing

* Ground Cover: 1=Grass; 2=Fallow; 3=Bare Ground; 4=Brome grass; 5=Sod; 6=Straw mulch; 7=Grass mulch; 8=Bare mulch; 9=Unknown

** The values 1 in the Precipitation category above indicate a TRACE value was recorded for these elements

Station: SPRINGFIELD EXP STN
 State: TN County: ROBERTSON Standard Time: CENTRAL
 Observation Time Temperature: 0600 Precipitation: 0600
 (LST) Evaporation: Soil: 9000

Record of Climatological Observations
 ** These data are quality controlled and may not be identical to the original observations **

P r e l i m i n a r y	Y e a r	M o n e t h	D a y	Temperature (°F)			Precipitation (see **)			24 Hour Wind Movement (miles)	Evaporation Amount of Evaporation (Inches & hundredths)	Soil Temperature (°F)					
				24 hrs. ending at observation time		At O b s e r v a t i o n	24 Hour Amounts ending at observation time		At O b s e r v a t i o n T i m e			4 inch depth			8 inch depth		
				Max.	Min.		Rain, melted snow, etc. (Inches & hundredths)	Snow, ice pellets (Inches & tenths)				Snow, ice pellets, hail, ice on ground (Inches)	Ground Cover (see *)	Max.	Min.	Ground Cover (see *)	Max.
1983	09	1	90	67	67	0	0	0		0		91	75				
1983	09	2	89	65	65	0	0	0		0		93	75				
1983	09	3	87	65	69	0	0	0		0		89	74				
1983	09	4	88	67	67	0	0	0		0		89	76				
1983	09	5	90	67	71	0	0	0		0		93	76				
1983	09	6	89	71	73	0.08	0	0		0		89	77				
1983	09	7	86	72	73	0	0	0		0		90	77				
1983	09	8	91	65	65	0	0	0		0		94	75				
1983	09	9	93	63	64	0	0	0		0		95	74				
1983	09	10	96	63	67	0	0	0		0		96	74				
1983	09	11	95	67	69	0	0	0		0		93	76				
1983	09	12	97	68	70	0	0	0		0		97	77				
1983	09	13	87	66	66	T	0	0		0		87	73				
1983	09	14	86	58	58	0	0	0		0		91	71				
1983	09	15	78	47	47	0	0	0		0		88	66				
1983	09	16	83	47	47	T	0	0		0		89	65				
1983	09	17	81	64	65	0	0	0		0		80	71				
1983	09	18	93	64	68	0	0	0		0		82	70				
1983	09	19	93	67	68	0	0	0		0		92	73				
1983	09	20	92	67	72	0	0	0		0		91	75				
1983	09	21	85	47	47	0.87	0	0		0		85	63				
1983	09	22	61	37	39	0	0	0		0		70	53				
1983	09	23	69	39	45	0	0	0		0		75	53				
1983	09	24	65	35	35	0	0	0		0		75	54				
1983	09	25	74	35	52	0	0	0		0		76	53				
1983	09	26	71	52	61	0	0	0		0		70	58				
1983	09	27	77	55	61	0	0	0		0		78	64				
1983	09	28	80	50	50	0	0	0		0		81	67				
1983	09	29	80	50	51	0	0	0		0		82	61				
1983	09	30	83	45	47	0	0	0		0		80	61				
Summary			84.3	57.5		0.95	0										

The ** tags in Preliminary indicate the data have not completed processing and quality control and may not be identical to the original observation

All 9's (e.g. 999999, 99999.9, etc.) in the data column indicate that the value was not received or is missing

*Ground Cover: 1=Grass; 2=Fallow; 3=Bare Ground; 4=Brome grass; 5=Sod; 6=Straw mulch; 7=Grass mulch; 8=Bare mulch; 9=Unknown

**The values 1 in the Precipitation category above indicate a TRACE value was recorded for these elements

Station: SPRINGFIELD EXP STN
 State: TN County: ROBERTSON Standard Time: CENTRAL
 Observation Time Temperature: 0600 Precipitation: 0600
 (LST) Evaporation: Soil: 9900

Record of Climatological Observations
 ** These data are quality controlled and may not be identical to the original observations **

P r e l i m i n a r y	Y e a r	M o n t h	D a y	Temperature (°F)			Precipitation (see **)			24 Hour Wind Movement (miles)	Evaporation Amount of Evaporation (Inches & hundredths)	Soil Temperature (°F)					
				24 hrs. ending at observation time		At O b s e r v a t i o n	24 Hour Amounts ending at observation time		At O b s e r v a t i o n Time			4 inch depth			8 inch depth		
				Max.	Min.		Rain, melted snow, etc. (Inches & hundredths)	Snow, ice pellets (Inches & tenths)				Snow, ice pellets, hail, ice on ground (Inches)	Ground Cover (see *)	Max	Min	Ground Cover (see *)	Max
1983	10	1	80	47	47	0	0	0			0	82	60				
1983	10	2	83	47	57	0	0	0			0	82	60				
1983	10	3	86	57	60	0	0	0			0	83	62				
1983	10	4	87	59	67	0	0	0			0	82	65				
1983	10	5	84	62	63	0.28	0	0			0	83	68				
1983	10	6	75	46	47	0	0	0			0	75	59				
1983	10	7	77	47	48	0	0	0			0	78	58				
1983	10	8	78	46	55	0	0	0			0	78	58				
1983	10	9	79	50	50	0	0	0			0	78	61				
1983	10	10	78	49	50	0	0	0			0	78	60				
1983	10	11	82	50	64	0	0	0			0	78	60				
1983	10	12	75	63	64	0	0	0			0	73	66				
1983	10	13	72	43	43	2.31	0	0			0	73	56				
1983	10	14	52	42	42	0	0	0			0	62	50				
1983	10	15	68	41	42	0	0	0			0	65	49				
1983	10	16	73	40	50	0	0	0			0	67	51				
1983	10	17	77	50	61	0	0	0			0	68	53				
1983	10	18	72	60	61	0.11	0	0			0	67	60				
1983	10	19	67	58	59	0.02	0	0			0	66	63				
1983	10	20	72	59	65	0	0	0			0	70	62				
1983	10	21	74	64	64	0.02	0	0			0	69	64				
1983	10	22	70	58	58	0.19	0	0			0	68	63				
1983	10	23	59	55	55	0.99	0	0			0	68	61				
1983	10	24	57	51	51	0.03	0	0			0	63	58				
1983	10	25	56	51	53	0.01	0	0			0	58	57				
1983	10	26	57	35	36	0.01	0	0			0	50	48				
1983	10	27	64	34	37	0	0	0			0	58	48				
1983	10	28	65	35	48	0	0	0			0	61	47				
1983	10	29	73	47	51	0	0	0			0	62	48				
1983	10	30	67	42	42	0	0	0			0	63	52				
1983	10	31	69	41	52	0	0	0			0	65	51				
Summary				71.9	49.3		3.97	0									

The ** flags in Preliminary indicate the data have not completed processing and quality control and may not be identical to the original observation

All 9's (e.g. 999999, 99999.9, etc.) in the data column indicate that the value was not received or is missing

*Ground Cover: 1=Grass; 2=Fallow; 3=Bare Ground; 4=Brome grass; 5=3ed; 6=Straw mulch; 7=Grass mulch; 8=Bare mulch; 9=Unknown

** The values 1 in the Precipitation category above indicate a TRACE value was recorded for these elements

Attachment 51

bound over in drug deal

By Rich Barrett JUL 21 1986
Banner Correspondent

SPRINGFIELD — Accused double murderer Edmund Zagorski has been bound over to the Aug. 8 term of the Robertson County Grand Jury after testimony about his role in a drug deal with two local men.

Zagorski appeared dazed and dazed Wednesday in his hearing before General Sessions Judge Thomas Guthrie.

Security was heavy with guards posted around the courthouse. Persons entering the courtroom were searched. Zagorski was led into court for his preliminary hearing wearing handcuffs and leg irons.

His attorney, Joe Walker, said Zagorski has lost 40 pounds since he has been in the isolation cell in the Robertson County Jail. Walker said Zagorski was under sedation during the hearing, explaining that the accused murderer had pounded the bars of his cell until his hands were bloodied.

Judge Guthrie denied Walker's motions to grant Zagorski bond, to move him out of Robertson County or to remove him from isolation.

Zagorski is accused of fatally shooting Jimmy Porter, 42, of Dickson, and Dale Dotson, 28, of McEwen. The bodies of the two were found shot and stabbed in a wooded area along Interstate 65 last May 6.

Robertson County Sheriff's Detective Ronnie Perry testified at the hearing that Zagorski told officers he was the middleman who set up a drug deal between his associates and Porter and Dotson.

Zagorski has maintained that the last time he saw Porter and Dotson they were walking with several "mercenaries" along the interstate. "I wasn't there," he told reporters as he was led away from the courthouse.

According to a statement given officers after his arrest, Zagorski said Dotson and Porter met Zagorski and his mercenary friends in Bucksport last April 23. The group met other mercenaries in Dickson and drove toward Kentucky.

Zagorski claims that the mercenaries took Dotson and Porter into the woods along with Zagorski's rifle. District Attorney General Dee Gay said they told Zagorski to go to a welcome center in Kentucky and wait. The mercenaries met Zagorski there and gave him a .0003 rifle and Dotson's pickup truck, he said.

Zagorski was subsequently arrested May 26 in southern Ohio after a shootout with Scioto County sheriff's deputies who learned he had been staying in a barn there.

The other witnesses to testify Wednesday, Jimmy Blackwell and Sally Salmon, both of Hickman County, said Zagorski told them he was a mercenary and had parachuted into Hickman County.

Attachment 52

MEDICARE PATIENT

S.S. OR H.I.B. NO.

PATIENT NAME (LAST, FIRST, M.I.) **Zagorski Edward G** HOME PHONE _____ ADMISSION DATE **7/16/83** A.M. P.M. **8 3-494** HOSPITAL NO.

PATIENT ADDRESS - STREET CITY STATE ZIP AGE DATE OF BIRTH SEX MARITAL STATUS

500 Willard St Sof **TN** **27** **UNKNOWN** **M** F M S W D C

EMPLOYER NAME ADDRESS - STREET CITY STATE ZIP EMPLOYER PHONE COMPENSATION YES NO

NEXT OF KIN (LAST, FIRST, M.I.) ADDRESS - STREET CITY STATE ZIP PHONE

None

NAME OF BLUE CROSS (AND/OR BLUE SHIELD) PLAN GROUP NO. CONTRACT NO. EFFECTIVE DATE SUBSCRIBER FAMILY MEMBER DEPENDENT COMPREHENSIVE

OTHER HOSPITALIZATION INSURANCE NAME ADDRESS CERT. OR POLICY NO. GROUP NO. EFFECTIVE DATE

FAMILY DOCTOR NOTIFIED YES NO E. & S. DOCTOR DOCTOR NOTIFIED DOCTOR RESPONDED DOCTOR ARRIVED BROUGHT BY: SELF POLICE FIRE RELATIVE OTHER

Webster YES NO **Bean**

EMERGENCY ROOM CHARGES (DOES NOT INCLUDE FEE OF ATTENDING PHYSICIAN)				OTHER SERVICES RENDERED	
ITEM	CHARGE	ITEM	CHARGE	DOCTOR'S FEE	
EMERGENCY ROOM	X	DRUGS		RESPIRATORY THERAPY	
ANESTHETIC		TETANUS TOXOID		X-RAY	
ANTISEPTIC				LABORATORY	
DRESSINGS				PHYSICAL THERAPY	
E.R. TRAY					
SUTURES					
				TOTAL CHARGES	

Ambulicated BRIEF HISTORY

CONDITION ON ADMISSION: GOOD FAIR POOR HEMORRHAGE CONSCIOUS UNCONSCIOUS COMA ORIENTED IN TIME & PLACE CONFUSED RATIONAL OTHER (SPECIFY)

IF ACCIDENT STATE WHERE, WHEN AND HOW INJURED, IF ILLNESS, DESCRIBE: **992 #0 228 R 76 BP 10/68**

states nerves bad for past 2 days - pressure bad dreams, insomnia, lethargic, slurred speech face appears edematous

pt has no specific c/o or pain at this time

hx poss drug abuse, Meds valium 10mg x 2 tabs x 2 weeks

ALLERGIES NO YES (SPECIFY) **NKA**

NURSE'S SIGNATURE **P. Tennant** OFFICER'S SIGNATURE **David Hogue** STAR **26** DISTRICT **3**

PHYSICAL EXAM AND TREATMENT

awake, oriented, responds appropriately to question memory intact. Pupils equal round reactive to light 2mm, EOMF Reflexes I+/- NO Babinski

highly all extremities equal, muscle strength I+/- h2

pt. taking Valium 10mg 3-4/x/d x 2 weeks.

TETANUS TOXOID _____ cc TETANUS ANTITOXIN TEST _____ cc TETANUS ANTITOXIN _____ UNITS

DIAGNOSIS **Valium excess**

CONDITION ON DISCHARGE GOOD FAIR POOR HEMORRHAGE UNCONSCIOUS RATIONAL OTHER (SPECIFY)

DISPOSITION OF CASE ADMITTED ADMISSION REFUSED/RELEASE SIGNED HOME WITH INSTRUCTIONS OTHER (SPECIFY) **Ambulicated Return to jail 120**

INSTRUCTIONS TO PATIENT:

check patient's wrist to be certain pill was swallowed and not saved

to be taken to 5mg p.o. b.i.d. evn

D/C Valium

Serax 10mg p.o. b.i.d. may give as much as t.i.d. if pt is seeing psychiatrist

PHYSICIAN'S SIGNATURE **Neil Bean** DATE **7/16/83** PATIENT'S SIGNATURE **unable to sign**

Attachment 53

MEDICARE PATIENT

S.S. OR H.I.S. NO.

PATIENT NAME (LAST, FIRST, M.I.) Zogorski - Edmund G. HOME PHONE NIP ADMISSION DATE 7/18/83 4:57 P.M. HOSPITAL NO. 83-501
 PATIENT ADDRESS - STREET 620 Willow St. CITY Sprfld. STATE TN ZIP 37154 AGE 25 DATE OF BIRTH 12/27/57 SEX M MARITAL STATUS M S W D.
 EMPLOYER NAME _____ ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ EMPLOYER PHONE _____ COMPENSATION YES NO
 NEXT OF KIN (LAST, FIRST, M.I.) None ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ PHONE _____
 NAME OF BLUE CROSS AND/OR BLUE SHIELD PLAN _____ GROUP NO. _____ CONTRACT NO. _____ EFFECTIVE DATE _____ SUBSCRIBER FAMILY MEMBER
 OTHER DEPENDENT COMPREHENSIVE
 OTHER HOSPITALIZATION INSURANCE NAME _____ ADDRESS _____ CERT. OR POLICY NO. _____ GROUP NO. _____ EFFECTIVE DATE _____
 FAMILY DOCTOR H.W. NOTIFIED YES NO E. R. DOCTOR _____ DOCTOR NOTIFIED _____ DOCTOR RESPONDED _____ DOCTOR ARRIVED _____ BROUGHT BY: SELF POLICE FIRE RELATIVE OTHER

EMERGENCY ROOM CHARGES (DOES NOT INCLUDE FEE OF ATTENDING PHYSICIAN)				OTHER SERVICES RENDERED	
ITEM	CHARGE	ITEM	CHARGE		
EMERGENCY ROOM		DRUGS		DOCTOR'S FEE	-
ANESTHETIC		TETANUS TOXOID		RESPIRATORY THERAPY	
ANTISEPTIC		Visit sig inc		X-RAY	
DRESSINGS		Rush		LABORATORY	
E.R. TRAY				PHYSICAL THERAPY	
SUTURES					
				TOTAL CHARGES	

BRIEF HISTORY
 CONDITION ON ADMISSION: GOOD FAIR POOR HEMORRHAGE CONSCIOUS UNCONSCIOUS COMA RATIONAL ORIENTED IN TIME & PLACE CONFUSED OTHER (SPECIFY) _____ TEMP 99 HR 78 BP 120/80
 IF ACCIDENT STATE WHERE, WHEN AND HOW INJURED, IF ILLNESS, DESCRIBE:
Swore neck ache - states on medication - for neck
vs - Eyes inflamed states he "wants to sleep till the
police fry him". Requesting Quaalude as med. of choice
 RELATIVE NOTIFIED _____
 POLICE NOTIFIED _____
 CORONER NOTIFIED _____
 BY WHOM _____

ALLERGIES
 NO YES (SPECIFY) _____
 NURSE'S SIGNATURE W. E. Ryan, R.N. OFFICER'S SIGNATURE R. Heath STAR ST DISTRICT _____

PHYSICIAN'S REPORT
 PHYSICAL EXAM. AND TREATMENT
Marked injected mcs - vital signs normal
vs - Neospirin oph 4x4
Visit 50mg / m
 TETANUS TOXOID _____ cc TETANUS ANTITOXIN TEST _____ cc TETANUS ANTITOXIN _____ UNITS
 DIAGNOSIS anxiety reaction

CONDITION ON DISCHARGE GOOD FAIR POOR HEMORRHAGE UNCONSCIOUS RATIONAL ORIENTED IN TIME & PLACE CONFUSED
 DISPOSITION OF CASE ADMITTED ADMISSION REFUSED/RELEASE SIGNED HOME WITH INSTRUCTIONS OTHER (SPECIFY) back to jail
 INSTRUCTIONS TO PATIENT: Returned to jail - c 54

Physician's Signature: Warren A. Payne DATE: 7/18/83 Patient's Signature: Edmund G. Zogorski

Attachment 54

MEDICARE PATIENT

U.S. OR H.I.B. NO. 545

PATIENT NAME (LAST, FIRST, M.I.) Zaboriski Edward G. HOME PHONE DP ADMISSION DATE 7/24/83 AM PM HOSPITAL NO. 23-5190

PATIENT ADDRESS STREET 508 Willow St CITY Springfield STATE MO ZIP 65702 AGE 28 DATE OF BIRTH 12/27/54 SEX M MARRIAGE STATUS M

EMPLOYER NAME _____ ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ EMPLOYER PHONE _____ COMPENSATION YES NO

NEXT OF KIN (LAST, FIRST, M.I.) None ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ PHONE _____

NAME OF BLUE CROSS AND/OR BLUE SHIELD PLAN _____ GROUP NO. _____ CONTRACT NO. _____ EFFECTIVE DATE _____ SUBSCRIBER FAMILY MEMBER DEPENDENT COMPREHENSIVE

OTHER HOSPITALIZATION INSURANCE NAME _____ ADDRESS _____ CERT. OR POLICY NO. _____ GROUP NO. _____ EFFECTIVE DATE _____

FAMILY DOCTOR None NOTIFIED YES NO E. R. DOCTOR None DOCTOR NOTIFIED YES NO DOCTOR RESPONDED YES NO DOCTOR ARRIVED YES NO BROUGHT BY: SELF POLICE FIRE RELATIVE OTHER

EMERGENCY ROOM CHARGES (DOES NOT INCLUDE FEE OF ATTENDING PHYSICIAN)				OTHER SERVICES RENDERED	
ITEM	CHARGE	ITEM	CHARGE	DOCTOR'S FEE	
EMERGENCY ROOM	X	DRUGS			X
ANESTHETIC		TETANUS TOXOID		RESPIRATORY THERAPY	
ANTISEPTIC		Midrin caps x 4		X-RAY	
DRESSINGS		Restoril x 1		LABORATORY	
E.R. TRAY		Uristar 15mg PM		PHYSICAL THERAPY	
SUTURES		2 sticks RUC			
				TOTAL CHARGES	

Ambulatory BRIEF HISTORY

CONDITION ON ADMISSION: GOOD FAIR POOR HEMORRHAGE CONSCIOUS UNCONSCIOUS COMA RATIONAL ORIENTED IN TIME & PLACE CONFUSED OTHER (SPECIFY) _____

IF ACCIDENT STATE WHERE, WHEN AND HOW INJURED, IF ILLNESS, DESCRIBE. epi migraine H/A, IV at intervals, states severe. Able to converse easily, light doesn't bother. No N+V. Also ep extremities becoming numb, e. color change. No colour changes noted. cont to ep insomnia

ALLERGIES (NAME YES (SPECIFY) DKA)

NURSE'S SIGNATURE M. Hodge OFFICER'S SIGNATURE Florence E. Reed STAR _____ DISTRICT _____

PHYSICIAN'S REPORT

PHYSICAL EXAM. AND TREATMENT Blood pressure way up 150/90
restless w/ pain
clear, oriented x3, poor judgment

① Uristar 15mg PM
 ② Midrin 4 capsules qid ③ Restoril 30mg at H

TETANUS TOXOID _____ cc TETANUS ANTITOXIN TEST _____ cc TETANUS ANTITOXIN _____ UNITS

DIAGNOSIS Cephalalgia

CONDITION ON DISCHARGE GOOD FAIR POOR HEMORRHAGE UNCONSCIOUS CONSCIOUS RATIONAL ORIENTED IN TIME & PLACE CONFUSED OTHER (SPECIFY) _____

DISPOSITION OF CASE ADMITTED ADMISSION REFUSED/RELEASE SIGNED HOME WITH INSTRUCTIONS OTHER (SPECIFY) left ambulatory hands

INSTRUCTIONS TO PATIENT ① Take Midrin Two Capsules four times a day ② Restoril 30mg at Bed time for sleep ③ Return to Regular doctor

PHYSICIAN'S SIGNATURE M. Hodge, M.D. DATE 7-24-83

PATIENT'S SIGNATURE _____

6004

Attachment 55

PATIENT NAME (LAST, FIRST, M.I.) **Zagorski, Edward** HOME PHONE _____ MEDICARE PATIENT S.S. OR H.I.B. NO. _____
 PATIENT ADDRESS (STREET, CITY, STATE, ZIP) **Roberts County Jail Spfd, TN 37174** ADMISSION DATE **7/5/83** HOSPITAL NO. **82-642**
 EMPLOYER NAME _____ ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ AGE _____ DATE OF BIRTH _____ SEX M F MARITAL STATUS M S W D C
 NEXT OF KIN (LAST, FIRST, M.I.) **None** ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ PHONE _____
 NAME OF BLUE CROSS AND/OR BLUE SHIELD PLAN _____ GROUP NO. _____ CONTRACT NO. _____ EFFECTIVE DATE _____
 OTHER HOSPITALIZATION INSURANCE _____ NAME _____ ADDRESS _____ CERT. OR POLICY NO. _____ GROUP NO. _____ EFFECTIVE DATE _____
 FAMILY DOCTOR **Dr. Webster** NOTIFIED YES NO E.R. DOCTOR **RAGE** DOCTOR NOTIFIED DOCTOR RESPONDED DOCTOR ARRIVED BROUGHT BY: SELF POLICE FIRE RELATIVE OTHER

EMERGENCY ROOM CHARGES (DOES NOT INCLUDE FEE OF ATTENDING PHYSICIAN)				OTHER SERVICES RENDERED	
ITEM	CHARGE	ITEM	CHARGE	DOCTOR'S FEE	
EMERGENCY ROOM		DRUGS		RESPIRATORY THERAPY	
ANESTHETIC		TETANUS TOXOID		X-RAY	
ANTISEPTIC				LABORATORY	
DRESSINGS				PHYSICAL THERAPY	
E.R. TRAY		GASTRIC Lavage			
SUTURES		Suction canister			
1000 cc N.S.Xg				TOTAL CHARGES	

Ref. Police CAR BRIEF HISTORY **Known**
 CONDITION ON ADMISSION: GOOD FAIR POOR HEMORRHAGE UNCONSCIOUS COMA ORIENTED IN TIME & PLACE CONFUSED TEMP. **100.2**
 IF ACCIDENT STATE WHERE, WHEN AND HOW INJURED; IF ILLNESS, DESCRIBE
C.C. Found in car unconscious - brought in per Police car - lying in back seat. Skin warm and dry. Known drug addict. Pills in brown envelope found in car. Responds slowly to verbal stimulus. 1:30 P. Responds slowly to verbal stimulus - catheterized by G. Walker, orderly.
 ALLERGIES NO YES (SPECIFY) _____
 NURSE'S SIGNATURE **M. R. Dean, R.N.** OFFICER'S SIGNATURE **James F. Hunt** STAR **44** DISTRICT _____

PHYSICIAN'S REPORT **Following in Envelope**
 PHYSICAL EXAM AND TREATMENT **Rx 10/6 - Gastric Lavage with normal saline. 13 yellow pills (Sera) 13 sm. white pills 10-16 - 4/200 - 2 lg. white pills**
Vital signs stable - Pt. resp. not clear - Early arrival to light sedation -
 TETANUS TOXOID _____ cc TETANUS ANTITOXIN TEST _____ cc TETANUS ANTITOXIN **ESQIC** UNITS
 DIAGNOSIS **R/O Drug Intox. Rt**

CONDITION ON DISCHARGE GOOD FAIR POOR HEMORRHAGE UNCONSCIOUS COMA ORIENTED IN TIME & PLACE CONFUSED
 DISPOSITION OF CASE ADMITTED ADMISSION REFUSED/RELEASE SIGNED HOME WITH INSTRUCTIONS OTHER (SPECIFY) **Returned to Robertson County Jail on 7/5 via ambulance to prison.**
 INSTRUCTIONS TO PATIENT: **Suggested drug overdose on alcohol. Good Alex - orient if stimulated verbally. Active Aggression. PERLA 4mm - EOM intact to right. 6/11/83 AM**

PHYSICIAN'S SIGNATURE **[Signature]** DATE _____ PATIENT'S SIGNATURE _____
6005

LABORATORY REPORTS

Zagorski Edward
 E.R. 83-6424
 Dr Webster Page

1:30 SEP 5 '83

TESTS	NORMALS	RESULTS	TEST	NORMALS	RESULTS		
<input checked="" type="checkbox"/>	GLUCOSE	65-105	100	<input checked="" type="checkbox"/>	BUN	5-26	15
	2 HR PPBS	<140			CREATININE	6-2.0	
<input checked="" type="checkbox"/>	ELECTROLYTES:				CPK ISO.		
	SODIUM	138-146	138		LDH ISO.		
	POTASSIUM	3.8-5.1	4.3	<input checked="" type="checkbox"/>	SGPT	<16	18
	CO ₂	21-29	23	<input checked="" type="checkbox"/>	SGOT	<16	27
	CHLORIDE	98-106	98		LDH	<110	
	TOTAL BIL	<1.5			CPK	<50	
	DIRECT BIL	<0.3			AMYLASE	20-110	
	INDIRECT BIL	<1.0			LIPASE	<0.9	
	TOTAL PROTEIN	6.0-8.0			URIC ACID	2.5-8.0	
	ALBUMIN	3.4-4.9			CHOLESTEROL	150-300	
	GLOBULIN	2.0-3.9			TRIGLYCERIDES	36-165	
	ALK. PHOS.	25-80			HDL CHOLESTEROL		
	CALCIUM	9.0-11.5					
	PHOSPHORUS	2.5-4.5					

JHJ 05
 LABORATORY CHEMISTRY
 CHART COPY

THROMBOFAX	PATIENT CONTROL	SEC
PROTIME	PATIENT CONTROL	SEC
DATE & HOUR ORDERED	TO BE DONE:	
9/5/83	<input checked="" type="checkbox"/> ROUTINE <input type="checkbox"/> STAT <input type="checkbox"/> SURG. A.M.	
DATE	NURSE	CHARGE
9/5/83	SJ	BP 00

JESSE H. JONES HOSPITAL
 SPRINGFIELD, TENNESSEE 37172
 R.J. FREEMAN, M.D., PATH.

Zagorski, Edward
 83-6424
 Dr Webster/ Page

TO BE DONE:	DATE	R. J. FREEMAN, M.D., PATH. JESSE H. JONES HOSPITAL SPRINGFIELD, TN. 37172	
<input type="checkbox"/> Routine	9/5	NURSE	TECH
<input checked="" type="checkbox"/> STAT	CHARGE	Mx	BP
<input type="checkbox"/> AM Surgery			
1. Urine + Blood for			
2. drug screen			
3.			
4. Sent HP 9-6-83			
5.			
6.			
7.			
8.			
9.			

JHJ 02
 MISCELLANEOUS LABORATORY
 REQUEST
 CHART COPY

145
 pm
 BP

PROGRESS NOTES

Notes Should Be Signed by Physician

Zagorski, EDWARD

ER 83-6424

Date	
9/5/83 - 3 ¹⁰	R.10. P. 126. 112/82 - Suctioning continued sediment containing a mass vegetation
3 ²⁰	Responds to verbal stimulus. 100% NS - 1 - pink excretion & sediment noted. Sfj
3 ³⁰	N. D. removed. Catheter d.c'd. Reasonable stimulation. Auralatory & respiratory
3 ⁴⁰	Returned to Rolenta Court, you in wheelchair with a patient in. Sfj High blood sugar - by 10:30 AM - 10-16 stay Early discharge
	<i>Empty during morning</i>

Attachment 56

1:25 - NO ANSWER IN OFFICE 1:30 OFFICE

PATIENT NAME (LAST, FIRST, M.I.) **Zagorski, Edward GEORGE** HOME PHONE _____ AMMISSION DATE **9-7-83** 1:15 A.M. HOSPITAL NO. **83-6487**

PATIENT ADDRESS **1615 W. Co. Sail** CITY **Spartanburg** STATE **SC** ZIP **29154** AGE **28** DATE OF BIRTH **12/27/54** SEX **M** MARITAL STATUS **M**

EMPLOYER NAME _____ ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ EMPLOYER PHONE _____ COMPENSATION YES NO

NEXT OF KIN (LAST, FIRST, M.I.) **None** ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ PHONE _____

NAME OF BLUE CROSS AND/OR BLUE SHIELD PLAN _____ GROUP NO. _____ CONTRACT NO. _____ EFFECTIVE DATE _____ SUBSCRIBER FAMILY MEMBER DEPENDENT COMPREHENSIVE

OTHER HOSPITALIZATION INSURANCE NAME _____ ADDRESS _____ CERT. OR POLICY NO. _____ GROUP NO. _____ EFFECTIVE DATE _____

FAMILY DOCTOR **DR. Hayes** NOTIFIED YES NO E. R. DOCTOR _____ DOCTOR NOTIFIED **1:40** DOCTOR RESPONDED **1:40** DOCTOR ARRIVED _____ BROUGHT BY: SELF POLICE FIRE RELATIVE OTHER

EMERGENCY ROOM CHARGES (DOES NOT INCLUDE FEE OF ATTENDING PHYSICIAN)

ITEM	CHARGE	ITEM	CHARGE	OTHER SERVICES RENDERED
EMERGENCY ROOM ✓		DRUGS		DOCTOR'S FEE <input type="checkbox"/>
ANESTHETIC		TETANUS TOXOID		RESPIRATORY THERAPY <input type="checkbox"/>
ANTISEPTIC		EMAX (MONITOR)		X-RAY <input type="checkbox"/>
DRESSINGS				LABORATORY <input type="checkbox"/>
E.R. TRAY				PHYSICAL THERAPY <input type="checkbox"/>
SUTURES		ELECTRODES X 3		
TOTAL CHARGES				

AMBULATORY INTO E.R. BRIEF HISTORY

CONDITION ON ADMISSION: GOOD FAIR POOR HEMORRHAGE UNCONSCIOUS COMA ORIENTED IN TIME & PLACE CONFUSED RATIONAL OTHER (SPECIFY)

IF ACCIDENT STATE WHERE, WHEN AND HOW INJURED, IF ILLNESS, DESCRIBE

(a) Sharp pain in (L) chest - Feels as if someone is kicking him - Hurts to touch - Hurts to take deep breath - Hyperventilating

(b) on adm. stopped when called his attention to #4. skin warm and dry

ALLERGIES NO YES (SPECIFY) **TYLENOL CAUSES ITCHING ALL OVER**

NURSE'S SIGNATURE **M.V. Dean** OFFICER'S SIGNATURE **St. Elvis Wilson** STAR _____ DISTRICT _____

PHYSICIAN'S REPORT

PHYSICAL EXAM. AND TREATMENT

(1) Phonotrace stat P.O. DR. HAYES / M.V. Dean R.N.

Heart - N.R. no D. Lungs clear to a.p.

Tender to palp. lateral chest wall on left - R - flexed lid - Synalgos Dc - Phentran - Handcuffs on arms + legs. Subitrate 5mg tid

TETANUS TOXOID _____ cc TETANUS ANTITOXIN TEST _____ cc TETANUS ANTITOXIN _____ UNITS

DIAGNOSIS **intercostal neuralgia.**

CONDITION ON DISCHARGE GOOD FAIR POOR HEMORRHAGE UNCONSCIOUS COMA ORIENTED IN TIME & PLACE CONFUSED RATIONAL OTHER (SPECIFY)

DISPOSITION OF CASE ADMITTED ADMISSION REFUSED/RELEASE SIGNED HOME WITH INSTRUCTIONS OTHER (SPECIFY) **sent Ambulatory**

INSTRUCTIONS TO PATIENT: **Relieve when nec. = POLICE 2:20 P.M.**

Warren Hayes 9/7/83
 PHYSICIAN'S SIGNATURE DATE

PATIENT'S SIGNATURE
6008

Failed Murder Suspect Takes Appearance in Court

SPRINGFIELD — A man accused of murdering a woman in a Springfield hospital after she was given a large overdose of a drug was taken to court Monday at the maximum security jail in Robertson County, Tenn., after undergoing emergency treatment Monday at the Holman Jones Hospital.

