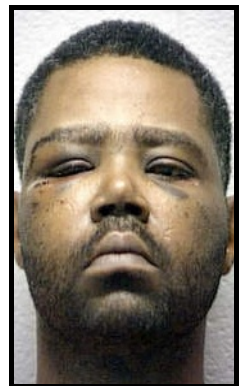
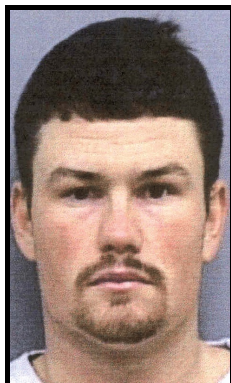
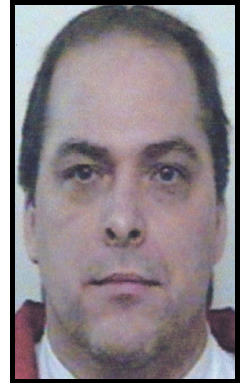
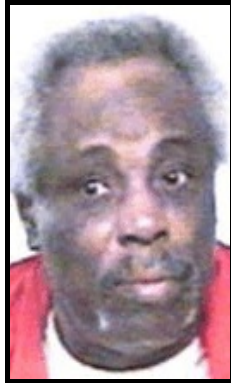


DEATH ROW 2013

Capital Punishment in Indiana



IPAC

***Steve Stewart
Clark County
Prosecuting Attorney
June 1, 2013***

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- Aggravating and Mitigating Circumstances Alleged
- Complete State and Federal Appellate History

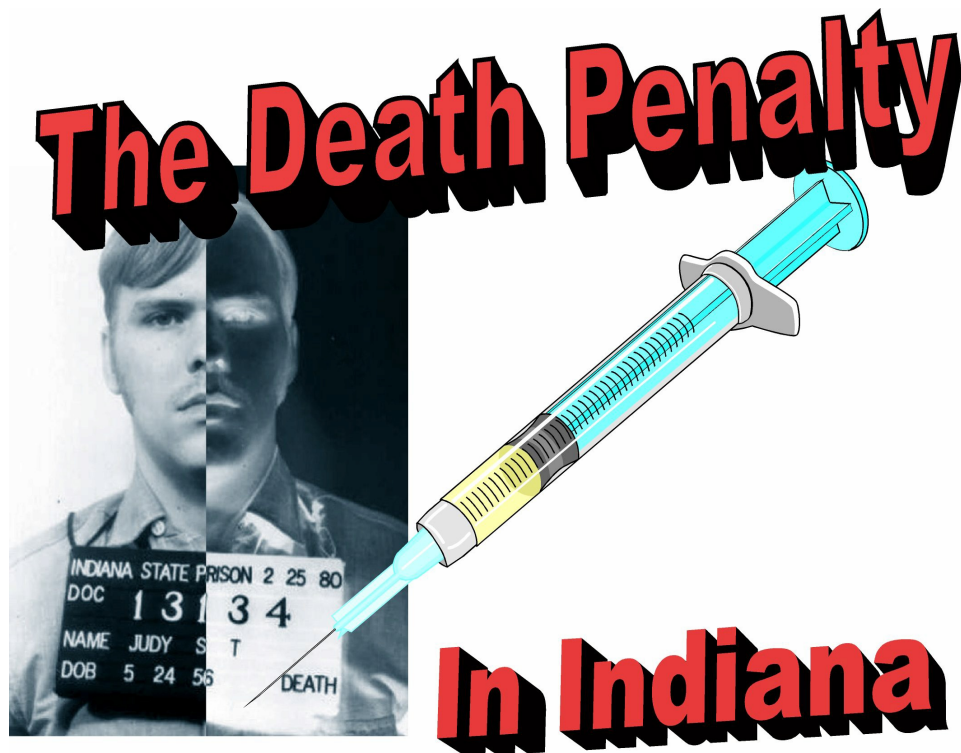
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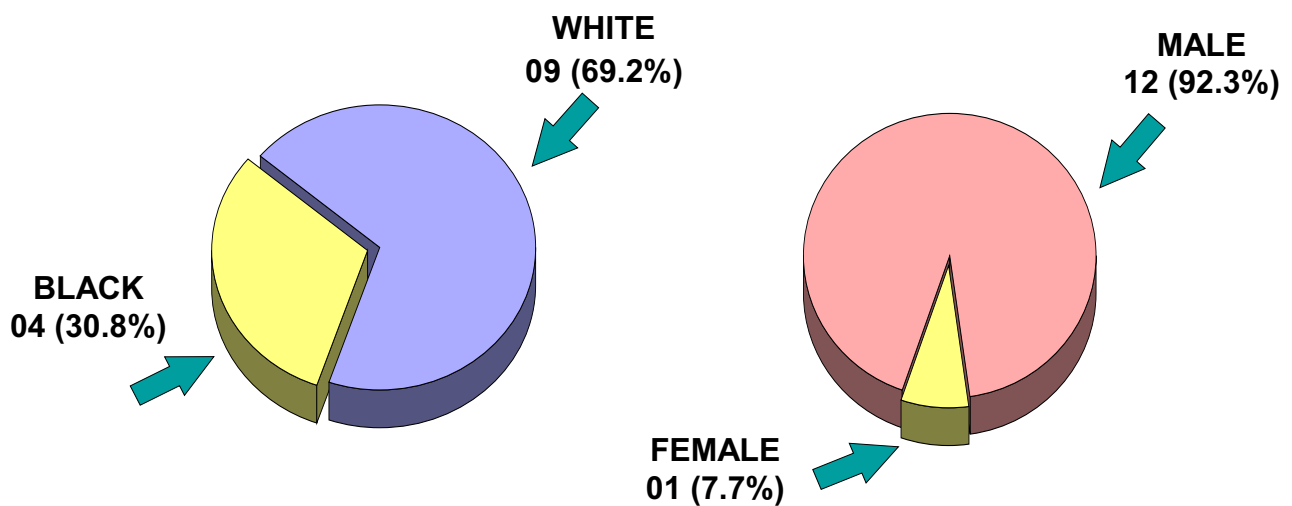
- U.S. Map showing number of executions and current death row population by state.

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On Indiana Death Row as of June 1, 2013 = 13

Of 13 inmates now on Indiana Death Row:



**CURRENT DEATH ROW AS OF JUNE 1, 2013
BY LENGTH OF TIME ON DEATH ROW AWAITING EXECUTION**

<u>Inmate</u>	<u>County</u>	<u>Sentencing Date</u>	<u>Length</u>
1. Debra Denise Brown	Lake	06-23-1986	26 yr, 342 d
2. Howard A. Allen	Marion	08-30-1988	24 yr, 273 d
3. Eric D. Holmes	Marion	03-26-1993	20 yr, 066 d
4. John M. Stephenson	Warrick	06-17-1997	15 yr, 348 d
5. Joseph E. Corcoran	Allen	08-26-1999	13 yr, 278 d
6. Michael D. Overstreet	Johnson	07-31-2000	12 yr, 304 d
7. Paul M. McManus	Vanderburgh	06-05-2002	10 yr, 360 d
8. Benjamin Ritchie	Marion	10-15-2002	10 yr, 228 d
9. Tommy R. Pruitt	Dearborn (Morgan)	11-21-2003	09 yr, 191 d
10. Wayne D. Kubsch	St. Joseph	04-18-2005	08 yr, 043 d
11. Frederick M. Baer	Madison	06-09-2005	07 yr, 356 d
12. Roy Lee Ward	Clay (Spencer)	06-08-2007	05 yr, 357 d
13. Kevin Charles Isom	Lake	03-08-2013	00 yr, 084 d

◆ Since January 25, 2008 only one Indiana jury trial has resulted in a death sentence.

◆ Since December 11, 2009 no Indiana death row inmates have been executed.

Youngest NOW on Indiana Death Row: Benjamin Ritchie (33 years, 01 day)

Youngest on Indiana Death Row SINCE 1977: Paula Cooper (16 years, 320 days)

Oldest NOW on Indiana Death Row: Howard Allen (64 years, 110 days)

Oldest on Indiana Death Row SINCE 1977: Richard D. Moore (75 years, 203 days)

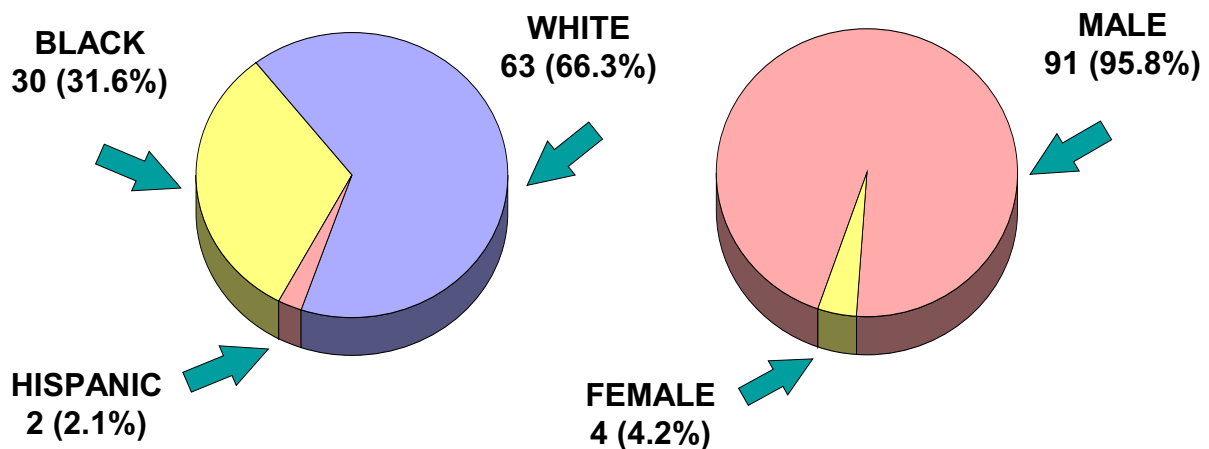
Longest NOW on Indiana Death Row: Debra Denise Brown (26 years, 342 days)

Longest on Indiana Death Row SINCE 1977: Debra Denise Brown (26 years, 342 days)

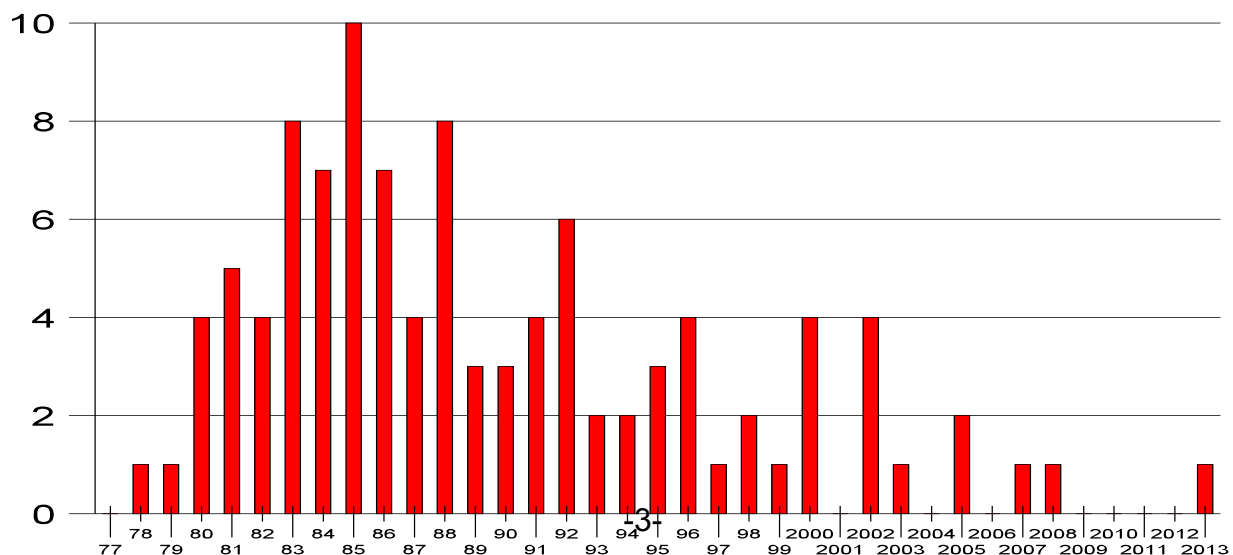
On Indiana Death Row Since 1977 = 95

(Includes Christopher Peterson twice, with two separate death sentences; includes each of those ten inmates resentenced to death again after remand only once)

Of 95 inmates on Indiana Death Row since 1977:



INDIANA DEATH SENTENCES BY YEAR (1977-2013)



VICTIMS

The 95 Defendants sentenced to death since 1977 have accounted for 156 murders for which they were convicted at the same trial they received a Death Sentence. (Includes victims on each of Christopher Peterson's two separate capital murders; includes victims of those ten inmates resentenced to death again after remand only once; includes co-defendant victims twice; does not include victims in the cases of Larry Hicks and Charles Smith.)

Age		Race		Gender	
00 - 09	20	White	128 (82.1%)	Male	82 (52.6%)
10 - 19	21	Black	24 (15.4%)	Female	74 (47.4%)
20 - 29	32	Hispanic	03 (01.9%)		
30 - 39	25	Indian	01 (00.6%)		
40 - 49	21				
50 - 59	09				
60 - 69	15	Average Age of Victim = 35.3 years			
70 - 79	08				
80+	05				

Youngest Victims = Elizabeth Waggoner (4 months) murdered by Dennis Ray Roark;
 Dennis Waggoner (20 months) murdered by Dennis Ray Roark;
 Ashlyn Bowsher (17 months) murdered by Joseph L. Trueblood;
 Jordan Hanmore (21 months) murdered by James P. Harrison.
 Shelby McManus (23 months) murdered by Paul M. McManus.

Oldest Victims = Ruby Hutsler (82 years) murdered by Gregory S. Johnson;
 Francisco Alarcon (82 years) murdered by Reynoldo Rondon & Eladio Martinez-Chavez;
 Mark Thompson (80 years) murdered by James Lowery;
 Gertrude Thompson (80 years) murdered by James Lowery.

Victim Relationship to Defendant		Method of Murder
Family	40	87 Shooting w/gun (55.8%)
Wife / Girlfriend / Ex (12)		
Husband / Boyfriend / Ex (2)		41 Stabbing (26.3%)
Mother / Foster Mother (3)		
Father / Foster Father (3)		23 Strangling (14.7%)
Child (6)		
Other (14)		11 Bludgeoning (07.1%)
Friend / Acquaintance	37	03 Stomping (1.9%)
Employer / Co-worker	06	03 Drowning (1.9%)
Neighbor	05	02 Fire Burning (1.3%)
Police	10	02 Smoke Inhalation (1.3%)
Stranger	58	01 Superglue (0.6%)

Multiple Murders

4 Steven T. Judy	3 James P. Harrison	2 Eric Holmes
4 Donald R. Wallace	3 Phillip A. Stroud	2 Kevin Lee Hough
4 Joseph E. Corcoran	3 John Stephenson	2 James Lowery
3 Kevin C. Isom	3 David Hollis	2 Phillip McCollum
3 Daniel Ray Wilkes	3 Walter L. Dye	2 Christopher Peterson
3 Wayne D. Kubsch	3 Paul M. McManus	2 Christopher Peterson
3 Dennis Ray Roark	2 Frederick M. Baer	2 Larry Potts
3 Arthur Paul Baird	2 Charles E. Barker	2 Vincent Prowell
3 Joseph Trueblood	2 Marvin Bieghler	2 Charles E. Roche
3 Richard D. Moore	2 William Benirschke	2 Gregory Rouster
3 Matthew Wrinkles	2 Frank R. Davis	2 Jay R. Thompson
3 Edward E. Williams	2 Richard Dillon	2 Jerry K. Thompson
3 Kevin Conner	2 D.H. Fleenor	2 Johnny Townsend
		2 Darnell Williams

Of the 105 cases resulting in a death sentence since 1977: 30 different counties have filed Murder charges seeking a Death Sentence, 62 counties have not. 33 counties have conducted Death Penalty Sentencing Hearings, 59 have not.

MOST ACTIVE COUNTIES

By Filings:

23 Lake	Lake (22): Averhart, Benirschke, Brewer, Brown, Coleman, Cooper, Hicks, Hollis, Isom, Landress, Lockhart, Matinez, McCollum, Peterson, Potts, Roark, Roche, Rondon, Rouster, Townsend, Vandiver, D.Williams, E.Williams; Marion (21): Allen, Barker, Burris, Conner, Daniels, G. Davis, Dye, Evans, Games, Harris, Holmes, Huffman, Moore, Patton, Resnover, Ritchie, T.Smith, J.K. Thompson, Timberlake, Underwood, Van Cleave; Vanderburgh (7): Canaan, McManus, Prowell, Schiro, Wallace, Wilkes, Wrinkles; Allen (4): Corcoran, Hough, T.Lowery, C.Smith; Madison (4): Baer, Johnson, Saylor, Wisehart; St. Joseph (3): Matheney, Kubsch, Stroud; Morgan (3): Pruitt, Bellmore, Judy; Tippecanoe (2): J.Lowery, Trueblood; Pike (2): Dillon, J.R.Thompson; LaPorte (2): F.Davis, James; Porter (2): Miller, Peterson; Dearborn (2): Jackson, Kennedy; Putnam (2): Minnick, Stevens; Boone (1): Bivins; Clark (1): Boyd; DeKalb (1): Woods; Delaware (1): Lambert; Floyd (1): Ingle; Hancock (1): Castor; Howard (1): Bieghler; Jefferson (1): Fleenor; Johnson (1): Overstreet; Marshall (1): L.Williams; Montgomery (1): Baird; Noble (1): Spranger; Orange (1): Thacker; Posey (1): Harrison; Spencer (1): Ward; Sullivan (1): R.Smith; Vigo (1): Benefiel; Warrick (1): Stephenson.
21 Marion	
07 Vanderburgh	
04 Allen	
04 Madison	
03 St. Joseph	
03 Morgan	
02 Tippecanoe	
02 LaPorte	
02 Porter	
02 Dearborn	
02 Pike	
02 Putnam	
01 (19 others)	

By Trials:

23 Lake	Lake (23): Benirschke, Brewer, Brown, Coleman, Cooper, Hicks, Hollis, Landress, Lockhart, Matheny, Martinez, McCollum, Peterson, Potts, Roark, Roark, Roche, Rondon, Rouster, Townsend, Vandiver, D.Williams, E.Williams; Marion (22): Allen, Barker, Burris, Burris, Conner, Daniels, G. Davis, Dye, Evans, Games, Harris, Holmes, Huffman, Patton, Resnover, Ritchie, T.Smith, J.K.Thompson, J.K.Thompson, Timberlake, Underwood, Van Cleave; Allen (6): Averhart, Averhart, Corcoran, Hough, T.Lowery, C.Smith; Boone (4): Bivins, J.Lowery, Moore, Woods; Vanderburgh (4): Canaan, McManus, Prowell, Wrinkles; Madison (4): Baer, Johnson, Saylor, Wisehart; Porter (3): James, Miller, Peterson; St. Joseph (3): Kubsch, Kubsch, Stroud; Clay (2): Minnick, Ward; Decatur (2): Kennedy, Kennedy; Johnson (2) Fleenor; Overstreet; Morgan (2): Bellmore, Judy; Tippecanoe (2): Stevens, Trueblood; Vigo (2): Benefiel, Wallace;; Wayne (2): Castor, Spranger Brown (1): Schiro; Clark (1): Boyd, Wilkes; Dearborn (1): Pruitt; Delaware (1): Lambert; Dubois (1): Thacker; Floyd (1): Ingle; Franklin (1): Jackson; Hamilton (1): Moore; Harrison (1): J.R. Thompson; Hendricks (1): J.Lowery; Howard (1): Bieghler; Knox (1): Dillon; LaPorte (1): L.Williams; Lawrence (1): Minnick; Marshall (1): F.Davis; Montgomery (1): Baird; Posey (1): Harrison; Spencer (1): Ward; Sullivan (1): R.Smith; Warrick (1): Stephenson.
22 Marion	
06 Allen	
04 Boone	
04 Vanderburgh	
04 Madison	
03 Porter	
03 St. Joseph	
02 Clay	
02 Clark	
02 Decatur	
02 Johnson	
02 Morgan	
02 Tippecanoe	
02 Vigo	
02 Wayne	
01 (21 others)	

CHANGE OF VENUE

27 of 105 trials resulting in a death sentence since 1977 have been venued outside the county of filing. Of the 44 cases originally filed in Marion and Lake Counties which resulted in a death sentence, only Averhart (twice) and Moore (twice) have had their cases venued to another county. Excluding the 44 cases which were originally filed in Marion and Lake Counties, 24 of 61 were venued to another county. Short of a change of venue, recent legislative and rule changes have allowed trial courts to obtain jurors from another county and transport them to the county of filing for trial. The above figures do not take into account this recent procedure.

On June 30, 2004 the Indiana Supreme Court reversed the murder conviction and death sentence of Roy Lee Ward on the grounds of failure to change venue or to obtain jurors from another county pursuant to IC 35-36-6-11, in the face of extensive pretrial publicity and community bias in Spencer County. It is thought to be the only such reversal in the state's history. On June 8, 2007, Ward was resentenced to death by a Special Judge following a Sentencing Hearing in Vanderburgh County and a recommendation of death by a jury selected from Clay County.

DEATH SENTENCES AFTER GUILTY PLEA TO MURDER

Ward	Judge Pigman (Clay)	06-08-2007
Moore	Judge Detamore (Boone)	01-12-2000
R. Smith	Judge Pierson (Sullivan)	07-12-1996
Prowell	Judge Young (Vanderburgh)	05-05-1994
Trueblood	Judge Melichar (Tippecanoe)	04-13-1990
Cooper	Judge Kimbrough (Lake)	07-11-1986
Patton	Judge Alsip (Marion)	07-20-1984
Harris (GBMI)	Judge Tranberg (Marion)	02-10-1984
Frank Davis	Judge Cook (Marshall)	01-25-1984
Van Cleave	Judge Gifford (Marion)	05-27-1983
Hollis	Judge Clement (Lake)	11-12-1982
Moore	Judge Barr (Hamilton)	10-25-1980

* Only Ward remains on Death Row. Moore died of natural causes on 12-24-06. R. Smith pled guilty pursuant to a plea agreement which required a sentence of death and was executed on 01-29-98. Trueblood was executed on 06-13-03. Hollis committed suicide 02-19-84.

DEATH SENTENCES FROM JUDGE OVERRIDE OF JURY

Saylor	Judge Newman (Madison)	02-17-1994
Roark	Judge Clement (Lake)	10-29-1992
Peterson	Judge Clement (Lake)	06-05-1992
Kennedy	Judge Westhafer (Decatur)	04-28-1992
Jackson	Judge Stewart (Franklin)	06-07-1988
Kennedy	Judge Westhafer (Decatur)	03-21-1988
Minnick	Judge Chezem (Lawrence)	09-18-1985
Martinez-Chavez	Judge Letsinger (Lake)	05-15-1985
Thompson	Judge Miller (Harrison)	03-18-1983
Schiro	Judge Rosen (Brown)	10-02-1981

* None remain on Death Row. As of July 1, 2002, IC 35-50-2-9 requires the Court to sentence the Defendant "accordingly" following a jury verdict.

DEATH SENTENCES AFTER HUNG JURY IN DEATH PHASE

Wilkes	Judge Heldt (Clark/Vanderburgh)	01-25-2008
Edward Williams	Judge Letsinger (Lake)	03-02-1993
Holmes	Judge Emkes (Marion)	03-26-1993
Burris	Judge Gifford (Marion)	11-22-1991
Roche	Judge Clement (Lake)	11-30-1990
Greagree Davis	Judge Jones (Marion)	10-26-1984
Hicks	Judge Kimbrough (Lake)	09-01-1978

*Only Holmes remains on Death Row. Burris was executed on 11-20-97. Roche committed suicide 01-10-06.