He is, in medical terms, said Robertson County Sheriff Jerry yesterday, and several other inmates in the jailbook also on medication. He said that he saved up his pills and that some of the other inmates had some of them.

As for the body of the woman, later Jimmy ... of ... the ...

Attachment 57

MEDICARE PATIENT

S.S. OR H.I.B. NO.

PATIENT NAME (LAST, FIRST, M.I.) Edward
 HOME PHONE _____ ADMISSION DATE 9/19/83 6:45 AM HOSPITAL NO. 83-654
 PATIENT ADDRESS - STREET 500 Willow St. CITY Sold STATE TN ZIP _____ AGE 28 DATE OF BIRTH 12/27/54 SEX _____ MARITAL STATUS _____
 EMPLOYER NAME _____ ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ EMPLOYER PHONE _____ COMPENSATION YES NO

NEXT OF KIN (LAST, FIRST, M.I.) _____ ADDRESS - STREET _____ CITY _____ STATE _____ ZIP _____ PHONE _____

NAME OF BLUE CROSS AND/OR BLUE SHIELD PLAN _____ GROUP NO. _____ CONTRACT NO. _____ EFFECTIVE DATE _____
 SUBSCRIBER FAMILY MEMBER
 DEPENDENT COMPREHENSIVE

OTHER HOSPITALIZATION INSURANCE NAME _____ ADDRESS _____ CERT. OR POLICY NO. _____ GROUP NO. _____ EFFECTIVE DATE _____
 FAMILY DOCTOR Hoyes & Webster NOTIFIED YES NO A.R. DOCTOR Roberts DOCTOR NOTIFIED _____ DOCTOR RESPONDED _____ DOCTOR ARRIVED _____ BROUGHT BY: SELF POLICE FIRE RELATIVE OTHER HCAS

EMERGENCY ROOM CHARGES (DOES NOT INCLUDE FEE OF ATTENDING PHYSICIAN)				OTHER SERVICES RENDERED	
ITEM	CHARGE	ITEM	CHARGE	DOCTOR'S FEE	
EMERGENCY ROOM	<input checked="" type="checkbox"/>	DRUGS		RESPIRATORY THERAPY	
ANESTHETIC		TETANUS TOXOID		X-RAY	
ANTISEPTIC		<u>Nubain 10mg IM</u>		LABORATORY	
DRESSINGS		<u>R6M</u>		PHYSICAL THERAPY	
E.R. TRAY		<u>Nubain</u>			
SUTURES					
				TOTAL CHARGES	

Ambulance - Cat BRIEF HISTORY

CONDITION ON ADMISSION: GOOD FAIR POOR HEMORRHAGE CONSCIOUS UNCONSCIOUS COMA ORIENTED IN TIME & PLACE CONFUSED RATIONAL OTHER (SPECIFY) _____ TEMP. 98 PULSE 104 RR 22 BP 142/70

IF ACCIDENT STATE WHERE, WHEN AND HOW INJURED, IF ILLNESS, DESCRIBE:
Electrical shock - stated pulled back 40 low back - States plugging in fan - stepped in fan - was startled & pulled back - 40 bilateral & back pain radiating down both legs.

RELATIVE NOTIFIED _____ POLICE NOTIFIED _____ CORONER NOTIFIED _____ BY WHOM _____

ALLERGIES

NO YES (SPECIFY) UNKNOWN

NURSE'S SIGNATURE D. Lopez RN OFFICER'S SIGNATURE David Hoyes STAR 26 DISTRICT 3

PHYSICIAN'S REPORT

PHYSICAL EXAM AND TREATMENT
Muscle spasm of lumbosacral spine
X-ray
Nubain 10 IM, R6M

TETANUS TOXOID _____ cc TETANUS ANTITOXIN TEST _____ cc TETANUS ANTITOXIN _____ UNITS

DIAGNOSIS Acute Musculoligamentous Strain
Lumbosacral Spine

CONDITION ON DISCHARGE GOOD FAIR POOR HEMORRHAGE UNCONSCIOUS CONSCIOUS RATIONAL ORIENTED IN TIME & PLACE CONFUSED OTHER (SPECIFY) _____

DISPOSITION OF CASE ADMITTED ADMISSION REFUSED/RELEASE SIGNED HOME WITH INSTRUCTIONS OTHER (SPECIFY) _____

INSTRUCTIONS TO PATIENT:
Returns to jail 7:45 PM Ambulatory

R. H. Webster M.D. 9-19-83
 PHYSICIAN'S SIGNATURE DATE PATIENT'S SIGNATURE

ROBERTSON CO. AMBULANCE RECORD

(615) 384-3740

UNIT NO: 6001 SHIFT B DATE 9/19/15

RUN NO.

--	--	--	--	--	--	--	--	--	--

LOCATION OF PATIENT Behind Skerriffs Office

AMBULANCE DISPATCHED FROM RCEMS 06

PATIENT TAKEN TO HTG. Hayes/interior

INJURY OR ILLNESS PT been shocked

POSSIBLE CAUSE OF INJURY

PATIENT INFORMATION:
Jatorische, Ed
Last Name First M.I.

Street Address
City State Zip
Telephone No.

VEHICLE LICENSE NO.
BILLING INFORMATION:

PATIENT'S EMPLOYER

NEAREST RELATIVE Relationship

Address

THIRD PARTY TO BE BILLED:

MEDICARE NO. BASE CHARGE \$
MEDICAID NO. EXTRICATION \$
OTHER Name TREATMENT \$
TOTAL DUE \$

Address

POLICY NO.

ACKNOWLEDGEMENT OF SERVICES

(Signature) (Date)

CREW:
A. Dover EMT
E.M.T. SIGNATURE EMT CERTIFICATION NO.

W. Cleward EMT
SECOND TECHNICIAN'S NAME EMT CERTIFICATION NO.

Signature of MD or RN accepting patient

PATIENT INFORMATION

AGE 28
 MALE
 FEMALE
 WHITE
 NON-WHITE
PHYSICAL ASSESSMENT:
 INITIAL APPEARANCE
 NO ACUTE DISTRESS
 ACUTE DISTRESS

RUN DATA FROM SCENE:

10-30
 10-33
 D.N.T.
 CRITICAL TRANSFER
 NO RESPONSE TIME

TIME INFORMATION

Dispatched 6:25
10-97 6:30
10-15 6:43
10-27 6:45
10-98

B/P		PULSE		RESPIRATION	
TIME	RATE	DESCRIPTION	RATE	DESCRIPTION	
	<u>148</u>	<u>88</u>	<u>SR.</u>	<u>24</u>	
	<u>88</u>	<u>78</u>	<u>14</u>	<u>22</u>	<u>1+2/70</u>

LEVEL OF CONSCIOUSNESS:

A. AWAKE ALERT
 DROWSY
 ORIENTED
 DISORIENTED
B. UNCONSCIOUS & RESPONDS TO:
 VERBAL STIMULATION
 PAINFUL STIMULATION
 NO RESPONSE TO PAIN
 CNS LEVEL CHANGED DURING TRANSPORT

PUPILS:

NORMAL RT. LT.
CONSTRICTED
DILATED
REACTIVE
NON-REACTIVE
 SEIZURE ACTIVITY
 TRAUMA
 BLUNT
 PENETRATING SITE

RESPIRATORY SIGNS:

BREATHING ADEQUATELY
 BREATH SOUNDS PRESENT:
 RIGHT LEFT
 RESPIRATORY DISTRESS
 LABORED BREATHING
 INSPIRATORY STRIDOR
 EXPIRATORY WHEEZING
 CYANOSIS

BLEEDING
 EXTERNAL SITE
 INTERNAL SITE
 AMOUNT SLIGHT, MODERATE, UNCONTROLLED

MOTOR-SENSORY ACTIVITY

PAIN: SITE

TREATMENT/SERVICE:

AIRWAY MAINTENANCE
 PHARYNGEAL
 ESOPHAGEAL
 ENDOTRACHEAL
 SUCTION
OXYGEN L/MIN
 C.P.R.
 DEFIBRILLATION
 EKG MONITORING
 TELEMETRY SENT
 I.V. FLUIDS
 MEDICATIONS
 MAST TROUSERS
 CONTROL BLEEDING
 BANDAGING
 SPLINTING
 NECK/SPINE
 IMMOBILIZATION
 EXTRICATION
 OTHER

COMMENTS:

MEDICATIONS	DOSE	ROUTE	TIME

I.V. FLUID: RATE

I.V. STARTED WITH # TYPE

M.D. or R.N. with whom radio contact made at hospital

6016

Zagorski Edward
ZAGORSKI, EDWARD
DR. WEBSTER
83-6040

REQUESTING PHYSICIAN <i>Webster</i>	DATE OF SERVICE <i>9-19-83</i>	X-RAY NUMBER <i>83-8436</i>
TYPE OF PATIENT <input type="checkbox"/> IN-PATIENT <input type="checkbox"/> OUTPATIENT <input checked="" type="checkbox"/> EMERGENCY		
PRIORITY <input type="checkbox"/> ROUTINE <input type="checkbox"/> STAT <input type="checkbox"/> PRE-OP <input type="checkbox"/> REC.		
TRANSPORTATION <input type="checkbox"/> WALK <input type="checkbox"/> WHEELCHAIR <input checked="" type="checkbox"/> STRETCHER <input type="checkbox"/> PORT.		

RACE *C* AGE *28* SEX *m*

MUST BE STAMPED WITH PATIENT'S NAMEPLATE - ALL OTHERS RETURNED

JESSE HOLMAN JONES HOSPITAL
 SPRINGFIELD, TENNESSEE 37172
 X-RAY REQUISITION

43.00
 CHARGE: *76-400-290*

THE FOLLOWING DATE MUST BE COMPLETED OR EXAMINATION MAY BE DELAYED

EXAM REQUESTED: *LS spine*

DATE REQUESTED: *9-19-83* A.M. P.M.

CLINICAL HISTORY:

Fall P.T.A. C/O ↓ back pain

DO NOT USE THIS SPACE

LUMBOSACRAL SPINE: No bone or joint abnormalities can be identified.

IMPRESSION: Within normal limits.

sn
 D & T 9/20/83

[Signature]
 G. TOM PROCTOR, M.D.

Attachment 58

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

STATE OF TENNESSEE,)	
)	
Movant,)	
)	
v.)	No. M1988-00026-SC-DDT-DD
)	
ABU ALI ABDUR'RAHMAN,)	
)	
Defendant.)	

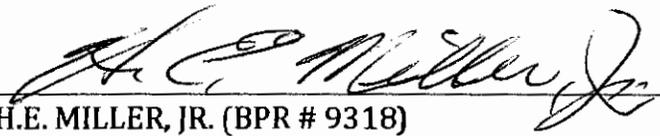
**DECLARATION UNDER PENALTY OF PERJURY
OF H.E. MILLER, JR.**

Mr. H.E. Miller, Jr., states under penalty of perjury as follows:

1. I am an attorney duly licensed and in good standing to practice law in the State of Tennessee. My Board of Professional Responsibility Number is 9318. I am a resident of Williamson County, Tennessee.

2. Attached is my report of my survey of first degree murder cases in Tennessee during the period July 1, 1977, through June 30, 2017. All of the statements contained in this report are true and correct to the best of my knowledge, information and belief.

Respectfully submitted,



H.E. MILLER, JR. (BPR # 9318)
8216 Frontier Lane
Brentwood, Tennessee 37027
(615) 953-7465

Dated: 2/27/18

Appendix 1
REPORT ON
SURVEY OF TENNESSEE FIRST DEGREE MURDER CASES
AND CAPITAL CASES
DURING THE 40-YEAR PERIOD FROM JULY 1, 1977, TO JUNE 30, 2017
By H. E. Miller, Jr.
Dated: February 7, 2018¹

Forty years ago, the Tennessee legislature enacted the state's current capital sentencing scheme to replace prior statutes that had been declared unconstitutional.² Although the current scheme has been amended in certain of its details, its essential features remain in place.³

In Tennessee, a death sentence can be imposed only in a case of "aggravated" first degree murder upon a "balancing" of statutorily defined aggravating circumstances⁴ proven by the prosecution and the mitigating circumstances presented by the defense.⁵ The Tennessee Supreme Court is statutorily required to review each death sentence "to determine whether (A) the sentence of death was imposed in any arbitrary fashion; (B) the evidence supports the jury's finding of statutory aggravating circumstance or circumstances; (C) the evidence supports the jury's finding that the aggravating circumstance or circumstances outweigh any mitigating circumstances; and (D) the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the nature of the crime and the defendant."⁶ The Court's consideration of whether a death sentence is "excessive or disproportionate to the penalty imposed in similar cases" is referred to as "comparative proportionality review."

In 1978, the Court promulgated Tennessee Supreme Court Rule 12 (formerly Rule 47), requiring that "in all cases ... in which the defendant is convicted of first-degree murder," the trial judge shall complete and file a report (the "Rule 12 Report") to include information about the case. Rule 12 was intended to create a database of first degree murder cases for use in comparative proportionality review.⁷

¹ This report is subject to updating as additional first degree murder cases are found.

² See State v. Hailey, 505 S.W.2d 712 (Tenn. 1974), and Collins v. State, 550 S.W.2d 643 (Tenn. 1977) (invalidating Tennessee's then-existing death penalty statutes).

³ See Tenn. Code Ann. § 39-13-204 (Sentencing for first degree murder) and § 39-13-206 (Appeal and review of death sentence).

⁴ Aggravating circumstances are defined in Tenn. Code Ann. § 39-13-104(i).

⁵ See Tenn. Code Ann. § 39-13-204(g) (to impose a death sentence, the jury must unanimously find beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating circumstances; if a single juror votes for life or life without parole, then the death sentence cannot be imposed).

⁶ Tenn. Code Ann. § 39-13-206(c)(1).

⁷ In State v. Adkins, 725 S.W.2d 660, 663 (Tenn. 1987), the Court stated that "our proportionality review of death penalty cases since Tennessee Supreme Court Rule 12 (formerly Rule 47) was promulgated in 1978 has been predicated largely on those reports and has never been limited to the cases that have come before us on appeal." See, also, the Court's press release issued January 1, 1999, announcing the use of CD-ROMs to store

The modern history of Tennessee's death penalty system raises questions that go to the heart of constitutional issues: How have we selected the "worst of the bad"⁸ among convicted first degree murderers for imposition of the ultimate sanction of death? Is there a meaningful distinction between those cases resulting in death sentences and those resulting in life (or life without parole) sentences? Does Tennessee's capital punishment system operate rationally, consistently, and reliably; or does it operate in an arbitrary and unpredictable fashion? Is there meaning to comparative proportionality review?

To assist in addressing these questions, I undertook a survey of all Tennessee cases resulting in first degree murder convictions since implementation of the state's current death penalty system – covering the 40-year period from July 1, 1977, through June 30, 2017.

THE SURVEY PROCESS

My starting point was to review all Rule 12 Reports on file with the Administrative Office of the Courts and the Office of the Clerk of the Tennessee Supreme Court. I quickly encountered a problem. In close to half of all first degree murder cases, trial judges failed to file the required Rule 12 Reports; and in many other cases, the filed Rule 12 Reports were incomplete or inaccurate, or were not supplemented by subsequent case developments such as reversal or retrial. I found that because many first degree murder cases are reviewed on appeal, appellate court decisions are an essential source of the information that cannot be found in the Rule 12 Reports. But many cases are resolved by plea agreements at the trial level without an appeal, leaving no record with the appellate court; and many appellate court decisions are not published in the standard case reporters.

Accordingly, over the past three years I have devoted untold hours searching various sources to locate and review Tennessee's first degree murder cases.⁹ I have had the assistance of Bradley A. MacLean and other attorneys who handle first degree murder cases. I have also received generous help from officials with the Tennessee Administrative Office of the Courts and the Tennessee Department of Correction, along with numerous court officials throughout the state. I would like to specifically acknowledge the tremendous assistance offered by the staff of the Tennessee State Library.

copies of Rule 12 reports, in which then Chief Justice Riley Anderson was quoted as saying, "The court's primary interest in the database is for comparative proportionality review in these cases, which is required by court rule and state law, The Supreme Court reviews to data to ensure rationality and consistency in the imposition of the death penalty and to identify aberrant sentences during the appeal process." (Available at tncourts.gov/press/1999/01/01/court-provides-high-tech). *Compare State v. Bland*, 958 S.W.2d 651 (Tenn. 1997) (changing the comparative proportionality review methodology by limiting the pool of comparison cases to capital cases that previously came before the Court on appeal).

⁸ The expression "the worst of the bad" has been used by the Court to refer to those defendants deserving of the death penalty. See, e.g., *State v. Nichols*, 877 S.W.2d 722, 739 (Tenn. 1994); *State v. Branam*, 855 S.W.2d 563, 573 (Tenn. 1993) (Drowota, J., concurring).

⁹ I have spent well in excess of 3,000 hours on this project.

In conducting this survey, I have reviewed the following sources of information:

- All Rule 12 Reports as provided by the Tennessee Administrative Office of the Courts and the office of the Clerk for the Tennessee Supreme Court;
- Reports on capital cases issued by the Administrative Office of the Courts;
- The Report on Tennessee Death Penalty Cases from 1977 to October 2007 published by The Tennessee Justice Project;
- Tennessee Court of Criminal Appeals and Tennessee Supreme Court decisions in first degree murder cases, as published on the Administrative Office of the Courts' website;
- Cases published in *Fastcase* on the Tennessee Bar Association website;
- Cases published in *Westlaw* and *Google Scholar*;
- Data furnished by the Tennessee Department of Correction;
- Information found in the Tennessee Department of Correction's TOMIS system as published on its website, and information separately provided by officials at the Tennessee Department of Correction;
- Information found in the Shelby County Register of Deeds Listing of Tennessee Deaths (the state-wide "Death Index" maintained by Tom Leatherwood, the Register of Deeds, has been very helpful in obtaining information regarding victims);
- Original court records;
- News publications.

I have attempted to compile the following data regarding each first degree murder case, to the extent available from the sources I reviewed:

- Name and TOMIS number of the defendant;
- Date of the offense;
- Defendant's date of birth and age on the date of the offense;
- Defendant's gender and race;
- Number, gender, race, and age(s) of first degree murder victim(s) in each case;
- Whether a notice to seek the death penalty was filed (if indicated in the Rule 12 Forms);

- County where the judgment of conviction was entered, and county where the offense occurred (if different);
- Sentence imposed for each first degree murder conviction; and
- Whether a Rule 12 Report was filed.
- In capital cases, whether the conviction or sentence was reversed, vacated or commuted, and the status of the case as of June 30, 2017.

The data I compiled is set forth in the following Appendices:

Appendix A: Master Chart of Adult Defendants with Sustained First Degree Murder Convictions from July 1, 1977 through June 30, 2017, in which Rule 12 Reports Were Filed.

Appendix B: Master Chart of Adult Defendants with Sustained First Degree Murder Convictions During the 40-Year Period, in which Rule 12 Reports Were Not Filed.

Appendix C: Master Chart of Juvenile Defendants (tried and convicted as adults) with Sustained First Degree Murder Convictions During the 40-Year Period, in which Rule 12 Reports Were Filed.

Appendix D: Master Chart of Juvenile Defendants (tried and convicted as adults) with Sustained First Degree Murder Convictions During the 40-Year Period, in which Rule 12 Reports Were Not Filed.

Appendix E: Chart Showing Numbers of Adult & Juvenile Defendants with Sustained First Degree Convictions.

Appendix F: Chart of Adult Cases Broken Down by County and Grand Division and Rule 12 Compliance.

Appendix G: Chart of Adult Multi-Murder Cases.

Appendix H: Chart of Tennessee Capital Trials During the 40-Year Period.

Ultimately all of this data can be derived from public court records.

Caveats

I am confident that I have found and reviewed all cases decided during the 40-Year Period in which death sentences have been imposed. This was a feasible task, for several reasons. The total number of capital trials that resulted in death sentences during this period (221) is relatively small compared to the total number of first degree murder cases (2,514)¹⁰ that I have been able to find. The Tennessee Supreme Court reviews on direct appeal all trials resulting in death sentences, creating a published opinion in each case. There exist various sources of information that specifically deal with capital cases, including records maintained by public defender offices, The Tennessee Justice Project reports of 2007 and 2008, the monthly and quarterly reports on capital cases issued by the Tennessee Administrative Office of the Courts, and records maintained by the Tennessee Department of Correction concerning the death row population.

On the other hand, I am equally confident that I have not found all first degree murder cases. I have carefully studied all filed Rule 12 Reports, but in 46% of first degree murder cases trial judges failed to file the required Rule 12 Reports. This Rule 12 noncompliance is especially problematic in regards to the most recent cases because of the time it typically takes for a first degree murder case to create a readily accessible record as it works through the trial and appellate processes.¹¹

Consequently, the ratios presented in this report are distorted because the totals of first degree murder cases that I have found are lower than the totals of actual cases. For example, among the cases I have been able to find, 3.4% of defendants convicted of first degree murder convictions received Sustained Death Sentences. We can be sure that, in fact, the actual percentage of Sustained Death Sentences is lower, because I am certain that I have not found all first degree murder cases resulting in life or LWOP sentences that should be included in the totals.

I have spent considerable time verifying my data by double-checking and cross-referencing my research, and by consulting with others in the field. Due to the sheer volume of data involved, the absence of Rule 12 Reports in many cases, and the inaccuracies in the Rule 12 Reports that have been filed in several other cases, I am sure my data contain some errors. Notwithstanding, in my view any errors are relatively minor and statistically insignificant except as otherwise noted.

I have included two master charts reflecting Sustained First Degree Murder Convictions of juveniles – *i.e.*, of defendants who were less than 18 years old at the time of the offense but were tried and convicted as adults. This report does not focus attention on juvenile cases because juvenile defendants are ineligible for the death sentence. Nonetheless, information about juvenile defendants may be helpful to indicate the scope of juvenile convictions and the degree of Rule 12 noncompliance in juvenile cases.

The percentages indicated in this report are rounded to the nearest 1% unless otherwise indicated.

¹⁰ This excludes cases of juvenile offenders who were not eligible for the death penalty.

¹¹ For example, there were only 93 first degree murder cases from the past four years (2013 – 2017), as compared to an average of 269 cases for each of the nine preceding four-year periods, even though Tennessee's murder rate over this most recent period was virtually the same as in prior periods. See Tables 23 and 25, *infra*.

SUMMARY OF FINDINGS

I. DEFINITIONS

For purposes of this report and the Appendices, the following definitions apply:

40-Year Period: The period of this survey, from July 1, 1977, to June 30, 2017. This survey is based on the date of the crime. All data regarding defendants on Death Row are as of June 30, 2017, without taking account of subsequent developments in their cases.

Awaiting Retrial: A Capital Case in which the defendant received Conviction Relief or Sentence Relief and was awaiting a retrial as of June 30, 2017.

Capital Case: A case decided during the 40-Year Period in which the defendant received a death sentence at the Initial Trial, including cases in which death sentences or the underlying convictions were subsequently reversed or vacated.

Capital Trial: An Initial Trial or a subsequent Retrial resulting in a death sentence.

Conviction Relief: A defendant receives Conviction Relief from a Capital Trial when a conviction from that Capital Trial is reversed on direct appeal or vacated in state post-conviction or federal habeas proceedings, even if the defendant is convicted on retrial.

Death Row consists of all defendants with Pending Death Sentences as of June 30, 2017. It does not include defendants not under death sentence while awaiting Retrial.

Death Sentence Reversal Rate: The percentage of Capital Trials that result in Conviction Relief or Sentence Relief. The Death Sentence Reversal Rate refers to Capital Trials, not capital defendants. A defendant's Initial Capital Trial might be reversed, and on Retrial he might be resentenced to death. That would count as one reversal out of two trials.

Deceased: A defendant who died during the 40-Year Period while he was under a sentence of death.

Initial Capital Trial: In any Capital Case during the 40-Year Period, the Initial Capital Trial is the initial trial at which the defendant was sentenced to death. The Initial Capital Trial is to be distinguished from any Retrial.

LWOP: Life without parole sentence.

Multi-Murder Case: A Sustained Adult First Degree Murder Case in which the defendant was convicted of two or more counts of first degree murder involving two or more murder victims.

New Death Sentence: Death sentence(s) imposed in the Initial Capital Trial. Except as otherwise indicated, multiple death sentences imposed in a single Multi-Murder Case are treated statistically as a single "death sentence." If a Retrial results in a death sentence, it is not treated as a "New Death Sentence."

Pending Death Sentence: Death sentence that was in place and pending as of June 30, 2017. If a defendant received Conviction Relief or Sentence Relief and was awaiting Retrial as of June 30, 2017, then the defendant did not have a Pending Death Sentence.

Retrial: In Capital Cases, a second or subsequent trial on the underlying criminal charge, or a second or subsequent sentencing hearing, following a remand after the original conviction or sentence from the Initial Capital Trial was reversed or vacated. (As of June 30, 2017, there were eight defendants who were not under death sentence but were awaiting Retrial.)

Reversed versus Vacated: The term “reversed” refers to the setting aside of a conviction or sentence on direct appeal, which may or may not be followed by a Retrial on remand. The term “vacated” refers to the setting aside of a conviction or sentence in collateral litigation such as state post-conviction or federal habeas corpus, which may or may not be followed by a Retrial.

Rule 12 Report: The report filed in a first degree murder case pursuant to Tenn. S. Ct. R. 12.

Rule 12 Noncompliance: The failure of a trial judge to fill out and file a Rule 12 Report as required by Tennessee Supreme Court Rule 12. **Rule 12 Compliance** indicates that a Rule 12 Report was filed in the case, but “Compliance” as used here does not indicate whether the Report was completely filled out in an accurate manner.

Sentence Relief: A defendant receives Sentence Relief from a Capital Trial when his/her death sentence from that Capital Trial is reversed on direct appeal, vacated in state post-conviction or federal habeas proceedings, or commuted by the Governor.¹²

Sustained Death Sentence: Death sentence(s) imposed during the 40-Year Period that were in place as of June 30, 2017, or as of the date of the defendant’s death. If a conviction or sentence was vacated and the case remanded for Retrial, and if as of June 30, 2017, or as of the date of the defendant’s death, the case had not been retried and the defendant was not under a death sentence, then the case does not count as a Sustained Death Sentence.

Sustained Adult First Degree Murder Cases: Cases in which the defendant was age 18 or older on the date of the offense, the defendant was convicted of one or more counts of first degree murder, and the conviction was sustained on appeal and/or post-conviction review. In the master charts attached as Appendices A through D, the cases are dated as of the date of the offense and are listed according to the defendants convicted. In some cases, the same defendant was convicted of two or more first degree murders in two or more separate proceedings involving different first degree murder charges. In those cases, the defendant is listed only once in the master charts and treated as one case, although the charts indicate if the defendant was involved in more than one separate case involving separate charges. **Sustained Juvenile First Degree Murder Cases** are those in which the defendant was under 18 years of age at the time of the offense and was tried and convicted as an adult.

¹² In one case, the federal court granted a conditional writ of habeas corpus barring execution until the state conducts a hearing on the defendant’s intellectual disability. See *Van Tran v. Colson*, 764 F.3d 594 (6th Cir. 2014). The state has not conducted the hearing within the time required, and therefore the state is barred from executing the defendant. For our purposes, this case is counted as Sentence Relief and Awaiting Retrial.

II. SUSTAINED ADULT FIRST DEGREE MURDER CASES

For the 40-Year Period, I have found at least 2,514 with Sustained Adult First Degree Murder Cases and 210 Sustained Juvenile First Degree Murder Cases. The numbers can be broken down as follows:

TABLE 1

Breakdown of Sustained First Degree Murder Cases By Rule 12 Compliance (Adult & Juvenile Cases)

	Totals	Rule 12 Reports Filed	Rule 12 Reports Not Filed	Noncompliance Rate
Sustained Adult First Degree Murder Cases	2,514	1,348	1,166	46%
Sustained Juvenile First Degree Murder Cases	210	104	106	50%
TOTALS of Adult + Juvenile Cases	2,724	1,452	1,272	47%

TABLE 2

Breakdown of Sustained First Degree Murder Cases According to Sentences Statewide (Adult Cases)

Sentences for First Degree Murder Convictions (Adult) - Statewide	Number of Defendants	% of the Total (rounded)
Life	2,090	83%
Life Without Parole (LWOP)	332	13%
Sustained Death Sentence	85	3.4% ¹³
Awaiting Retrial	7	0.2%
TOTAL	2,514	100%

¹³ As explained in the *Caveats* section above, the actual percentage of Sustained Death Sentences is almost certainly lower than 3.4%. While I am relatively certain that I have captured all cases resulting in death sentences, both sustained and unsustained, I am equally sure that I have not found all first degree murder cases because of the high rate of Rule 12 Noncompliance. As more first degree murder cases are found, the measured percentage of Sustained Death Sentence cases will decline.

TABLE 3

**Breakdown of Sustained First Degree Murder Cases According to Sentences
Shelby County (Adult Cases)**

Sentences for First Degree Murder Convictions (Adult) - Shelby County	Number of Defendants	% of the Total (rounded)
Life	476	80%
Life Without Parole (LWOP)	85	14%
Awaiting Retrial	6	1%
Sustained Death Sentence	30	5%
TOTAL	597	100%

TABLE 4

**Breakdown of Sustained First Degree Murder Cases According to Sentences
Davidson County (Adult Cases)**

Sentences for First Degree Murder Convictions (Adult) - Davidson County	Number of Defendants	% of the Total (rounded)
Life	332	88%
Life Without Parole (LWOP)	35	9%
Awaiting Retrial	0	0%
Sustained Death Sentence	11	3%
TOTAL	378	100%

TABLE 5

**Breakdown of Sustained First Degree Murder Cases According to Sentences
Knox County (Adult Cases)**

Sentences for First Degree Murder Convictions (Adult) - Knox County	Number of Defendants	% of the Total (rounded)
Life	149	86%
Life Without Parole (LWOP)	17	10%
Awaiting Retrial	1	<1%
Sustained Death Sentence	6	<4%
TOTAL	173	100%

**BREAKDOWN OF SUSTAINED ADULT FIRST DEGREE MURDER CASES
ACCORDING TO RACE AND RULE 12 COMPLIANCE**

TABLE 6

Statewide Sustained Adult First Degree Murder Cases

Race (% Gen'l Pop)¹⁴	Rule 12 Reports Filed¹⁵ (Compliance Rate)	Rule 12 Reports Not Filed¹⁶ (Non-Compliance Rate)	Total Cases	% of Total Cases¹⁷
Black (17%)	646 (54% Filed)	543 (46% Not Filed)	1,189	47%
White (78%)	665 (53% Filed)	602 (47% Not Filed)	1,267	50%
Other (5%)	37 (64% Filed)	21 (36% Not Filed)	58	2%
TOTALS	1,348 (54% Filed)	1,166 (46% Not Filed)	2,514	100%

¹⁴ In this column, the percentages designate the percentage of that race in the general population according to the 2010 Census. For example, according to the 2010 Census, 17% of Tennessee's general population was black.

¹⁵ This column represents the numbers and percentages of cases in which Rule 12 Reports were filed in cases involving defendants in the designated races. For example, among the total of 1,189 cases involving black defendants, Rule 12 Reports were filed in 646 of those cases for a Rule 12 Compliance Rate of 54%.

¹⁶ This column represents the numbers and percentages of cases in which Rule 12 Reports were not filed in cases involving defendants in the designated races. For example, among the total of 1,166 cases involving black defendants, Rule 12 Reports were not filed in 543 of those cases for a Rule 12 compliance rate of 46%.

¹⁷ This column represents the percentage of defendants of the designated race. Thus, 47% of all Sustained Adult First Degree Murder Cases throughout the state during the 40-Year Period involved black defendants.

TABLE 7
Shelby County Sustained Adult First Degree Murder Cases

Race (% Gen'l Pop.)	Rule 12 Reports Filed	Rule 12 Reports Not Filed	Total Cases	% of Total Cases
Black (52%)	271 (52% Filed)	252 (48% Not Filed)	523	88%
White (41%)	38 (57% Filed)	29 (43% Not Filed)	67	11%
Other (7%)	5 (83% Filed)	1 (17% Not Filed)	6	1%
TOTALS	314 (53% Filed)	282 (47% Not Filed)	596	100%

TABLE 8
Davidson County Sustained Adult First Degree Murder Cases

Race (% Gen'l Pop.)	Rule 12 Reports Filed	Rule 12 Reports Not Filed	Total Cases	% of Total Cases
Black (28%)	136 (62% Filed)	85 (38% Not Filed)	221	58%
White (61%)	81 (58% Filed)	59 (42% Not Filed)	140	37%
Other (11%)	12 (71% Filed)	5 (29% Not Filed)	17	5%
TOTALS	229 (60% Filed)	149 (40% Not Filed)	378	100%

TABLE 9
Knox County Sustained Adult First Degree Murder Cases

Race (% Gen'l Pop.)	Rule 12 Reports Filed	Rule 12 Reports Not Filed	Total Cases	% of Total Cases
Black (8%)	42 (58% Filed)	30 (42% Not Filed)	72	42%
White (86%)	56 (59% Filed)	39 (41% Not Filed)	95	55%
Other (6%)	4 (67% Filed)	2 (33% Not Filed)	6	3%
TOTALS	102 (59% Filed)	71 (41% Not Filed)	173	100%

III. MULTI-MURDER CASES

Sentences imposed in the Multi-Murder Cases break down as follows:

TABLE 10: Multi-Murder Cases - Statewide

Sentences for Multi- Murder Convictions During the 40-Year Period Statewide - Adult	Number of Defendants	% of the Total Multi-Murder Cases
Life	230	68%
Life Without Parole (LWOP)	76	22%
Sustained Death Sentence	33	10%
TOTAL	339	100%

TABLE 11: Multi-Murder Cases - Shelby County

Sentences for Multi- Murder Convictions During the 40-Year Period Shelby County - Adult	Number of Defendants	% of the Total Multi-Murder Cases
Life	30	54%
Life Without Parole (LWOP)	14	25%
Sustained Death Sentence	12	21%
TOTAL	56	100%

TABLE 12: Multi-Murder Cases - Davidson County

Sentences for Multi- Murder Convictions During the 40-Year Period Davidson County - Adult	Number of Defendants	% of the Total Multi-Murder Cases
Life	35	66%
Life Without Parole (LWOP)	11	21%
Sustained Death Sentence	7	13%
TOTAL	53	100%

TABLE 13: Multi-Murder Cases - Knox County

Sentences for Multi- Murder Convictions During the 40-Year Period Knox County- Adult	Number of Defendants	% of the Total Multi-Murder Cases
Life	19	79%
Life Without Parole (LWOP)	4	27%
Sustained Death Sentence	1	4%
TOTAL	24	100%

TABLE 13A

Multi-Murder Cases - Breakdown By Number of Victims & Sentences

Number of Victims	Life or LWOP Sentences	Sustained Death Sentences	Totals
2	259 (92% of 2-Victim cases)	24 (8% of 2-Victim cases)	283
3	32 (82% of 3-Victim cases)	7 (18% of 3-Victim cases)	39
4	11 (92% of 4-Victim cases)	1 (8% of 4-Victim cases)	12
5	1 (100% of 5-Victim cases)	0 (0% of 5-Victim cases)	1
6	3 (75% of 6-Victim cases)	1 (25% of 6-Victim cases)	4
TOTALS	306 (90% of Multi-Murder Cases)	33 (10% of Multi-Murder Cases)	339

The total of single-murder cases during the 40-Year Period was 2,175. Among those, 53 (2.4%) received Sustained Death Sentences

PRE-OCTOBER 21, 2001 MULTI-MURDER CASES

On October 18, 2001, the Office of the District Attorney General for the 20th Judicial District issued its Death Penalty Guidelines. Since that date through June 30, 2017, no death sentences have been imposed in Davidson County. The breakdown of single and Multi-Murder Cases, before and after October 18, 2001, can be set forth as follows:

TABLE 14

**Pre-October 2001 Multi-Murder Cases
By Largest Counties**

Sentence	Shelby County	Davidson County	Knox County
Life	23	18	9
LWOP	6	4	1
Sustained Death	9	7	0
TOTALS	38	29	10
% Sustained Death Sentences	24%	24%	0%

TABLE 15

**Pre-October 2001 Multi-Murder Cases
By Grand Divisions & Statewide**

Sentence	West	Middle	East	Statewide Totals
Life	23	56	58	137
LWOP	11	10	13	34
Sustained Death	10	12	4	26
TOTALS	44	78	75	197
% Sustained Death Sentences	22%	15%	5%	13%

POST-OCTOBER 2001 MULTI-MURDER CASES

TABLE 16

**Post-October 2001 Multi-Murder Cases
By Largest Counties**

Sentence	Shelby County	Davidson County	Knox County
Life	7	17	10
LWOP	8	7	3
Sustained Death	3	0	1
TOTALS	18	24	14
% Sustained Death Sentences	17%	0%	7%

TABLE 17

**Post-October 2001 Multi-Murder Cases
By Grand Divisions & Statewide**

Sentence	West	Middle	East	Statewide
Life	18	37	29	84
LWOP	9	22	11	42
Sustained Death	4	0	2	6
TOTALS	31	59	42	132
% Sustained Death Sentences	13%	0%	5%	5%

IV. CAPITAL CASES

A. Basic Capital Case Statistics During the 40-Year Period

TABLE 18

Separate Capital <u>Trials</u> resulting in death sentences ¹⁸	221	
<u>Defendants</u> who received death sentences ¹⁹	192	
<u>Defendants</u> with Sustained Death Sentences	86	(45% of total def's)
<u>Defendants</u> whose death sentences were not Sustained	106	(55% of total def's) ²⁰
<u>Trials</u> resulting in <u>Conviction</u> Relief	28	(13% of total trials)
<u>Trials</u> resulting in <u>Sentence</u> Relief	104	(47% of total trials)
Total <u>Trials</u> resulting in Relief	132	(60% of total trials) ²¹
<u>Defendants</u> with Pending Death Sentences	56	(29% of total def's) ²²
<u>Defendants</u> who died of natural causes with Sustained Death Sentences	24	(12% of total def's)
Multi-Murder <u>Defendants</u> with Sustained Death Sentences	32	(37% of Sust. Death Sent.)
Single-Murder <u>Defendants</u> with Sustained Death Sentences	54	(63% of Sust. Death Sent.)
Awaiting Retrial	8	(4% of total def's)
Executions in Tennessee	6	(3% of total def's)

¹⁸ These include all Initial Trials and Retrials.

¹⁹ One defendant (Paul Reid) is listed with three Initial Capital Trials and another (Stephen Laron Williams) with Two Initial Trials, all on separate murder charges, which were not Retrials. Eighteen other defendants are listed with two trials on the same charges resulting in death sentences (i.e., an Initial Trial and a Retrial); and four are listed with three trials on the same charges (i.e., an Initial Trial and two Retrials), leaving a total of 26 Retrials. Of those Retrials, in 14 cases the death sentences were reversed or vacated (54%), and in 12 cases they were sustained (46%), which closely corresponds with the overall ratio of reversed vs. sustained death sentences.

²⁰ This is the overall Death Sentence Reversal Rate among defendants who received death sentences, after accounting for Retrials. Commutations are counted here as reversals.

²¹ This is the overall reversal rate of trials resulting in death sentences.

²² This is the size of Death Row as of June 30, 2017, based on the definitions set forth in Part I, *supra*. Additionally, eight defendants whose convictions or sentences were vacated were awaiting retrial.

B. Exonerations

During the 40-Year Period, there have been three exonerations of death row inmates, as follows:

Michael Lee McCormick (acquitted in his retrial)
Sentenced in 1988; Exonerated in 2008; 20 years on death row.

Paul Gregory House (charges dismissed based on evidence of actual innocence)
Sentenced in 1986; Exonerated in 2009; 23 years on death row.

Gussie Willis Vann (charges dismissed based on evidence of actual innocence)
Sentenced in 1994; Exonerated in 2011; 17 years on death row.

Additionally, Ndume Olatushani (formerly Erskine Johnson), who was sentenced to death in 1985, was granted a new trial in his *coram nobis* proceeding, in which he claimed actual innocence. He was released in 2012 on an *Alford* plea after being incarcerated for 26 years.

C. Commutations

Governor Bredesen commuted the death sentences of three defendants, as follows:

Michael Boyd (*a.k.a. Mika'eel Abdullah Abdus-Samad*) was granted a commutation of his sentence to life without parole on September 14, 2007, after being on death row for 19½ years. The Certificate of Commutation stated:

“[T]his appears to me an extraordinary death penalty case where the grossly inadequate legal representation received by the defendant at his post-conviction hearing, combined with procedural limitations, has prevented the judicial system from ever comprehensively reviewing his legitimate claims of having received ineffective assistance of counsel at the sentencing phase of his trial...”

Gaile K. Owens’ sentence was commuted to life on July 10, 2010, after being on death row for 2 ½ years. The Certificate of Commutation stated:

“[T]his appears to me an extraordinary death penalty case in which the defendant admitted her involvement in the murder of her husband and attempted to accept the district attorney’s conditional offer of life imprisonment. This acceptance was ineffective only because of her co-defendant’s refusal to accept such an agreement...”

Edward Jerome Harbison’s sentence was commuted to life without parole on January 11, 2011, after being on death row for 26 years. The Certificate of Commutation stated:

“[T]his appears to me an extraordinary death penalty case where grossly inadequate legal representation received by the defendant at the direct appeal phase, combined with procedural limitations, have prevented the judicial system from ever comprehensively reviewing his legitimate claims of having received ineffective assistance of counsel at the sentencing phase of his trial...”

D. Executions

During the 40-Year Period, six defendants were executed:

TABLE 19

Executed Defendant	Sentencing Date	Execution Date	Time on Death Row
Robert Glenn Coe	Feb. 2, 1981	Apr. 19, 2000	19 years, 2 months
Sedley Alley	Mar. 18, 1987	June 28, 2006	19 years, 3 months
Philip Workman	Mar. 31, 1982	May 9, 2007	25 years, 1 month
Daryl Holton	June 15, 1999	Sept 12, 2007	8 years, 3 months ²³
Steve Henley	Feb. 28, 1986	Feb. 4, 2009	22 years, 11 months
Cecil C. Johnson, Jr.	Jan. 20, 1981	Dec. 2, 2009	28 years, 10 months

E. Residency on Death Row

Among the 56 defendants with Pending Death Sentences, the lengths of time they resided on death row (from sentencing date in the Initial Capital Trial to June 30, 2017), can be summarized as follows:

TABLE 20

Length of Time on Death Row	Number of Defendants (as of 6/30/2017)
> 30 Years	10
20 - 30 Years	20
10 - 20 Years	16
< 10 Years	10

The median residency on Death Row (as of June 30, 2017) was 21½ years.

The longest residency on Death Row (as of June 30, 2017) was 35 years, 3 months.

²³ Daryl Holton waived his rights to post-conviction and federal habeas review, which accounts for the shortened period between his sentencing and execution dates.

F. Geographic / Racial Distribution of Sustained Death Sentences

During the 40-Year Period, 48 of the 95 Tennessee Counties (51%) conducted Capital Trials, although only 28 of the 95 (29%) counties imposed Sustained Death. The 28 counties that imposed Sustained Death Sentences represent 64% of Tennessee’s general.

**TABLE 21
SUSTAINED DEATH SENTENCES BY COUNTY/RACE DURING 40-YEAR PERIOD**

County	Grand Division	Race of Def: Black	Race of Def: White	Race of Def: Other	Totals	Most Recent Crime Date²⁴
Dyer	West	1	1	0	2	1/2/00
Fayette	West	1	0	0	1	5/2/97
Hardeman	West	0	1	0	1	1/17/02
Henderson	West	0	1	0	1	2/5/97
Lake	West	0	1	0	1	2/3/86
Madison	West	2	3	0	5	1/11/05
Shelby	West	18	10	2	30	1/19/12
Tipton	West	1	0	0	1	6/1/10
Weakley	West	0	1	0	1	9/7/79
Bedford	Middle	0	1	0	1	11/30/97
Cheatham	Middle	0	1	0	1	3/3/85
Coffee	Middle	1	0	0	1	1/1/85
Davidson	Middle	4	7	0	11	7/8/99
Jackson	Middle	0	1	0	1	7/24/85
Montgomery	Middle	0	1	0	1	7/8/96
Robertson	Middle	0	1	0	1	4/23/83
Stewart	Middle	0	2	1	3	8/20/88
Williamson	Middle	0	1	0	1	9/24/84
Blount	East	0	2	0	2	2/22/92
Bradley	East	0	1	0	1	12/9/98
Campbell	East	0	2	0	2	8/15/88
Cocke	East	0	1	0	1	12/3/89
Hamilton	East	0	3	0	3	9/6/01
Knox	East	1	5	0	6	1/7/07
Morgan	East	0	1	0	1	1/15/85
Sullivan	East	1	2	0	3	11/27/04
Union	East	0	1	0	1	3/17/86
Washington	East	0	2	0	2	10/6/02
TOTALS		30 (35%)	53 (62%)	3 (3%)	86 (100%)	

Western Grand Division = 23 Blacks + 18 Whites + 2 Other = 43 (50% of statewide total)

Middle Grand Division = 5 Blacks + 15 Whites + 1 Other = 21 (24% of statewide total)

Eastern Grand Division = 2 Blacks + 20 Whites + 0 Other = 22 (26% of statewide total)

²⁴ The “Most Recent Crime Date” is the date of the most recent offense in the county that resulted in a Sustained Death Sentence.

Since October 2001²⁵, 14 New Death Sentences, that have been sustained, were imposed in 8 counties – or in 8% of the counties representing 34% of Tennessee’s general population (according to the 2010 Census).

TABLE 22

**SUSTAINED DEATH SENTENCES BY COUNTY/RACE
SINCE OCTOBER 2001**

County	Grand Division	Race of Def: Black	Race of Def: White	Race of Def: Other	Totals
Hardeman	West	0	1	0	1
Madison	West	1	0	0	1
Shelby	West	7	0	0	7
Tipton	West	1	0	0	1
Hamilton	East	0	1	0	1
Knox	East	1	0	0	1
Sullivan	East	0	1	0	1
Washington	East	0	1	0	1
Totals		10 (71%)	4 (29%)	0	14 (100%)

Western Grand Division = 9 Blacks + 1 White = 10 Total (71% of statewide total)

Middle Grand Division = 0 Total

Eastern Grand Division = 1 Black + 3 Whites = 4 Total (29% of statewide total)

As indicated in Table 21, above, for each of the three Grand Divisions, the last murder resulting in a Sustained Death Sentence occurred on the following dates:

West Grand Division: January 19, 2012 (Shelby County)

Middle Grand Division: July 8, 1999 (Davidson County)

East Grand Division: January 7, 2007 (Knox County)

²⁵ As mentioned above, in October 2001 the Office of the District Attorney General for the 20th Judicial District issued its Death Penalty Guidelines. Since then, no death sentences have been imposed in Davidson County, or the entire Middle Grand Division of the State. Also, the frequency of death sentences throughout the State since October 2001 is markedly lower than during the prior 24 year period. Accordingly, it may be useful to compare certain statistics from the two different periods before and after October 2001.

G. Frequency and Decline

During the 40-Year Period, the frequency of trials resulting in New Death Sentences reached a peak around 1990. Beginning around 2005, we have seen a steady and accelerating decline, as follows:

TABLE 23

FREQUENCY OF TENNESSEE DEATH SENTENCES IN 4-YEAR INCREMENTS

4-Year Period	Trials Resulting in Death Sentences	New Death Sentences (i.e., Initial Capital Trials)	Sustained Death Sentences ²⁶	Ave. New Death Sentences per Year	1 st Degree Murder Cases ²⁷	% "New" Death Sentences / 1 st Degree Murders	% Sustained Death Sentences / 1 st Degree Murders
7/1/77 – 6/30/81	25	25	6	6.25 per year	155	16%	4%
7/1/81 – 6/30/85	37	33	12	8.25 per year	197	17%	6%
7/1/85 – 6/30/89	34	32	15	8.00 per year	238	13%	6%
7/1/89 – 6/30/93	38	37	18	9.25 per year	282	13%	6%
7/1/93 – 6/30/97	21	17	9	4.45 per year	395	4%	2%
7/1/97 – 6/30/01	32	24	14	6.00 per year	316	8%	4%
7/1/01 – 6/30/05	20	16	5	4.00 per year	283	6%	2%
7/1/05 – 6/30/09	5	4	4	1.00 per year	271	1.5%	1.4%
7/1/09 – 6/30/13	6	6	5	1.50 per year	284	2%	1.7%
7/1/13 – 6/30/17	3	1	1	0.25 per year	Incomplete Data ²⁸	Incomplete Data	Incomplete Data
TOTALS	221	195²⁹	89³⁰	4.88 per year (40 years)	>2,514	<8%	<3.5%

²⁶ Defendants who received Sustained Death Sentences based on dates of their Initial Capital Trials.

²⁷ Counted by defendants, not murder victims.

²⁸ Thus far I have found records for only 93 cases resulting in first degree murder convictions for murders occurring during the most recent 4-year period. Because of the time it takes for a case to be tried and appealed, we have an incomplete record of cases from the most recent years. According to T.B.I. statistics, however, the annual number of homicides in Tennessee has remained relatively consistent over the period. See Table 25.

²⁹ One defendant had 3 separate "new" trials each resulting in "new" and "sustained" death sentences; another defendant had 2 such trials. See footnote 1, *supra*. Accordingly, there were 195 "new" trials involving a total of 192 defendants, and 89 "sustained" death sentences involving a total of 86 defendants.

³⁰ See note 28. While 89 trials resulted in Sustained Death Sentences, only 86 defendants received Sustained Death Sentences.

Totals for the first 24 years, from July 1, 1977, to June 30, 2001:

168 "New" death sentences =>

7 "New" death sentences per year (13.2% of First Degree Murder Cases)

74 "Sustained" death sentences =>

4 "Sustained" death sentences per year (5.8% of First Degree Murder Cases)

Totals for the most recent 16 years, from July 1, 2001, to June 30, 2017:

27 "New" death sentences =>

1.7 "New" death sentences per year (3.5% of First Degree Murder Cases)

15 "Sustained" death sentences =>

0.9 "Sustained death sentences per year (< 2.0% of First Degree Murder Cases)

Throughout the state, no new death sentences were imposed during the most recent three-year period (from 6/15/2014 to 6/30/2017).

The decline in death sentences is also reflected in the numbers of counties that have imposed death sentences, which can be broken down in 4-year increments as follows:

TABLE 24

**NUMBER OF COUNTIES CONDUCTING CAPITAL TRIALS
BY 4-YEAR INCREMENTS**

4-Year Period	Number of Counties Conducting Capital Trials³¹ During the Indicated 4-Year Period
7/1/1977 – 6/30/1981	13
7/1/1981 – 6/30/1985	18
7/1/1985 – 6/30/1989	17
7/1/1989 – 6/30/1993	18
7/1/1993 – 6/30/1997	11
7/1/1997 – 6/30/2001	12
7/1/2001 – 6/30/2005	11
7/1/2005 – 6/30/2009	3
7/1/2009 – 6/30/2013	5
7/1/2013 – 6/30/2017	1

³¹ These include all 221 Initial Capital Trials and Retrials, whether or not the convictions or death sentences were eventually sustained. Obviously, several counties conducted Capital Trials in several of the 4-Year Periods. Shelby County, for example, conducted Capital Trials in each of these periods.

The annual rate of “New Death Sentences” has declined while the annual number of murder cases has remained relatively constant.

TABLE 25

**NEW DEATH SENTENCES COMPARED TO MURDERS
2002 - 2016**

Year	“Murders” ³²	New Death Sentences	% New Death Sentences per Murders	Sustained New Death Sentences	% Sustained New Death Sentences per Murders
2002	385	6	1.6 %	1	0.3 %
2003	394	3	1.0 %	3	1.0 %
2004	350	4	1.1 %	0	0 %
2005	430	2	0.4 %	1	0.2 %
2006	409	1	0.3 %	1	0.3 %
2007	395	1	0.3 %	1	0.3 %
2008	408	1	0.3 %	1	0.3 %
2009	461	1	0.4 %	1	0.4 %
2010	360	2	0.6 %	2	0.6 %
2011	375	2	0.6 %	1	0.3 %
2012	390	1	0.3 %	1	0.3 %
2013	333	0	0 %	0	0 %
2014	375	1	0.3 %	1	0.3%
2015	406	0	0 %	0	0 %
2016	470	0	0 %	0	0 %
TOTALS	5,941 (Ave = 396/year)	25 (1.7/year)	0.4 %	14 (0.9/year)	0.2 %

During the 10-year period 2003 – 2012:

- Total non-negligent homicides = 3,972 => (397 / year)
- Total New Death Sentences = 18 => (1.8 / year)
- % New Death Sentences per non-neg. homicides = 0.5%
- Total sustained New Death Sentences = 12 => (1.2 / year)
- % sustained new death sentences per non-neg. homicides = 0.3%

During the 4-year period 2013 – 2016:

- Total non-negligent homicides = 1,584 => (396 / year)
- Total New Death Sentences = 1 => (0.25 / year)
- % New Death Sentences per non-neg. homicides = 0.06%

Of the 19 defendants who received New Death Sentences over this 14-year period, none have been executed, and six have had their sentences vacated. The remaining Pending Cases are under review and could ultimately result in reversals.

³² The “Murders” statistics come from the T.B.I. annual reports, which date back to 2002. For statistical purposes, T.B.I. defines “Murders” as non-negligent homicides.

Attachment 59

TENNESSEE'S DEATH PENALTY LOTTERY

Bradley A. MacLean
brad.maclea9@gmail.com
(615) 943-8716

H. E. Miller, Jr.
hemjr@bellsouth.net
(615) 476-2576

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I. INTRODUCTION

Imagine entering a lottery in which you are given a list of Tennessee's 2,514 adult first-degree murder cases since 1977, when our modern death penalty system was installed, along with a description of the facts and circumstances surrounding each case in whatever detail you request. You are not told what the final sentences were – whether Life, Life Without Parole (LWOP), or Death. Your job is to make two guesses. First, you must guess which 86 defendants, out of the 2,514, received sustained death sentences (*i.e.*, death sentences sustained on appeal and in post-conviction and federal habeas review). Second, you must guess which six defendants were actually executed during the 40-year period from 1977 to 2017. What are the odds that your guesses would be correct?

We submit that the odds would be close to nil. Even with an abundance of information about the cases, trying to figure out who was sentenced to death, and who was actually executed, would be nothing but a crapshoot.

And what would you look for to make your guesses? The egregiousness of the crime? Maybe, but the vast majority of the most egregious cases (including rape-murder cases and multiple murder cases involving children) resulted in Life or LWOP sentences. Perhaps it would make sense to look for other factors, such as the county where the case occurred (with a strong preference for Shelby County); the race of the defendant (choosing black for the most recent cases would be a very good strategy); the prosecutor (because some prosecutors like the death penalty, and others do not; and some prosecutors cheat, while others don't); the defense lawyers (because some know how to effectively try a capital case, and others do not); the wealth or appearance of the defendant (virtually all capital defendants were indigent at the time of trial, and all defendants on death row are indigent); the publicity surrounding the trial;

the trial judge (because some judges are more prosecution oriented, and others are more defense oriented); or the judges who reviewed the case on appeal or in post-conviction or federal habeas (because some judges are more inclined to reverse death sentences, and others almost always vote the other way); or the year of the sentencing (because a defendant convicted of first-degree murder during the mid-1980's was at least ten times more likely to be sentenced to death than a defendant convicted over the most recent years). In guessing who may have been executed, perhaps the age of the defendant and his health would be relevant (because at current rates a condemned defendant is four times more likely to die of natural causes than to suffer the fate of execution).

Of course, other than the egregiousness of the crime, none of these factors should play a role in deciding the ultimate penalty of death. Yet we know, and the statistical evidence bears out, that these are exactly the kinds of factors we would need to consider in making our guesses in the lottery, if we were to have any chance whatsoever of guessing correctly.

The intent of this article is to bring to light a survey conducted by one of the co-authors, attorney H.E. Miller, Jr., of Tennessee's first degree murder cases over the 40-year period from July 1, 1977, when Tennessee's current capital sentencing scheme went into effect, through June 30, 2017. Mr. Miller conducted his survey in order to address the issue of arbitrariness in Tennessee's capital sentencing system. Mr. Miller's report is attached as Appendix 1.

Before turning to a discussion of Mr. Miller's survey, we need to set the stage with the historical context of Tennessee's system. Accordingly, in Part II we discuss the legal background of Tennessee's scheme beginning with the seminal United States Supreme Court decision in Furman v. Georgia¹ through the enactment of Tennessee's scheme in response to

¹ 408 U.S. 238 (1972).

Furman. In Parts III and IV we discuss two important developments in Tennessee's scheme. In Part III we discuss the expansion of the class of death eligible defendants resulting from two sources: (i) the Tennessee Supreme Court's liberal interpretation of the "aggravating circumstances" that define the class, and (ii) the General Assembly's addition over the years of new "aggravating circumstances." In Part IV we discuss the Tennessee Supreme Court's evisceration of its "comparative proportionality review" of death sentences. In Part V, we return to our lottery analogy by comparing two extreme cases, one resulting in the death sentence and the other in a life sentence. Then, having set the historical stage, in Part VI we turn to a description and evaluation of the results of Mr. Miller's survey. Finally, in Part VII, we look at what others have said about our capital sentencing system, and we state our conclusion that Tennessee's death penalty system is nothing more than a capricious lottery.

II. BACKGROUND

We tend to forget the reason behind Tennessee's current capital sentencing scheme. It stems from the 1972 case of Furman v Georgia,² where the United States Supreme Court expressed three principles that underlie the Court's death penalty jurisprudence under the Eighth Amendment Cruel and Unusual Punishments Clause.

The first principle is that death is different. "The penalty of death differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice.

² Id.

And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity.”³

The second principle is that the constitutionality of a punishment is to be judged by contemporary, “evolving standards of decency that mark the progress of a maturing society.”⁴

And third, viewing how the sentencing system operates as a whole, the death penalty must not be imposed in an arbitrary and capricious manner. Justices Stewart and White issued the decisive opinions in Furman that represent the Court’s holding – the common denominator among the concurring opinions constituting the majority.⁵ Justice Stewart explained it this way:

[T]he death sentences now before us are the product of a **legal system** that brings them, I believe, within the very core of the Eighth Amendment’s guarantee against cruel and unusual punishments, a guarantee applicable against the States through the Fourteenth Amendment. In the first place, it is clear that these sentences are “cruel” in the sense that they excessively go beyond, not in degree but in kind, the punishments that the state legislatures have determined to be necessary. In the second place, it is equally clear that these sentences are “unusual” in the sense that the penalty of death is infrequently imposed for murder, and that its imposition for rape is extraordinarily rare. But I do not rest my conclusion upon these two propositions alone. These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders in 1967 and 1968, many just as reprehensible as these, **the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed**. My concurring

³ Id. at 306 (Stewart, J., concurring). The Supreme Court has reiterated this principle. The death penalty “is different in kind from any other punishment imposed under our system of criminal justice.” Gregg v. Georgia, 428 U.S. 153, 188 (1976). “From the point of view of the defendant, it is different both in its severity and its finality. From the point of view of society, the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action.” Gardner v. Florida, 430 U.S. 349, 357 (1977).

⁴ Trop v. Dulles, 356 U.S. 86, 101 (plurality opinion) (quoted by Douglas, J., in Furman, 408 U.S. at 242). As Justice Douglas further explained, “[T]he proscription of cruel and unusual punishments ‘is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice.’” Id. at 242-43 (quoting from Weems v. United States, 217 U.S. 349, 378 (1909)). The Court’s constitutional decisions should be informed by “contemporary values concerning the infliction of a challenged sanction.” Gregg v. Georgia, 428 U.S. 153, 173 (1976).

⁵ Justices Brennan and Marshall opined that the death penalty is *per se* unconstitutional. Justice Douglas’s position on the *per se* issue was unclear, but he found that the death penalty sentencing schemes at issue were unconstitutional.

Brothers have demonstrated that, if any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race. But racial discrimination has not been proved, and I put it to one side. I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed.⁶

And Justice White explained:

I begin with what I consider a near truism: that the death penalty could so seldom be imposed that it would cease to be a credible deterrent or measurably to contribute to any other end of punishment in the criminal justice system. It is perhaps true that no matter how infrequently those convicted of rape or murder are executed, the penalty so imposed is not disproportionate to the crime and those executed may deserve exactly what they received. It would also be clear that executed defendants are finally and completely incapacitated from again committing rape or murder or any other crime. **But when imposition of the penalty reaches a certain degree of infrequency,** it would be very doubtful that any existing general need for retribution would be measurably satisfied. Nor could it be said with confidence that society's need for specific deterrence justifies death for so few when for so many in like circumstances life imprisonment or shorter prison terms are judged sufficient, or that community values are measurably reinforced by authorizing a penalty so rarely invoked.

...

[C]ommon sense and experience tell us that seldom-enforced laws become ineffective measures for controlling human conduct and that the death penalty, unless imposed with sufficient frequency, will make little contribution to deterring those crimes for which it may be exacted.⁷

...

It is also my judgment that **this point has been reached with respect to capital punishment as it is presently administered** under the statutes involved in these cases.... I cannot avoid the conclusion that as the statutes before us are now administered, **the penalty is so infrequently imposed that the threat of execution is too attenuated to be of substantial service to criminal justice.**⁸

⁶ 408 U.S. at 309-10. (internal citations omitted; emphasis added).

⁷ *Id.* at 311-12 (emphasis added).

⁸ *Id.* at 312-13 (emphasis added).

Since Furman and Gregg, the Court has repeatedly emphasized that the judicial system must guard against arbitrariness in the imposition of the death penalty; and the qualitative difference of death from all other punishments requires a correspondingly greater need for reliability, consistency, and fairness in capital sentencing decisions. *See, e.g., Gardner v. Florida*⁹ (“It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.”); *Zant v. Stephens*¹⁰ (“[B]ecause there is a qualitative difference between death and any other permissible form of punishment, ‘there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.’”); *California v. Ramos*¹¹ (“The court ... has recognized that the qualitative difference of death from all other punishments requires a correspondingly greater degree of scrutiny of the capital sentencing determination.”); *Ford v. Wainwright*¹² (“In capital proceedings generally, this Court has demanded that factfinding procedures aspire to a heightened standard of reliability.”); *Spaziano v. Florida*¹³ (“[B]ecause of its severity and irrevocability, the death penalty is qualitatively different from any other punishment, and hence must be accompanied by unique safeguards to ensure that it is a justified response to a given offense.”). Therefore, courts must “carefully scrutinize ... capital sentencing schemes to minimize the risk that the penalty will be imposed in error or in an arbitrary and capricious manner. There must be a

⁹ 430 U.S. 349, 357 (1977).

¹⁰ 462 U.S. 862, 884-85 (1983).

¹¹ 463 U.S. 992, 998-99 (1983).

¹² 477 U.S. 399, 411 (1986).

¹³ 468 U.S. 447, 468 (1984).

valid penological reason for choosing from among the many criminal defendants the few who are sentenced to death.”¹⁴

Furman makes at least three more key points concerning a proper Eighth Amendment analysis in the death penalty context:

(i) Courts must view how the entire sentencing system operates – *i.e.*, how the few are selected to be executed from the many murderers who are not - and not just focus on the particular case under review. As the Supreme Court explained, we must “look[] to the sentencing system as a whole (as the Court did in Furman ...)”;¹⁵ “a constitutional violation is established if a defendant demonstrates a “pattern of arbitrary and capricious sentencing.”¹⁶ It is worth noting that in Furman, Justice Stewart’s opinion makes no reference to the facts or circumstances of the individual cases under review, and Justice White’s opinion only referred to the dates of the trials in the cases in a footnote.¹⁷ Their opinions, along with the other three concurring opinions, dealt with the operation of the death penalty system under a discretionary sentencing scheme, and not with the merits of the individual cases.

¹⁴ Id. at 460 n. 7.

¹⁵ Gregg v. Georgia, 428 U.S. 153, 200 (1976) (emphasis added).

¹⁶ Id. at 195 n. 46 (joint opinion of Stewart, Powell, and Stevens, JJ.).

¹⁷ Indeed, there is virtually no reference to the facts of the cases under review in any of the nine Furman opinions.

(ii) How the capital sentencing system operates as a whole, as well as evolving standards of decency, will change over time and eventually can reach a point where the system is operating in an unconstitutional manner – as was the case in Furman.¹⁸

(iii) An essential factor to consider in the Eighth Amendment analysis is the infrequency with which the death penalty is carried out.

To analyze the Eighth Amendment issue by viewing the sentencing system as a whole and ascertaining the infrequency with which the death penalty is carried out, it is necessary to look at statistics. After all, frequency is a statistical concept. A similar need to analyze statistics, particularly statistical trends, applies when assessing evolving standards of decency.

And, indeed, that is exactly what the majority did in Furman. Each of the concurring opinions in Furman relied upon various forms of statistical evidence that purported to demonstrate patterns of inconsistent or otherwise arbitrary sentencing.¹⁹ Evidence of such inconsistent results, of sentencing decisions that could not be explained on the basis of individual culpability, indicated that the system operated arbitrarily and therefore violated the Eighth Amendment.

¹⁸ Post-Furman, by virtue of our evolving standards of decency, the Court has removed “various classes of crimes and criminals from death penalty eligibility. Examples include those who rape adults, Coker v. Georgia, 433 U.S. 584 (1977); the insane, Ford v. Wainwright, 477 U.S. 399 (1986); the intellectually disabled, Atkins v. Virginia, 536 U.S. 304 (2002); juveniles, Roper v. Simmons, 543 U.S. 551 (2005); and those who rape children, Kennedy v. Louisiana, 554 U.S. 407 (2008).” State v. Pruitt, 415 S.W.3d 180, 224 n. 6 (Tenn. 2013) (Koch, J., concurring and dissenting).