SENTENCED TO DEATH AGAIN AFTER REMAND

	<u>First Death Sentence</u>	(reversed)	<u>Again After Remand</u>
Ward	12-18-2002	(810 N.E.2d 1042)	06-08-2007
Kubsch	08-28-2000	(784 N.E.2d 905)	04-18-2005
J.K. Thompson	05-25-1996	(690 N.E.2d 224)	09-29-2000
Moore	05-15-1995	(678 N.E.2d 1258)	01-13-2000
Averhart	05-08-1982	(614 N.E.2d 924)	03-18-1996
Roark	10-17-1989	(573 N.E.2d 881)	10-29-1992
Kennedy	03-21-1988	(578 N.E.2d 633)	04-28-1992
Burris	02-20-1981	(558 N.E.2d 1067)	11-22-1991
Minnick	05-22-1982	(467 N.E.2d 754)	09-18-1985
Jim Lowery	07-11-1980	(434 N.E.2d 868)	01-17-1983

* Ward and Kubsch remain on Death Row. Burris was executed on 11-20-97. Lowery was executed on 06-27-2001. J.K. Thompson was killed on Death Row 10-27-02. Moore died of natural causes on 12-24-06.

JOINT DEATH PENALTY TRIALS

<u>Defendants</u>	<u>County</u>	<u>Judge</u>	<u>Sentencing Date</u>
Roche / Nicksich	Lake	Judge James L. Clement	11-30-1990
Rouster / D.Williams	Lake	Judge James E. Letsinger	03-23-1987
Huffman / Underwood	Marion	Judge Thomas E. Alsip	08-23-1985
Martinez-Chavez / Rondon	Lake	Judge James E. Letsinger	05-10-1985
McCollum / Townsend	Lake	Judge Richard W. Maroc	03-08-1985
Averhart / Hudson / North	Lake	Judge Alfred W. Moellering	05-25-1982
Resnover / T.Smith	Marion	Judge Jeffrey V. Boles	07-23-1981

INDIANA DEATH SENTENCES BY YEAR (1977 - June 1, 2013)

1977 = 0	1989 = 3	2001 = 0
1978 = 2	1990 = 3	2002 = 4
1979 = 1	1991 = 4	2003 = 1
1980 = 4	1992 = 6	2004 = 0
1981 = 5	1993 = 2	2005 = 5
1982 = 4	1994 = 2	2006 = 0
1983 = 8	1995 = 3	2007 = 1
1984 = 7	1996 = 4	2008 = 1
1985 = 10	1997 = 1	2009 = 0
1986 = 7	1998 = 2	2010 = 0
1987 = 4	1999 = 1	2011 = 0
1988 = 8	2000 = 4	2012 = 0
		2013 = 1 (As of June 1, 2013)

Of the 105 total cases since 1977 where a death sentence was handed down:

MOST ACTIVE TRIAL JUDGES

7 - Judge James L. Clement (Lake) (Benirschke, Brewer, Peterson, Roark, Roark, Roche, Hollis)	3 - Judge Thomas Newman (Madison) (Saylor, Wisehart, Johnson)
6 - Judge James Letsinger (Lake) (Lockhart, Martinez/Rondon, Matheney, Rouster/D.Williams, Vandiver, E. Williams)	2 - Judge Thomas E. Alsip (Marion)(Huffman/Underwood, Patton)
5 - Judge Patricia J. Gifford (Marion) (Daniels, Dye, Ritchie, Van Cleave, Burris)	2 - Judge Richard J. Conroy (Lake)(Landress, Potts)
4 - Judge John R. Barney (Marion) (Allen, Barker, Evans, J.K. Thompson)	2 - Judge Cynthia S. Emkes (Johnson) (Holmes, Overstreet)
4 - Judge Alfred W. Moellering (Allen) (Averhart/Hudson/North, T. Lowery, C.Smith, Timberlake)	2 - Judge James Kimbrough (Lake) (Cooper, Hicks)
4 - Judge John W. Tranberg (Marion) (Burris, Conner, Games, Harris)	2 - Judge Thomas Milligan (Montgomery) (Baird, Bivins)
3 - Judge Jeffrey V. Boles (Hendricks) (Judy, Resnover/T.Smith, J.Lowery)	2 - Judge Thomas W. Webber (Porter) (James, Peterson)
3 - Judge Richard W. Maroc (Lake) (Brown, McCollum/Townsend, Coleman)	2 - Judge John A. Westhafer (Decatur) (Kennedy, Kennedy)
	2 - Judge Richard L. Young (Vanderburgh) (Prowell, Wrinkles)
	2 - Judge Carl A. Heldt (Vanderburgh) (McManus, Wilkes)

TRIAL JUDGE INDEX

Allen County Superior Court
 Judge Alfred W. Moellering
 (Averhart/Hudson/North, T. Lowery, C. Smith,
 Timberlake)

Allen County Superior Court
 Judge Kenneth R. Scheibenberger (Averhart)

Allen County Superior Court
 Judge Frances C. Gull (Corcoran)

Boone County Superior Court
 Judge Donald R. Peyton (Woods)

Boone County Superior Court
 Judge James R. Detamore (Moore)

Boone County Superior Court
 Judge Paul H. Johnson, Jr. (J. Lowery)

Brown County Circuit Court
 Judge Samuel R. Rosen (Schiro)

Clark County Circuit Court
 Judge Clifford H. Maschmeyer (Boyd)

Clay County Circuit Court
 Judge Ernest E. Yelton (Minnick)

Dearborn County Circuit Court
 Judge James D. Humphrey (Pruitt)

Decatur County Circuit Court
 Judge John A. Westhafer (Kennedy, Kennedy)

Delaware County Superior Court
 Judge Robert L. Barnett, Jr. (Lambert)

Dubois County Circuit Court
 Judge Hugo C. Songer (Thacker)

Floyd County Superior Court
 Judge Richard G. Striegel (Ingle)

Franklin County Circuit Court
 Judge Eugene A. Stewart (Jackson)

Hamilton County Superior Court
 Judge Jerry M. Barr (Moore)

Harrison County Circuit Court
 Judge Scott T. Miller (Jay Thompson)

Hendricks County Circuit Court
 Judge Jeffrey V. Boles
 (Judy, Resnover/T. Smith, J. Lowery)

Howard County Superior Court
 Judge Dennis H. Parry (Bieghler)

Johnson County Circuit Court
 Judge Larry J. McKinney (Fleenor)

Johnson County Superior Court
 Judge Cynthia S. Emkes (Holmes, Overstreet)

Knox County Superior Court
 Judge Edward C. Theobald (Dillon)

Lake County Superior Court
 Judge James L. Clement
 (Benirschke, Brewer, Hollis, Peterson, Roark,
 Roark, Roche)

Lake County Superior Court
 Judge James E. Letsinger
 (Lockhart, Martinez/Rondon, Matheney,
 Rouster/D. Williams, Vandiver, E. Williams)

Lake County Superior Court
 Judge James C. Kimbrough (Cooper, Hicks)

Lake County Superior Court
 Judge Richard J. Conroy (Landress, Potts)

Lake County Superior Court
 Judge Richard W. Maroc
 (Brown, McCollum/Townsend, Coleman)

Lake County Superior Court
 Judge Thomas Stefaniak, Jr. (Isom)

LaPorte County Circuit Court
 Judge Robert S. Gettinger (L. Williams)

Lawrence County Circuit Court
 Judge Linda Chezem (Minnick)

Madison County Superior Court
 Judge Thomas Newman, Jr.
 (Saylor, Wisehart, Johnson)

Madison County Superior Court #1
 Judge Fredrick Spencer (Baer)

Marion County Superior Court
 Judge Patricia J. Gifford
 (Daniels, Dye, Ritchie, Van Cleave, Burris)

Marion County Superior Court
 Judge John R. Barney, Jr.
 (Allen, Barker, Evans, J.K. Thompson)

Marion County Superior Court
 Judge John W. Tranberg
 (Burris, Conner, Games, Harris)

Marion County Superior Court
 Judge Roy F. Jones (G. Davis)

Marion County Superior Court
 Judge Tonya Walton Pratt (J.K. Thompson)

Marion County Superior Court
 Judge Thomas E. Alsip
 (Huffman/Underwood, Patton)

Marshall County Circuit Court
 Judge Michael D. Cook (F. Davis)

Montgomery County Circuit Court
 Judge Thomas K. Milligan (Baird, Bivins)

Morgan County Circuit Court
 Judge James E. Harris (Bellmore)

Porter County Superior Court
 Judge Roger V. Bradford (Miller)

Porter County Superior Court
 Judge Thomas W. Webber (James, Peterson)

Posey County Circuit Court
 Judge James M. Redwine (Harrison)

Spencer County Circuit Court
 Judge Wayne Roell (Ward)
 St. Joseph County Superior Court
 Judge Jerome Frese (Kubsch)
 St. Joseph County Superior Court
 Judge William T. Means (Stroud)
 St. Joseph County Superior Court
 Judge William H. Albright (Kubsch)
 Sullivan County Circuit Court
 Judge P. J. Pierson (R.Smith)
 Tippecanoe County Superior Court
 Judge George J. Heid (Stevens)
 Tippecanoe County Circuit Court
 Judge Ronald E. Melichar (Trueblood)
 Vanderburgh County Circuit Court
 Judge Richard L. Young (Prowell, Wrinkles)
 Vanderburgh County Circuit Court
 Judge William H. Miller (Canaan)

Vanderburgh County Circuit Court
 Judge Carl A. Heldt (McManus, Wilkes)
 Vanderburgh County Circuit Court
 Judge Robert J. Pigman (Ward)
 Vigo County Circuit Court
 Judge Hugh D. McQuillan (Wallace)
 Vigo County Superior Court
 Judge Michael H. Eldred (Benefiel)
 Warrick County Superior Court
 Judge Edward A. Campbell (Stephenson)
 Wayne County Superior Court
 Judge Robert L. Reinke (Castor)
 Wayne County Circuit Court
 Judge Wayne C. Puckett (Spranger)
 Whitley County Circuit Court
 Judge Edward J. Meyers (Hough)

MOST ACTIVE TRIAL PROSECUTORS

(Includes all trial prosecutors in all 105 "trials" that resulted in a Death Sentence in Indiana since 1977. No distinction is made between lead counsel and second chair. Note joint trials. Does not include death penalty trials that resulted in a sentence less than death.)

8 - Thomas W. Vanes
 (Benirschke, Rouster/D. Williams, Hollis, Coleman,
 Lockhart, Brown, Brewer, Vandiver)
 7 - David E. Cook
 (Games, Patton, Resnover/T. Smith, Van Cleave,
 G.Davis, Huffman/Underwood, Conner)
 5 - John V. Commons
 (Moore, Timberlake, Allen, JKThompson, Conner)
 4 - J. Gregory Garrison
 (Castor, Moore, Resnover/T. Smith, Burris)
 4 - John J. Burke
 (Roark, E.Williams, Landress, Roark)

4 - Stanley M. Levco
 (McManus, Wallace, Wilkes, Wrinkles)
 3 - William F. Lawler, Jr.
 (Wisehart, Saylor, Johnson)
 3 - Delbert H. Brewer
 (Stevens, Minnick, Minnick)
 3 - John H. Meyers, IV
 (J.Lowery, Trueblood, J.Lowery)
 3 - Scott C. Newman
 (Ritchie, Timberlake, Dye)
 3 - Lawrence O. Sells
 (Barker, JKThompson, JKThompson)

TRIAL PROSECUTOR INDEX

Phillip I. Adler (Benefiel)
 Merritt K. Alcorn (Fleenor)
 Jeffrey L. Arnold (Lambert)
 Jerry A. Atkinson (Schiro)
 John W. Barce (J.Lowery)
 Jerry J. Bean (Trueblood)
 Craig V. Braje (F.Davis)
 Delbert H. Brewer
 (Stevens, Minnick, Minnick)
 John J. Burke
 (Roark, E.Williams, Landress, Roark)
 Kathleen Burns (Rouster/D. Williams)
 Sheila A. Carlisle (Moore)

Paul R. Cherry (Woods)
 Robert L. Collins (Ingle)
 Susan Collins (Averhart)
 John V. Commons
 (Moore, Timberlake, Allen, JKThompson,
 Conner)
 Michael T. Conway (Harris)
 David E. Cook
 (Games, Patton, Resnover/T. Smith, Conner,
 Van Cleave, G.Davis, Huffman/Underwood)
 Richard Cook (Coleman)
 Bradley D. Cooper (Overstreet)
 Todd A. Corne (Stephenson)

Jane Spencer Craney (Bellmore)
 John F. Crawford Jr. (Martinez-Chavez/Rondon)
 Rodney J. Cummings (Baer)
 J. A. Cummins (Lambert)
 Joseph L. Curosh, Jr. (Roche/Nicksich, Potts)
 Jon A. Dartt (Ward, Ward)
 James H. Douglas (Peterson, Miller)
 Scott H. Duerring (Kubsch, Kubsch)
 Darrell F. Ellis (Thacker)
 Marcus C. Emery (Daniels)
 John G. Evon (Peterson)
 Donita F.M. Farr (Wilkes)
 Stanley O. Faith (Ingle)
 Thomas W. Farlow (Allen)
 Anne M. Flannelly (Stevens)
 Gregory L. Fumarolo (C.Smith)
 J. Gregory Garrison
 (Castor, Moore, Resnover/T. Smith, Burris)
 Robert W. Gevers II (Corcoran)
 Wilmer E. Goering II (Fleenor)
 Stephen Goldsmith (Evans)
 G. Thomas Gray (Judy)
 Michael M. Greener (Hicks)
 Trent Van Haaften (Harrison)
 Lance D. Hamner (Overstreet)
 Joel D. Hand (Ritchie)
 James P. Hayes (L.Williams)
 William F. Herrbach (James)
 Marilyn E. Hrnjak (Hicks)
 Ralph R. Huff (L.Williams)
 James D. Humphrey (Jackson, Kennedy)
 Steven A. Hunt (McManus)
 Terry E. Iacoli (Pruitt)
 Thomas L. Jackson (McCollum/Townsend)
 Jerome F. Jacobi (Boyd)
 Michelle Jatkiewicz (Isom)
 Brian F. Jennings (G.Davis)
 Carole J. Johnson (Burris)
 Fred R. Jones (L.Williams)
 Peter Katic (Brewer)
 Ora A. Kincaid III (Woods)
 John D. Krisor (Matheney)
 Joan Kuoros (Lockhart)
 G. David Laur (Spranger)
 William F. Lawler, Jr.
 (Wisehart, Saylor, Johnson)
 Christian M. Lenn (Canaan)
 Mary Margaret Lloyd (Wrinkles)
 Stanley M. Levco
 (McManus, Wallace, Wilkes, Wrinkles)
 Peggy O. Lohorn (Baird)
 Robert E. Love (Hough)
 Robert J. Lowe (Stevens)
 John M. Maciejczyk (Stroud)
 Tina L. Mann (Overstreet)
 Mark S. Massa (JKThompson)
 Michael J. McAlexander (T.Lowery)
 Rebecca S. McClure (Bivins)

Jerry J. McGaughey (Dillon, JayThompson)
 John M. McGrath (Averhart/Hudson/North)
 James W. Mcnew
 (Cooper, Averhart/Hudson/North)
 Keith A. Meyer (Stephenson)
 John H. Meyers, IV
 (J.Lowery, Trueblood, J.Lowery)
 Michael Miller (Kennedy)
 David S. Milton (Holmes)
 Fritz D. Modesitt (Minnick)
 Kimberley Kelley Mohr (Harrison)
 Timothy M. Morrison (Evans, Harris)
 Charles J. Myers (Bieghler)
 Scott C. Newman
 (Ritchie, Timberlake, Dye)
 Brett J. Niemeier (Prowell)
 Kathleen M. O'Halloran
 (McCollum/Townsend, Brown)
 Stephen A. Oliver (Judy)
 James J. Olszewski (Peterson)
 Susan L. Orth (Ingle)
 Jonathan J. Parkhurst (Prowell)
 Bruce E. Petit (Bivins)
 Robert J. Pigman (Canaan, Wallace)
 Brian G. Poindexter (Barker)
 James P. Posey (C.Smith)
 David L. Puckett (Baer)
 Richard W. Reed (Lambert)
 Gwen R. Rinkenberger (Peterson, Miller)
 Jack R. Robinson (Ward)
 Richard J. Rudman (J.Lowery)
 Richard L. Russell (Bieghler)
 Frank E. Schaffer (Kubsch)
 Stephanie J. Schankerman (Dye)
 Lawrence O. Sells
 (Barker, JKThompson, JKThompson)
 Peter Shakula (Averhart)
 Robert C. Shook (Fleenor)
 Stephen M. Sims (Hough, T.Lowery)
 Terry K. Snow (Castor)
 Steven P. Sonnega (Pruitt)
 Robert E. Springer (R.Smith)
 Ralph W. Staples, Jr. (Peterson)
 Wayne E. Steele (Baird)
 Steven D. Stewart (Boyd)
 Mark K. Sullivan (Dillon)
 Robert P. Thomas (Allen, Huffman/Underwood)
 John D. Tinder (Burris, Moore)
 Barbara J. Trathen (Dye, Burris)
 Michael J. Tuszyński (Stroud)
 David Urbanski (Isom)
 Thomas W. Vanes
 (Benirschke, Rouster/D. Williams, Hollis,
 Coleman, Lockhart, Brown, Brewer, Vandiver)
 Dale P. Webster (Dillon)
 Joel V. Williams (Kubsch)
 Cynthia L. Winkler (Ingle)
 Thomas J. Young (Daniels)

MOST ACTIVE TRIAL DEFENSE ATTORNEYS

(Includes all defense attorneys in all 105 trials that resulted in a Death Sentence in Indiana since 1977. No distinction is made between lead counsel and second chair. Does not include death penalty trials that resulted in a sentence less than death.)

- | | |
|---|---|
| 4 - Kevin B. Relphorde
(Potts, Cooper, Landress, Roark) | 3 - Daniel L. Toomey
(McCollum, Brown, Townsend) |
| 3 - Jeffrey A. Baldwin
(Overstreet, Stevens, JKThompson) | 3 - Alex R. Voils, Jr.
(Barker, Evans, Allen) |
| 3 - Cornell Collins
(McCollum, Coleman, Townsend) | 3 - Dennis A. Vowels
(Stephenson, Wrinkles, Prowell) |
| 3 - Noah L. Holcomb
(Rouster, Roche, Roark) | 3 - I. Alexander Woloshansky
(Peterson, Peterson, Roark) |
| 3 - Robert L. Lewis
(Martinez-Chavez, Lockhart, Rouster) | 3 - Herbert I. Shaps (Vandiver, Hollis, Isom) |

TRIAL DEFENSE ATTORNEY INDEX

- | | |
|--|--|
| Robert F. Alden(Holmes) | Steven L. Harris (Judy) |
| Thomas E. Alsip (Burris, Resnover) | Beverly Harris (Canaan) |
| Ronald V. Aungst (Miller) | Grant Hawkins (Games, Van Cleave) |
| Jeffrey A. Baldwin (Overstreet, Stevens, JKThompson) | David Hennessy (JKThompson) |
| Arnold P. Baratz (Timberlake, Holmes, Patton) | Gregory H. Hofer (F.Davis) |
| Patrick Biggs (Ingle) | Noah L. Holcomb (Rouster, Roche, Roark) |
| Scott A. Blazey (Ward) | Eugene C. Hollander (Underwood) |
| Timothy Bookwalter (G.Davis) | Jere L. Humphrey (L.Williams) |
| Hamilton Carmouche (McCollum, Townsend) | R. Mark Inman (Burris) |
| Mitchell P. Chabreja (Saylor) | William Janes (James) |
| Eric O. Clark (Rondon) | Jerry T. Jarrett (Peterson, Peterson) |
| Joseph Cleary (JKThompson) | Douglas E. Johnston (Woods) |
| Robert V. Clutter (Stevens, JKThompson) | Michael C. Keating (Schiro) |
| Cornell Collins (McCollum, Coleman, Townsend) | Robert S. Kentner (Miller) |
| Larry D. Combs (Fleenor) | J. Richard Kiefer (Kennedy) |
| Bruce S. Cowan (Hough) | Scott L. King (Matheney, Potts) |
| John F. Crawford (Ritchie, Dye) | James F. Korpall (Stroud, Kubsch) |
| Michael J. Danks (Prowell, Wrinkles) | Eric K. Koselke (Moore) |
| William Davis (Benirschke) | Michelle M. Fennessy-Kraus (Averhart) |
| Kimberly Devane (Dye) | Steven B. Lazinsky (Conner) |
| Gerald Dewester (Huffman) | Charles F. Leonard (T.Lowery) |
| Timothy R. Dodd (Jay Thompson) | Robert L. Lewis (Martinez-Chavez, Lockhart, Rouster) |
| Joseph K. Etling (R.Smith) | Kevin L. Likes (Averhart) |
| Michael Fisher (Burris) | Jeffrey A. Lockwood (Baer, Saylor) |
| Michael T. Forsee (Boyd) | S. Anthony Long (Stephenson) |
| James T. Frank (Brewer) | Darnail Lyles (Lockhart, D.Williams) |
| Jimmy E. Fulcher (Dillon) | Alphonso Manns (Thacker) |
| Christopher B. Gambill (Benefiel) | Albert E. Marshall (Brown, Landress) |
| Douglas A. Garner (Pruitt) | David L. Martenet (Evans) |
| Lawrence D. Giddings (J.Lowery, J.Lowery) | Brian J. May (Kubsch) |
| Wilmer E. Goering (Moore) | Mark D. Maynard (Lambert, Castor) |
| Glenn A. Grampp (McManus) | Michael J. McDaniel (Ingle) |
| Michael D. Gross (Bivins) | Kevin P. McGoff (Kennedy, Bellmore) |
| Willie Harris (Lockhart) | Casey McCloskey (Isom) |

Kevin M. McShane (Ritchie, Hicks)
 Ronald E. McShurley (Lambert)
 Rick Mendes (Conner)
 Garry Miracle (Wisehart, Johnson)
 Patrick Murphy (Castor)
 Woodrow S. Nasser (Minnick, Minnick)
 John S. Nimmo (Corcoran)
 Peter D. Nugent (Overstreet)
 Thomas O'Brien (Trueblood)
 Ellen O'Connor (Timberlake)
 Michael O'Reilly (Trueblood)
 Donald W. Pagos (James)
 Donald R. Peyton (J.Lowery)
 Richard R. Plath (T.Smith)
 Carolyn W. Rader (Dye, Barker)
 Lonnie Randolph (Coleman)
 Charles Gregory Read (Boyd)
 Kevin B. Relphorde (Potts, Cooper, Landress, Roark)
 Charles C. Rhetts (Woods)
 Ronald Richmer (Jackson)
 Terrance W. Richmond (Jackson, Spranger)
 Steven E. Ripstra (Ingle, Thacker, Ward)
 Merle B. Rose (Daniels)
 Mitchell Rothman (McManus)
 Nathaniel Ruff (D.Williams)
 David R. Schneider (D.Williams)
 Kurt Schnepfer (Wilkes)
 David Schneider (Averhart)
 Philip R. Skodinski (Kubsch)
 Charles Scruggs (Bieghler)
 David B. Sexton (Allen)
 Herbert I. Shaps (Vandiver, Hollis)

Harry A. Siamas (Baird)
 Philip Skodinski (Stroud)
 William G. Smock (Wallace, R.Smith)
 Bruce R. Snyder (Hough)
 Barry L. Standley (Canaan)
 Nile Stanton (Hicks)
 Thomas M. Swain (Harrison)
 Ronald Tedrow (Bellmore)
 Mark A. Thoma (Corcoran)
 Ted R. Todd (Fleenor)
 Daniel L. Toomey (McCollum, Brown, Townsend)
 Barrie C. Tremper (T.Lowery)
 L. Craig Turner (Burris, Harris)
 William Vanderpol Jr. (Pruitt)
 J. Robert Vegter (Hicks)
 Alex R. Voils, Jr. (Barker, Evans, Allen)
 Dennis A. Vowels (Stephenson, Wrinkles, Prowell)
 Ronald Warrum (Harrison)
 Robert C. Way (Spranger)
 Daniel L. Weber (Benefiel)
 Craig O. Wellnitz (Underwood)
 Allen F. Wharry (Woods, Bivins)
 George Wilder (Trueblood)
 Barbara Williams (Wilkes)
 Bryan R. Williams (Baer)
 Barbara Coyle Williams (Ward)
 Theodore D. Wilson (C.Smith)
 Neil Wiseman (Kubsch)
 I. Alexander Woloshansky (Peterson, Peterson, Roark)
 John C. Wood (Bieghler)
 William F. Wurster (Daniels)
 Linda Meier Youngcourt (Moore, Ward)

INDIANA DEPUTY ATTORNEYS GENERAL - DIRECT APPEAL ATTORNEY INDEX

Index includes all appellate attorneys representing the State of Indiana on direct appeals only, as recognized by the Indiana Supreme Court as attorney of record in the published opinion. No distinction is made between lead counsel and second chair. Does not include Amicus Curiae counsel. Note joint appeals: McCollum / Townsend, Rouster / D. Williams. Does not include appeals following death penalty trials that resulted in a sentence less than death.