¹⁹ Furman, 408 U.S. at 249-52 (Douglas, J., concurring); id. at 291-95 (Brennan, J., concurring); id. at 309-10 (Stewart, J., concurring); id. at 313 (White, J., concurring); id. at 364-66 (Marshall, J., concurring).

The death penalty statutes under review in Furman, and virtually all then-existing death penalty statutes, were “discretionary.”²⁰ Under those sentencing schemes, if the jury decided that the defendant was guilty of a capital offense, then either the jury or judge would decide whether the defendant would be sentenced to life or death. The sentencing decision was completely discretionary, with no narrowing of discretion or guidance in the exercise of discretion if the defendant was found guilty. Furman determined that under those kinds of discretionary sentencing schemes, the death penalty was being imposed capriciously, in the absence of consistently applied standards, and accordingly any particular death sentence under such a system would be deemed unconstitutionally arbitrary. This problem arose in large measure from the infrequency of the death penalty’s application and the irrational manner by which so few defendants were selected for death.

In response to Furman, various states enacted two different kinds of capital sentencing schemes, which the Court reviewed in 1976. The two leading decisions were Woodson v. North Carolina,²¹ and Gregg v. Georgia,²²

In Woodson, the Court examined a mandatory sentencing scheme – if the defendant was found guilty of the capital crime, a death sentence followed automatically. Presumably, a mandatory scheme would eliminate the Furman problem of unfettered sentencing discretion. The Court, however, found that such a mandatory scheme violates the Eighth Amendment on three independent grounds. Most significantly for our purposes, the Court determined that

²⁰ In 1838, Tennessee was the first state to convert from a “mandatory” capital sentencing scheme to a “discretionary” scheme, purportedly to mitigate the strict harshness of a mandatory approach. Eventually all states with the death penalty followed course and converted to discretionary schemes. Stuart Banner, The Death Penalty – An American History 139 (Harvard Univ. Press, 2002).

²¹ 428 U.S. 280 (1976).

²² 428 U.S. 153 (1976).

North Carolina's mandatory death penalty statute "fail[ed] to provide a constitutionally tolerable response to Furman's rejection of unbridled jury discretion in the imposition of capital sentences. ... [W]hen one considers the long and consistent American experience with the death penalty in first-degree murder cases, it becomes evident that mandatory statutes enacted in response to Furman have simply papered over the problem of unguided and unchecked jury discretion."²³ (Again, the Court looked at the historical record.) The mandatory statute merely shifted discretion away from the sentencing decision to the guilty/not-guilty decision, which historically had involved an excessive degree of discretion - and therefore arbitrariness - in capital cases. The Court emphasized that mandatory sentencing schemes "do[] not fulfill Furman's basic requirement by replacing arbitrary and wanton jury discretion with objective standards to guide, regularize, and make rationally reviewable the process for imposing a sentence of death."²⁴

In Gregg, the Court upheld a "guided discretion" sentencing scheme. This type of scheme, patterned in part after the American Law Institute Model Penal Code, §210.6 (1962), was designed to address Furman's concern with arbitrariness by: (i) bifurcating capital trials in order to treat the sentencing decision separately from the guilty/not-guilty decision; (ii) narrowing the class of death-eligible defendants by requiring the prosecution to prove aggravating circumstances, thereby narrowing the range of discretion that could be exercised; (iii) allowing the defendant to present mitigating evidence, to ensure that the sentencing decision is individualized, another constitutional requirement; (iv) guiding the jury's exercise of

²³ 423 U.S. at 302.

²⁴ Id. at 303 (emphasis added).

discretion within that narrowed range by instructing the jury on the proper consideration of aggravating and mitigating circumstances; and (v) ensuring adequate judicial review of the sentencing decision as a check against possible arbitrary and capricious decisions. The Court explained the fundamental principle of Furman, that “where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action.”²⁵

When Gregg was decided, states had no prior experience with “guided discretion” capital sentencing. Whether such a scheme would “fulfill Furman’s basic requirement” of removing arbitrariness and capriciousness from the system, and whether it would comply with our evolving standards of decency, could only be determined over time. Essentially, Gregg’s discretionary sentencing statute was an experiment, never previously attempted or tested.

In 1977, Tennessee responded to Furman, Woodson, and Gregg by enacting its version of a guided discretion capital sentencing scheme.²⁶ Tennessee’s scheme was closely patterned after the Georgia scheme upheld in Gregg and included the same elements itemized above. While the Tennessee General Assembly subsequently amended Tennessee’s statute a number of times, its basic structure remains.²⁷ As was the case in Georgia, under Tennessee’s scheme a

²⁵ 428 U.S. at 189.

²⁶ See Tenn. Code Ann. §§ 39-13-204 and 206.

²⁷ In 1993, the General Assembly provided for life without parole as an alternative sentence for first degree murder. T.C.A. § 39-13-204(f). In 1995, as part of the “truth-in-sentencing” movement the General Assembly amended the provisions of Tenn. Code Ann. § 40-35-501 pertaining to release eligibility, which has been interpreted to require a defendant sentenced to life for murder to serve a minimum of 51 years before release eligibility. See Vaughn v State, 202 S.W.3d 106 (Tenn. 2006). In 1999 the General Assembly adopted lethal injection as the preferred method of execution and subsequently, in 2014, allowed for electrocution as a fallback method if lethal injection drugs are not

death sentence can be imposed only in a case of “aggravated” first degree murder upon a “balancing” of statutorily defined aggravating circumstances²⁸ proven by the prosecution and any mitigating circumstances presented by the defense.²⁹ The Tennessee Supreme Court is statutorily required to review each death sentence “to determine whether (A) the sentence of death was imposed in any arbitrary fashion; (B) the evidence supports the jury’s finding of statutory aggravating circumstance or circumstances; (C) the evidence supports the jury’s finding that the aggravating circumstance or circumstances outweigh any mitigating circumstances; and (D) the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the nature of the crime and the defendant.”³⁰ The Court’s consideration of whether a death sentence is “excessive or disproportionate to the penalty imposed in similar cases” is referred to as “comparative proportionality review.”

III. AGGRAVATORS AND THE EXPANDED CLASS OF DEATH-ELIGIBLE DEFENDANTS

The thesis of this article is that Tennessee’s capital punishment system operates as a capricious lottery. To put into proper context the lottery metaphor and recent trends in Tennessee’s capital sentencing, it is important to understand how the Tennessee General Assembly and the Tennessee Supreme Court have gradually expanded the class of death-eligible

available. Tenn. Code Ann. § 40-23-114. Additionally, over the years the General Assembly has broadened the class of death-eligible defendants by adding and changing the definition of certain aggravating circumstances, discussed in Part III below.

²⁸ Aggravating circumstances are defined in Tenn. Code Ann. § 39-13-104(i).

²⁹ See Tenn. Code Ann. § 39-13-204(g) (to impose a death sentence, the jury must unanimously find beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating circumstances; if a single juror votes for life or life without parole, then the death sentence cannot be imposed).

³⁰ Tenn. Code Ann. § 39-13-206(c)(1).

defendants. The expansion of this class has correspondingly broadened the range of discretion for prosecutors in deciding whether to seek death, and for juries in making capital sentencing decisions at trial. This in turn has increased the potential for arbitrariness.³¹

A fundamental feature of the capital sentencing scheme approved in Gregg, and adopted by Tennessee, is the narrowing of the class of first degree murder defendants who are eligible for the death penalty, by requiring proof of the existence of one or more statutorily defined “aggravating circumstances” that characterize the crime and/or the defendant. As the Court in Gregg explained, “Furman mandates that where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action.”³² A central part of the majority opinion in Gregg specifically addressed whether the statutory aggravating circumstances in that case effectively limited the range of discretion in the capital sentencing decision.³³ The Court has repeatedly stressed that a State’s “capital sentencing scheme must ‘genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder.’”³⁴

In addition to defining the class of death eligible defendants, aggravating circumstances also provide the prosecution with a means of persuading the jury to impose a death sentence.

³¹ This phenomenon – the expansion over time of the class of death-eligible defendants – has occurred in a number of states and is sometimes referred to as “aggravator creep.” See Edwin Colfax, Fairness in the Application of the Death Penalty, 80 Ind. L.J. 35, 35 (2005).

³² Gregg, 428 U.S. at 189.

³³ Id. at 200-04.

³⁴ Lowenfied v. Philps, 484 U.S. 231, 244 (1988) (quoting Zant v. Stephens, 462 U.S. 862, 877 (1983)).

At sentencing, the jury is called upon to “weigh” the aggravating circumstances against the mitigating circumstances, and if the jury finds that the aggravators outweigh the mitigators, then the sentence “shall be death.”³⁵ The more aggravators the prosecution can prove, the more likely the jury will give greater weight to the aggravators and return a death verdict. Moreover, along with expanding the number and definitional range of aggravators, the Court and the legislature have also expanded the range of evidence that the prosecution can present to the jury at the sentencing hearing, which also enhances the prosecution’s case for death.³⁶

The Tennessee statute enacted in 1977 defined eleven aggravating circumstances that set the boundary around the class of death-eligible defendants.³⁷ Over the years, the Tennessee

³⁵ Tenn. Code Ann. § 39-13-204(g)(1).

³⁶ Tenn. Code Ann. § 39-13-204(c) allows the prosecution to introduce, among other things, evidence relating to “the nature and circumstances of the crime” or “the defendant’s character and background.” The Court has broadly interpreted this provision by holding that this kind of evidence “is admissible regardless of its relevance to any aggravating or mitigating circumstance.” *State v. Sims*, 45 S.W.3d 1, 13 (Tenn. 2001). The legislature also amended § 39-13-204(c) to allow introduction of evidence relating to a defendant’s prior violent felony conviction, which is discussed below in connection with the (i)(2) aggravator. Additionally, following *Payne v. Tennessee*, 501 U.S. 808 (1991), the legislature amended § 39-13-204(c) to permit victim impact testimony in the sentencing hearing. See *State v. Nesbit*, 978 S.W.2d 872, 887-94 (Tenn. 1998).

³⁷ The original version of the sentencing statute, Tenn. Code Ann. § 39-2404(i) (1997), defined the eleven aggravating circumstances as follows:

- (1) The murder was committed against a person less than twelve years of age and the defendant was eighteen years of age, or older.
- (2) The defendant was previously convicted of one or more felonies, other than the present charge, which involved the use or threat of violence to the person.
- (3) The defendant knowingly created a great risk of death to two or more persons, other than the victim murdered, during his act of murder.
- (4) The defendant committed the murder for remuneration or the promise of remuneration, or employed another to commit the murder for remuneration or the promise of remuneration.
- (5) The murder was especially heinous, atrocious, or cruel in that it involved torture or depravity of mind.
- (6) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another.
- (7) The murder was committed while the defendant was engaged in committing, or was an accomplice in the commission of, or was attempting to commit, or was fleeing after committing or attempting to commit, any first degree murder, arson, rape, robbery, burglary, larceny,

General Assembly has added six aggravators to the original list, bringing the total number to 17, and it has amended other aggravators to further expand the class of death eligible defendants.³⁸

kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb.

(8) The murder was committed by the defendant while he was in lawful custody or in a place of lawful confinement or during his escape from lawful custody or from a place of lawful confinement.

(9) The murder was committed against any peace officer, corrections official, corrections employee or fireman, who was engaged in the performance of his duties, and the defendant knew or reasonably should have known that such victim was a peace officer, corrections official, corrections employee or fireman, engaged in the performance of his duties.

(10) The murder was committed against any present or former judge, district attorney general or state attorney general, assistant district attorney general or assistant state attorney general due to or because of the exercise of his official duty or status and the defendant knew that the victim occupied said office.

(11) The murder was committed against a national, state, or local popularly elected official, due to or because of the official's lawful duties or status, and the defendant knew that the victim was such an official.

See, Houston v. State, 593 S.W.2d 267, 274 n.1 (Tenn. 1980).

³⁸ Tenn. Code Ann. § 39-13-204(h) (2017) now defines the aggravators as follows (the important changes from the 1977 version are italicized);

(1) The murder was committed against a person less than twelve (12) years of age and the defendant was eighteen (18) years of age or older;

(2) The defendant was previously convicted of one (1) or more felonies, other than the present charge, *whose statutory elements* involve the use of violence to the person;

(3) The defendant knowingly created a great risk of death to two (2) or more persons, other than the victim murdered, during the act of murder;

(4) The defendant committed the murder for remuneration or the promise of remuneration, or employed another to commit the murder for remuneration or the promise of remuneration;

(5) The murder was especially heinous, atrocious, or cruel, in that it involved torture or *serious physical abuse beyond that necessary to produce death*;

(6) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another;

(7) The murder was *knowingly* committed, *solicited, directed, or aided by the defendant*, while the defendant *had a substantial role in committing or attempting to commit, or was fleeing after having a substantial role in committing or attempting to commit*, any first degree murder, arson, rape, robbery, burglary, *theft*, kidnapping, *aggravated child abuse, aggravated child neglect, rape of a child, aggravated rape of a child*, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb;

(8) The murder was committed by the defendant while the defendant was in lawful custody or in a place of lawful confinement or during the defendant's escape from lawful custody or from a place of lawful confinement;

(9) The murder was committed against any *law enforcement* officer, corrections official, corrections employee, *probation and parole officer, emergency medical or rescue worker*,

While the Tennessee legislature's expansion of aggravators is significant, it is perhaps more significant that the Tennessee Supreme Court has interpreted a number of the most frequently used aggravators in a broad fashion. The important interpretations are as follows:

(i)(2) Aggravator – Prior Violent Felony Conviction

In a large number of murder cases, the defendant was previously convicted of a violent felony, and prosecutors frequently use the prior violent felony conviction as an aggravator in seeking death sentences. The Tennessee Supreme Court has broadened the application of this aggravator in a number of ways.

First, notwithstanding the plain language of the statute as amended, which requires that the "statutory elements" of the prior conviction involve the use of violence to the person, it is not necessary for the statutory elements of the prior crime to explicitly involve the use of

emergency medical technician, paramedic or firefighter, who was engaged in the performance of official duties, and the defendant knew or reasonably should have known that the victim was a law enforcement officer, corrections official, corrections employee, probation and parole officer, emergency medical or rescue worker, emergency medical technician, paramedic or firefighter engaged in the performance of official duties;

(10) The murder was committed against any present or former judge, district attorney general or state attorney general, assistant district attorney general or assistant state attorney general, due to or because of the exercise of the victim's official duty or status and the defendant knew that the victim occupied such office;

(11) The murder was committed against a national, state, or local popularly elected official, due to or because of the official's lawful duties or status, and the defendant knew that the victim was such an official;

(12) The defendant committed "mass murder," which is defined as the murder of three (3) or more persons, whether committed during a single criminal episode or at different times within a forty-eight-month period;

(13) The defendant knowingly mutilated the body of the victim after death;

(14) The victim of the murder was seventy (70) years of age or older; or the victim of the murder was particularly vulnerable due to a significant disability, whether mental or physical, and at the time of the murder the defendant knew or reasonably should have known of such disability;

(15) The murder was committed in the course of an act of terrorism;

(16) The murder was committed against a pregnant woman, and the defendant intentionally killed the victim, knowing that she was pregnant; or

(17) The murder was committed at random and the reasons for the killing are not obvious or easily understood.

violence. Instead, according to the Court, in cases involving a prior crime which statutorily may or may not involve the use of violence, it is only necessary for the prosecution to prove to the judge (not the jury), based upon the record of the prior conviction, that as a factual matter the prior crime actually did involve the defendant's use of violence to another person.³⁹

Thus, for example, in State v. Cole the defendant had been convicted of robbery and other crimes for which "the statutory elements of each of the crimes may or may not involve the use of violence, depending on the facts of the underlying conviction."⁴⁰ The Court sustained the use of the prior violent felony aggravator upon the trial judge's determination that the evidence underlying the prior convictions established that in fact the crimes involved the defendant's use of violence.⁴¹

Second, the Court has held that the "prior conviction" need not relate to a crime that occurred before the alleged capital murder; it is only necessary that the defendant be "convicted" of that crime before his capital murder trial.⁴² The "prior convicted" crime may have occurred after the murder for which the prosecution seeks the death penalty. It is not unusual for the prosecution to obtain a conviction for a more recent crime in order to create an aggravator for use in the capital trial on a prior murder.

³⁹ State v. Ivy, 188 S.W.2d 132, 151 (Tenn. 2006) (holding that the prior conviction may be used as an aggravator if the element of "violence to the person" was set forth in "the statutory definition, charging document, written plea agreement, transcript of plea colloquy, [or] any explicit factual finding by the trial judge to which the defendant assented") (quoting Shepard v. United States, 544 U.S. 3, 16 (2005)).

⁴⁰ 155 S.W.3d 885, 899 (2005).

⁴¹ Id. at 899-905. Arguably the procedure by which the trial judge made the finding of violence to the person was modified by the Court in Ivy, *supra* note 39.

⁴² State v. Allen, 69 S.W.3d 181, 186 (Tenn. 2002); State v. Fitz, 19 S.W.3d 213, 214 (Tenn. 2000).

Third, a prior conviction of a violent felony that occurred when the defendant was a juvenile, if he was tried as an adult, can qualify as an aggravator to support a death sentence for a murder that occurred later when the defendant was an adult,⁴³ even though juvenile offenders are not eligible for the death penalty.⁴⁴

Additionally, in 1998 the legislature expanded the range of permissible evidence the prosecution can introduce relating to a prior violent felony conviction. The 1998 amendment permits introduction of evidence “concerning the facts or circumstances of the prior conviction” to “be used by the jury in determining the weight to be accorded the aggravating factor.”⁴⁵ The amendment gives the prosecution extremely broad license to use such evidence because “[s]uch evidence shall not be construed to pose a danger of creating unfair prejudice, confusing the issues, or misleading the jury and shall not be subject to exclusion on the ground that the probative value of the evidence is outweighed by prejudice to either party.”⁴⁶

(i)(5) Aggravator – Heinous, Atrocious or Cruel

A murder defendant is eligible for the death penalty if “[t]he murder was especially heinous, atrocious, or cruel, in that it involved torture or serious physical abuse beyond that necessary to produce death”⁴⁷ – often referred to as the “HAC aggravator.” Any murder, by definition, is a heinous crime that can evoke in a normal juror a strong, visceral negative reaction. In most premeditated murder cases the prosecution can allege the HAC aggravator.

⁴³ State v. Davis, 141 S.W.3d 600, 616-18 (Tenn. 2004).

⁴⁴ Roper v. Simmons, 543 U.S. 551 (2005).

⁴⁵ Tenn. Code Ann. § 39-13-204(c).

⁴⁶ Id.

⁴⁷ Tenn. Code Ann. § 39-13-204(c).

But under Furman and Gregg, most murder cases should not be eligible for capital punishment. The challenge is to create a meaningful, rational, and consistently applied distinction between first degree murder cases in general, all of which are “heinous” in some sense of the term, and the supposedly few murders that are “especially heinous, atrocious or cruel” justifying a death sentence, in order for this aggravator to serve the function of meaningfully narrowing the class of death eligible defendants.

What constitutes an “especially heinous, atrocious or cruel” murder is ultimately a subjective determination without clearly delineated criteria. In the early period following Furman, the United States Supreme Court struck down similar kinds of aggravators as unconstitutionally vague.⁴⁸ The Tennessee Supreme Court responded to those cases by applying a “narrowing construction” of the statutory language, stipulating that the HAC aggravator is “directed at ‘the conscienceless or pitiless crime which is unnecessarily torturous to the victim.’”⁴⁹ In Cone v. Bell a Sixth Circuit panel declared Tennessee’s HAC aggravator to be unconstitutionally vague.⁵⁰ The Supreme Court, however, reversed the Sixth Circuit and upheld Tennessee’s version based upon the narrowing construction.⁵¹ Although the Supreme Court

⁴⁸ See, e.g., Godfrey v. Georgia, 446 U.S. 420 (1980) (invalidating Georgia’s “outrageously or wantonly vile, horrible or inhuman” aggravator); Maynard v. Cartwright, 486 U.S. 356 (1988) (invalidating Oklahoma’s “especially heinous, atrocious or cruel” aggravator).

⁴⁹ State v. Dicks, 615 S.W.2d 126 (Tenn. 1981); State v. Melson, 638 S.W.2d 342, 367 (Tenn. 1982). The Court’s narrowing construction included language purportedly defining the term “torturous.” The Tennessee legislature followed suit by amending the language of the HAC aggravator to provide that it must involve “torture or serious physical abuse beyond that necessary to produce death.”

⁵⁰ Cone v. Bell, 359 F.3d 785, 794-97 (2004).

⁵¹ Bell v. Cone, 543 U.S. 447 (2005) (*per curiam*).

upheld Tennessee's HAC aggravator, it was a close call, and the criteria for its application remains subjective.

Even with its narrowing construction in response to early U.S. Supreme Court decisions, the Tennessee Supreme Court manages to give the HAC aggravator a very broad definition. The Court's fullest description of this aggravator can be found in State v. Keen, where the Court explained:

The "especially heinous, atrocious or cruel" aggravating circumstance "may be proved under either of two prongs: torture or serious physical abuse." This Court has defined "torture" as the "infliction of severe physical or mental pain upon the victim while he or she remains alive and conscious." The phrase "serious physical abuse beyond that necessary to produce death," on the other hand, is "self-explanatory; the abuse must be physical rather than mental in nature." The word 'serious' alludes to a matter of degree," and the term "abuse" is defined as "an act that is 'excessive' or which makes 'improper use of a thing,' or which uses a thing 'in a manner contrary to the natural or legal rules for its use.'"

Our case law is clear that "[t]he anticipation of physical harm to oneself is torturous" so as to establish this aggravating circumstance. Our case law is also clear that the physical and mental pain suffered by the victim of strangulation may constitute torture within the meaning of the statute."⁵²

The Court has also held that although the HAC aggravator now contains two prongs – "torture" or "serious physical abuse" – jurors "do not need to agree on which prong makes the murder 'especially heinous, atrocious, or cruel.'"⁵³

The case of State v. Rollins⁵⁴ illustrates the broad scope of the Court's definition of the HAC aggravator. The defendant was found guilty of stabbing the victim multiple times. In the guilt phase the medical examiner testified to the cause of death, describing in detail the multiple stab wounds. In the sentencing hearing, the medical examiner testified again, largely repeating

⁵² 31 S.W.3d 196, 206-07 (Tenn. 2000) (internal citations omitted).

⁵³ Id. at 208-09. *See also State v. Davidson*, 509 S.W.3d 156, 219 (Tenn. 2016).

⁵⁴ 188 S.W.3d 553, 572 (Tenn. 2006).

his evocative guilt-phase testimony and further describing some of the stab wounds as “defensive,” meaning that the victim was conscious and experienced physical and mental suffering during the assault. According to the Court, this evidence was sufficient to establish the HAC aggravator. It follows that, in any murder case in which the victim was aware of what was happening and/or suffered physical pain during the assault, it may be possible to find the existence of the HAC aggravator. Certainly the prosecution can allege it in a wide range of cases. With the Court’s nebulous definition, it is difficult to see how the HAC aggravator meaningfully narrows the class of death eligible defendants.

(i)(6) Aggravator – Avoiding Arrest or Prosecution

The (i)(6) aggravator applies when “[t]he murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another.” This aggravator can be alleged in any case in which the murder occurred during the commission of another crime, because in any such case the prosecution can argue that a motivating factor in the murder was to eliminate the victim as a witness. As with other aggravators, the Tennessee Supreme Court has broadly defined this aggravator.

Although this aggravator addresses the defendant’s motivation, not much is required to prove it. While “[t]he defendant’s desire to avoid arrest or prosecution must motivate the defendant to kill, [] it does not have to be the only motivation. Nor does it have to be the dominant motivation. The aggravating circumstance is not limited to the killings of eyewitnesses or those witnesses who know or can identify the defendant.”⁵⁵

⁵⁵ Penny J. White, Tennessee Capital Case Handbook, at 15.43 (Tennessee Association of Criminal Defense Attorneys, 2010) (citing Terry v. State, 46 S.W.3d 147, 162 (Tenn. 2001); State v. Bush, 942 S.W.2d 489, 529 (Tenn. 1997); State v. Evans, 838 S.W.2d 185 (Tenn. 1992); State v. Ivy, 188 S.W.3d 132, 144 (Tenn. 2006); and State v. Hall, 976 S.W.2d 121, 133 (Tenn. 1998)).

As one scholar has explained, “When applied broadly to any victim who could have possibly identified the defendant, this aggravating circumstance applies to almost all murders, in violation of the narrowing principle.”⁵⁶

Aggravator (i)(7) – Felony Murder

Many murders are committed during the commission of another crime, and a “felony murder” can be prosecuted as first degree murder even if the defendant was not the assailant and lacked any intent to kill.⁵⁷ Also a defendant who caused the victim’s death during the commission of another felony can be guilty of felony murder even if the defendant neither premeditated nor intended the victim’s death.⁵⁸ If the defendant is guilty of felony murder, then the prosecution can allege and potentially prove the (i)(7) aggravator.⁵⁹

In the felony murder case of State v. Middlebrooks, 840 S.W.2d 317, 341 (Tenn. 1992), the Court invalidated the earlier version of this aggravator, because there was no distinction between the elements of the crime of felony murder and the felony murder aggravator. The Court held that in such a case, the felony murder aggravator was unconstitutional because, by merely duplicating the elements of the underlying felony murder, it did not sufficiently narrow the class of death eligible defendants.

The legislature responded by amending the statute in 1995 to add two elements to the felony murder aggravator: that the murder was “knowingly” committed, solicited, directed, or

⁵⁶ Id. at 15.45.

⁵⁷ See Tenn. Code Ann. § 39-13-202(a) for the elements of first degree premeditated murder and first degree felony murder.

⁵⁸ State v. Pruitt, 415 S.W.3d 180, 205 (Tenn. 2013).

⁵⁹ The other felonies that support this aggravator are “first degree murder, arson, rape, robbery, burglary, theft, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb[.]” 39 Tenn. Code Ann. § 39-13-204(i)(7).

aided by the defendant; and that the defendant had a “substantial role” in the underlying felony while the murder was committed.⁶⁰ In State v. Banks, the Court upheld the amended felony murder aggravator because its elements did not merely duplicate the elements of felony murder, and therefore, according to the Court, the aggravator satisfied the constitutional requirement to narrow the class of death eligible defendants.⁶¹

Although the legislature amended the (i)(7) felony murder aggravator in response to the Middlebrooks problem, it is not clear how this amendment created a practical difference in the statutory definition. The “knowing” and “substantial role” elements in the amended statute are relatively easy to prove and potentially could apply to virtually every felony murder, and these elements do not effectively perform a narrowing function.⁶²

Because the Court and legislature have expanded the number and meaning of aggravating circumstances that could support a death sentence, we submit that a large majority of first degree murder cases are now death eligible. It is hard to imagine a case in which the prosecution could not allege and potentially prove the existence of an aggravator. With this development, it is especially significant that, as discussed in Part VI below, Tennessee has experienced a sharp decline in sustained death sentences over the past ten to twenty years, notwithstanding the availability of death as a sentencing option in a larger number of first

⁶⁰ Tenn. Code Ann. § 39-13-204(i)(7) (1995).

⁶¹ 271 S.W.3d 90, 152 (Tenn. 2008). *See also* Carter v. State, 958 S.W.2d 620, 624 (Tenn. 1997) (upholding the aggravator when defendant was charged with both premeditated and felony murder relating to the same murder); State v. Robinson, 146 S.W.3d 469, 501 (Tenn. 2004) (upholding felony murder aggravator when the defendant did not kill the victim).

⁶² *See, e.g., State v. Pruitt*, 415 S.W.3d 180, 205 (Tenn. 2013) (upholding felony murder aggravator when, although defendant caused victim’s death during a carjacking, there was no proof that he intended the death or knew that death would ensue).

degree murder cases. This not only implicates the problem of arbitrariness, it also strongly indicates that Tennessee's evolving standard of decency is moving away from the death penalty.

IV. COMPARATIVE PROPORTIONALITY REVIEW AND RULE 12

Another important development in Tennessee's death penalty jurisprudence has been the evisceration of any kind of meaningful "comparative proportionality review" of death sentences by the Tennessee Supreme Court.

As noted above, in an effort to protect against the "arbitrary and capricious" imposition of the death penalty, and following Georgia's lead, the Tennessee scheme requires the Tennessee Supreme Court to conduct a "comparative proportionality review" in every capital case. Tenn. Code Ann. § 39-13-206(c)(1)(D) provides that the Court shall determine whether "the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the nature of the crime and the defendant." According to the Court, the statute's purpose is to ensure "rationality and consistency in the imposition of the death penalty."⁶³ Justice Aldolpho A. Birch, Jr., explained, "The principle underlying comparative proportionality review is that it is unjust to impose a death sentence upon one defendant when other defendants, convicted of similar crimes with similar facts, receive sentences of life imprisonment (with or without parole). ... Thus, proportionality review serves a crucial role as an 'additional safeguard against arbitrary or capricious sentencing.'"⁶⁴ This follows from the

⁶³ See, e.g., State v. Barber, 753 S.W.2d 659, 665-66 (Tenn. 1988).

⁶⁴ State v. Godsey, 60 S.W.3d 759, 793 (Tenn. 2001) (Birch, J., concurring and dissenting).

principle that a State's "capital sentencing scheme ... must reasonably justify the imposition of a more severe sentence on the defendant *compared to others found guilty of murder*."⁶⁵

To facilitate comparative proportionality review, the Court promulgated Tennessee Supreme Court Rule 12 (formerly Rule 47) in 1978, requiring that "in all cases ... in which the defendant is convicted of first-degree murder," the trial judge shall complete and file so-called Rule 12 reports to include information about each of the cases.⁶⁶ Rule 12 was intended to create a database of first-degree murder cases for use in comparative proportionality review in capital cases. In State v. Adkins,⁶⁷ the Court stated that "our proportionality review of death penalty cases ... has been predicated largely on those reports *and has never been limited to the cases that have come before us on appeal*." (Emphasis added.) On January 1, 1999, the Court issued a press release announcing the use of CD-ROMS to store copies of Rule 12 forms, in which then Chief Justice Riley Anderson was quoted as saying, "The court's primary interest in the database is for comparative proportionality review in [capital] cases, which is required by court rule and state law, The Supreme Court reviews the data to ensure rationality and consistency in the imposition of the death penalty and to identify aberrant sentences during the appeal process."⁶⁸

⁶⁵ Lowenfield v. Phelps, 484 U.S. 321, 244 (1988) (quoting Zant v. Stephens, 462 U.S. 862, 877 (1983)) (emphasis added).

⁶⁶ As of June 30, 2017, the Rule 12 report included 67 detailed questions plus sub-questions divided into six parts, as follows: A. Data Concerning the Trial of the Offense (12 questions); B. Data Concerning the Defendant (17 questions); C. Data Concerning Victims, Co-Defendants, and Accomplices (15 questions); D. Representation of the Defendant (10 questions); E. General Considerations (3 questions); and E. Chronology of Case (10 questions). Additionally, the prosecutor and the defense attorney are given the opportunity to submit comments to be appended to the report.

⁶⁷ 725 S.W.2d 660, 663 (Tenn. 1987).

⁶⁸ Available at <http://tncourts.gov/press/1999/01/01/court-provides-high-tech-tool-legal-research-murder-cases> (last visited 11/17/17).

The collection of Rule 12 data for comparative proportionality review was based on the idea, derived from Furman, that capital cases must be distinguishable in a meaningful way from non-capital first-degree murder cases. If there is no meaningful and reliable way to distinguish between capital and non-capital first-degree murder cases, then the capital punishment system operates arbitrarily, contrary to constitutional principles and modern notions of human decency.

Under this concept of arbitrariness, Rule 12 data collection can make sense. By gathering and analyzing this kind of data, we can begin to see statistically whether our judicial system is consistently and reliably applying appropriate criteria or standards for selecting only the “worst of the bad” defendants for capital punishment,⁶⁹ or whether there are other inappropriate criteria (such as race, poverty, geographic location, prosecutorial whim, or other factors) that play an untoward influence in capital sentencing decisions.

Unfortunately, the history of the Court’s comparative proportionality review, and of Rule 12, has been problematic.⁷⁰ Rule 12 data has rarely, if ever, entered into the Court’s comparative proportionality analysis. There was no effort by the Court or any other public agency to organize or quantify Rule 12 data in any comprehensive way. All we have now are CD-ROMS with copies of more than a thousand Rule 12 reports that have been filed, with no indices, summaries, or sorting of information. There exist no reported Tennessee appellate court opinions that cite or use any statistical data compiled from the Rule 12 reports. And

⁶⁹ Members of the Tennessee Supreme Court have used the term “worst of the bad” in reference to the proposition that the death penalty should be reserved only for the very worst cases. See State v. Nichols, 877 S.W.2d 722, 739 (Tenn. 1994); State v. Howell, 868 S.W.2d 238, 265 (Tenn. 1993) (Reid, C.J., concurring); State v. Middlebrooks, 840 S.W.2d 317, 350 (Tenn. 1992) (Drowota, J., concurring and dissenting).