INDIANA ATTORNEYS GENERAL (1977 - 2013)

Theodore L. Sendak	Republican	1969 - 1980
Linley E. Pearson	Republican	1981 - 1992
Pamela Carter	Democrat	1993 - 1996
Jeff Modisett	Democrat	1997 - 1999
Karen Freeman-Wilson	Democrat	2000 - 2000
Steve Carter	Republican	2001 - 2008
Gregory F. Zoeller	Republican	2009 - present

Linley E. Pearson 01-12-81 to 01-11-93

Joseph N. Stephenson

(Averhart, Bieghler, Boyd, Brown, Burris, Canaan, F.Davis, G.Davis, Harris, Huffman, T.Lowery, Martinez, Townsend, Minnick, Minnick, Moore, Patton, Resnover, Rondon, Schiro, T.Smith, Spranger, Townsend, Underwood, Van Cleave, Vandiver, Wallace, Wisheart)

Arthur Thaddeus Perry

(Azania, Baird, Bellmore, Benefiel, Benirschke, Castor, Coleman, Conner, Daniels, Evans, Evans, Hough, Jackson, Kennedy, Landress, Lockhart, Matheney, Miller, Potts, Roark, Roche, Rouster, Trueblood, D.Williams)

Michael Gene Worden

(Thompson, Cooper, Judy, J.Lowery, J.Lowery)

Palmer K. Ward

(Brewer, Daniels, Dillon, L.Williams)

Cheryl L. Greiner (Thacker, Woods)

Louis E. Ransdell (Fleenor, Games)

Gary Damon Secrest (Johnson)

Theodore E. Hansen (C.Smith)

Charles D. Rodgers (Judy)

Thomas D. Quigley (Brewer)

Pamela Carter 01-11-93 to 01-13-97

Arthur Thaddeus Perry

(Harrison, Holmes, James, Kennedy, Lambert, Peterson-Lake, Ben-Yisrayl-Porter, Prowell, Roark, Timberlake, E.Williams, Bivins, Burris)

James D. Dimitri (Wrinkles)

Jeff Modisett 01-13-97 to 02-21-00

Arthur Thaddeus Perry

(J.Thompson, Allen, Barker, Saylor, R.Smith)

Janet Brown Mallett (Dye)

Andrew L. Hedges (Ingle)

Michael A. Hurst (Stephenson)

Geoff Davis (Stevens)

Karen Freeman-Wilson 02-21-00 to 01-08-01

Priscilla J. Fossum (Corcoran)

Steve Carter 01-08-01 to 01-12-09

James B. Martin (Kubsch, Stroud, Ward)

Scott A. Kreider (McManus)

Thomas D. Perkins (Moore)

Timothy W. Beam (Overstreet)

Andrew A. Kobe (Pruitt)

Stephen R. Creason (Ritchie)

Gregory F. Zoeller 01-12-09 to present

James B. Martin (Ward)

Stephen R. Creason (Wilkes)

DIRECT APPEAL - DEFENSE ATTORNEY INDEX

Index includes all appellate attorneys representing the Defendant on direct appeals only, as recognized by the Indiana Supreme Court as attorney of record in the published opinion. No distinction is made between lead counsel and second chair. Does not include Amicus Curiae counsel. Note joint appeals: McCollum / Townsend, Rouster / D. Williams. Does not include appeals following death penalty trials that resulted in a sentence less than death.

Laurie A. Baiden (Schiro)	William Janes (James)
Jeffrey A. Baldwin (Stevens)	Richard Kammen (Daniels, Holmes, Van Cleave)
Jeffrey Baldwin (Overstreet)	Michael C. Keating (Prowell, Schiro, Wrinkles)
Arnold P. Baratz (Holmes)	J. Richard Kiefer (Kennedy, Kennedy)
Daniel L. Bella (Lockhart, Rouster/D.Williams)	Scott L. King (Matheney, Rouster/D.Williams)
William H. Bender (Harrison)	Eric K. Koselke (Moore, Stroud)
John C. Bohdan (Corcoran)	Dennis R. Kramer (Brewer)
Stephen C. Bower (Averhart)	Charles F. Leonard (T.Lowery)
John P. Brinson (McManus)	Kevin L. Likes (Azania)
Susan D. Burke (Barker)	Jeffrey A. Lockwood (Saylor)
William Byer, Jr. (Johnson)	Rhonda Long-Sharp (Kubsch)
Mitchell P. Chabreja (Saylor)	Darnail Lyles (E.Williams)
J. Murray Clark (G.Davis)	Howard B. Lytton, Jr. (Dillon)
Joseph M. Cleary (J.Thompson)	Alphonso Manns (Thacker)
John D. Clouse (Schiro)	Albert Marshall (Potts, Roark)
Robert V. Clutter (J.Thompson)	John E. Martin (Miller)
Michael T. Conway (Harris)	Mark D. Maynard (Lambert)
Bruce S. Cowan (Hough)	Michael J. McDaniel (Ingle)
Michael J. Danks (Wrinkles)	Kevin P. McGoff (Kennedy, Kennedy)
William Van Der Pol Jr. (Pruitt)	Kevin McShane (Ritchie)
Keith A. Dilworth (Castor)	Ronald E. McShurley (Lambert)
Timothy R. Dodd (McManus, J.R.Thomson)	Judith G. Menadue (Timberlake)
Daniel Dovenbarger (Van Cleave)	P. Stephen Miller (Corcoran)
Janet S. Dowling (Stephenson)	Garry W. Miracle (Wisehart)
Dawn D. Duffy (Resnover)	Woodrow S. Nasser (Minnick, Minnick)
Joseph K. Etling (R.Smith)	David H. Nicholls (McCollum/Townsend)
Michelle Fennessy-Kraus (Azania)	Michael J. O'Reilly (Trueblood)
James T. Flanigan (Holmes)	Thomas J. O'Brien (Trueblood)
Hector L. Flores (Martinez)	Donald W. Pagos (James)
Michael T. Forsee (Boyd)	Ellen S. Podgor (McCollum/Townsend)
Monica Foster (Huffman, Kubsch)	John Proffitt (Moore)
David P. Freund	Carolyn W. Rader (Barker)
(Baird, J.Lowery, Fleenor, Vandiver, Bivins, Woods)	Susan D. Rayl (Holmes)
Bruce M. Frey (Bieghler)	Charles G. Read (Boyd)
Christopher B. Gambill (Benefiel)	Terrance W. Richmond
Gary S. Germann (Ben-Yisrayl-Porter)	(Jackson, Rondon, Springer)
Lawrence D. Giddings (J.Lowery)	Steven E. Ripstra (Dillon, Ward, Ward)
Marce Gonzalez, Jr. (Benirschke, Roark)	Nathaniel Ruff (Rouster)
William Wayne Gooden (Wilkes)	George K. Shields (Games)
John Andrew Goodridge ((Wilkes)	Mark Small (Ritchie)
Jill E. Greuling (Huffman)	Allen N. Smith, Jr. (Underwood)
Teresa D. Harper (Dye, Pruitt, Overstreet)	William G. Smock (R.Smith, Wallace)
Beverly K. Harris (Canaan)	Bruce R. Snyder (Hough)
Stephen L. Harris (Judy)	Theodore M. Sosin (Evans, Evans)
Gregory H. Hofer (F.Davis)	Barry L. Standley (Canaan)
James G. Holland (Burris)	James F. Stanton
Jere I. Humphrey (F.Davis, L.Williams)	(Coleman, Landress, Peterson, Townsend)
Charles R. Hyde (Castor)	Janice L. Stevens (Moore)
Mark Inman (Burris)	Charles E. Stewart, Jr. (Roche, E.Williams)

Victor L. Streib (Cooper)
 Kenneth M. Stroud (Judy, Harris, Moore)
 Daniel L. Toomey (Brown)
 William L. Touchette (Cooper)
 Barrie C. Tremper (T.Lowery, C.Smith)
 L. Craig Turner (Conner, Harris, Patton)
 M.E. Tuke (Baird, Martinez)
 Alex R. Voils, Jr. (G.Davis)

Dennis A. Vowels (Prowell)
 Richard A. Waples (Daniels)
 Daniel L. Weber (Benefiel)
 Brent L. Westerfeld
 (Allen, Bellmore, Stephenson, Stevens, Stroud)
 Stephen P. Wolfe (T.Smith)
 I. Alexander Woloshansky (O.Ben-Yisrayl)
 Lorinda Meier Youngcourt (Moore, Ward, Ward)

INDIANA DEPUTY ATTORNEYS GENERAL - PCR APPEAL ATTORNEY INDEX

Index includes all appellate attorneys representing the State of Indiana on appeal from the grant or denial of PCR, as recognized by the Indiana Supreme Court as attorney of record in the published opinion. No distinction is made between lead counsel and second chair. Does not include Amicus Curiae counsel. Does not include PCR appeals following death penalty trials that resulted in a sentence less than death.

INDIANA ATTORNEYS GENERAL (1977 - 2006)

Theodore L. Sendak	Republican	1969 - 1980
Linley E. Pearson	Republican	1981 - 1992
Pamela Carter	Democrat	1993 - 1996
Jeff Modisett	Democrat	1997 - 1999
Karen Freeman-Wilson	Democrat	2000 - 2000
Steve Carter	Republican	2001 - 2008
Gregory F. Zoeller	Republican	2009 - present

Linley E. Pearson 01-12-81 to 01-11-93

Joseph N. Stevenson
 (Benefiel, Brewer, Burris, Daniels, Resnover,
 Schiro, Schiro, C.Smith, T.Smith, Spranger,
 L.Williams)

Arthur Thaddeus Perry
 (Averhart, J.Lowery, Resnover, Wallace, Wallace)
 Louis E. Ransdell (Fleenor)

Pamela Carter 01-11-93 to 01-13-97

Arthur Thaddeus Perry
 (Baird, Canaan, Hames, Hough, Huffman,
 Minnick, Moore, Rondon, T.Smith)
 Geoff Davis (Van Cleave)
 James A. Joven (Wisehart)
 Preston W. Black (Conner)
 Dana Childress-Jones (Schiro)
 Meredith J. Mann (Daniels)
 Geoff Davis (Johnson)

Jeff Modisett 01-13-97 to 02-21-00

Arthur Thaddeus Perry
 (Benefiel, Matheney, Miller, Roche, Rouster,
 Trueblood, D.Williams)
 Christopher L. LaFuse (Brown, Coleman, Coleman)

Priscilla J. Fossum (Harrison, Lambert)
 Michael A. Hurst (Holmes)
 James D. Dimitri (Ben-Yisrayl)
 Andrew L. Hedges (Bivins)
 Rosemary L. Borek (E.Williams)
 James D. Dimitri (Woods)

Karen Freeman-Wilson 02-21-00 to 01-08-01

Arthur Thaddeus Perry
 (Daniels, Ben-Yisrayl, Saylor, Saylor)
 Stephen R. Creason (Saylor)
 Andrew L. Hedges (Stevens)
 Priscilla J. Fossum (Allen, Timberlake)
 James B. Martin (Timberlake)
 Thomas D. Perkins (Prowell, Wrinkles)

Steve Carter 01-08-01 to 01-12-09

James B. Martin (Overstreet, Stephenson)
 Arthur Thaddeus Perry (Ben-Yisrayl)
 Christopher L. LaFuse (Averhart)
 Stephen R. Creason (Corcoran, Ritchie)
 Timothy W. Beam (Dye)

Gregory F. Zoeller 01-12-09 to present

James B. Martin (Ward)

PCR APPEAL - DEFENSE ATTORNEY INDEX

Index includes all appellate attorneys representing the Defendant on appeal from the grant or denial of PCR, as recognized by the Indiana Supreme Court as attorney of record in the published opinion. No distinction is made between lead counsel and second chair. Does not include Amicus Curiae counsel. Does not include PCR appeals following death penalty trials that resulted in a sentence less than death.

Kenneth L. Bird (Bieghler, Roche, VanCleave)	Paul Levy (Brewer, L.Williams, Resnover)
Barbara S. Blackman (Dye, Prowell, Stevens)	Joe Keith Lewis (Woods)
Valerie K. Boots (Averhart)	Kevin L. Likes (Hough)
Thomas M. Carusillo (Rondon)	Rhonda Long-Sharp (Averhart, Schiro, C.Smith)
Kathleen Cleary	Lisa Malmer (Canaan)
(Allen, Coleman, Coleman, Conner, Dye, Holmes,	Joanna McFadden (Corcoran)
Lambert, Overstreet, Pruitt, Ritchie, Trueblood,	Kevin P. McGoff (Minnick, Resnover)
VanCleave)	Judith G. Menadue
Jesse A. Cook (Azania, Baird)	(Daniels, Rondon, T.Smith, Wallace)
Michael E. Deutsch (Azania)	J. Jeffreys Merryman, Jr. (Matheney, Wisehart)
Marie F. Donnelly (Benefiel, Games, Roche)	Ken Murray (Brown)
David L. Doughten (Hough)	Ann M. Pfarr (Miller, D.Williams)
Janet S. Dowling (Bivins, Brown, Wisehart)	John J. Ray (Wallace)
Mark A. Earnest (Daniels, Daniels)	Terrance W. Richmond (Spranger)
Michelle Fennessy (Johnson)	Michael Sauer (Games)
Monica Foster (Averhart, Huffman, J.Lowery, Schiro)	F. Thomas Schornhorst (Fleenor, T.Smith)
Alan M. Freedman (Rouster)	Steven H. Schutte
William Goodman (Azania)	(Ben-Yisrayl, Ben-Yisrayl, Ben-Yisrayl,
Glenn A. Grampp (Canaan)	Canaan, Holmes, Prowell, Matheney,
Joanna Green	Overstreet, Stephenson)
(Allen, Ben-Yisrayl, Benefiel, Harrison, Holmes,	Ann M. Skinner (E.Williams)
Moore, Miller, Wrinkles)	John S. Sommer (Roche, Trueblood)
Danielle L. Gregory (Allen, E.Williams)	David C. Stebbins (Woods)
Frances Watson Hardy (Schiro)	Ann M. Sutton (Timberlake)
Teresa D. Harper (C.Smith)	James N. Thiros (Rouster)
Emily Mills Hawk	Linda R. Torrent (C.Smith)
(Ben-Yisrayl, Ben-Yisrayl, Saylor, Saylor)	AleR. Voils, Jr. (Schiro)
Carol R. Heise (Rouster)	Laura L. Volk
Margaret Hills (Wallace)	(Dye, Corcoran, Prowell, Pruitt, Ward, Wrinkles)
Thomas C. Hinesley	Linda M. Wagoner (Burris, Johnson)
(Conner, Harrison, Lambert, Moore, Overstreet,	Richard A. Waples (Daniels)
Pruitt, Saylor, Saylor, Stephenson, Stevens,	Scott A. Weathers (Huffman)
VanCleave, Ward, Wisehart)	Brent L. Westerfeld
Chris Hitz-Bradley (Trueblood)	(Fleenor, J.Lowery, Resnover, Ritchie)
Linda K. Hughes (Holmes, Wrinkles)	Juliet M. Yackel (D.Williams)
Michael C. Keating Canaan)	Lorinda Meier Youngcourt
Eric K. Koselke (Daniels, Timberlake)	(Bieghler, Bivins, Minnick)
Robert E. Lancaster	
(Coleman, Coleman, Harrison, E.Williams)	

IC 35-50-2-9 (b) AGGRAVATING CIRCUMSTANCES

Of the 95 cases resulting in a death sentence since 1977:

(Includes Christopher Peterson twice, with two separate death sentences; includes only once those ten who were resentenced to death after reversal on appeal)

Cases alleging/proving single aggravator: 40

Cases alleging/proving multiple aggravators: 54

Most aggravators alleged/proved in a single case: 05 (Baer), 04 (G. Davis, Harrison, Miller, Ward)

b (1) Intentional Murder:

	<u>Robbery</u>	<u>Burglary</u>	<u>Rape</u>	<u>CDC</u>
Allen	Martinez	Barker	Baer (Attempt)	Benefiel
Averhart	McCollum	Bellmore	Benefiel	Canaan
Baer	Miller	Bieghler	G.Davis	Evans
Benirschke	Minnick	Boyd	Evans	Miller
Bivins	Rondon	Canaan	Harris	T.Lowery
Burris	Rouster	G.Davis	Judy	Ward
Cooper	Saylor	Dillon	T.Lowery	
Daniels	C.Smith	Fleenor	Miller	<u>Molesting</u>
Games	Stroud	Johnson	Minnick	Brown
Holmes	J.K.Thompson	J.Lowery	Overstreet	Coleman
Hough	Underwood	Matheny	Patton	F.Davis
Huffman	Van Cleave	Roche	Schiro	T.Lowery
James	D.Williams	Stroud	Ward	Stevens
Jackson	E.Williams	Thompson		
Kennedy	L.Williams	Wallace	<u>Kidnapping</u>	<u>Arson</u>
Landress	Wisehart	Wisehart	Barker	Harrison
Lockhart	Woods		Harris	Johnson
J.Lowery			Jackson	
			Kennedy	
			Ingle	

b (2) Explosives: None

b (3) Lying in Wait: F.Davis, G.Davis, Fleenor, Matheny, Stephenson, Thacker, Vandiver, Ingle

b (4) Hired to Kill: Vandiver

b (5) Hiring to Kill: Thacker

b (6) Law Enforcement Victim: Averhart, Castor, Lambert, Moore, Pruitt, Resnover, Ritchie, T.Smith, Spranger, Timberlake

b (7) Convicted of Another Murder: Brown, Coleman, Harrison, Hough, Lockhart, Peterson, L.Williams, J.R. Thompson, J.K. Thompson

b (8) Committed Another Murder: Baer, Baird, Barker, Benirschke, Bieghler, Castor, Conner, Corcoran, Dillon, Dye, Fleenor, Hicks, Hollis, Holmes, Hough, Isom, Judy, Kubsch, J.Lowery, McManus, McCollum, Moore, Peterson, Potts, Prowell, Roark, Roche, Rouster, Stephenson, Stroud, J.K. Thompson, Townsend, Trueblood, Wallace, Wilkes, D.Williams, E.Williams, Wrinkles

b (9) On Probation or Parole or In Custody: Baer, Miller, Ritchie, Saylor, R. Smith, Stevens, Ward

b (10) Dismemberment: None

b (11) Burning, Mutilation, Torture: Ward

b (12) Victim Less Than 12 Years Old: Baer, Harrison, Kubsch, McManus, Roark, Stevens, Trueblood, Wilkes

b (13) Victim was previous felony domestic violence victim of Defendant: None

b (14) Victim was Witness Against Defendant: None

b (15) Drive-By Shooting: Stephenson

b (16) Intentional Killing of Viable Fetus: None

PENDING CASES

At Trial

According to the Indiana Supreme Court Administrator, who monitors the progress of death penalty cases pursuant to Rule 24 of the Indiana Rules of Criminal Procedure, 7 death penalty cases are pending and awaiting trial as of June 1, 2013:

	<u>County</u>	<u>Date Filed</u>	<u>Trial / Next Action</u>
John K. Adams	Marion	02-25-00	Found Incompetent 10-19-00
Peter Burton	Lake	04-20-93	Illinois Death Sentence
Roy Bell	Fulton	03-14-12	Jury Trial 10-01-13
William Clyde Gibson	Floyd	05-23-12	Jury Trial 10-21-13
William Clyde Gibson	Floyd	05-23-12	Jury Trial 01-21-14
Richard Carley Hooten	Clark	03-21-13	Jury Trial 08-13-13
Jeffrey Alan Weisheit	Vanderburgh	04-26-10	In Trial 06-03-13

On Direct Appeal

Kevin Charles Isom (Indiana Supreme Court)

On PCR in Trial Court

None.

On PCR Appeal

None.

On Habeas in District Court

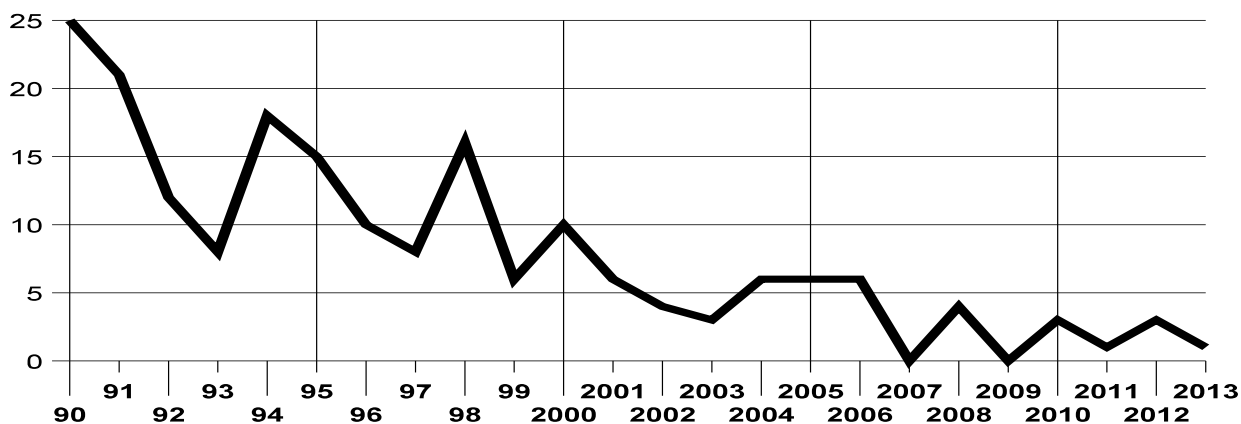
Fredrick Michael Baer (Southern District of Indiana)
Debra Denise Brown (Ohio District Court)
Eric D. Holmes (Southern District of Indiana)
Wayne D. Kubsch (Northern District of Indiana)
Benjamin Donnie Ritchie (Southern District of Indiana)
John Matthew Stephenson (Northern District of Indiana)
Roy Lee Ward (Southern District of Indiana)

On Habeas Appeal

Howard Allen (7th Circuit)
Joseph E. Corcoran (7th Circuit)
Paul Michael McManus (7th Circuit)
Michael Dean Overstreet (U.S. Supreme Court)
Tommy Ray Pruitt (7th Circuit)

DEATH PENALTY REQUESTS BY INDIANA PROSECUTORS

According to the Indiana Supreme Court Administrator, since 1990 Indiana Prosecutors have requested a Death Sentence in 193 murder cases as of June 1, 2013:



<u>Death Penalty Filing</u>	<u>County</u>	<u>Sentencing</u>	<u>Disposition</u>
2013 (1)			
Richard Hooten	Clark	-	-
2012 (3)			
Roy Bell	Fulton	-	-
William Clyde Gibson	Floyd	-	-
William Clyde Gibson	Floyd	-	-
2011 (1)			
Thomas Hardy	Marion	04-05-12	LWOP + 40 years
2010 (3)			
David Alex Flores	Lake	09-09-10	LWOP
Jeffrey Alan Weisheit	Vanderburgh	06-03-13	-
Barney J. Chamorro	Boone	05-10-12	LWOP
2009 (0)			
2008 (4)			
Kevin Isom	Lake	01-08-13	Death Sentence
Ronald Davis	Marion	11-10-10	245 years
Michael A. Gibson	Sullivan	03-18-10	LWOP
Zachariah Melcher	Sullivan	01-28-11	65 years
2007 (0)			
2006 (6)			
Baker, Mark S.	Fulton	11-01-07	LWOP
Harbison, Nicholas	Pike	06-22-07	LWOP
Rios, Simon	Allen	10-01-07	LWOP
Turner, Desmond	Marion	11-20-09	LWOP + 88 years
Walker, Katron L.	Vigo	08-28-09	95 years
Wilkes, Daniel	Vanderburgh	01-25-08	Death Sentence

<u>Death Penalty Filing</u>	<u>County</u>	<u>Sentencing</u>	<u>Disposition</u>
2005 (6)			
Allen, Kenneth	Marion	01-10-10	LWOP
Cottrell, Chad A.	Parke	05-29-09	LWOP
Gauvin, Michelle D.	Tippecanoe	10-26-06	LWOP
Melcher, Zachariah	Clark	08-03-06	LWOP
Stockelman, Anthony	Jackson	04-20-06	LWOP
Voss, Jeffrey	Marion	04-20-07	LWOP
2004 (6)			
Baer, Frederick Michael	Madison	06-09-05	Death Sentence
Jeter, Darryl	Lake	06-16-06	LWOP
Maust, David	Lake	12-16-05	LWOP
Nicholson, Scott	Miami	01-12-11	60 years
Richards, Stephen T.	Lake	09-27-04	LWOP
Wilson, Kerry	Floyd	09-20-05	LWOP
2003 (3)			
Cain, Craig	Grant	10-18-04	LWOP
Holland, Thomas	Marion	12-09-05	LWOP
Losch, David L.	Elkhart	02-06-04	LWOP
2002 (4)			
Covington, Ronald	Marion	10-22-04	LWOP
Hatch, Ronrico	Allen	03-12-04	LWOP
Patrick, Jason	St. Joseph	03-15-04	65 years, 20 years, 08 years
Verner, Louis	Delaware	02-24-05	LWOP
2001 (6)			
McManus, Paul Michael	Vanderburgh	06-05-02	Death Sentence
Parker, Lamar Edward	Allen	01-24-03	110 years
Pruitt, Tommy R.	Morgan	11-21-03	Death Sentence
Richeson, Walter William	Lake	05-03-02	65 years
Shannon, Michael P.	Marion	03-19-03	LWOP
Ward, Roy Lee	Spencer	12-18-02	Death Sentence
2000 (10)			
Adams, John K.	Marion		Incompetent - Pending
Branum, Richard A.	Gibson	12-20-00	LWOP
Britt, Victor Eugene	Lake	11-03-06	246 years
Holland, Kelly K.	Harrison	05-16-01	LWOP, 180 years
Leone, Jeff A.	Greene	05-14-02	LWOP
Ritchie, Benjamin	Marion	10-15-02	Death Sentence
Smallwood, Howard J.	St. Joseph	11-01-01	LWOP
Stroud, Philip A.	St. Joseph	07-11-05	LWOP
Whipps, Jeffrey A.	Knox	10-02-02	40 years
Wilburn, Stevan P.	Fountain		
1999 (6)			
Kubsch, Wayne	St. Joseph	08-28-00/04-18-05	Death Sentence
Lichtenberger, Mark	Adams	07-10-00	LWOP
Malinski, David	Porter	03-16-00	155 years

<u>Death Penalty Filing</u>	<u>County</u>	<u>Sentencing</u>	<u>Disposition</u>
Powell, Jason	Elkhart	03-14-02	LWOP
Slater, Reggion	Porter	10-29-01	LWOP
Witmer, Alex	Elkhart		
1998 (16)			
Anderson, Corey	Jasper	02-28-00	LWOP
Corcoran, Joseph Edward	Allen	08-26-99	Death Sentence
Dixon, Larry Darnell	Lake	01-10-00	50 years
Greer, Timothy	Johnson	03-02-00	LWOP
Gross, Jeremy	Marion	06-09-00	LWOP
Highbaugh, Michael	Marion	04-11-00	LWOP
Jones, Jerry	Marion	05-30-01	73 years
Kovak, Boris	Elkhart	08-26-99	LWOP
Moore, Michael S.	Delaware	05-28-99	155 years
Overstreet, Michael Dean	Johnson	07-31-00	Death Sentence
Powell, Myron	Marion	06-16-01	65 years
Salyers, Frankie Allen	Elkhart	05-06-05	LWOP
Schmitt, Eric Scott	Vanderburgh	03-24-99	75 years
Sowers, Lawrence	Henry	01-10-01	18 years Assisting Criminal
Temple, Richard P.	Carroll	05-22-00	130 years
Veal, Paul G.	Marion	10-19-00	LWOP
1997 (8)			
Dickens, Gregory	St. Joseph	07-09-99	LWOP
Fitzhugh, Bryan	Allen	10-16-98	188 years
Gooden, Anthony Terrell	Lake	07-03-02	60 years
Hobson, Jentry	Lake	11-30-00	25 years Conspiracy Murder
Hubbard, Randall L.	Morgan	07-24-98	120 years
Jackson, Sharon Elizabeth	Lake	07-08-02	20 years Conspiracy Murder
Price, Kerrie	Marion	03-02-00	LWOP
Sholes, David T.	Wabash	03-07-97	LWOP
1996 (10)			
Britt, Eugene	Porter	05-23-96	LWOP
Dye, Walter	Marion	01-20-98/11-08-04	DP - Reversed; LWOP
Gorbea, Joseph L.	Lake	02-20-98	LWOP
Ingle, John	Floyd	11-23-98/06-20-01	DP - Reversed; 115 years
Martin, Tony	Marion	09-19-98	DP Withdrawn
Mason, Henry T.	Allen	09-29-97	LWOP
Mosley, Corey	Marion	08-22-97	LWOP
Sherwood, Steven	Morgan	09-28-01	65 years
Stephenson, John M.	Warrick	06-17-97	Death Sentence
Warlick, Rickey P.	Allen	05-29-98	LWOP
1995 (15)			
Boyd, Daniel	Marion	06-27-97	LWOP
Garrett, Edgar	Elkhart	10-30-95	Jury Trial; Not Guilty
Gaume, Joe	Elkhart	10-16-97	60 years, 20 years
Jones, Roman	Lake	12-27-96	225 years
Lowrimore, Steven R.	Marion	04-17-98	LWOP; Deceased
Lunsford, Ronald	Sullivan	09-09-96	40 years; Vol Manslaughter
Mathisen, Thomas	Marion	09-04-96	LWOP

<u>Death Penalty Filing</u>	<u>County</u>	<u>Sentencing</u>	<u>Disposition</u>
Mathisen, Ronald	Marion	09-06-96	LWOP
Miller, Ronnie	Marion	03-26-99	85 years
Peoples, Bryan	Elkhart	10-03-96	120 years
Rogers, Thomas Lee	Lake	04-26-96	LWOP
Smith, Robert A.	Sullivan	07-12-96	Death Sentence - Executed
Spiller, Kenneth J.	Lake	10-30-96	115 years
Webber, Harvell	Marion	06-10-96	Dismissed
Witt, Darren	Lake	12-06-96	LWOP
1994 (18)			
Adams, Raymond K.	Hamilton	10-30-95	LWOP
Ajabu, Kofi Modibo	Hamilton	10-03-95	LWOP
Barker, Charles E.	Marion	11-26-96	DP - Reversed - Pending
Beason, Jay	LaPorte	12-05-95	120 years
Berry, Mark	LaPorte	08-26-96	80 years
Gilmer, Frank Scott	Porter	05-13-96	LWOP
Jones, Rodney	LaPorte	03-07-95	20 years; Aggravated Battery
Kidd, William T.	Elkhart	05-12-94	LWOP
McIntyre, Robert	LaPorte	12-11-95	LWOP
Newton, Larry	Delaware	12-29-95	LWOP
Parish, David	Knox	09-16-94	Dismissed
Sotelo, Joseph S.	Lake	10-21-94	LWOP
Stevens, Christopher	Putnam	03-14-95	Death Sentence
Thompson, Jerry K.	Marion	05-24-96/09-29-00	DP; DP; Deceased
Walls, James G.	Hamilton	10-30-95	LWOP
Weatherford, Robert W. S.	Madison	11-15-95	LWOP
Williams, Kevin V.	Elkhart	06-29-95	60 years
Wrinkles, Matthew	Vanderburgh	06-14-95	Death Sentence
1993 (8)			
Allen, Marty J.	Johnson	12-21-94	192 years
Burton, Peter	Lake		Pending
Holmes, Steven M.	Marion	07-23-93	100 years
Prowell, Vincent	Vanderburgh	05-05-94	DP - Reversed - 100 years
Sears, James	Marion	03-10-94	60 years, 50 years
Taylor, Denon A.	Marion	10-07-94	60 years, 40 years
Timberlake, Norman	Marion	08-11-95	Death Sentence
Whetzel, Stephen	Floyd	03-18-96	45 years
1992 (12)			
Alcorn, William P.	Marion	11-01-94	Jury Trial; Not Guilty
Bradley, Richard D.	Madison	02-10-93	60 years
Clements, Helen Marie	Elkhart	12-17-92	50 years
Hurt, Kenneth S.	Marion	05-10-94	60 years
Loveless, Melinda D.	Jefferson	01-04-93	60 years
Penick, Jimmie	Dekalb	01-26-94	60 years
Roseborough, Jesse	Lake	03-19-93	60 years
Saylor, Benny Lee	Madison	02-17-94/05-21-04	DP - Reversed - 100 years
Spears, Clinton	Lake	02-23-93	4 years; Assisting a Criminal
Tackett, Mary L.	Jefferson	01-04-93	60 years
Williams, Edward Earl	Lake	05-15-07	100 years
Wingett, Ronald	Marion	04-22-93	90 years