⁷⁰ In only one case has the Tennessee Supreme Court set aside a death sentence based on comparative proportionality review. See State v. Godsey, 60 S.W.3d 759 (Tenn. 2001).

perhaps most significantly, in more than one-third of first degree murder cases, trial judges have failed to file Rule 12 reports, leaving a huge gap in the data.⁷¹

In the 1990's, Tennessee Supreme Court Justices Lyle Reid⁷² and Adolpho A. Birch, Jr.⁷³ began dissenting from the Court's decisions affirming death sentences because of what they perceived to be inadequate comparative proportionality review. Justice Reid criticized the majority for conducting comparative proportionality review "without a structured review process."⁷⁴

Then in 1997, the Court decided State v. Bland,⁷⁵ which dramatically changed the Court's purported methodology for conducting a comparative proportionality review. Among other things, the Court narrowed the pool of cases to be compared in the analysis. Under Bland, the Court now compares the capital case under review only with other capital cases it has previously reviewed, and not with the broader pool of all first degree murder cases, including those that resulted in sentences of life or life without parole. Justices Reid and Birch dissented in Bland. Justice Reid repeated his earlier complaints that the Court's comparative proportionality review analysis lacks proper standards.⁷⁶ Justice Birch agreed with Justice Reid

⁷¹ See discussion of H.E. Miller, Jr.'s survey in Part VI, below. A copy of Mr. Miller's report is attached as Appendix 1.

⁷² Justice Reid retired from the bench in 1998.

⁷³ Justice Birch retired from the bench in 2006.

⁷⁴ State v. Hodges, 944 S.W.2d 346, 363 (Tenn. 1997) (Reid, J., dissenting).

⁷⁵ 958 S.W.2d 651 (Tenn. 1997).

⁷⁶ Id. at 674-79.

and further dissented from the Court's decision to narrow the pool of cases to be considered.⁷⁷ Thereafter Justice Birch repeatedly dissented from the Court's decisions affirming death sentences, on the ground that the Court's comparative proportionality analysis was essentially meaningless.⁷⁸ Justice Birch stated: "I believe that the three basic problems with the current proportionality analysis are that: (1) the proportionality test is overbroad, (2) the pool of cases used for comparison is inadequate, and (3) review is too subjective."⁷⁹

More recently, in the 2014 decision of State v. Pruitt, Justices William C. Koch, Jr.⁸⁰ and Sharon G. Lee dissented from the Court's comparative proportionality methodology.⁸¹ Justice Koch pointed out the problems with Bland as follows:

[T]he Bland majority changed the proportionality analysis in a way that deviates not only from the language of Tenn. Code Ann. § 39-13-206(c)(1)(D) but also from the relevant decisions of the United States Supreme Court.

First, the Court narrowed the pool of cases to be considered in a proportionality analysis. Rather than considering all cases that resulted in a conviction for first-degree murder (as the Court had done from 1977 to 1997), the Court limited the pool to "only those cases in which a capital sentencing hearing was actually conducted... regardless of the sentence actually imposed." State v. Bland, 958 S.W.2d at 666. By narrowly construing "similar cases" in Tenn. Code Ann. § 39-13-206(c)(1)(D), the Court limited

⁷⁷ Id. at 679. Because of the meaninglessness of the Court's comparative proportionality analysis, Justice Birch consistently dissented when the Court affirmed death sentences. See, e.g., State v. Leach, 148 S.W.3d 42, (Tenn. 2004) (Birch, J., concurring and dissenting) ("I have repeatedly expressed my displeasure with the current protocol since the time of its adoption in State v. Bland. [Case citations omitted.] As previously discussed, I believe that the three basic problems with the current proportionality analysis are that: (1) the proportionality test is overbroad, (2) the pool of cases used for comparison is inadequate, and (3) review is too subjective. In my view, these flaws undermine the reliability of the current proportionality protocol.")

⁷⁸ See State v. Davis, 141 S.W.3d 600, 632-33 (Tenn. 2004) (Birch, J., concurring and dissenting), in which Justice Birch presented a list of such cases.

⁷⁹ Id. at 633.

⁸⁰ Justice Koch retired from the bench in 2014.

⁸¹ State v. Pruitt, 415 S.W.3d 180, 225 (Tenn. 2013) (Koch, J., concurring and dissenting).

proportionality review to only a small subset of Tennessee's murder cases – the small minority of cases in which a prosecutor actually sought the death penalty.

The second limiting feature of the State v. Bland proportionality analysis is found in the Court's change in the standard of review. The majority opinion held that a death sentence could be found disproportionate only when "the case, taken as a whole, is *plainly lacking* in circumstances consistent with those in similar cases in which the death penalty has been imposed." State v. Bland, 958 S.W.2d at 665 (emphasis added). This change prevents the reviewing courts from determining whether the case under review exhibits the same level of shocking despicability that characterizes the bulk of our death penalty cases or, instead, whether it more closely resembles cases that resulted in lesser sentences.

The third limiting feature of the State v. Bland analysis is the seeming conflation of the consideration of the circumstances in Tenn. Code Ann. § 39-13-206(c)(1)(B) and Tenn. Code Ann. § 39-13-206(c)(1)(C) with the circumstance in Tenn. Code Ann. § 39-13-206(c)(1)(D). When reviewing a sentence of death for first-degree murder, the courts must separately address whether "[t]he evidence supports the jury's finding of statutory aggravating circumstance or circumstances;" whether "[t]he evidence supports the jury's finding that the aggravating circumstance or circumstances outweigh any mitigating circumstances;" and whether "[t]he sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the nature of the crime and the defendant."

As applied since 1997, State v. Bland has tipped the scales in favor of focusing on the evidentiary support for the aggravating circumstances found by the jury and on whether these circumstances outweigh the mitigating circumstances. Instead of independently addressing the evidence regarding "the nature of the crime and the defendant," Bland's analysis has prompted reviewing courts to uphold a death sentence as long as the evidence substantiates the aggravating circumstance or circumstances found by the jury, as well as the jury's decision that the aggravating circumstance or circumstances outweigh any mitigating circumstances.⁸²

In an earlier case, Justice Birch pointedly summarized the problem with the Court's comparative proportionality jurisprudence: "Because our current comparative proportionality review system lacks objective standards, comparative proportionality analysis seems to be little more than a 'rubber stamp' to affirm whatever decision the jury reaches at the trial level."⁸³

⁸² Id. at 227-28.

⁸³ State v. Chalmers, 28 S.W.3d 913, 924 (Tenn. 2000) (Birch, J., concurring and dissenting).

V. SIMPLIFYING THE LOTTERY: A TALE OF TWO CASES

As the legislature and the Court have expanded the opportunity for arbitrariness by expanding the class of death eligible defendants, and as the Court has removed a check against arbitrariness by declining to conduct meaningful comparative proportionality review, it is time to ask how Tennessee's capital punishment system operates in fact. Returning to the lottery scenario, let us simplify the problem by considering just two cases and asking two questions: (i) which of the two cases is more deserving of capital punishment? and, (ii) which of the two cases actually resulted in a death sentence?⁸⁴

Case #1

The two defendants were both convicted of six counts of first degree premeditated murder. They shot a man and a woman in the head. They strangled to death two women, one of whom was pregnant, thus also killing her unborn child. They also "stomped" a 16-month old child to death.

Both of the defendants had previously served time in jail or prison. When one of the defendants was released from prison, the two of them got together and dealt drugs including marijuana, cocaine, crack cocaine, and pills. Their drug business was successful, progressing from selling to "crack heads" and addicts to selling to other dealers. One of the defendants, the apparent leader of the two, was described as intelligent.

⁸⁴ The description of Case #1 is a summary of the facts described in State v. Moss, No. 2014-00746-CCA-R3-CD (Tenn. Crim. App. 2016); and Burrell v. State, No. M2015-2115-CCA-R3-PC (Tenn. Crim. App. 2017). The description of Case #2 is a summary of the facts described in State v. Pruitt, 415 S.W.3d 180 (Tenn. 2013).

The defendants planned to rob WC, a male who also dealt drugs. On the night of the crime, WC and AM, a female, went to WC's mother's house. The defendants were together in Huntsville, Alabama, and one of them telephoned WC. After receiving the call, WC and AM left WC's mother's house and went to pick up the defendants. The four of them left Huntsville with one of the defendants driving the car, WC sitting in the front passenger seat, the other defendant sitting behind WC, and AM sitting behind the driver. They drove to a house where the defendants kept their drugs. When the car pulled into the garage, the defendant in the back seat shot WC in the back of the head three times. The killer then shot AM in the head. The defendants pulled AM out of the back seat, dragged her into the utility room and put a piece of plywood over the doorway to conceal her body.

The defendants then went inside the house and found CC, a pregnant woman. They bound her hands behind her back and dunked her head in a bathtub to force her to reveal where WC kept his drugs and money. When CC was unwilling or unable to tell them, they strangled her to death. When the defendants killed CC, they also killed her unborn child. After killing CC and her unborn child, they stomped to death the sixteen-month-old child who was also in the house.

The defendants then drove to another house where WC kept drugs. WC's body was still in the car. They found JB, a woman who was inside the house, and strangled her to death in the same manner that they had killed CC. After killing JB, the defendants ransacked the house, looking for money and drugs. They took drugs from one or both houses, and they took WC's AK-47s from the second house. According to the

prosecution's theory, the defendants intended to "pin" the killing on WC, so they spared the lives of his two children and disposed of his body in the woods.

The aggravators that would support death sentences in these cases included: (i)(1) (murder against a person less than twelve years old); (i)(5) (the murders were heinous, atrocious or cruel); (i)(6) (the murders were committed for the purpose of avoiding arrest or prosecution); (i)(7) (the murders were committed while the defendants were committing other felonies including first degree murder, robbery, burglary, theft, kidnapping, and aggravated child abuse); (i)(12) (mass murder); and (i)(16) (one of the victims was pregnant).

Case #2

Defendant was convicted of first degree felony murder for causing the death of an elderly man in the course of carjacking the victim's car. There was no evidence that the defendant intended the victim's death.

The defendant had prior convictions for aggravated burglary, robbery, criminal intent to commit robbery, and theft over \$500. His I.Q was tested at 66 and 68, in the intellectual disability range; but the court found that he was not sufficiently deficient in adaptive behavior to meet the legal definition of intellectual disability that would have exempted him from the death penalty.⁸⁵

Defendant planned to rob a car. He went to the Apple Market and stood outside the store's door. An older man, the victim, came out of the market with groceries in his arms and walked to his car. As the man reached the driver's side door, defendant ran up behind him, and there ensued a short scuffle lasting about 15 seconds. The defendant

⁸⁵ See Adkins v. Virginia, 536 U.S. 304 (2002) (disqualifying the intellectually disabled from the death penalty); Tenn. Code Ann. § 39-13-203 (same).

threw the man into the car and/or pavement, causing severe injuries including brain trauma, fractured bones, and internal bleeding. Defendant slammed the car door and drove away. The man was taken to the hospital where he died of his head injuries the following day.

The aggravators that would support a death sentence in this case were: (i)(2) (prior violent felonies); (i)(7) (felony murder); and (i)(14) (victim over 70 years old).

We submit that the majority of persons presented with these two case scenarios, without any further information about the operation of Tennessee's death penalty system, would choose Case #1 as the more appropriate and likely candidate for the death penalty. In fact, however, in Case #1 neither defendant received a death sentence - one received six consecutive life sentences, and the other received four concurrent and two consecutive life sentences. On the other hand, the defendant in Case #2, who did not premeditate or intend the victim's death, was sentenced to death.

These cases are not comparable. How could the single felony murder case result in a death sentence while the premeditated multi-murder case resulted in life sentences? They are both fairly recent cases. The multi-victim premeditated murder case was in a rural county in the Middle Grand Division of the State, where no death sentences have been imposed since 2001. By contrast, the single-victim felony murder case, involving a borderline intellectually disabled defendant, was in Shelby County which has accounted for 52% of all new Tennessee death sentences since mid-2001, of which 86% involved black defendants. These may not be the only factors that could explain the disparity between these cases, but they stand out.

These cases may represent an extreme comparison - although 90% of all multi-murder cases resulted in life or LWOP sentences - but this comparison most clearly illustrates a

problem with our death penalty system. Geographic location, differing prosecutorial attitudes, and the prejudicial influences of defendants' mental impairments are arbitrary factors that, along with other arbitrary factors discussed below, too often determine the application of capital punishment. In the next part, we review Mr. Miller's survey of first degree murder cases since 1977, which we believe supports the proposition that arbitrariness permeates the entire system.

VI. MR. MILLER'S SURVEY OF FIRST DEGREE MURDER CASES

A. The Survey Process

Given the Tennessee Supreme Court's abandonment of the original purpose behind Rule 12 data collection, how can we systematically evaluate the manner by which Tennessee has selected, out of more than two thousand convicted first degree murderers, only 86 defendants to sentence to death – and only six defendants to execute – during the 40 years the system has been in place? Is there a meaningful distinction between death-sentenced and life-sentenced defendants? Are we imposing the death penalty only upon those criminals who are the “worst of the bad”? Does our system meet the constitutional demand for heightened reliability, consistency, and fairness? Or is our system governed by arbitrary factors that should not enter into the sentencing decision?

To test the degree of arbitrariness in Tennessee's death penalty system, attorney H. E. Miller, Jr., undertook a survey of all Tennessee first-degree murder cases decided during the 40-year period beginning July 1, 1977, when the current system was installed. Mr. Miller devoted

thousands of hours over several years in conducting his survey. His Report is attached as Appendix 1.⁸⁶

Mr. Miller began his survey by reviewing the filed Rule 12 reports. He soon discovered, however, that in close to one-half of first-degree murder cases, trial judges failed to file Rule 12 reports – and for those cases, there is no centralized data collection system. Further, many of the filed Rule 12 reports were incomplete or contained errors.⁸⁷

Mr. Miller found that Rule 12 reports were filed in 1,348 adult first-degree murder cases. He has identified an additional 1,166 first-degree murder cases for which Rule 12 reports were not filed, bringing the total of adult first degree murder cases that he has been able to find to 2,514.⁸⁸ Thus, trial judges failed to comply with Rule 12 in at least 46% of adult first degree murder cases.⁸⁹ This astounding statistic is perhaps explainable by the fact that Rule 12 data has never been used by the Court in a meaningful way and has become virtually obsolete since

⁸⁶ The appendices to Mr. Miller's Report, which include all of the data he collected, are not included in the attachment to this article but are available on request.

⁸⁷ In 2004, the Tennessee Comptroller of the Treasury noted: "Office of Research staff identified a number of cases where defendants convicted of first-degree murder did not have a Rule 12 report, as required by law. ... Rule 12 reports are paper documents, which are scanned and maintained on CD-ROM. The format does not permit data analysis." John G. Morgan, Tennessee's Death Penalty: Costs and Consequences (Comptroller of the Treasury Office of Research, July 2004) (found at <https://deathpenaltyinfo.org/documents/deathpenalty.pdf>, last visited 11/17/17). The situation with Rule 12 reports has not improved since the Comptroller's report.

⁸⁸ There undoubtedly exist additional first-degree murder cases, for which Rule 12 reports were not filed, that Mr. Miller did not find. For example, some cases are settled at the trial court level and are never taken up on appeal; and without filed Rule 12 reports, these cases are extremely difficult to find. Certainly a fair number of recent cases were not found because of the time it takes for a case to proceed from trial to the Court of Criminal Appeals before an appellate court record is created. It also is possible that cases decided on appeal were inadvertently overlooked, despite great effort to be thorough. To the extent there are additional first degree murder cases that were not found, statistics including those cases would more strongly support the infrequency of death sentences and the capricious nature of our death penalty lottery.

⁸⁹ The Rule 12 noncompliance rate is 50% in juvenile first degree murder cases.

Bland v. State⁹⁰ when the Tennessee Supreme Court decided to limit its comparative proportionality review only to other capital cases that it had previously reviewed.⁹¹

Because of problems with the Rule 12 reports, Mr. Miller found it necessary to greatly broaden his research to find and review the first degree murder cases for which Rule 12 reports were not filed, and to verify and correct information contained in the Rule 12 reports that were filed. As described in his Report, Mr. Miller researched numerous sources of information including cases reported in various websites, Tennessee Department of Correction records, Tennessee Administrative Office of the Courts reports, and original court records, among other sources.

Mr. Miller compiled information about each case, to the extent available, including: name, gender, age and race of defendant; date of conviction; county of conviction; number of victims; gender, age and race of victims (to the extent this information was available); and results of appeals and post-conviction proceedings – information that should have been included in Rule 12 reports.

B. Factors Contributing to Arbitrariness

Mr. Miller's survey reveals that Tennessee's capital sentencing scheme fails to fulfill Furman's basic requirement to avoid arbitrariness in imposing the ultimate penalty. Capital sentencing in Tennessee is not "regularized" or "rationalized." The statistics, and the

⁹⁰ See notes 75-77, *supra*, and accompanying text.

⁹¹ The perpetuation of Rule 12 on the books gives rise to two unfortunate problems. First, Rule 12 creates a false impression of meaningful data collection, which clearly is not the case when we realize the 46% noncompliance rate and the lack of evidence that Rule 12 data has served any purpose under the current system. Second, the 46% noncompliance rate among trial judges who preside over first degree murder cases tends to undermine an appearance of integrity. We should expect judges to follow the Court's rules.

experience of attorneys who practice in this area, demonstrate a number of factors that contribute to system's capriciousness.

(1) Infrequency & downward trend

As pointed out above, frequency of application is the most important factor in assessing the constitutionality of the death penalty. As the death penalty becomes less frequently applied, there is an increased chance that capital punishment becomes "cruel and unusual in the same way that being struck by lightning is cruel and unusual."⁹² Infrequency of application sets the foundation for analysis of the system.

Since July 1, 1977, among the 2,514 Tennessee defendants who were convicted of first-degree murder, only 192 of those defendants received death sentences. Among those 192 defendants, only 86 defendants' death sentences had been sustained as of June 30, 2017, while the death sentences imposed on 106 defendants had been vacated or reversed. Accordingly, over the span of the past 40 years only approximately 3.4% of convicted first degree murderers have received sustained death sentences – and most of those cases are still under review. Of those 86 defendants whose death sentences have been sustained, only six were actually executed, representing less than 0.2% of all first degree murder cases – or less than one out of every 400 cases. In other words, the probability that a defendant who commits first degree murder is arrested, found guilty, sentenced to death, and executed is miniscule. Even if Tennessee were to hurriedly execute the approximately dozen death row defendants who are

⁹² Furman v. Georgia, 408 U.S. at 310 (Stewart, J., concurring).

currently eligible for execution dates,⁹³ the percentage of executed defendants as compared to all first-degree murder cases would remain extremely small.

Additionally, over the past twenty years there has been a sharp decline in the frequency of capital cases. Table 23 from Mr. Miller's Report tells the story:

⁹³ Tennessee Supreme Court Rule 12.4 provides that an execution date will not be set until the defendant's case has completed the "standard three tiers" of review (direct appeal, post-conviction, and federal habeas corpus), which occurs when the defendant's initial habeas corpus proceeding has run its full course through the U.S. Supreme Court. The Tennessee Administrative Office of the Courts lists eleven "capital cases that have, at one point, neared their execution date." <http://www.tsc.state.tn.us/media/capital-cases> (last visited 11/17/2017).

FREQUENCY OF TENNESSEE DEATH SENTENCES
FREQUENCY OF TENNESSEE DEATH SENTENCES IN 4-YEAR INCREMENTS

4-Year Period	Trials Resulting in Death Sentences	New Death Sentences (i.e., Initial Capital Trials)	Sustained Death Sentences ⁹⁴	Ave. New Death Sentences per Year	1 st Degree Murder Cases ⁹⁵	% "New" Death Sentences / 1 st Degree Murders	% Sustained Death Sentences / 1 st Degree Murders
7/1/77 – 6/30/81	25	25	6	6.25 per year	155	16%	4%
7/1/81 – 6/30/85	37	33	12	8.25 per year	197	17%	6%
7/1/85 – 6/30/89	34	32	15	8.00 per year	238	13%	6%
7/1/89 – 6/30/93	38	37	18	9.25 per year	282	13%	6%
7/1/93 – 6/30/97	21	17	9	4.45 per year	395	4%	2%
7/1/97 – 6/30/01	32	24	14	6.00 per year	316	8%	4%
7/1/01 – 6/30/05	20	16	5	4.00 per year	283	6%	2%
7/1/05 – 6/30/09	5	4	4	1.00 per year	271	1.5%	1.4%
7/1/09 – 6/30/13	6	6	5	1.50 per year	284	2%	1.7%
7/1/13 – 6/30/17	3	1	1	0.25 per year	Incomplete Data ⁹⁶	Incomplete Data	Incomplete Data
TOTALS	221	195⁹⁷	89⁹⁸	4.88 per year (40 years)	>2,514	<8%	<3.5%

⁹⁴ Defendants who received Sustained Death Sentences based on dates of their Initial Capital Trials.

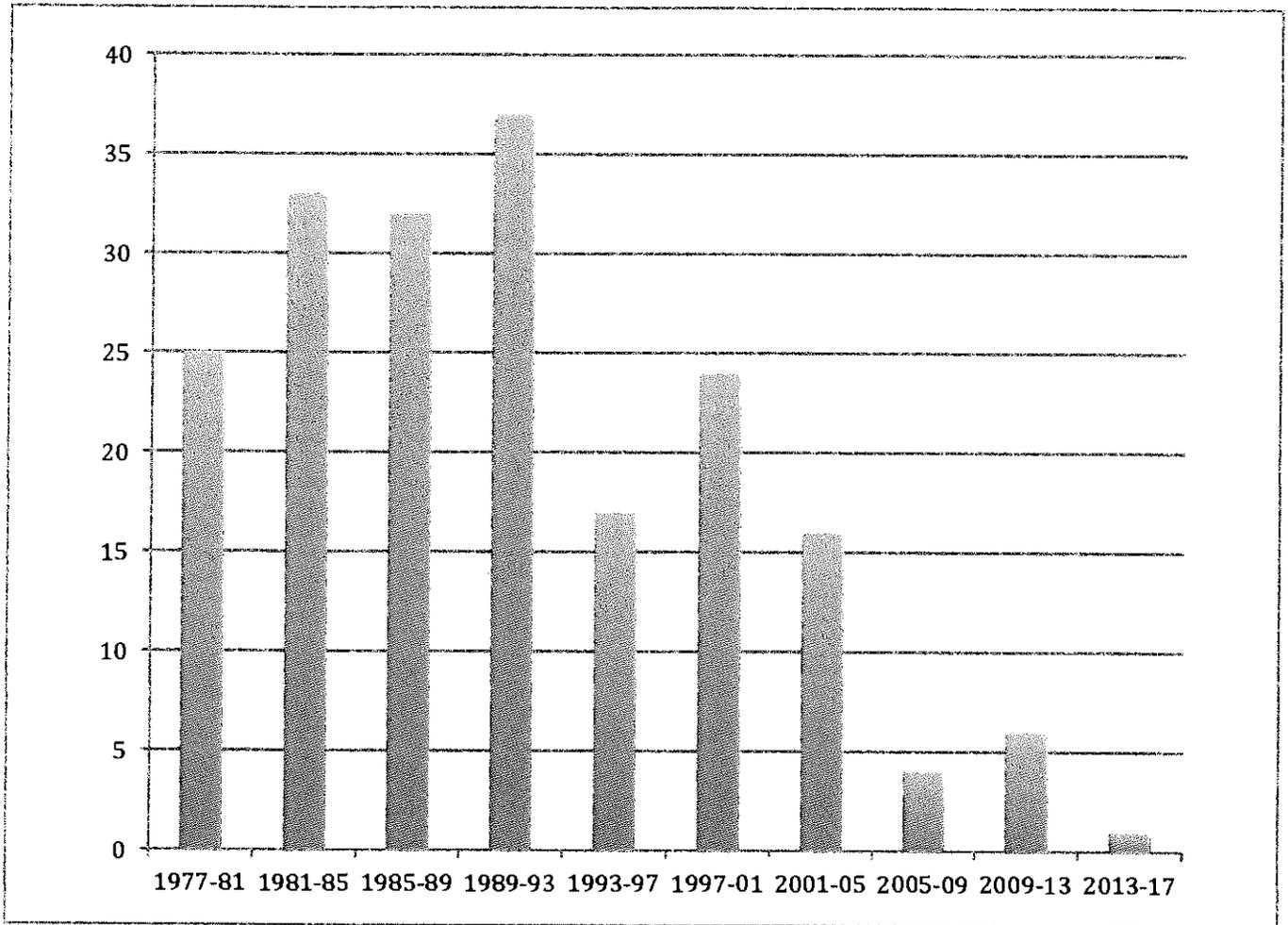
⁹⁵ Counted by defendants, not murder victims.

⁹⁶ Thus far I have found records for only 93 cases resulting in first degree murder convictions for murders occurring during the most recent 4-year period. Because of the time it takes for a case to be tried and appealed, we have an incomplete record of cases from the most recent years. According to T.B.I. statistics, however, the annual number of homicides in Tennessee has remained relatively consistent over the period. See Table 25.

⁹⁷ One defendant had 3 separate "new" trials each resulting in "new" and "sustained" death sentences; another defendant had 2 such trials. See footnote 1, *supra*. Accordingly, there were 195 "new" trials involving a total of 192 defendants, and 89 "sustained" death sentences involving a total of 86 defendants.

⁹⁸ See note 96. While 89 trials resulted in Sustained Death Sentences, only 86 defendants received Sustained Death Sentences.

**GRAPH OF NEW DEATH SENTENCES⁹⁹
IN TENNESSEE
BY 4-YEAR INCREMENTS**



As we can see, disregarding cases that were subsequently reversed or vacated, the frequency of new death sentences has fallen from a high of 9.25 per year from 1989 to 1993, to a low of 0.25 per year during the most recent 4-year period of 2013 to 2017 – a 97% reduction in the rate of new death sentences. Moreover, no new death sentence was imposed in Tennessee over the three-year period from July 2014 through June 2017; and over the 16-year period from February 2001 through June 2017, no death sentence had been imposed in the

⁹⁹ This graph includes all original capital trials resulting in “new” death sentences, including those that were subsequently reversed or vacated.

Middle Grand Division of the State (which includes Nashville-Davidson County and 40 other counties, representing more than one-third of the State's population).¹⁰⁰

Mr. Miller broke down the statistics into two groups – cases originally tried during the first 24 years, before June 30 2001; and those originally tried during the most recent 16 years, through June 30, 2017. Mr. Miller used 2001 as a dividing line because it was during the period leading up to that year when Tennessee began experiencing its steep decline in the frequency of new death sentences. Also, 2001 was the year when the Office of the District Attorney General for Davidson County issued its *Death Penalty Guidelines*,¹⁰¹ setting forth the procedure and criteria that Office would use in determining when to seek a death sentence.

During the initial 24-year period, Tennessee imposed sustained death sentences on 5.8% of the defendants convicted of first-degree murder, at the average rate of 4 sustained death sentences per year. Since 2001, the percentage of first degree murder cases resulting in death sentences has dropped to less than 2%, at a rate of less than 1 sustained death sentence per year.

At this level of infrequency, it is impossible to conceive how Tennessee's death penalty system is serving any legitimate penological purpose. No reasonable scholar could maintain that there is any deterrence value to the death penalty when it is imposed with such infrequency.¹⁰² And there is minimal retributive value when the overwhelming percentage of

¹⁰⁰ See Appendix 2, *Chart of Tennessee Capital Trials*.

¹⁰¹ A copy of these Guidelines is on file with the authors and available upon request. The current Davidson County District Attorney confirmed to one of the authors that the Guidelines remain in effect. Based on our inquiries, no other district attorney general office has adopted written guidelines or standards for deciding when to seek death.

¹⁰² Although a small minority of studies have purported to document a deterrent effect, none have documented such an effect in a state like Tennessee where the vast majority of killers get Life or LWOP

first degree murder cases (now more than 98%) end up with Life or LWOP.¹⁰³ Any residual deterrent or retributive value in Tennessee's sentencing system is further diluted to the point of non-existence by the other factors of arbitrariness listed below. As Justice White stated in Furman, "[T]he death penalty could so seldom be imposed that it would cease to be a credible deterrent or measurably to contribute to any other end of punishment in the criminal justice system."¹⁰⁴

The decline in the frequency of new death sentences in Tennessee also evidences Tennessee's evolved standard of decency away from capital punishment. As further explained below, in the vast majority of Tennessee Counties, including all counties within the Middle Grand Division, the death penalty is essentially dead.¹⁰⁵

sentences, and where those who do receive death sentences long survive their sentencing date, usually until they die of natural causes, and are rarely executed. In fact, "the majority of social science research on the issue concludes that the death penalty has no effect on the homicide rate." D. Beschle, Why Do People Support Capital Punishment? The Death Penalty as Community Ritual, 33 Conn. L. Rev. 765, 768 (2001). See, e.g., National Research Council of the National Academies, Deterrence and the Death Penalty 2 (2012) ("[R]esearch to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates.")

¹⁰³ The role of retribution in our criminal justice system is a debatable issue. "Retribution is no longer the dominant objective of the criminal law." Williams v. New York, 337 U.S. 241, 248 (1949). Over time, "our society has moved away from public and painful retribution toward ever more humane forms of punishment." Baze v. Rees, 553 U.S. 35, ___ (2008) (Stevens, J., concurring in the judgment). The United States Supreme Court has cautioned that, of the valid justifications for punishment, "retribution ... most often can contradict the law's own ends. This is of particular concern ... in capital cases. When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint." Kennedy v. Louisiana, 554 U.S. 407, ___ (2008).

¹⁰⁴ 408 U.S. at 311.

¹⁰⁵ The decline in new death sentences in Tennessee mirrors a nationwide trend. According to the Death Penalty Information Center, the nationwide number of death sentences has declined from a total of 295 in 1998 to a total of just 31 in 2016 – a 90% decline. <https://deathpenaltyinfo.org/documents/FactSheet.pdf> (last visited 11/13/2017).

(2) Geographic disparity

Death sentences are not evenly distributed throughout the state. Whether it is a function of differing crime rates, political environment, racial tensions, the attitude of prosecutors, the availability of resources, the competency of defense counsel, or the characteristics of typical juries, a few counties have zealously pursued the death penalty in the past, while others have avoided it altogether. Over the 40-year period, only 48 of Tennessee's 95 counties (roughly one-half), have conducted trials resulting in death sentences;¹⁰⁶ but as indicated above, the majority of death sentences were reversed or vacated. More significantly, only 28 counties, representing 64% of Tennessee's population, have imposed sustained death sentences;¹⁰⁷ and since 2001, only eight counties, representing just 34% of Tennessee's population, have imposed sustained death sentences.¹⁰⁸ In the most recent five-year period, from July 1, 2012, to June 30, 2017, Shelby County was the only county to impose death sentences.

The decline in the number of counties resorting to the death penalty is illustrated by the following table taken from Mr. Miller's report, which gives the number of counties that conducted capital trials (*i.e.*, trials resulting in death sentences) during each of the ten four-year increments during the 40-year period:¹⁰⁹

¹⁰⁶ See Appendix 2, *Chart of Tennessee Capital Trials*.

¹⁰⁷ Appendix 1, *Miller Report*, Table 21.

¹⁰⁸ *Id.*, Table 22. See also Appendix 2, *Chart of Tennessee Capital Trials* 8.

¹⁰⁹ *Id.*, Table 24.

4-Year Period	Number of Counties Conducting Capital Trials¹¹⁰ During the Indicated 4-Year Period
7/1/1977 – 6/30/1981	13
7/1/1981 – 6/30/1985	18
7/1/1985 – 6/30/1989	17
7/1/1989 – 6/30/1993	18
7/1/1993 – 6/30/1997	11
7/1/1997 – 6/30/2001	12
7/1/2001 – 6/30/2005	11
7/1/2005 – 6/30/2009	3
7/1/2009 – 6/30/2013	5
7/1/2013 – 6/30/2017	1

It is costly to maintain a capital punishment system.¹¹¹ As the number of counties that impose the death penalty declines, an increasing majority of Tennessee’s taxpayers are subsidizing the system that is not being used on their behalf, but instead is being used only by a diminishingly small number of Tennessee’s counties.

Shelby County stands at one end of the spectrum. Since 1977, it has accounted for 37% of all sustained death sentences; over the past 10 years, it has accounted for 57% of Tennessee

¹¹⁰ These include all 221 Initial Capital Trials and Retrials, whether or not the convictions or death sentences were eventually sustained. Obviously, several counties conducted Capital Trials in several of the 4-Year Periods. Shelby County, for example, conducted Capital Trials in each of these periods.

¹¹¹ There has been no study of the of Tennessee’s system. See Tennessee’s Death Penalty Costs and Consequences, *supra* note 87, at i-iv (concluding that capital cases are substantially more expensive than non-capital cases, but itemizing reasons why the Comptroller was unable to determine the total cost of Tennessee’s capital punishment system). Studies from other states, however, have concluded that maintaining a death penalty system is quite expensive, costing millions of dollars per year. For a general discussion of costs, see Brandon L. Garrett, End of Its Rope: How Killing the Death Penalty Can Revive Criminal Justice, 95-100 (Harvard University Press, 2017) (citing studies from several states). The Death Penalty Information Center website lists and describes a number of cost studies at <https://deathpenaltyinfo.org/costs-death-penalty> (last visited 11/15/2017).

death sentences during that period; and, as mentioned above, it has accounted for all of Tennessee's death sentences during the most recent 5-year period.¹¹²

Lincoln County is one of the many counties that stand at the other end of the spectrum. In Lincoln County over the past 39 years, there have been ten first-degree murder cases involving eleven defendants and 22 victims (an average of 2.2 victims per case). No death sentences were imposed, even in two mass murder cases. For example, in the recent case of State v. Moss,¹¹³ discussed in Part V above, the defendant and his co-defendant were each convicted of six counts of first-degree premeditated murder; the murders were egregious; but the defendants received life sentences, not death. According to the Rule 12 reports, in another Lincoln County case, State v. Jacob Shaffer, on July 22, 2011, the defendant, who had committed a prior murder in Alabama, was convicted of five counts of first-degree murder and was sentenced to LWOP, not death.

Indeed, in the entire Middle Grand Division, over the past 25 years, since January 1, 1992, only six defendants received sustained death sentences – a rate of only one case every four years, and no cases since February 2001.

There is a statistically significant disparity between the geographic distribution of first-degree murder cases, on the one hand, and the geographic distribution of capital cases, on the other. Mere geographic location of a case makes a difference, contributing an indisputable element of arbitrariness to the system.

¹¹² Appendix 2, *Chart of Tennessee Capital Trials* 8.

¹¹³ No. 2013-CR-63 (Tenn. Crim. App., Sep. 21, 2016).

(3) Timing and natural death

To the consternation of many, capital cases take years to work through the three tiers of review – from trial and direct appeal through post-conviction and federal habeas – and further litigation beyond that. Perhaps that is as it should be, given the heightened need for reliability in capital cases and the exceedingly high capital sentencing reversal rate due to trial errors, as discussed below. But the long duration of capital cases, combined with natural death rates among death row defendants, contributes an additional form of arbitrariness in determining which defendants are ultimately executed.

As of June 30, 2017, among the 56 surviving defendants on death row, the average length of time they had lived on death row was more than 21 years, and this average is increasing as the death row population ages while fewer new defendants are entering the population.¹¹⁴ Only ten new defendants were placed on death row during the most recent 10 years, equal in number to the ten surviving defendants who had been on death row for over 30 years. One surviving defendant had been on death row for more than 35 years. Mr. Miller's Report breaks down the surviving defendants' length of time on death row as follows:¹¹⁵

Length of Time on Death Row	Number of Defendants (as of 6/30/2017)
> 30 Years	10
20 – 30 Years	20
10 – 20 Years	16
< 10 Years	10

¹¹⁴ Appendix 1, *Miller Report* 17.

¹¹⁵ *Id.*, Table 20.

Of the six whom Tennessee has executed, their average length of time on death row was 20 years, and one had been on death row for close to 29 years.¹¹⁶

The length of time defendants serve on death row facing possible execution further diminishes any arguable penological purpose in capital punishment to the point of nothingness. With the passage of time, the force of deterrence disappears, and the meaning of retribution is lost.¹¹⁷

Moreover, during the 40-year period, 24 condemned defendants died of natural causes on death row. This means that, so far at least, a defendant with a sustained death sentence is four times more likely to die of natural causes than from an execution. Even if Tennessee hurriedly executes the approximately dozen death-sentenced defendants who have completed their “three tiers” of review,¹¹⁸ with the constantly aging death row population the number of natural deaths will continue to substantially exceed deaths by execution.

Given the way the system operates, a high percentage of natural deaths among the death row population is an actuarial fact affecting the carrying out of the death penalty.

Consequently, the timing of a case during the 40-year period, along with the health of the defendant, is an arbitrary factor determining not only whether a defendant will be sentenced to death, but also whether he will ever be executed. Furthermore, if a death-sentenced defendant

¹¹⁶ This includes Daryl Holton who waived his post-conviction proceedings and was executed in 1999 when he had been on death row only 8 years.

¹¹⁷ See Johnson v. Bredesen, 130 S.Ct. 541, 543 (2009) (Stevens, J., dissenting from denial of certiorari immediately before Tennessee’s execution of Cecil Johnson, who had been on death row for close to 29 years) (“[D]elaying an execution does not does not further public purposes of retribution and deterrence but only diminishes whatever possible benefit society might receive from petitioner’s death.”).

¹¹⁸ See note 92, *supra*.

is four times more likely to die of natural causes than by execution, then the death penalty loses any possible deterrent or retributive effect for that reason as well.

(4) Error rates

Of the 192 Tennessee defendants who received death sentences during the 40-year period, 106 defendants had seen their sentences or convictions vacated because of trial error, and only 86 defendants had sustained death sentences (of whom 56 were still living as of June 30, 2017) – and most of their cases are still under review.¹¹⁹ This means that during the 40-year period the death sentence reversal rate was 55%. Among those reversals, three defendants were exonerated of the crime, and a fourth was released upon the strength of new evidence that he was actually innocent.¹²⁰

If 55% of General Motors automobiles over the past 40 years had to be recalled because of manufacturing defects, consumers and shareholders would be outraged, the government would investigate, and the company certainly would go out of business. One of the fundamental principles under the Eighth Amendment is that our death penalty system must be reliable.¹²¹ With a 55% reversal rate, reliability is lacking.

¹¹⁹ During the 40-year period 24 defendants died of natural causes while their death sentences were pending. These are counted as “sustained” death sentences, along with the six defendants who were executed and the 56 defendants on death row as of June 30, 2017.

¹²⁰ See Appendix 1, *Miller Report*, at 16.

¹²¹ See, e.g., *Caldwell v. Mississippi*, 472 U.S. 320, 329 (1985) (“[M]any of the limits this Court has placed on the imposition of capital punishment are rooted in a concern that the sentencing process should facilitate the responsible and reliable exercise of sentencing discretion.”).

The existence of error in capital cases and the prospect of reversal is a random factor that introduces a substantial element of arbitrariness into the system. Two causes of error, ineffective assistance of counsel and prosecutorial misconduct, are discussed below.¹²²

(5) Quality of defense representation

We have identified 45 defendants whose death sentences or convictions were vacated by state or federal courts on grounds of ineffective assistance of counsel.¹²³ In other words, courts have found that 23% of the Tennessee defendants sentenced to death were deprived of their constitutional right to effective legal representation. This is an astounding figure, especially given the difficulty in proving both the “deficiency” and “prejudice” prongs under the Strickland standard for determining ineffective assistance of counsel under the Sixth Amendment.¹²⁴ In two additional cases affirmed by the courts, Governor Bredesen commuted the death sentences based, in part, on his determination that the defendants suffered from “grossly inadequate defense representation” at trial and/or during the post-conviction process.¹²⁵ These are findings of legal malpractice.¹²⁶ If a law firm were judicially found to have committed

¹²² Other reversible errors have included unconstitutional aggravators, erroneous evidentiary rulings, improper jury instructions, insufficient evidence to support the verdict, among other grounds for reversed. See The Tennessee Justice Project, Tennessee Death Penalty Cases Since 1977 (Oct 2007) (copy on file with the authors and available upon request).

¹²³ These cases are listed in Appendix 3, *List of Capital IAC Cases*.

¹²⁴ Strickland v. Washington, 466 U.S. 668 (1984). The difficulty of proving ineffective assistance of counsel is embodied in the following oft-quoted passage from Strickland: “Judicial scrutiny of counsel’s performance must be highly deferential.... Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel’s conduct falls within the wide range of professional assistance; ...” Id. at 689 .

¹²⁵ See Appendix 1, *Miller Report* 16.

¹²⁶ There are additional capital cases in which courts have vacated death sentences on grounds of ineffective assistance of counsel, only to be reversed on appeal. See, e.g., Abdur’Rahman v. Bell, 226 F.3d

malpractice in more than 23% of their cases over the past 40 years, the firm would incur substantial liability and dissolve. How can we tolerate a capital punishment system that yields these results?

The reasons for deficient defense representation in capital cases are not hard to locate. The problem begins with the general inadequacy of resources available to fund the defense in indigent cases. In a recently published report, the Tennessee Indigent Defense Task Force, appointed by the Tennessee Supreme Court, found:

There is a strongly held belief in the legal community that attorneys do not receive reasonable compensation when representing clients as counsel appointed by the State. The Task Force was repeatedly reminded that, in almost every trial situation, the attorney for the defendant will be paid less than every other person with the trial associated in a professional capacity – less than the testifying experts, the investigators, and interpreters.

Attorneys and judges from across the state, in a variety of different roles and stages of their careers, as well as other officials and experts in the field were overwhelmingly in favor of increasing the compensation for attorneys in appointed cases. Concern regarding compensation is not new.¹²⁷

According to the Task Force, there is a general consensus among lawyers and judges that “the current rates for paying certain experts ... are below market rate.”¹²⁸

Virtually all defendants in capital cases are indigent and must rely upon appointed counsel for their defense.¹²⁹ A typical capital defendant has no role in choosing the defense

696 (6th Cir. 2000) (affirming deficient performance finding, but reversing on the prejudice prong); Morris v. Carpenter, 802 F.3d 825 (6th Cir. 2015) (reversing by applying a strict standard of reviewing state court decisions). These cases illustrate differing judicial viewpoints on capital punishment, which is another arbitrary factor discussed below.

¹²⁷ Indigent Representation Task Force, Liberty & Justice for All: Providing Right to Counsel Services in Tennessee 35 (Apr2017) (the “Task Force Report”) (available at <http://tncourts.gov/sites/default/files/docs/irtfreportfinal.pdf>, last visited on 11/18/17).

¹²⁸ Id. at 52.

attorneys who will represent him. Capital cases are unique in many respects and place peculiar demands on the defense, involving mitigation investigation, extensive use of experts, “death qualification” and “life qualification” in jury selection, and the sentencing phase trial – the only kind of trial in the Tennessee criminal justice system in which a jury makes the sentencing decision. Thus, capital defense representation is regarded as a highly specialized area of law practice.¹³⁰ As noted by the American Bar Association:

[D]eath penalty cases have become so specialized that defense counsel have duties and functions definably different from those of counsel in ordinary criminal cases. ...

Every task ordinarily performed in the representation of a criminal defendant is more difficult and time-consuming when the defendant is facing execution. The responsibilities thrust upon defense counsel in a capital case carry with them psychological and emotional pressures unknown elsewhere in the law. In addition, defending a capital case is an intellectually rigorous enterprise, requiring command of the rules unique to capital litigation and constant vigilance in keeping abreast of new developments in a volatile and highly nuanced area of the law.¹³¹

Handling a death case is all consuming, requiring extraordinary hours and nerves. It is difficult for a private attorney to build and maintain a successful law practice while effectively

¹²⁹ See note 142 , *infra*.

¹³⁰ Tenn. S. Ct. R. 13, Section 3, acknowledges the specialized nature of capital defense representation by imposing special training requirements on appointed capital defense attorneys. This is the only area of law in which the Tennessee Supreme Court imposes such a requirement. Unfortunately, the Tennessee training requirements for capital defense attorneys is inadequate. *Cf.* William P. Redick, Jr., et al., Pretend Justice – Defense Representation in Tennessee Death Penalty Cases, Mem. L. Rev. 303, 328-33 (2008).

¹³¹ American Bar Association, Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (Revised Edition), 31 Hofstra L. Rev. 913, 923 (2003) (quoting Douglas W. Vick, Poorhouse Justice: Underfunded Indigent Defense Services and Arbitrary Death Sentences, 43 Buff. L. Rev. 329, 357-58 (1995)) (hereinafter referred to as the ABA Guidelines).

defending a capital case at billing rates that do not cover overhead.¹³² Most public defender offices have excessive caseloads without having to take on capital cases.¹³³ For these and other reasons, capital defense litigation is a surpassingly difficult, highly specialized field of law, requiring extensive training and experience and the right frame of mind – as well as sufficient time and resources. In Tennessee, especially with the sharp decline in the frequency of capital cases, few attorneys have acquired any meaningful experience in actually trying capital cases through the sentencing phase, and the training is sparse. Moreover, given the constraints on compensation and funds for expert services, Tennessee offers inadequate resources to properly defend a capital case, or to attract the better lawyers to the field.¹³⁴

On the other hand, some highly effective attorneys, willing to suffer the harsh economics and emotional stress of capital cases, do handle these kinds of cases, often with great success and at great personal and financial sacrifice.¹³⁵ Unfortunately, there simply are not enough of these kinds of lawyers to go around.

With a reversal rate based on inadequate defense representation exceeding 23%, Tennessee's experience confirms the conclusion reached by the American Bar Association several years ago:

¹³² See Tenn. S. Ct. R. 13, Section 3(k) (setting maximum billing rates for appointed counsel and funding for investigators and experts).

¹³³ See Task Force Report, *supra* note 126, at 40-43.

¹³⁴ For a thorough discussion of the problems with capital defense representation in Tennessee, see Pretend Justice, *supra* note 129.

¹³⁵ Effective capital defense representation requires defense counsel to expend their own funds to cover investigative services, because funding provided under Tenn. S. Ct. R. 13, Section 3(k) is grossly inadequate.

Indeed, problems with the quality of defense representation in death penalty cases have been so profound and pervasive that several Supreme Court Justices have openly expressed concern. Justice Ginsburg told a public audience that she had “yet to see a death case among the dozens coming to the Supreme Court on eve-of-execution stay applications in which the defendant was well represented at trial” and that “people who are well represented at trial do not get the death penalty.” Similarly, Justice O’Connor expressed concern that the system “may well be allowing some innocent defendants to be executed” and suggested that “[p]erhaps it’s time to look at minimum standards for appointed counsel in death cases and adequate compensation for appointed counsel when they are used.” As Justice Breyer has said, “the inadequacy of representation in capital cases” is “a fact that aggravates the other failings” of the death penalty system as a whole.¹³⁶

It goes without saying that the quality of defense representation can make a difference in the outcome of a case. A defendant’s life should not turn on his luck of the draw in the lawyers appointed to his case, but we know that it does – yet another source of arbitrariness in the system.

(6) Prosecutorial discretion and misconduct

Prosecutors vary in their attitude towards the death penalty. Some strongly pursue it, while others avoid it. In more sparsely populated districts, the costs and burdens of prosecuting a capital case may be prohibitive. In other districts (such as Shelby County), the political environment and other factors may encourage the aggressive pursuit of the death penalty.¹³⁷ In a 2004 report on the death penalty, Tennessee’s Comptroller of the Treasury concluded:

Prosecutors are not consistent in their pursuit of the death penalty. Some prosecutors interviewed in this study indicated that they seek the death penalty only in extreme

¹³⁶ ABA Guidelines, *supra* note 130, at 928-29 (internal citations omitted).

¹³⁷ Although we have not collected the data on this issue, it is well known among the defense bar that in Shelby County, in a significant percentage of capital trials juries do not return verdicts of first-degree murder, suggesting a tendency on the part of the prosecution to over-charge. In Davidson County, by contrast, in capital trials juries always return guilty verdicts for first-degree murder, although they also are known occasionally (especially in recent years) to return Life or LWOP sentences.

cases, or the “worst of the worst.” However, prosecutors in other jurisdictions make it a standard practice on every first-degree murder case that meets at least one aggravating factor. Still, surveys and interviews indicate that others use the death penalty as a bargaining chip to secure plea bargains for lesser sentences. Many prosecutors also indicated that they consider the wishes of the victim’s family when making decisions about the death penalty.¹³⁸

In 2001, the Office of the District Attorney General for Davidson County, Tennessee, issued a set of Guidelines that Office would follow in deciding whether to seek the death penalty in any case.¹³⁹ Unfortunately, other district attorneys have not followed suit as they resist any written limitations in the exercise of their prosecutorial discretion. There are no uniformly applied standards or procedures among the different district attorneys in deciding whether to seek capital punishment. The lack of uniform standards, combined with the differing attitudes towards the death penalty among the various district attorneys throughout the state, injects a substantial degree of arbitrariness in the sentencing system.

In addition to the vagaries of prosecutorial discretion, the occurrence of prosecutorial misconduct adds another element of capriciousness. Prosecutorial misconduct is a thorn in the flesh of the death penalty system that can influence outcomes.¹⁴⁰ Sixth Circuit Judge Gilbert Merritt has written: “[T]he greatest threat to justice and the Rule of Law in death penalty cases is state prosecutorial malfeasance – an old, widespread, and persistent habit. The Supreme

¹³⁸ Note 87, *supra*, at 13.

¹³⁹ See note 100, *supra*.

¹⁴⁰ For a discussion of the prevalence of prosecutorial misconduct throughout the country, see Innocence Project, [Prosecutorial Oversight: A National Dialogue in the Wake of *Connick v. Thompson*](https://www.innocenceproject.org/wp-content/uploads/2016/04/IP-Prosecutorial-Oversight-Report_09.pdf) (March 2016) (available at https://www.innocenceproject.org/wp-content/uploads/2016/04/IP-Prosecutorial-Oversight-Report_09.pdf, last visited on 11/14/17). In a recent study, the Fair Punishment Project found that the Shelby County district attorney’s office had the highest rate of prosecutorial misconduct findings in the nation. Fair Punishment Project, [The Recidivists: New Report on Rates of Prosecutorial Misconduct](http://fairpunishment.org/new-report-on-rates-of-prosecutorial-misconduct/) (July 2017) (available at <http://fairpunishment.org/new-report-on-rates-of-prosecutorial-misconduct/>, last visited on 11/14/2017).

Court and the lower federal courts are constantly confronted with these so-called *Brady* exculpatory and mitigating evidence cases. ... In capital cases, this malfeasance violates both due process and the Eighth Amendment.”¹⁴¹

We have located at least eight Tennessee capital cases in which either convictions or death sentences were set aside because of prosecutorial misconduct, and at least three other cases in which courts found prosecutorial misconduct but affirmed the death sentences notwithstanding.¹⁴² Presumably capital cases are handled by the most experienced and qualified prosecutors, so there is no excuse for this level of judicially found misconduct. And we can reasonably assume that undetected misconduct, potentially affecting convictions and sentences, has occurred in other cases. Suppressed evidence is not always discovered. Although inexcusable, some degree of misconduct is explainable, because prosecutors are elected officials, and capital cases are fraught with emotion and often highly publicized. These kinds of circumstances can lead to excessive zeal.

¹⁴¹ See Judge Gilbert Stroud Merritt, Jr., Prosecutorial Error in Death Penalty Cases, 76 Tenn. L. Rev. 677 (2008-2009) (citing Brady v. Maryland, 373 U.S. 83, 87 (1963); other internal citations omitted).

¹⁴² See State v. Buck, 670 S.W.2d 600 (Tenn. 1984) (improper closing argument and *Brady* violation); State v. Smith, 755 S.W.2d 757 (Tenn. 1988) (improper closing argument); State v. Bigbee, 885 S.W.2d 797 (Tenn. 1994) (improper closing argument); Johnson v. State, 38 S.W.3d 52 (Tenn. 2001) (*Brady* violation); Bates v. Bell, 402 F.3d 635 (6th Cir. 2005) (improper closing argument); House v. Bell, 2007 WL 4568444 (E.D. Tenn. 2007) (*Brady* violation); Christopher A. Davis v. State, Davidson County No. 96-B-866 (April 6, 2010) (*Brady* violation); Gdongalay Berry v. State, Davidson County No. 96-B-866 (April 6, 2010) (*Brady* violation). There are other cases of *Brady* violations which did not serve as grounds for reversal. See, e.g., Abdur’Rahman v. Bell, 999 F.Supp. 1073, 1088-1090 (1998) (*Brady* violations found not material, sentence vacated on IAC grounds, reversed by the 6th Cir.); Rimmer v. State, Shelby Co. 98-010134, 97-02817, 98-01003 (Oct. 12, 2012) (while the prosecution suppressed evidence, the conviction was vacated on IAC grounds); Thomas v. Westbrook, 849 F.3d 659 (6th Cir. 2017) (*Brady* violation).

(7) Defendants' impairments

From our personal experiences, combined with our research, we submit that the vast majority of capital defendants are impaired due to mental illness and/or intellectual disability.¹⁴³ On the one hand, these kinds of impairments can serve as powerful mitigating circumstances that reduce culpability in support of a life instead of death sentence, although too frequently defendants' impairments are inadequately investigated and presented to the sentencing jury by defense counsel. On the other hand, a defendant's impairments can create obstacles in effective defense representation and can further create, in subtle ways, an unfavorable appearance to the jury during the trial. Too often, a defendant's impairments can unjustly aggravate the jurors' and the court's attitude towards the defendant, which is another factor contributing to the arbitrariness of the system.

(i) Mental illness

Mental illness is rampant among criminal defendants. A study published in 2006 by the United States Department of Justice, Bureau of Justice Statistics, found that, nationwide, 56% of state prisoners, 45% of federal prisoners, and 64% of those incarcerated in local jails, suffered from a serious mental health problem.¹⁴⁴ Other studies indicate that the percentage of mentally

¹⁴³ Poverty is another cause of mental impairment, which unfortunately is not discussed in the case law. According to a 2007 report, every Tennessee death-sentenced defendant who was tried since early 1990 was declared indigent at the time of trial and had to rely on court-appointed defense counsel; and a large majority of those who were tried before then were also declared indigent. The Tennessee Justice Project, Tennessee Death Penalty Cases Since 1977, note 120 *supra*. There is a growing body of social science research demonstrating the adverse psychological and cognitive effects of poverty. See, e.g., William Julius Wilson, When Work Disappears (Vintage Books, 1997); Sendhil Mullainathan & Eldar Shafir, Scarcity: The New Science of Having Less and How It Defines Our Lives (Picador, 2013).

¹⁴⁴ Doris J. James and Lauren E. Glaze, Mental Health Problems of Prison and Jail Inmates (Bureau of Justice Statistics Special Report, September 2006) (found at <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>, last visited 11/15/2017).

ill inmates is particularly high on death row. For example, one study found “that of the 28 people executed in 2015, seven suffered from serious mental illness, and another seven suffered from serious intellectual impairment or brain injury.”¹⁴⁵ Another study concluded: “Over half (fifty-four) of the last one hundred executed offenders had been diagnosed with or displayed symptoms of severe mental illness.”¹⁴⁶

From examining Tennessee capital post-conviction cases, where evidence of mental illness among death-sentenced defendants is often investigated and developed in support of claims of ineffective assistance of counsel, we can conclude that a significant number of defendants on Tennessee’s death row suffer from severe mental disorders. The following cases illustrate the issue.

Cooper v. State,¹⁴⁷ was the first Tennessee case in which a death sentence was vacated on grounds of ineffective assistance of counsel. Trial counsel inadequately investigated the defendant’s social history and mental condition. In post-conviction, expert testimony was presented that the defendant suffered from an affective disorder with recurrent major depression over long periods of time, and at the time of the homicide his condition had deteriorated to a full active phase of a major depressive episode.

¹⁴⁵ Mental Health America, *Position Statement 54: Death Penalty and People with Mental Illnesses*, n. 9 (June 14, 2016) (citing Death Penalty Information Center, *Report: 75% of 2015 Executions Raised Serious Concerns About Mental Health or Innocence*, archived at <https://perma-archives.org/warc/QQJ8-DDQD/http://www.deathpenaltyinfo.org/category/categories/issues/mental-illness> (last visited 12/15/17)).

¹⁴⁶ *Id.* (citing Robert J. Smith, et al., *The Failure of Mitigation?*, 65 *Hastings L.J.* 1221, 1245 (2014)).

¹⁴⁷ 847 S.W.2d 521 (Tenn. Crim. App. 1992).

In Wilcoxson v. State,¹⁴⁸ the defendant had been diagnosed at different times with schizophrenia, schizo-affective disorder, and bipolar disorder. The Court of Criminal Appeals found trial counsel's performance to be deficient in failing to raise the issue of the defendant's competency to stand trial, and in failing to present evidence of the defendant's psychiatric problems to the jury as mitigating evidence in sentencing. While the Court found that post-conviction counsel failed to carry their burden of retrospectively proving the defendant's incompetency to stand trial, the Court vacated the death sentence on grounds of ineffective assistance of counsel for their failure to present social history and mental health mitigation evidence at sentencing.

In Taylor v. State,¹⁴⁹ the post-conviction court set aside the defendant's conviction and death sentence on the ground that his trial counsel were deficient in their investigation and presentation of defendant's psychiatric disorders pre-trial, in connection with his competency to stand trial, and during the trial, in connection with his insanity defense and his sentencing hearing. The evidence included an assessment by a forensic psychiatrist for the state, who was not discovered by defense counsel and therefore did not testify at trial, that the defendant was psychotic.

In Carter v. Bell,¹⁵⁰ according to expert testimony presented in federal habeas, the defendant suffered from psychotic symptoms involving hallucinations, paranoid delusions and thought disorders consistent with paranoid schizophrenia or an organic delusional disorder. His death sentence was vacated on grounds of ineffective assistance

¹⁴⁸ 22 S.W.3d 289 (Tenn. Crim. App. 1999).

¹⁴⁹ 1999 WL 512149 (Tenn. Crim. App. 1999).

¹⁵⁰ 218 F.3d 581 (6th Cir. 2000).

of counsel because his trial lawyers failed to investigate his social and psychiatric history.

In Harries v. Bell,¹⁵¹ the federal habeas court found that the defendant's trial counsel failed to investigate and develop evidence of the defendant's abusive childhood background; his frontal lobe brain damage, which impaired his mental executive functions; and his mental illness, which had been variously diagnosed as bipolar mood disorder, anxiety disorder, and post-traumatic stress disorder. The federal court vacated the death sentence on the basis of ineffective assistance of counsel.

Adverse childhood experiences and severe mental illness can profoundly affect cognition, judgment, impulse control, mood and decision-making. Unfortunately, these cases are typical in the death penalty arena.¹⁵² A defendant's mental illness, if not fully realized by defense counsel, and if not properly presented and explained to the jury at trial, can prejudice the defendant both in his relationship with his defense counsel, and in his demeanor before the jury.¹⁵³

Regarding the effect of mental illness on the attorney-client relationship, the ABA

Guidelines explain:

Many capital defendants are ... severely impaired in ways that make effective communication difficult: they may have mental illnesses or personality disorders that make them highly distrustful or impair their reasoning and perception of reality; they

¹⁵¹ 417 F.3d 631 (6th Cir. 2005).

¹⁵² One of the authors, Mr. MacLean, has worked on a number of capital cases in state post-conviction and federal habeas proceedings. In every case he has worked on, the defendant has been diagnosed with a severe mental disorder.

¹⁵³ For a discussion of the potential effects of a defendant's impairments on his legal representation, see Bradley A. MacLean, Effective Capital Defense Representation and the Difficult Client, 76 Tenn. L. Rev. 661 (2009).

may be mentally retarded or have other cognitive impairments that affect their judgment and understanding; they may be depressed and even suicidal; or they may be in complete denial in the face of overwhelming evidence. In fact, the prevalence of mental illness and impaired reasoning is so high in the capital defendant population that “[i]t must be assumed that the client is emotionally and intellectually impaired.”¹⁵⁴

Regarding the potential effect of a defendant’s mental illness at trial, Justice Kennedy’s comment in Riggins v. Nevada,¹⁵⁵ involving the side-effects of antipsychotic medication in a capital case, is instructive:

It is a fundamental assumption of the adversary system that the trier of fact observes the accused throughout the trial, while the accused is either on the stand or sitting at the defense table. This assumption derives from the right to be present at trial, which in turn derives from the right to testify and rights under the Confrontation Clause. At all stages of the proceedings, the defendant’s behavior, manner, facial expressions, and emotional responses, or their absence, combine to make an overall impression on the trier of fact, an impression that can have a powerful influence on the outcome of the trial. If the defendant takes the stand, ..., his demeanor can have a great bearing on his credibility and persuasiveness, and on the degree to which he evokes sympathy. The defendant’s demeanor may also be relevant to his confrontation rights.¹⁵⁶

(ii) Intellectual disability

In Atkins v. Virginia, decided in 2000,¹⁵⁷ the United States Supreme Court declared that if a defendant fits a proper definition of intellectual disability (or mental retardation, as the term was used at the time), he is ineligible for the death penalty under the Eighth Amendment Cruel and Unusual Punishments Clause. The Court left it to the states to formulate an appropriate definition and procedure for determining intellectual disability.

¹⁵⁴ ABA Guidelines, *supra* note 130, at 1007-08 (quoting Rick Kammen & Lee Norton, Plea Agreements: Working with Capital Defendants, *The Advocate*, Mar 2000, at 31).

¹⁵⁵ Riggins v. Nevada, 504 U.S. 127 (1992).

¹⁵⁶ *Id.* at 142.

¹⁵⁷ Atkins v. Virginia, 536 U.S. 304 (2002); Hall v. Florida, 572 U.S. ___, 134 S.Ct. 1986 (2014).

Before Atkins was decided, in 1991 the Tennessee General Assembly enacted Tenn. Code Ann. § 39-13-203 to exempt from the death penalty those defendants who fit the statutory definition of “mental retardation.” The statute has since been amended to change the label from “retardation” to “intellectual disability,” but the three statutory elements to the definition remain the same: “(1) significantly subaverage general intellectual functioning as evidenced by a functional intelligence quotient (I.Q.) of seventy (70) or below; (2) Deficits in adaptive behavior; and (3) The intellectual disability must have been manifested during the developmental period, or by eighteen (18) years of age.”¹⁵⁸ Many Tennessee capital defendants have low intellectual functioning, and a number of them can make viable arguments that they fit within the statutory definition of intellectual disability and therefore should be exempt from capital punishment, although often they do not prevail on this issue.¹⁵⁹

A defendant’s low intellectual functioning can lead to two additional avenues of arbitrariness in Tennessee’s capital punishment system.

¹⁵⁸ State v. Pruitt, 415 S.W.3d 180, 202 (Tenn. 2013) (quoting Tenn. Code Ann. § 39-13-203(a). *See also* Van Tran v. Colson, 764 F.3d 594, 605 (6th Cir. 2014).

¹⁵⁹ A number of capital defendants have reported I.Q.’s in the borderline range of intellectual disability, even if many of them did not qualify for the intellectual disability exemption. *See, e.g., Nesbit v. State*, 452 S.W.3d 779, 794 (Tenn. 2014) (reported I.Q. of 74); State v. Pruitt, 415 S.W.3d 180, 202 (Tenn. 2013) (reported I.Q. of 66 and 68); Keen v. State, 398 S.W.3d 594, 617 (Tenn. 2012) (Wade, J., dissenting) (reported I.Q. of 67); Cribbs v. State, 2009 WL 1905454, at *17 (Tenn. Crim. App. 2009) (reported I.Q. of 73); State v. Strode, 232 S.W.3d 1, 5 (Tenn. 2007) (reported I.Q. of 69); State v. Rice, 184 S.W.3d 646, 661 (Tenn. 2006) (reported I.Q. of 79); Howell v. State, 151 S.W.3d 450, 459 (Tenn. 2004) (reported I.Q. of between 62 and 73, with a high score of 91); State v. Carter, 114 S.W.3d 895, 900 (Tenn. 2003) (reported I.Q. of 78); State v. Dellinger, 79 S.W.3d 458, 465-66 (Tenn. 2002) (reported I.Q. of between 72 and 83); Van Tran v. State, 66 S.W.3d 790, 793 (Tenn. 2001) (reported I.Q. of between 65 and 72); State v. Blanton, 975 S.W.2d 269, 278 (Tenn. 1998) (reported I.Q. of 74); State v. Smith, 893 S.W.2d 908, 912 (Tenn. 1994) (reported I.Q. ranging from 54 to 88); Cooper v. State, 847 S.W.2d 521, 525 (Tenn. Crim. App. 1992) (I.Q. in the “sixties and seventies”); State v. Black, 815 S.W.2d 166, 174 (Tenn. 1991) (reported I.Q. of 76); State v. Payne, 791 S.W.2d 10, 17 (Tenn. 1990) (reported I.Q. of 78 to 82).

First, the statutory category of intellectual disability is arbitrarily and vaguely defined. Intellectual disability is determined on a multi-dimensional set of sliding or graduated scales, and the condition can manifest itself in a multitude of ways. How are we to measure those scales, and how are we to draw a fine line in identifying those who fall within the category of defendants who shall be exempted from capital punishment? For example, what is the practical difference between a functional I.Q. of 71 versus 69? In many cases, the defendant has been administered several I.Q. tests at different points in his life yielding different scores. How are those scores to be reconciled? Moreover, the measure of each scale cannot be ascertained strictly from raw test scores but requires the application of an expert witness's "clinical judgment."¹⁶⁰ In a battle of testifying experts, whose clinical judgment are we to trust? As the Tennessee Supreme Court has acknowledged, "Without question, mental retardation is a difficult condition to define. The U.S. Supreme Court, in Atkins v. Virginia, admitted as much, stating: '[t]o the extent there is serious disagreement about the execution of the mentally retarded offenders, it is in determining which offenders are in fact retarded.'"¹⁶¹ With reference to the I.Q. element of the statutory definition, the Howell Court went on to say, "The statute does not provide a clear directive regarding which particular test or testing method is to be used."¹⁶² Consequently, the proper interpretation of the definition, and its application to

¹⁶⁰ In Coleman v. State, 341 S.W.3d 221, 221 (Tenn. 2011), the Court held that the statutory definition "does not require that raw scores on I.Q. tests be accepted at their face value and [] the courts may consider competent expert testimony showing that a test score does not accurately reflect a person's functional I.Q."

¹⁶¹ Howell v. State, 151 S.W.3d, at 547 (quoting Atkins, 536 U.S., at 317).

¹⁶² Id. at 459.

specific cases, has generated considerable litigation.¹⁶³ These cases involve a battle of the experts, and whether a defendant is found to be intellectually disabled under the statutory definition and therefore exempt from the death penalty may well depend on the quality of his defense counsel, the personality and persuasiveness of the expert testimony, and the disposition and receptivity of the judge making the ultimate determination. In close cases, the issue has a markedly subjective aspect, leaving room for arbitrary decision-making.

The second factor contributing to arbitrariness relates to one of the reasons for disqualifying the intellectually disabled from capital punishment – their reduced capacity to assist in their defense. In Atkins, the United States Supreme Court explained:

The reduced capacity of mentally retarded offenders provides a second justification for a categorical rule making such offenders ineligible for the death penalty. The risk “that the death penalty will be imposed in spite of factors which may call for a less severe penalty” is enhanced, not only by the possibility of false confessions, but also by the lesser ability of mentally retarded defendants to make a persuasive showing of mitigation in the face of prosecutorial evidence of one or more aggravating factors. Mentally retarded defendants may be less able to give meaningful assistance to their counsel and are typically poor witnesses, and their demeanor may create an unwarranted impression of lack of remorse for their crimes. ... [M]oreover, reliance on mental retardation as a mitigating factor can be a two-edged sword that may enhance the likelihood that the aggravating factor of future dangerousness will be found by the jury. Mentally retarded defendants in the aggregate face a special risk of wrongful execution.¹⁶⁴

In this respect, intellectual disability and mental illness similarly affect the reliability of capital sentencing, by impairing, through no fault of the defendant, both the defendant’s

¹⁶³ See, e.g., Black v. Carpenter, 866 F.3d 734 (6th Cir. 2017) (reflecting years of litigation in a case involving a broad range of I.Q. scores); Van Tran v. Colson, 764 F.3d 594 (6th Cir. 2014) (after years of litigation, vacating the state court’s judgment and ruling that defendant was intellectually disabled and therefore exempt from execution); Coleman v. State, 341 S.W.3d 221 (Tenn. 2011) (discussing a line of Tennessee intellectual disability cases illustrating the Court’s struggle in interpreting the meaning of the statutory elements).

¹⁶⁴ 536 U.S. at 320-21.

capacity to work with defense counsel and the defendant's capacity to present himself to the court and the jury in a favorable way.

With regard to sentencing, this problem may be partially resolved when the defendant is found to fall within the statutory definition of intellectual disability. But there are several other cases in which the defendant's intellectual functioning is compromised but the defendant is not declared intellectually disabled. Too often it is simply a matter of degree and subjective evaluation by the judge in the face of conflicting expert testimony. Even if a defendant is held not to be exempt from capital punishment, his reduced intellectual functioning can nevertheless impair his capacity to assist in his defense and to present himself in the courtroom, which contributes to the arbitrariness of the system.

(8) Race

African Americans represent 17% of Tennessee's population, according to the U.S. Census Bureau, but they represent 44% of Tennessee's current death row population.¹⁶⁵ (Only 51% of the current death row population is non-Hispanic White.) While a number of factors may account for this discrepancy, it cannot be ignored, and it suggests a pernicious form of arbitrariness.

No one can doubt the existence of implicit racial bias in our criminal justice system, and this bias inevitably infects the capital punishment system.¹⁶⁶ The exercise of discretion

¹⁶⁵ Appendix 1, *Miller Report*, at 10.

¹⁶⁶ For general discussions of implicit racial bias, *see, e.g.*, Christine Jolls & Cass R. Sunstein, The Law of Implicit Bias, 94 Cal. L. Rev. 969 (2006); Jennifer L. Eberhardt, *et al.*, Seeing Black: Race, Crime, and Visual Processing, 87 Journal of Personality and Social Psychology 876 (2004). The presence of racial bias in our criminal justice system – whether explicit or implicit – has been well established. *See, e.g.*, Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (The New Press 2010); Samuel R. Gross, *et al.*, Race and Wrongful Convictions (National Registry of Exonerations, Mar 7, 2017). *See also* United States Sentencing Commission, Demographic Differences in Sentencing (Nov

permeates a capital case – from the time of arrest through the charging decision, the district attorney’s decision to seek the death penalty, innumerable decisions by all of the parties and the judiciary throughout the proceedings, and the ultimate jury decision of life versus death. Where there is discretion, there is room for implicit racial bias.

In 1997 the Tennessee Supreme Court’s Commission on Racial and Ethnic Fairness issued its Final Report at the conclusion of its two-year review of the State’s judicial system.¹⁶⁷ Among other things, the Commission concluded that while no “explicit manifestations of racial bias abound [in the Tennessee judicial system] ..., institutionalized bias is relentlessly at work.”¹⁶⁸ While our society continually attempts to eradicate the effects of implicit bias from our institutions, there is no indication that it has been eliminated from our capital sentencing system.

The American Bar Association commissioned a study of racial bias in Tennessee’s capital punishment system that was published in 2007.¹⁶⁹ The study concluded that the race of the

2017) (based on several studies, concluding that “black male offenders continue[] to receive longer sentences than similarly situated Black offenders” by a substantial margin) (available at <https://www.ussc.gov/research/research-reports/demographic-differences-sentencing>, last visited 11/18/2017).

¹⁶⁷ Final Report of the Tennessee Commission on Racial and Ethnic Fairness to the Supreme Court of Tennessee (1997) (available at http://www.tsc.state.tn.us/sites/default/files/docs/report_from_commission_on_racial_ethnic_fairness.pdf, last visited 11/17/17).

¹⁶⁸ Id. at 5.

¹⁶⁹ Glenn Pierce, at al., Race and Death Sentencing in Tennessee: 1981-2000, Appendix 1 to The Tennessee Death Penalty Assessment Report, note 181, *infra*.

defendant and the victim influences who receives the death sentence, “even after the level of homicide aggravation is statistically controlled.”¹⁷⁰

The recent trend regarding race is disturbing. Over the past ten years, from July 1, 2007 to June 30, 2017, there were nine trials resulting in new death sentences; in all but one of those cases (*i.e.*, in 89% of the cases), the defendant was African American.¹⁷¹ It appears that as the death penalty becomes less frequently imposed, in an increasing percentage of cases it is imposed on African Americans.

(9) Judicial disparity

While judges are presumed to be objective and impartial, from our experience in capital cases we know that different judges view these cases differently, and the predisposition of a judge can influence his or her decisions in capital cases. We can begin by looking at the deeply divided death penalty opinions issued by the Supreme Court on a yearly basis, from the nine differing opinions issued in Furman v. Georgia in 1972 through the five conflicting opinions issued in Glossip v. Gross in 2015,¹⁷² and in cases since then. For example, Justices Brennan and Marshall categorically opposed the death penalty and always voted to reverse or vacate death sentences, while Justices Rehnquist and Scalia consistently voted to uphold death sentences, and this split continues with the current members of the Court.

We see similarly opposing views expressed on the United States Court of Appeals for the Sixth Circuit. These judges, persons of integrity and intelligence, acting in good faith, and looking at the same cases involving the same legal principles, often come to opposing

¹⁷⁰ Id. at Q.

¹⁷¹ See Appendix 2, *Chart of Tennessee Capital Trials*. These numbers exclude retrials.

¹⁷² 576 U.S. ___, 135 S.Ct. 2726 (2015).

conclusions about what the proper outcomes should be. Among the defense bar, and probably within the Attorney General's office, we know that in many federal habeas cases, the judge or panel that we draw will likely determine the outcome of the case.

Our review of the voting records of Sixth Circuit judges in capital habeas cases arising out of Tennessee emphasizes the point. The *Chart of Sixth Circuit Voting in Tennessee Capital Habeas Cases*, attached as Appendix 4, breaks down the Sixth Circuit votes according to political party affiliation – *i.e.*, according to whether the judges were appointed by Republican or Democrat administrations. We found 37 Sixth Circuit decisions in which the Court finally disposed of capital habeas cases from Tennessee. In those cases, Republican-appointed judges cast 88% of their votes to deny relief and only 12% of their votes to grant relief. By contrast, Democrat-appointed judges cast only 22% of their votes to deny relief, and 78% of their votes to grant relief. In other words, the voting records for Republican-appointed judges were the opposite from the voting records for Democrat-appointed judges; Republican-appointed judges were significantly more favorable to the prosecution, whereas Democrat-appointed judges were significantly more favorable to the defense.¹⁷³

The political skewing of the voting records is greater in the twenty cases that were decided by split votes, which represent a majority of the Sixth Circuit cases. In those cases, Republican-appointees voted against the defendant 93% of the time, and for defendant only 7% of the time; whereas Democrat-appointees voted exactly the opposite way - against the defendant only 7% of the time, and for the defendant 93% of the time. Similarly, in the six Tennessee capital cases that were decided by the full *en banc* Court, Republican-appointed judges cast 91% of their votes against the defendants, whereas Democrat-appointed judges cast

¹⁷³ Appendix 4, *Chart of Sixth Circuit Voting in Tennessee Capital Habeas Cases*, at. 1-5.

97% of their votes in favor of the defendants. In five of the six *en banc* cases, the Court's decision was determined strictly along party lines.¹⁷⁴

Without pointing to individual members of the Tennessee judiciary, it is reasonable to believe that different state court judges also differ in their exercise of judgment in these kinds of cases. All practicing attorneys know that a judge's worldview can shape his or her attitude towards the death penalty, and towards criminal defendants and the criminal justice system in general. These attitudes can affect decisions ranging from the final judgment in a post-conviction case to rulings on evidentiary and procedural issues during the course of pre-trial and trial proceedings.

That is to be expected in the highly controversial and emotionally charged arena of capital punishment. It is human nature. Everyone approaches these kinds of issues with certain cognitive biases shaped by differing worldviews.¹⁷⁵ Trial judges are elected officials, and we know from the experience of Justice Penny White that the politics of the death penalty can even influence the Court's composition.¹⁷⁶ It goes without saying that liberal judges tend to

¹⁷⁴ Id. at 5-6.

¹⁷⁵ For interesting discussions of how different cognitive styles deal with controversial social issues in different ways, *see, e.g.*, Richard A. Posner, How Judges Think (Harvard University Press) (2008); Adam Benforado & Jon Hanson, The Great Attributional Divide: How Divergent Views of Human Behavior Are Shaping Legal Policy, 57 *Emory L. Rev.* 312 (2008); and Dan M. Kahan & Donald Bramam, Cultural Cognition and Public Policy, 24 *Yale Law & Policy Rev.* 147 (2006). For studies of judicial bias based on differing political perspectives, *see, e.g.*, Max M. Schanzenbach and Emerson H. Tiller, Reviewing the Sentencing Guidelines: Judicial Politics, Empirical Evidence, and Reform, 75 *U. Chi. L. Rev.* 715 (2008); Chris Guthrie, Misjudging, 7 *Nev. L. J.* 420 (2007).

¹⁷⁶ In 1996 Justice White became the only Tennessee Supreme Court Justice who was removed from office in a retention election. She was the political victim of a campaign to remove her from the Court because of her concurring vote to reverse the death sentence in a single death penalty case – *State v. Odom*, 928 S.W.2d 18 (Tenn. 1996). Justice White's experience was discussed in a recent study regarding the effects of political judicial elections on judicial decision-making in capital cases. *See Reuters Investigates, Uneven Justice: In states with elected high court judges, a harder line on capital*

be somewhat more sympathetic to defense arguments, and conservative judges tend to be somewhat more sympathetic to prosecution arguments. This is not necessarily a criticism, for in our society diversity of viewpoint is a good thing. But in highly charged death penalty cases, where divergent points of view are more likely to come to the fore, and where arbitrariness is not to be tolerated, differences in judicial disposition contribute to the capriciousness of the capital punishment system. From our study, this is obviously true to a remarkable degree in the federal court system, and there is good reason to believe it is true at least to some degree in the state court system as well.

C. Comparative Disproportionality: Single vs. Multi-Murder Cases

It is beyond the scope of this article to identify the many extremely egregious cases resulting in Life or LWOP sentences, or to compare them to the many significantly less egregious cases leading to death sentences or executions. But the statistics concerning one simple metric make the point – number of victims. Mr. Miller has identified 339 defendants convicted of multiple counts of first-degree murder since 1977. Of those, only 33 (or 10%) received sustained death sentences, whereas 306 (or 90%) received Life or LWOP.¹⁷⁷ Several in the Life/LWOP category were convicted of three or more murders. These numbers can be broken down as follows:

punishment (Sept 22, 2015) (found at <http://www.reuters.com/investigates/special-report/usa-deathpenalty-judges/>, last visited on 11/15/2017).

¹⁷⁷ Appendix 1, *Miller Report*, at 12.

Multi-Murder Cases - Breakdown By Number of Victims & Sentences¹⁷⁸

Number of Victims	Life or LWOP Sentences	Sustained Death Sentences	Totals
2	259 (92% of 2-Victim cases)	24 (8% of 2-Victim cases)	283
3	32 (82% of 3-Victim cases)	7 (18% of 3-Victim cases)	39
4	11 (92% of 4-Victim cases)	1 (8% of 4-Victim cases)	12
5	1 (100% of 5-Victim cases)	0 (0% of 5-Victim cases)	1
6	3 (75% of 6-Victim cases)	1 (25% of 6-Victim cases)	4
TOTALS	306 (90% of Multi-Murder Cases)	33 (10% of Multi-Murder Cases)	339

Virtually all of these defendants were found guilty of premeditated murder (as opposed to felony murder). Thus, from these statistics, if a defendant deliberately killed two or more victims, he was nine times more likely to be sentenced to Life or LWOP than death; and the sentence he received most likely depended on extraneous factors such as the geographic location of the crime, the prosecutor, quality of defense counsel, timing of the case, and the other factors described above.

On the other hand, compared to the 306 multiple murder defendants who were sentenced to life or LWOP instead of death, a majority of the defendants with sustained death

¹⁷⁸ Table 13A, *Miller Report*.

sentences (53 out of a total of 86, or 62%) committed single murders, and several of them were found guilty of felony murder and not premeditated murder.¹⁷⁹

This comparative disproportionality demonstrates a lack of rationality in Tennessee's system. The evidence of such inconsistent results, of sentencing decisions that cannot be explained solely on the basis of individual culpability, indicates that the system operates arbitrarily, contrary to the requirements of the Eighth Amendment.

VII. CONCLUSION

A. U.S. Supreme Court Dissenting Opinions

We are not alone in claiming that the historical record shows that capital sentencing systems like Tennessee's fail Furman's commandment against arbitrariness and capriciousness. The death penalty has hung by a thin thread since it was reinstated in Gregg. The vote to uphold the guided discretion scheme in Gregg was seven-to-two. Justices Powell, Blackmun and Stevens were among the seven in the majority. However, after years of observing the application of guided discretion sentencing schemes in the real world, each of these Justices changed his mind. These three Justices, combined with the dissenting Justices in Gregg,¹⁸⁰ would have constituted a majority going the other way.

¹⁷⁹ We have identified ten cases resulting in sustained death sentences in which the defendants were convicted of felony murder and not premeditated murder: State v. Barnes, 703 S.W.2d 611 (Tenn. 1985); State v. Middlebrooks, 840 S.W.2d 317 (Tenn. 1992); State v. Howell, 868 S.W.2d 238 (Tenn. 1993); State v. Nichols, 877 S.W.2d 722 (Tenn. 1994); State v. Cazes, 875 S.W.2d 253 (Tenn. 1994); State v. Carter, 988 S.W.2d 145 (Tenn. 1999); State v. Chalmers, 28 S.W.3d 913 (Tenn. 2000); State v. Powers, 101S.W.3d 383 (Tenn. 2003); State v. Pruitt, 415 S.W.3d 180 (Tenn. 2013); State v. Bell, 480 S.W.3d 486 (Tenn. 2015).

¹⁸⁰ Justices Brennan and Marshall cast the dissenting votes.

Justice Powell dissented in Furman, voting to uphold discretionary death penalty statutes, and also authored the Court's decision in McCleskey v. Kemp, 481 U.S. 279 (1987), which upheld Georgia's death penalty against a challenge based upon demonstrated racial bias. Shortly after his retirement, however, his biographer published the following colloquy:

In a conversation with the author [John C. Jeffries Jr.] in the summer of 1991, Powell was asked if he would change his vote in any case:

"Yes, *McCleskey v. Kemp*."

"Do you mean you would now accept the argument from statistics?"

"No, I would vote the other way in any capital case."

"In *any* capital case?"

"Yes."

"Even in *Furman v. Georgia*?"

"Yes, I have come to think that capital punishment should be abolished."

Capital punishment, Powell added, "serves no useful purpose." The United States was "unique among the industrialized nations of the West in maintaining the death penalty," and it was enforced so rarely that it could not deter.¹⁸¹

Justice Blackmun, who also dissented in Furman and voted to uphold discretionary sentencing statutes, and voted with the majority in Gregg, first expressed his changed view in 1992:

Twenty years have passed since this Court declared that the death penalty must be imposed fairly, and with reasonable consistency, or not at all, see Furman v. Georgia, 408 U.S. 238 (1972), and, despite the effort of the States and the Court to devise legal formulas and procedural rules to meet this daunting challenge, the death penalty remains fraught with arbitrariness, discrimination, caprice, and mistake.¹⁸²

Justice Stevens, who was relatively new to the Court when he joined the Gregg majority, followed suit fourteen years later in 2008:

¹⁸¹ John C. Jeffries Jr., Justice Lewis F. Powell Jr.: A Biography, at 451-52 (Charles Scribner's Sons, 1994).

¹⁸² Callins v. Collins, 510 U.S. 1141, 1143 (1994) (Blackmun, J., dissenting).

I have relied on my own experience in reaching the conclusion that the imposition of the death penalty represents “the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes. A penalty with such negligible returns to the State [is] patently excessive and cruel and unusual punishment violative of the Eighth Amendment.” Furman, 408 U.S. at 312 (White, J., concurring).¹⁸³

With reference to current Justices who were not on the Court when Gregg was decided, in the case of Glossip v. Gross, Justices Breyer and Ginsburg recently looked at the historical record. In a careful analysis, they explained why a system such as Tennessee’s can no longer be sustained. They summarized their analysis as follows:

In 1976, the Court thought that the constitutional infirmities in the death penalty could be healed; the Court in effect delegated significant responsibility to the States to develop procedures that would protect against those constitutional problems. Almost 40 years of studies, surveys, and experience strongly indicate, however, that this effort has failed. Today’s administration of the death penalty involves three fundamental constitutional defects: (1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty’s penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use.¹⁸⁴

The Glossip dissent is significant because it represents a shifting view and eloquently reflects on the failed effort over forty years to apply guided discretion capital sentencing schemes that were supposed to address the problem of arbitrariness. The historical record in Tennessee, as well as in other states that have attempted to maintain capital sentencing systems, speaks to how this kind of system simply has not been able to accomplish that goal.

B. Opinions from the ALI and the ABA Tennessee Assessment Team

The opinions of the dissenting Supreme Court Justices are echoed by other leading authorities.

¹⁸³ Baze v. Rees, 128 S.Ct. 1520, 1549-51 (2008) (Stevens, J., concurring in result).

¹⁸⁴ Glossip v. Gross, 576 U.S. ___, ___, 135 S.Ct. 2726, ___ (2015) (Breyer, J., dissenting).

As mentioned above, Tennessee’s capital punishment scheme was patterned after the Georgia scheme approved in Gregg, which in turn was patterned in part after the American Law Institute Model Penal Code §210.6 (1962). In 2009, the American Law Institute (ALI) withdrew §210.6 from the Model Penal Code because of its concerns about whether death penalty systems can be made fair.¹⁸⁵ In recommending withdrawal of this section from the Model Penal Code, the ALI Council issued a Report to its membership stating, “Section 201.6 was an untested innovation in 1962. We now have decades of experience with death-penalty systems modeled on it.... [O]n the whole the section has not withstood the tests of time and experience.”¹⁸⁶ The Report went on to describe the ALI Council’s reasons for its concerns about fairness in death penalty systems, as follows:

These [concerns] include (a) the tension between clear statutory identification of which murder should command the death penalty and the constitutional requirement of individualized determination; (b) the difficulty of limiting the list of aggravating factors so that they do not cover (as they do in a number of state statutes now) a large percentage of murderers; (c) the near impossibility of addressing by legal rule the conscious or unconscious racial bias within the criminal-justice system that has resulted in statistical disparity in death sentences based on the race of the victim; (d) the enormous economic costs of administering a death-penalty regime, combined with studies showing that the legal representation provided to some criminal defendants is inadequate; (e) the likelihood, especially given the availability and reliability of DNA testing, that some persons sentenced to death will later, and perhaps too late, be shown to not have committed the crime for which they were sentenced; and (f) the politicization of judicial elections, where – even though nearly all state judges perform their tasks conscientiously – candidate statements of personal views on the death penalty and incumbent judges’ actions in death-penalty cases become campaign issues.¹⁸⁷

¹⁸⁵ See American Law Institute, Report of the Council to the Membership of the American Law Institute on the Matter of the Death Penalty (April 15, 2009) (available at https://www.ali.org/media/filer_public/3f/ae/3fae71f1-0b2b-4591-ae5c-5870ce5975c6/capital_punishment_web.pdf), last visited 11/17/17).

¹⁸⁶ Id. at 4.

¹⁸⁷ Id. at 5. The American Law Institute reported an “overwhelming[]” vote for withdrawal of §210.6. <https://www.ali.org/publications/show/model-penal-code>.

In a similar vein and focusing on Tennessee, the American Bar Association appointed a Tennessee Death Penalty Assessment Team to assess fairness and accuracy in Tennessee's death penalty system.¹⁸⁸ The Assessment Team conducted an extensive study of Tennessee's system and issued its lengthy report in March 2007.¹⁸⁹ The Team concluded that "Tennessee's death penalty system falls short in the effort to afford every capital defendant fair and accurate procedures."¹⁹⁰ The Report identified the following areas "as most in need of reform":

- Inadequate procedures to address innocence claims;
- Excessive caseloads of defense counsel;
- Inadequate access to experts and investigators;
- Inadequate qualification and performance standards for defense counsel;
- Lack of meaningful proportionality review;
- Lack of transparency in the clemency process;
- Significant juror confusion;
- Racial disparities in Tennessee's sentencing;
- Geographical disparities in Tennessee's capital sentencing; and
- Death sentences imposed on people with severe mental disability.¹⁹¹

¹⁸⁸ The members of the Assessment Team were Professor Dwight L. Aarons, Chair; W.J. Michael Cody, former Tennessee Attorney General; Kathryn reed Edge, former President of the Tennessee Bar Association; Jeffrey S. Henry, Executive Director of the Tennessee District Public Defenders Conference, Judge Gilbert S. Merritt, former Chief Judge of the United States Court of Appeals for the Sixth Circuit; attorney Bradley A. MacLean; and attorney William T. Ramsey.

¹⁸⁹ The Tennessee Death Penalty Assessment Report: An Analysis of Tennessee's Death Penalty Laws, Procedures, and Practices (March 2007) (available at <https://www.americanbar.org/content/dam/aba/migrated/moratorium/assessmentproject/tennessee/finalreport.authcheckdam.pdf>, last visited 11/13/2017).

¹⁹⁰ Id., at iii.

¹⁹¹ Id. at iii – vi.

C. Final Remarks

It is clear from the statistics and our experience over the past 40 years that Tennessee's death penalty system "fails to provide a constitutionally tolerable response to Furman's rejection of unbridled jury discretion in the imposition of capital sentences."¹⁹² The system is riddled with arbitrariness.

A person of compassion and empathy cannot deny that the death penalty is cruel. "Death is truly an awesome punishment. The calculated killing of a human being by the State involves, by its very nature, a denial of the executed person's humanity."¹⁹³ "The penalty of death differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally in its absolute renunciation of all that is embodied in our concept of humanity."¹⁹⁴

When over the past 40 years we have executed fewer than one out of every 400 defendants (less than ¼ of 1%) convicted of first degree murder; when we sentence 90% of multiple murderers to life or life without parole and only 10% to death; when the majority of capital cases are reversed or vacated because of trial error; when the courts have found that in over 23% of capital cases, defense counsel's performance was constitutionally deficient; when the number of death row defendants who die of natural causes is four times greater than the number Tennessee actually executed; when we have not seen a new capital case in Tennessee since mid-2014; when we haven't seen any death sentences in the Grand Middle Division since

¹⁹² Woodson, 428 U.S. at 302.

¹⁹³ Spaziano v. Florida, 468 U.S. at 469 n. 3 (Stevens, J., concurring).

¹⁹⁴ Furman, 408 U.S., at 306 (Stewart, J., concurring).

early 2001 – then, it must also be said that the death penalty is an “unusual” and unfair punishment. The statistics make clear that Tennessee’s system is at least as arbitrary and capricious as the systems declared unconstitutional in Furman – and that is without accounting for the exorbitant delays and costs inherent in Tennessee’s system, which far exceed the delays and costs inherent in the pre-Furman era.

The lack of proportionality and rationality in our selection of the few whom we decide to kill is breathtakingly indifferent to fairness, without justification by any legitimate penological purpose. The death penalty system as it has operated in Tennessee over the past 40 years, and especially over the past ten years, is but a cruel lottery, entrenching the very problems that Furman sought to eradicate.

Appendix 2
Tennessee Trials In Which Death Sentences Were Imposed
During The Period 7/1/1977 through 6/30/2017

This chart identifies in chronological order, by defendant's name, each "Capital Trial" that resulted in the imposition of one or more death sentences. For purposes of this chart, the term Capital Trial includes a resentencing hearing.

The county listed is where the murder allegedly occurred, not necessarily where the case was tried.

A number in parentheses immediately following the defendant's name in a multi-murder case indicates the number of murder victims for which death sentences were imposed.

Asterisks indicate cases that have had two or more Capital Trials arising from the same charges. A single asterisk indicates the result of the defendant's first Capital Trial, a double asterisk indicates the result of the defendant's second trial for the same murder(s), etc. The other Capital Trials involving the same defendant and charges are cross-referenced in the far right column.

A Capital Trial is "Pending" if it has not been reversed or vacated – i.e., if the defendant is still under a sentence of death from that Capital Trial. Because capital cases typically are challenged until a defendant is executed, a case remains Pending as long as the defendant is alive.

If a case is ultimately resolved by plea agreement or by the prosecution's withdrawal of the death notice (e.g., while the defendant is awaiting retrial or resentencing), that fact is not reflected in the chart.

Capital Trial No.	Defendant	County Where Offense Occurred	Sentence Date (of instant sentencing proceeding)	Defendant's Race and Gender	Type of Relief (AR) = Awaiting Retrial	Other Capital Trial(s) for Same Defendant
1	Richard Hale Austin*	Shelby	10/22/77	White/Male	Sentence Relief	No. 169
2	Ronald Eugene Rickman	Shelby	03/04/78	White/Male	Conviction Relief	
3	William Edward Groseclose	Shelby	03/04/78	White/Male	Conviction Relief	
4	Larry Charles Ransom	Shelby	04/07/78	Black/Male	Sentence Relief	
5	Ralph Robert Cozzolino	Hamilton	04/22/78	White/Male	Sentence Relief	
6	Russell Keith Berry	Greene	08/28/78	White/Male	Conviction Relief	
7	Donald Wayne Strouth	Sullivan	09/04/78	White/Male	DECEASED	
8	Richard Houston	Knox	11/03/78	Black/Male	Conviction Relief	
9	Donald Michael Moore	Shelby	11/10/78	White/Male	Sentence Relief	
10	Jeffrey Stuart Dicks	Sullivan	02/10/79	White/Male	DECEASED	
11	Luther Terry Pritchett	Marion	08/16/79	White/Male	Sentence Relief	
12	Michael Angelo Coleman	Shelby	04/19/80	Black/Male	Sentence Relief	
13	Carl Wayne Adkins*	Washington	01/29/80	White/Male	Sentence Relief	Nos. 52, 62
14	Loshie Pitts Harrington	Dickson	06/01/80	White/Male	Sentence Relief	
15	Stephen Allen Adams	Shelby	06/20/80	Black/Male	Sentence Relief	

16	Richard Weldon Simon	Montgomery	06/26/80	Black/Male	Sentence Relief	
17	Raymond Eugene Teague*	Hamilton	11/22/80	White/Male	Sentence Relief	No. 44
18	Hugh Warren Melson	Madison	12/05/80	White/Male	DECEASED	
19	Cecil C. Johnson, Jr. (3)	Davidson	01/20/81	Black/Male	EXECUTED	
20	Joseph Glenn Buck	Smith	01/24/81	White/Male	Sentence Relief	
21	Robert Glen Coe	Weakley	02/28/81	White/Male	EXECUTED	
22	Walter Keith Johnson*	Hamilton	03/25/81	White/Male	Sentence Relief	No. 47
23	Hubert Loyd Sheffield	Shelby	03/26/81	White/Male	Sentence Relief	
24	Timothy Eugene Morris	Greene	04/09/81	White/Male	Sentence Relief	
25	Thomas Gerald Laney	Sullivan	04/11/81	White/Male	Sentence Relief	
26	Ronald Richard Harries	Sullivan	08/08/81	White/Male	Sentence Relief	
27	Stephen Leon Williams	Hawkins	10/16/81	White/Male	Sentence Relief	
28	Laron Ronald Williams (2)	Shelby	11/06/81	Black/Male	DECEASED	
29	Laron Ronald Williams	Madison	12/14/81	Black/Male	DECEASED	
30	David Earl Miller*	Knox	03/17/82	White/Male	Sentence Relief	No. 76
31	Kenneth Wayne Campbell	Washington	03/26/82	White/Male	Sentence Relief	
32	Phillip Ray Workman	Shelby	03/31/82	White/Male	EXECUTED	
33	Michael David Matson	Hamilton	04/22/82	White/Male	Sentence Relief	
34	Gary Bradford Cone (2)	Shelby	04/23/82	White/Male	DECEASED	
35	Michael Eugene Sample (2)	Shelby	11/02/82	Black/Male	PENDING	
36	Larry McKay (2)	Shelby	11/02/82	Black/Male	PENDING	
37	Tommy Lee King	Maury	11/13/82	Black/Male	Sentence Relief	
38	Richard Caldwell	Henderson	12/04/82	White/Male	Conviction Relief	
39	Walter Lee Caruthers	Knox	02/08/83	Black/Male	Sentence Relief (AR) ¹	
40	David Carl Duncan	Sumner	04/01/83	Black/Male	Sentence Relief (AR)	
41	Richard Carlton Taylor*	Hickman	05/07/83	White/Male	Conviction Relief	No. 198
42	Willie James Martin	Shelby	06/24/83	Black/Male	Conviction Relief	
43	Charles Edward Hartman*	Montgomery	05/23/83	White/Male	Sentence Relief	No. 153
44	Raymond Eugene Teague**	Hamilton	08/25/83	White/Male	Sentence Relief	No. 17
45	Ricky Goldie Smith	Shelby	02/10/84	Black/Male	Sentence Relief	
46	Edmund George Zagorski (2)	Robertson	03/02/84	White/Male	PENDING	

¹ Died while awaiting Retrial.

47	Walter Keith Johnson**	Hamilton	03/08/84	White/Male	Sentence Relief	No. 22
48	William Wesley Goad	Sumner	03/22/84	White/Male	Sentence Relief	
49	Willie Claybrook	Crockett	06/06/84	Black/Male	Conviction Relief	
50	David Lee McNish	Carter	08/15/84	White/Male	Sentence Relief (AR) ²	
51	James William Barnes	Washington	09/14/84	White/Male	DECEASED	
52	Carl Wayne Adkins**	Washington	10/01/84	White/Male	Sentence Relief	Nos. 13, 62
53	Edward Jerome Harbison	Hamilton	10/05/84	Black/Male	Sentence Relief (Commutation)	
54	James David Carter	Hamblen	11/14/84	White/Male	Sentence Relief	
55	Willie Sparks	Hamilton	11/14/84	Black/Male	Sentence Relief	
56	Kenneth Wayne O'Guinn	Madison	01/22/85	White/Male	DECEASED	
57	Terry Lynn King	Knox	02/06/85	White/Male	PENDING	
58	Vernon Franklin Cooper	Hamilton	02/15/85	White/Male	Sentence Relief	
59	Tony Lorenzo Bobo	Shelby	02/22/85	Black/Male	Sentence Relief	
60	Leonard Edward Smith*	Sullivan	03/20/85	White/Male	Conviction Relief	Nos. 97, 143
61	Charles Walton Wright (2)	Davidson	04/05/85	Black/Male	PENDING	
62	Carl Wayne Adkins***	Washington	06/28/85	White/Male	Sentence Relief	Nos. 13, 52
63	Rocky Lee Coker	Sequatchie	07/11/85	White/Male	Sentence Relief	
64	Thomas Lee Crouch	Williamson	08/08/85	White/Male	DECEASED	
65	Gregory S. Thompson	Coffee	08/22/85	Black/Male	DECEASED	
66	Donnie Edward Johnson	Shelby	10/04/85	White/Male	PENDING	
67	Erskine Leroy Johnson	Shelby	12/07/85	Black/Male	Conviction Relief	
68	Anthony Darrell Hines*	Cheatham	01/10/86	White/Male	Sentence Relief	No. 96
69	Sidney Porterfield	Shelby	01/15/86	Black/Male	DECEASED	
70	Gaile K. Owens	Shelby	01/15/86	White/Female	Sentence Relief (Commutation)	
71	Paul Gregory House	Union	02/08/86	White/Male	Conviction Relief (Exonerated)	
72	Steve Morris Henley* (2)	Jackson	02/28/86	White/Male	Sentence Relief	No. 161
73	Roger Morris Bell	Hamilton	05/23/86	Black/Male	Sentence Relief	
74	Terry Dwight Barber	Lake	08/18/86	White/Male	DECEASED	
75	Billy Ray Irick	Knox	11/3/86	White/Male	PENDING	
76	David Earl Miller**	Knox	02/12/87	White/Male	PENDING	No. 30

² Died while awaiting Retrial.

77	Bobby Randall Wilcoxson	Hamilton	02/13/87	White/Male	Sentence Relief	
78	Sedley Alley	Shelby	03/18/87	White/Male	EXECUTED	
79	Stephen Michael West (2)	Union	03/25/87	White/Male	PENDING	
80	David Scott Poe	Montgomery	03/28/87	White/Male	Sentence Relief	
81	Darrell Wayne Taylor	Shelby	04/24/87	Black/Male	Sentence Relief	
82	Nicholas Todd Sutton (2)	Morgan	03/04/86	White/Male	PENDING	
83	Wayne Lee Bates	Coffee	05/21/87	White/Male	Sentence Relief	
84	James Lee Jones, Jr. (aka Abu-Ali Abdur'Rahman)	Davidson	07/15/87	Black/Male	PENDING	
85	Homer Bouldin Teel	Marion	08/31/87	White/Male	Sentence Relief	
86	Michael Lee McCormick	Hamilton	01/15/88	White/Male	Conviction Relief (Exonerated)	
87	Pervis Tyrone Payne (2)	Shelby	02/27/88	Black/Male	PENDING	
88	Michael Boyd (aka Mikaeel Abdullah Abdus-Samud)	Shelby	03/10/88	Black/Male	Sentence Relief (Commutation)	
89	Ronald Michael Cauthern*(2)	Montgomery	03/18/88	White/Male	Sentence Relief	No. 140
90	J.B. McCord	Warren	05/01/88	White/Male	Conviction Relief	
91	Edward Leroy Harris (2)	Sevier	05/13/88	White/Male	Sentence Relief	
92	John David Terry*	Davidson	09/22/88	White/Male	Sentence Relief	No. 157
93	Byron Lewis Black (3)	Davidson	03/10/89	Black/Male	PENDING	
94	Mack Edward Brown	Knox	05/22/89	White/Male	Conviction Relief	
95	Heck Van Tran (3)	Shelby	06/23/89	Asian/Male	Sentence Relief (AR)	
96	Anthony Darrell Hines**	Cheatham	06/27/89	White/Male	PENDING	No. 68
97	Leonard Edward Smith**	Sullivan	08/25/89	White/Male	Sentence Relief	Nos. 60, 143
98	Donald Ray Middlebrooks*	Davidson	09/22/89	White/Male	Sentence Relief	No. 144
99	Michael Wayne Howell	Shelby	10/26/89	Native Am/ Male	DECEASED	
100	Thomas Daniel Eugene Hale	Washington	11/18/89	Black/Male	Conviction Relief	
101	Jonathan Vaughn Evans	Hamblen	12/16/89	Black/Male	Sentence Relief	
102	Gary June Caughron	Sevier	02/03/90	White/Male	Sentence Relief	
103	John Michael Bane*	Shelby	02/23/90	White/Male	Sentence Relief	No. 156
104	Danny Branam	Knox	05/04/90	White/Male	Sentence Relief	
105	Harold Wayne Nichols	Hamilton	05/12/90	White/Male	PENDING	
106	Tommy Joe Walker	Knox	05/14/90	White/Male	Sentence Relief	
107	Randy Duane Hurley	Cocke	05/23/90	White/Male	Sentence Relief	

108	Oscar Franklin Smith (3)	Davidson	07/26/90	White/Male	PENDING	
109	David M. Keen*	Shelby	8/15/90	White/Male	Sentence Relief	No. 158
110	Victor James Cazes	Shelby	11/01/90	White/Male	DECEASED	
111	Jonathan Wesley Stephenson*	Cocke	10/19/90	White/Male	Sentence Relief	No. 194
112	Olen Edward Hutchison	Campbell	01/18/91	White/Male	DECEASED	
113	Kenneth Patterson Bondurant*	Giles	02/09/91	White/Male	Conviction Relief	No. 201
114	David Allen Brimmer	Anderson	03/02/91	White/Male	Sentence Relief	
115	Roosevelt Bigbee	Sumner	03/15/91	Black/Male	Sentence Relief	
116	Joseph Arlin Shepherd	Monroe	04/04/91	White/Male	Sentence Relief	
117	Ricky Eugene Estes	Shelby	06/26/91	White/Male	Conviction Relief	
118	James Blanton (2)	Stewart	07/27/91	White/Male	DECEASED	
119	Sylvester Smith	Shelby	09/27/91	Black/Male	Sentence Relief	
120	Millard Curnutt	Campbell	11/22/91	White/Male	DECEASED	
121	William Eugene Hall (2)	Stewart	12/04/91	White/Male	PENDING	
122	Derrick Desmond Quintero (2)	Stewart	12/04/91	Latino/Male	PENDING	
123	Henry Eugene Hodges	Davidson	01/28/92	White/Male	PENDING	
124	Craig Thompson	Shelby	02/29/92	Black/Male	Sentence Relief	
125	Timothy Dewayne Harris	Shelby	03/04/92	Black/Male	Sentence Relief	
126	Leroy Hall, Jr.	Hamilton	03/11/92	White/Male	PENDING	
127	Ricky Thompson*	McMinn	04/04/92	White/Male	Conviction Relief	182
128	Derrick Johnson	Shelby	04/22/92	Black/Male	Sentence Relief	
129	Robert Williams	Hamilton	06/19/92	Black/Male	Sentence Relief	
130	Richard Odom*	Shelby	10/15/92	White/Male	Sentence Relief	Nos. 177, 210
131	William Arnold Murphy	Shelby	11/20/92	White/Male	Sentence Relief	
132	Michael Dean Bush	Putnam	02/22/93	White/Male	Sentence Relief	
133	Gary Wayne Sutton	Blount	02/24/93	White/Male	PENDING	
134	James Anderson Dellinger (2)	Blount	02/24/93	White/Male	PENDING	
135	Fredrick Sledge	Shelby	11/04/93	Black/Male	Sentence Relief	
136	Christopher Scott Beckham	Shelby	11/17/93	White/Male	Sentence Relief	
137	Andre S. Bland	Shelby	02/14/94	Black/Male	PENDING	
138	Glen Bernard Mann	Dyer	07/19/94	Black/Male	DECEASED	
139	Gussie Willis Vann	McMinn	08/10/94	White/Male	Conviction Relief (Exonerated)	

140	Perry A. Cribbs	Shelby	11/16/94	Black/Male	Sentence Relief	
141	Preston Carter* (<i>aka Akil Jahi</i>) (2)	Shelby	01/25/95	Black/Male	Sentence Relief	No. 179
142	Ronald Michael Cauthern**(2)	Montgomery	01/25/95	White/Male	Sentence Relief	No. 89
143	Clarence C. Nesbit	Shelby	02/24/95	Black/Male	Sentence Relief (AR)	
144	Kevin B. Burns (2)	Shelby	09/23/95	Black/Male	PENDING	
145	Leonard Edward Smith***	Sullivan	09/27/95	White/Male	Sentence Relief	Nos. 60, 97
146	Donald Ray Middlebrooks**	Davidson	10/12/95	White/Male	PENDING	No. 98
147	Christa Gail Pike	Knox	03/30/96	White/Female	PENDING	
148	Tony V. Carruthers (3)	Shelby	04/26/96	Black/Male	PENDING	
149	James Montgomery (3)	Shelby	04/26/96	Black/Male	Conviction Relief	
150	Jon D. Hall	Henderson	02/05/97	White/Male	PENDING	
151	Farris Genner Morris, Jr. (2)	Madison	04/01/97	Black/Male	PENDING	
152	Bobby Gene Godsey, Jr.	Sullivan	04/25/97	White/Male	Sentence Relief	
153	Charles Edward Hartman**	Montgomery	08/01/97	White/Male	Sentence Relief	No. 43
154	Roy E. Keough	Shelby	05/09/97	White/Male	Sentence Relief	
155	Tyrone L. Chalmers	Shelby	06/19/97	Black/Male	PENDING	
156	John Michael Bane**	Shelby	07/18/97	White/Male	PENDING	No. 103
157	John David Terry**	Davidson	08/07/97	White/Male	DECEASED	No. 92
158	David M. Keen**	Shelby	08/15/97	White/Male	PENDING	No. 109
159	Jerry Ray Davidson	Dickson	09/03/97	White/Male	Sentence Relief	
160	Dennis Wade Suttles	Knox	11/04/97	White/Male	PENDING	
161	Steve Morris Henley** (2)	Jackson	12/15/97	White/Male	EXECUTED	No. 72
162	James Patrick Stout	Shelby	03/03/98	Black/Male	Sentence Relief	
163	Vincent C. Sims	Shelby	05/01/98	Black/Male	PENDING	
164	Kennath Artz Henderson	Fayette	07/13/98	Black/Male	PENDING	
165	Michael Dale Rimmer*	Shelby	11/09/98	White/Male	Sentence Relief	Nos. 200, 221
166	Gregory Robinson	Shelby	11/23/98	Black/Male	PENDING	
167	Gerald Lee Powers	Shelby	12/14/98	Asian/Male	PENDING	
168	William Pierre Torres	Knox	02/25/99	Latino/Male	Sentence Relief	
169	Richard Hale Austin**	Shelby	03/05/99	White/Male	DECEASED	No. 1
170	James A. Mellon	Knox	03/05/99	White/Male	Conviction Relief	
171	Paul Dennis Reid (2)	Davidson	04/20/99	White/Male	DECEASED	

172	Daryl Keith Holton (4)	Bedford	06/15/99	White/Male	EXECUTED	
173	Christopher A. Davis (2)	Davidson	06/17/99	Black/Male	Sentence Relief	
174	Timothy Terrell McKinney	Shelby	07/16/99	Black/Male	Conviction Relief	
175	William Richard Stevens (2)	Davidson	07/23/99	White/Male	DECEASED	
176	Paul Dennis Reid (2)	Montgomery	09/22/99	White/Male	DECEASED	
177	Richard Odom**	Shelby	10/01/99	White/Male	Sentence Relief	Nos. 130, 210
178	William Glenn Rogers	Montgomery	01/21/00	White/Male	PENDING	
179	Preston Carter** (aka Akil Jahi) (2)	Shelby	02/17/00	Black/Male	PENDING	No. 139
180	G'Dongalay Parlo Berry (2)	Davidson	05/25/00	Black/Male	Sentence Relief	
181	Paul Dennis Reid (3)	Davidson	05/27/00	White/Male	DECEASED	
182	Ricky Thompson**	McMinn	06/13/00	White/Male	Sentence Relief	No. 127
183	Arthur Todd Copeland	Blount	07/24/00	Black/Male	Conviction Relief	
184	David Lee Smith (2)	Bradley	11/06/00	White/Male	DECEASED	
185	Robert Lee Leach, Jr. (2)	Davidson	02/16/01	White/Male	DECEASED	
186	Robert Faulkner	Shelby	03/10/01	Black/Male	Conviction Relief (AR)	
187	Hubert Glenn Sexton (2)	Scott	06/30/01	White/Male	Sentence Relief	
188	Charles Edward Rice	Shelby	01/14/02	Black/Male	PENDING	
189	Steven Ray Thacker	Dyer	02/08/02	White/Male	DECEASED	
190	John Patrick Henretta	Bradley	04/06/02	White/Male	Sentence Relief	
191	Detrick Deangelo Cole	Shelby	04/19/02	Black/Male	Sentence Relief	
192	Leonard Jasper Young	Shelby	08/24/02	White/Male	Sentence Relief (AR)	
193	Andrew Thomas	Shelby	09/26/02	Black/Male	Conviction Relief (AR)	
194	Jonathan Wesley Stephenson**	Cocke	10/05/02	White/Male	PENDING	No. 111
195	David Ivy	Shelby	01/11/03	Black/Male	PENDING	
196	Steven James Rollins	Sullivan	06/21/03	White/Male	Conviction Relief	
197	Stephen L. Hugueley	Hardeman	09/16/03	White/Male	PENDING	
198	Richard Carlton Taylor**	Hickman	10/16/03	White/Male	Sentence Relief	No. 41
199	Marlan Duane Kiser	Hamilton	11/20/03	White/Male	PENDING	
200	Michael Dale Rimmer**	Shelby	01/13/04	White/Male	Conviction Relief	Nos. 165, 221
201	Kenneth Patterson Bondurant**	Giles	01/20/04	White/Male	Sentence Relief	No. 113
202	Robert Hood	Shelby	05/06/04	Black/Male	Sentence Relief	
203	Joel Schmeiderer	Wayne	05/15/04	White/Male	Sentence Relief	

204	James Riels (2)	Shelby	08/13/04	White/Male	Sentence Relief	
205	Franklin Fitch	Shelby	10/29/04	Black/Male	Sentence Relief	
206	Harold Hester	McMinn	03/12/05	White/Male	Sentence Relief	
207	Devin Banks	Shelby	04/11/05	Black/Male	Sentence Relief	
208	David Lynn Jordan (3)	Madison	09/25/06	White/Male	PENDING	
209	Nickolus Johnson	Sullivan	04/27/07	Black/Male	PENDING	
210	Richard Odom***	Shelby	12/08/07	White/Male	PENDING	Nos. 130, 177
211	Corinio Pruitt	Shelby	03/01/08	Black/Male	PENDING	
212	Henry Lee Jones (2)*	Shelby	05/14/09	Black/Male	Conviction Relief	No. 220
213	Lemarcus Davidson (2)	Knox	10/30/09	Black/Male	PENDING	
214	Howard Hawk Willis (2)	Washington	06/21/10	White/Male	PENDING	
215	Jessie Dotson (6)	Shelby	10/12/10	Black/Male	PENDING	
216	John Freeland	Chester	05/23/11	Black/Male	Sentence Relief	
217	James Hawkins	Shelby	06/11/11	Black/Male	PENDING	
218	Rickey Bell	Tipton	03/30/12	Black/Male	PENDING	
219	Sedrick Clayton (3)	Shelby	06/15/14	Black/Male	PENDING	
220	Henry Lee Jones (2)**	Shelby	05/16/15	Black/Male	PENDING	No. 212
221	Michael Dale Rimmer***	Shelby	05/07/16	White/Male	PENDING	Nos. 165, 221

Appendix 3

List of Tennessee Capital Cases Granted Relief on Grounds of Ineffective Assistance of Counsel During the 40-Year Period 7/1/1977 – 6/30/2017

Tennessee capital cases granted relief in state court for IAC:

1. *State v. Ransom*, Shelby County Criminal Court No. B57716 (January 1, 1983) (sentence relief) (settled for life)
2. *Teague v. State*, 772 S.W.2d 915 (Tenn. Crim. App. 1988) (sentence relief) (settled for life)
3. *Cooper v. State*, 847 S.W.2d 521 (Tenn. Crim. App. 1992) (grant of sentence relief from pc court aff'd) (resentenced to less than death)
4. *Johnson v. State*, 1992 WL 210576 (Tenn. Crim. App. 1992) (sentence relief) (released in 2012 on *Alford* plea)
5. *Campbell v. State*, 1993 WL 122057 (Tenn. Crim. App. 1993) (sentence relief) (settled for life sentence/subsequently paroled)
6. *Adkins v. State*, 911 S.W.2d 334 (Tenn. Crim. App. 1994) (sentence relief) (resentenced to less than death)
7. *Teel v. State*, Marion County Circuit Court No. 1460 (April 12, 1995) (sentence relief) (settled for life)
8. *Bell v. State*, 1995 WL 113420 (Tenn. Crim. App. 1995) (sentence relief) (resentenced to less than death)
9. *Goard v. State*, 938 S.W.2d 363 (Tenn. 1996) (sentence relief) (resentenced to life)
10. *Coker v. State*, Sequatchie County Circuit Court No. 4778 (April 22, 1996) (sentence relief) (resentenced to life)
11. *Brimmer v. State*, 29 S.W.3d 497 (Tenn. Crim. App. 1998) (sentence relief) (resentenced to less than death)
12. *Smith v. State*, 1998 WL 899362 (Tenn. Crim. App. 1998) (conviction relief) (settled for life)
13. *Hurley v. State*, Cocke County Circuit Court No. 4802 (December 12, 1998) (sentence relief) (settled for life)
14. *Richard Taylor v. State*, 1999 WL 512149 (Tenn. Crim. App. 1999) (conviction relief) (settled for life)

15. *Darrell Wayne Taylor v. State*, Shelby County Criminal Court, Case No. P – 7864, Trial No. 86—03704 (settled for life; paroled)
16. *McCormick v State*, 1999 WL 394935 (Tenn. Crim. App. 1999) (conviction relief) (acquitted on retrial – exoneration)
17. *Wilcoxson v. State*, 22 S.W.3d 289 (Tenn. Crim. App. 1999) (sentence relief) (resentenced to less than death)
18. *Caughron v. State*, 1999 WL 49906 (Tenn. Crim. App. 1999) (sentence relief) (resentenced to less than death)
19. *State v. Bush*, Cumberland County Circuit Court No. 84–411 (March 7, 2002) (sentence relief) (settled for life)
20. *Vann v. State*, McMinn Co. Post–Conviction No. 99–312 (May 29, 2008) (conviction relief) (charges dismissed – exoneration)
21. *Nesbit v. State*, Shelby Co. P–21818 (July 9, 2009) (sentence relief)
22. *Cribbs v. State*, 2009 WL 1905454 (Tenn. Crim. App. 2009) (sentence relief) (settled for life)
23. *McKinney v State*, 2010 WL 796939 (Tenn. Crim. App. 2010) (conviction relief) (after 2 subsequent mistrials [hung juries], pled to 2d degree murder and released)
24. *Cole v. State*, 2011 WL 1090152 (Tenn. Crim. App. 2011) (sentence relief) (settled for life without parole)
25. *Young v. State*, Shelby County No. 00–04018 (March 28, 2011) (sentence relief)
26. *Banks v. State*, Shelby County No. 03–01956 (September 13, 2011) (sentence relief) (settled for LWOP)
27. *Smith v. State*, 357 S.W.3d 322 (Tenn. 2011) (sentence relief) (settled for life)
28. *Stout v. State*, Shelby Co., 2012 WL 3612530 (Tenn. Crim. App. 2012) (sentence relief) (sentenced to life)
29. *Rollins v. State*, Sullivan Co., 2012 WL 3776696 (Tenn. Crim. App. 2012) (sentence relief by trial P.C. court; conviction relief on appeal) (settled for life)
30. *Rimmer v. State*, Shelby Co. 98–01034, 97–02817, 98–01033 (October 12, 2012) (conviction relief) (retried, convicted, sentenced to death again after mitigation waiver)

31. *Hester v. State*, McMinn Co. 00–115 (May 20, 2013) (settled for LWOP without PC hearing; at the plea hearing, State acknowledged IAC/mitigation)
32. *Davidson v. State*, 453 S.W.3d 386 (Tenn. 2014) (sentence relief) (settled for LWOP)
33. *Schmeiderer v. State*, Maury Co. 14488 (December 22, 2014) (settled for LWOP without PC hearing; agreed disposition order references IAC/mitigation)

Tennessee capital cases granted relief in federal court for IAC:

1. *Richard Austin v. Bell*, 126 F.3d 843 (6th Cir. 1997) (sentence relief) (resentenced to death)
2. *Rickman v. Bell*, 131 F.3d 1150 (6th Cir. 1997) (conviction relief) (resentenced to life)
3. *Groseclose v. Bell*, 131 F.3d 1161 (6th Cir. 1997) (conviction relief) (resentenced to life)
4. *Carter v. Bell*, 218 F.3d 581 (6th Cir. 2000) (sentence relief) (settled for life)
5. *Caruthers v. Carpenter*, 3:91–CV–0031 Docket (Doc) #287 and #288 (June 6, 2001) (order granting sentencing relief) (on appeal)
6. *Timothy Morris v. Bell*, E. D. Tenn. No. 2:99–CD–00424 (May 16, 2002) (sentence relief) (settled for life)
7. *Harries v. Bell*, 417 F.3d 631 (6th Cir. 2005) (sentence relief) (settled for life)
8. *King v. Bell*, M.D. Tenn. No. 1:00–cv–00017 (July 13, 2007) (sentence relief) (resentenced to life)
9. *House v. Bell*, 2007 WL 4568444 (E.D. Tenn. 2007) (conviction relief) (charges dismissed in 2009 - exoneration)
10. *Cauthern v. Colson*, 736 F.3d 465 (6th Cir. 2013) (sentence relief) (sentenced to life)
11. *Duncan v. Carpenter*, No. 3:88–00992 (M.D. Tenn. Mar. 4, 2015) (sentence relief)
12. *McNish v. Westbrooks*, 2016 WL 755634 (E.D. Tenn. Feb. 25, 2016), No.: 2:00–CV–095–PLR–CLC (sentence relief)

Appendix 4

CHART OF SIXTH CIRCUIT VOTING IN TENNESSEE CAPITAL HABEAS CASES

Republican Appointed Judges

REPUBLICAN APPOINTED JUDGES	DATE APPOINTED TO 6 TH CIRCUIT	VOTES TO <u>DENY</u> RELIEF	VOTES TO <u>GRANT</u> RELIEF (or remand)
Batchelder	1991	8	1
Boggs	1986	12	1
Cook	2003	10	1
Gibbons	2002	4	1
Griffin	2005	3	0
Guy	1985	0	1
Kethledge	2008	1	0
McKeague	2005	2	0
Nelson	1985	2	0
Norris	1986	7	0
Rogers	2002	6	0
Ryan	1985	3	3
Siler	1991	11	0
Suhrheinrich	1990	4	1
Sutton	2003	4	0
White	2008	2	2
TOTALS		79 (88%)	11 (12%)

Democrat Appointed Judges

DEMOCRAT APPOINTED JUDGES	DATE APPOINTED TO 6 TH CIRCUIT	VOTES TO <u>DENY</u> RELIEF	VOTES TO <u>GRANT</u> RELIEF
Clay	1997	3	8
Cole	1995	4	7
Daughtrey	1993	1	3
Donald	2011	0	1
Gilman	1997	2	4
Keith	1977	0	2
Martin	1979	0	5
Merritt	1979	0	9
Moore	1995	3	6
TOTALS		13 (22%)	45 (78%)

SIXTH CIRCUIT CAPITAL HABEAS CASES FROM TENNESSEE
FINAL DISPOSITIONS IN THE COURT OF APPEALS¹

CASE	VOTES TO DENY RELIEF	VOTES TO GRANT RELIEF (or remand)
Houston v. Dutton 50 F.3d 381 (1995)		Guy (R) Merritt (D) Ryan (R)
Austin v. Bell 126 F.3d 843 (1997)		Martin (D) Merritt (D) Suhrheinrich (R)
Rickman v. Bell 131 F.3d 1150 (1997)	Suhrheinrich (R)	Keith (D) Ryan (R)
Groseclose v. Bell 130 F.3d 1161 (1997)	Suhrheinrich (R)	Keith (D) Ryan (R)
Coe v. Bell 161 F.3d 320 (1998)	Boggs (R) Norris (R)	Moore (D)
Carter v. Bell 218 F.3d 581 (2000)	Clay (D) Gilman (D) Nelson (R)	
Workman v. Bell 227 F.3d 331 (2000) (<i>en banc</i>) ²	Batchelder (R) Boggs (R) Nelson (R) Norris (R) Ryan (R) Siler (R) Suhrheinrich (R)	Clay (D) Cole (D) Daughtrey (D) Gilman (D) Martin (D) Merritt (D) Moore (D)
Abdur'Rahman v. Bell 226 F.2d 696 (2000)	Batchelder (R) Siler (R)	Cole (D)

¹ The cases included in this chart are the final Court of Appeals dispositions of Tennessee capital habeas cases. This chart does not include other decisions that addressed collateral issues or that were superseded by subsequent Court of Appeals decisions.

² In *Workman v. Bell*, 160 F.3d 276 (6th Cir. 1998), Judges Nelson, Ryan and Siler, all Republican appointees, voted to affirm the district court's denial of habeas relief. In *Workman v. Bell*, 227 F.3d 331 (6th Cir. 2000) (*en banc*), the seven Democrat appointees voted to remand the case for further proceedings, while the seven Republican appointees voted to affirm the district court. Because the vote was evenly split, the district court's denial of habeas relief was affirmed. Mr. Workman was executed.

Caldwell v. Bell 288 F.3d 838 (2002)	Norris (R)	Clay (D) Merritt (D)
Hutchison v. Bell 303 F.3d 720 (2002)	Cole (D) Moore (D) Siler (R)	
Alley v. Bell 307 F.3d 380 (2002)	Batchelder (R) Boggs (R) Ryan (R)	
Thompson v. Bell 315 F.3d 566 (2003)	Moore (D) Suhrheinrich (R)	Clay (D)
Donnie Johnson v. Bell 344 F.3d 567 (2003)	Boggs (R) Norris (R)	Clay (D)
House v. Bell 386 F.3d 668 (2004) (<i>en banc</i>) ³	Batchelder (R) Boggs (R) Cook (R) Gibbons (R) Norris (R) Rogers (R) Siler (R) Sutton (R)	Clay (D) Cole (D) Daughtrey (D) Gilman (D) Martin (D) Merritt (D) Moore (D)
Bates v. Bell 402 F.3d 635 (2005)		Batchelder (R) Merritt (D) Moore (D)
Harbison v. Bell 408 F.3d 823 (2005)	Cook (R) Siler (R)	Clay (D)
Harries v. Bell 407 F.3d 631 (2005)		Boggs (R) Cook (R) Gibbons (R)
Payne v. Bell 418 F.3d 644 (2005)	Cook (R) Rogers (R) Sutton (R)	
Henley v. Bell 487 F.3d 379 (2007)	Cook (R) Siler (R)	Cole (D)

³ The Supreme Court overturned the Sixth Circuit's *en banc* decision. *House v. Bell*, 547 U.S. 518 (2006). On remand from the Supreme Court, the district court granted relief on Mr. House's claims relating to actual innocence, and the state then dismissed the charges – resulting in Mr. House's exoneration.

Cone v. Bell 505 F.3d 610 (2007) ⁴	Batchelder (R) Boggs (R) Cook (R) Griffin (R) McKeague (R) Norris (R) Rogers (R) Ryan (R) Sutton (R)	Clay (D) Cole (D) Daughtrey (D) Gilman (D) Martin (D) Merritt (D) Moore (D)
Cecil Johnson v. Bell 525 F.3d 466 (2008)	Batchelder (R) Gibbons (R)	Cole (D)
Owens v. Guida 549 F.3d 399 (2008)	Boggs (R) Siler (R)	Merritt (D)
West v. Bell 550 F.3d 542 (2008)	Boggs (R) Norris (R)	Moore (D)
Irick v. Bell 565 F.3d 315 (2009)	Batchelder (R) Siler (R)	Gilman (D)
Smith v. Bell No. 05-6653 (2010)	Cole (D) Cook (R) Griffin (R)	
Wright v. Bell 619 F.3d 586 (2010)	Cole (D) McKeague (R) Rogers (R)	
Nicholus Sutton 645 F.3d 752 (2011)	Boggs (R) Daughtrey (D)	Martin (D)
Strouth v. Colson 680 F.3d 596 (2012)	Cook (R) Kethledge (R) Sutton (R)	
Cauthern v. Colson 726 F.3d 465 (2013)	Rogers (R)	Clay (D) Cole (D)
Hodges v. Colson 727 F.3d 517 (2013)	Batchelder (R) Cook (R)	White (R)

⁴ In *Cone v. Bell*, 243 F.3d 961 (6th Cir. 2001), Judges Norris (R), Merritt (D), and Ryan (R) voted unanimously to grant relief. The Supreme Court overturned that decision in *Cone v. Bell*, 535 U.S. 685 (2002). On remand, Judges Ryan and Merritt voted for relief, while Judge Norris (R) dissented. 359 F.3d 785 (6th Cir. 785). Again, the Supreme Court overturned the decision. 543 U.S. 447 (2005). Then on remand, Judges Norris and Ryan voted to deny habeas relief, while Judge Merritt dissented. 492 F.3d 743 (6th Cir. 2007). On Mr. Cone's petition for rehearing *en banc*, seven Democrat appointees dissented from the denial of rehearing *en banc*. 505 F.3d 610 (6th Cir. 2007). The remaining judges, all Republican appointees, either voted to deny rehearing *en banc* or acquiesced in the denial. (These opposing positions on the *en banc* petition are counted as votes in the chart.) Then again the Supreme Court overturned the Sixth Circuit, 556 U.S. 1769 (2009), and remanded the case to the district court. Mr. Cone died on death row while his case was pending.

Van Tran v. Colson 764 F.3d 594 (2014)	Cook (R) Rogers (R) White (R)	
Middlebrooks v. Bell 619 F.3d 526 (2010) Middlebrooks v. Carpenter 843 F.3d 1127 (2016)	Clay (D) Gilman (D) Moore (D) White (R)	
Miller v. Colson 694 F.3d 691 (2012)	Gibbons (R) Siler (R)	White (R)
Morris v. Carpenter 802 F.3d 825 (2015)	Boggs (R) Clay (D) Siler (R)	
Gary Wayne Sutton v. Carpenter No. 11-6180 (2015)	Boggs (R) Cook (R) Gibbons (R)	
Thomas v. Westbrook 849 F.3d 659 (2017)	Siler (R)	Merritt (D) Donald (D)
Black v. Carpenter 866 F.3d 734 (6 th Cir. 2017)	Boggs (R) Cole (D) Griffin (R)	

Further notes:

Split Decisions: Of the 37 cases charted above, 21 (or 57%) resulted in split decisions. In these split decision cases, 92% of the Republican appointee votes were against relief, while 92% of the Democrat appointee votes were for relief. The votes according to party affiliation of the judges were:

Republican Appointee Votes Against Relief = 50 (93%)
 Republican Appointee Votes For Relief = 4 (7%)

Democrat Appointee Votes Against Relief = 3 (7%)
 Democrat Appointee Votes For Relief = 37 (93%)

Since 2005, no Republican appointee majority has voted for relief.

En Banc Opinions: We have identified six Sixth Circuit *en banc* opinions in capital cases from Tennessee. Three are included in the chart because those *en banc* decisions resulted in final disposition of the petitioners' habeas claims in the Court of Appeals. The other three are not included in the chart because they decided collateral issues that were not dispositive of the petitioners' habeas claims. The *en banc* opinions are as follows:

O'Guinn v. Dutton, 88 F.3d 1409 (6th Cir. 1996) (*en banc*) (*per curiam*) (7 to 6 decision resulting in a remand to state court, in which 4 Democrat appointees and 3 Republican appointees voted favorably for the petitioner; while 5 Republican appointees and 1 Democrat appointee voted unfavorably against the petitioner) (not included in the chart);

Workman v. Bell, 227 F.3d 331 (6th Cir. 2000) (*en banc*) (a tie 7 to 7 vote strictly along party lines, effectively denying habeas relief) (included in the chart);

Abdur'Rahman v. Bell, 392 F.3d 174 (2004) (*en banc*) (in a 7 to 6 decision on a habeas procedural issue, all 6 Democrat appointees and 1 Republican appointee voted in favor of the petitioner, and 6 Republican appointees and no Democrat appointees voted against the petitioner – *i.e.*, the single swing Republican appointee vote enabled the case to continue) (not included in the chart);

House v. Bell, 386 F.3d 668 (6th Cir. 2004) (*en banc*) (8 to 7 vote, strictly along party lines, denying habeas relief) (included in the chart);

Alley v. Little, 452 F.3d 620 (6th Cir. 2006) (*en banc*) (8 to 5 vote rejecting method-of-execution claim, in which 7 Republican appointees and 1 Democrat appointee voted against the petitioner, and 5 Democrat appointees voted for the petitioner) (not included in the chart);

Cone v. Bell, 505 F.3d 610 (6th Cir. 2007) (all 7 Democrat appointees dissented from denial of *en banc* review, while all 9 Republican appointees supported denial of *en banc* review – resulting in denial of habeas relief) (included in the chart).

Among these *en banc* opinions, Republican appointees cast 42 of their 46 votes (91%) against the petitioners, while Democrat appointees cast 36 of their 37 votes (97%) in favor of the petitioners.