<u>Death Penalty Filing</u>	<u>County</u>	<u>Sentencing</u>	<u>Disposition</u>
1991 (21)			
Anderson, Timothy	Vanderburgh	11-14-91	60 years
Bivins, Gerald	Boone	06-05-92	Death Sentence - Executed
Bradley, Adam	Steuben	09-02-92	50 years
Carrion, Christopher	Allen	11-19-92	50 years
Clover, Randy	Greene	01-05-93	60 years, 35 years; Deceased
Collier, Charles B.	Washington	01-13-92	3 years; Obstruction of Justice
Dearth, William	Steuben	01-30-92	20 years; Conspiracy
Gray, Larry	Steuben	10-27-92	50 years
Harrison, James Patrick	Posey	12-14-91	DP - Reversed - 150 years
Helfenbein, Theodore	Clark	05-26-92	94 years
Holmes, Eric	Marion	03-26-93	Death Sentence
Lambert, Michael	Delaware	01-17-92	Death Sentence - Executed
Paul, Jeffrey J.	Posey	04-29-92	60 years, 50 years
Peterson, Christopher	Lake	06-05-92	DP - Reversed - 120 years
Peterson, Christopher	Porter	05-15-92	DP - Reversed - Pending
Pigg, Steve A.	Miami	12-18-91	45 years, 35 years
Powell, Cheryl	Steuben	06-03-92	40 years
Smith, Steven	Marion	09-24-93	60 years, 50 years
Sullivan, Donna	Steuben	03-12-92	15 years; Conspiracy
Taylor, Raleigh T.	Marion	07-16-93	110 years
Yerden, Russell W.	Marion	06-14-95	60 years, 50 years, 20 years
1990 (25)			
Buie, Jason	Randolph	09-25-91	100 yrs - Reversed - 40 yrs
Burke, Curtis	Miami	01-20-92	50 years
Busenbark, Gene A.	Parke	09-18-90	60 years, 20 years
Dobkins, Orville	Shelby	05-17-91	Dismissed
Garza, Raul	Allen	03-15-91	60 years
Harmon, William Glen	Porter	11-02-92	280 years
Higgins, Joey	Newton	10-22-90	52 years
James, Victor	LaPorte	02-28-91/11-29-93	DP - Reversed - 90 years
Matheney, Alan L.	St. Joseph	05-11-90	Death Sentence
McCord, Scott	Randolph	07-01-91	110 years; Deceased
McKinney, Bruce	Lake	12-16-91	55 years
Miller, Perry	Porter	05-20-91/08-07-01	DP - Reversed - 138 years
Niksich, Edward J.	Lake	07-03-91	80 years
Richards, Randall	Marion	12-20-91	80 years
Robertson, Donald	Marion	05-06-92	92 years
Robinson, Latanya J.	Allen	07-16-90	60 years, 20 years
Roche, Charles	Lake	11-30-90	DP - Reversed - Pending
Sheets, John C.	Randolph	09-30-91	8 years; Assisting a Criminal
Simmons, Vesta	Porter	12-05-90	110 years
Swetkey, George F.	Lake	08-24-90	110 years
Trueblood, Joseph	Tippecanoe	04-12-90	Death Sentence - Executed
Vance, Michael	Marion	03-28-91	190 years
Walls, Rickey J.	Sullivan		Jury Trial; Not Guilty
Wall, Fred E.	Sullivan		Jury Trial; Not Guilty
Wood, Rodney A.	Porter	12-02-91	60 years

TIME / ENDLESS DELAYS

Of the 95 cases resulting in a death sentence since 1977:

(Includes Christopher Peterson twice, with two separate death sentences; includes each of those ten inmates resentenced to death again after remand only once.)

Murder to Death Sentence = 14.3 months average

Shortest = Brewer (3 months) Longest = Isom (67 months), Barker (41 months)

Most Recently: Isom (67 months), Wilkes (21 months), Baer (16 months), Pruitt (29 months)

Of the 104 decisions reported by the Indiana Supreme Court on direct appeal:

Death Sentence to Indiana Supreme Court Direct Appeal Opinion = 37.6 months average

Shortest = Judy (11 months) Longest = Allen (109 months)

Most Recently: Wilkes (23 months), Corcoran (36 months), Overstreet (31 months), Kubsch (31 months), McManus (25 months), Stroud (21 months), Ritchie (19 months), Ward (37 months), Pruitt (22 months), Kubsch (25 months).

Since 1977, the United States Supreme Court has denied certiorari on Indiana death penalty cases 144 times, and thereafter denied rehearings 16 times. Only twice have they reached the merits of a claim. In 1994 the United States Supreme Court affirmed the conviction and sentence of Thomas Schiro. Schiro v. Farley, 114 S.Ct. 783 (1994). Two years later, the Indiana Supreme Court vacated Schiro's death sentence on appeal after denial of his third PCR. Schiro v. State, 669 N.E.2d 1357 (Ind. 1996). And in 2010, the United States Supreme Court vacated the 7th Circuit Court of Appeals opinion and reinstated the death sentence in Wilson v. Corcoran, 131 S.Ct. 13 (November 08, 2010).

Only two other times has the United States Supreme Court accepted certiorari on an Indiana death penalty case. The first was in 1989, vacating the death sentence of Michael Daniels and remanding back to the Indiana Supreme Court for reconsideration in light of South Carolina v. Gathers. Daniels v. Indiana, 109 S.Ct. 3182 (1989). Upon reconsideration, the Indiana Supreme Court again affirmed the death sentence at Daniels v. State, 561 N.E.2d 487 (Ind. 1990). In 2000, the death sentence of Alton Coleman was vacated and remanded back to the Indiana Supreme Court for reconsideration in light of Williams v. Taylor. Coleman v. Indiana, 120 S.Ct. 1717 (2000). Upon reconsideration, the Indiana Supreme Court again unanimously affirmed the death sentence. Coleman v. State, 741 N.E.2d 697 (Ind. 2000).

The cases of Howard Allen (Marion) and Donald Ray Wallace (Vanderburgh) easily take the award for most prolific delays. Allen murdered a 73 year old woman in 1987, and was given a death sentence in 1988. The case was not decided on direct appeal until 1997. The Indiana Supreme Court found the Court Reporter in contempt and suspended the appellate attorney from the practice of law for causing the 9 year delay. Wallace murdered a family of four during a burglary in 1980, and was given a death sentence in 1982. The case was affirmed on direct appeal in 1985. Denial of PCR was affirmed in 1990. A Petition for Habeas Corpus was filed in the U.S. District Court, Southern District of Indiana in 1995. It was fully briefed and on the desk of U.S. District Court Judge Sarah Evans Barker for more than 5 years before a decision was finally handed down on November 14, 2002. Wallace v. Davis, WL 31572002 (S.D. Ind. 2002). The opinion left unexplained the reason for the delay. The decision was affirmed by the U.S. Seventh Circuit Court of Appeals at Wallace v. Davis, 362 F.3d 914 (7th Cir. March 26, 2004). Wallace was executed by lethal injection on March 10, 2005.

The Indiana Attorney General represents the State of Indiana in all cases after a defendant is sentenced to death, including direct appeal, post-conviction relief (trial and appeal), and habeas corpus (trial and appeal) in the federal courts.

Life Without Parole

As of June 1, 2013, there are 113 inmates serving a sentence of Life Without Parole in Indiana, 112 of which were based upon murder convictions under IC 35-50-2-9, and 1 (Asher Hill - Marion County) based upon a robbery conviction and sentencing as a Habitual Offender under IC 35-50-2-8.5. (According to Indiana Department of Corrections Planning & Research)

Last Name	First Name	IDOC #	Race	Sex	Date of Birth	Committing County	Sentence Date	Offense
Adams	Raymond	883978	B	M	10/9/1968	Hamilton	10/30/1995	Murder
Ajabu	Kofi	955750	B	M	2/2/1973		10/3/1995	Murder
Allen	Kenneth	173335	W	M	11/27/1975	Marion	2/5/2010	Murder
Alvarez	Angelicia	153105	H	F	9/19/1979	Elkhart	9/24/2007	Murder
Anderson	Corey	945315	W	M	6/13/1978	Jasper	2/28/2000	Murder
Baird	Arthur	872036	W	M	2/6/1946	Montgomery	3/13/1987	Murder
Baker	Mark	184339	B	M	12/20/1972	Fulton	9/27/2007	Murder
Barker	Charles	976850	W	M	1/19/1958	Marion	11/26/1996	Murder
Bassett	Robert	872522	W	M	10/6/1962	Bartholomew	06/21/2006	Murder
Boyd	Daniel	974259	W	M	10/17/1977	Marion	6/27/1997	Murder
Branum	Richard	106718	W	M	9/2/1975	Gibson	12/12/2000	Murder
Britt	Eugene	963641	B	M	11/4/1957	Porter	5/23/1996	Murder
Brown	Joseph	112295	W	M	11/24/1954	Vanderburgh	9/4/2001	Murder
Brown	Levoohn	116470	W	M	2/1/1973	Huntington	6/4/2001	Murder
Burns	Christopher	117063	W	M	1/3/1982	Delaware	8/2/2001	Murder
Cain	Craig	120057	W	M	6/11/1984	Grant	10/18/2004	Murder
Cain	Jeffrey	209906	W	M	12/28/1957	DeKalb	8/20/2010	Murder
Camm	David	113866	W	M	3/23/1964	Warrick	3/28/2006	Murder
Clark	Derrick	113973	B	M	3/24/1981	Madison	4/2/2002	Murder
Clark	Ian	104092	W	M	2/13/1973	Kosciusko	4/3/2008	Murder
Conley	Andrew	218096	W	M	5/14/1992	Ohio	10/15/2010	Murder
Cottrell	Chad	195185	W	M	7/21/70	Hamilton	5/29/2009	Murder
Covington	Ronald	146060	B	M	11/1/1974	Marion	10/22/2004	Murder
Cox	Patrick	973230	W	M	6/28/1977	Madison	1/27/1997	Murder
Daniels	Michael	13135	B	M	3/8/1958	Marion	9/14/1979	Murder
Delarosa	Anthony	134291	W	M	7/22/1983	Hamilton	4/15/2009	Murder
Dennis	Frank	985703	W	M	6/2/1966	Marion	10/29/1998	Murder
Dickens	Greg	967141	B	M	5/22/1981	St. Joseph	7/9/1999	Murder
Dickey	Leonard	190101	W	M	5/18/1960	Wayne	7/3/2008	Murder
Dumas	Ronald	882103	B	M	11/12/1960	Lake	11/1/2001	Murder
Dye	Walter	987990	B	M	10/2/1964	Marion	11/8/2004	Murder
Flores	David	952290	H	M	10/22/1973	Lake	9/9/2010	Murder
Gauvin	Michelle	152955	ML	F	1/17/1972	Tippecanoe	10/26/2006	Murder

Last Name	First Name	IDOC #	Race	Sex	Date of Birth	Committing County	Sentence Date	Offense
Gibson	Michael	914266	W	M	5/28/1974	Sullivan	3/18/2010	Murder
Gorbea	Joseph	984053	H	M	1/22/1977	Lake	2/20/1998	Murder
Greer	Timothy	993826	W	M	5/8/1968	Johnson	3/2/2000	Murder
Griffith	Fernando	105877	B	M	6/16/1977	Johnson	9/20/2001	Murder
Gross	Jeremy	966498	W	M	9/19/1979	Marion	6/9/2000	Murder
Hale	Steven	102321	W	M	7/9/1976	Daviess	7/31/2000	Murder
Halliburton	Tyrice	128713	B	M	5/28/1981	Elkhart	5/17/2012	Murder
Harbison	Nicholas	171967	W	M	4/12/1983	Pike	6/22/2007	Murder
Hardy	Thomas	973341	B	M	12/21/1950	Marion	4/5/2012	Murder
Hatch	Ronrico	138169	B	M	10/5/1980	Whitley	10/31/2003	Murder
Hatfield	Ronald	871098	W	M	7/21/1959	Delaware	1/25/2006	Murder
Helsley	Christopher	114564	W	M	2/7/1978	Pike	7/19/2002	Murder
Highbaugh	Michael	902926	B	M	10/9/1965	Marion	4/11/2000	Murder
Hill	Asher	922526	B	M	5/30/1966	Marion	6/7/2001	Habitual
Holland	Kelly	116194	W	M	10/22/1971	Harrison	5/16/2001	Murder
Holland	Tommy	138825	W	M	1/2/1975	Marion	12/9/2005	Murder
Houser	Donald	923239	W	M	2/15/1970	Noble	2/4/2003	Murder
Inman	Michael	984424	B	M	3/29/1976	Marion	6/13/2012	Murder
Ison	David	905813	W	M	8/27/1965	Franklinj	3/14/2012	Murder
Jeter	Darryl	160155	B	M	11/3/1984	Lake	7/14/2006	Murder
Jones	Brian	102703	W	M	9/3/1976	Knox	1/12/2001	Murder
Kidd	William	943337	W	M	4/1/1959	Elkhart	5/12/1994	Murder
Kiplinger	Kyle	189826	W	M	8/26/1983	Perry	8/8/2008	Murder
Klein	Michael	951619	W	M	6/29/1977	Marion	2/6/1997	Murder
Knapp	Randy	970191	W	M	5/26/1959	Greene	11/15/2012	Murder
Kovak	Boris	995398	W	M	7/11/1965	Elkhart	8/26/1999	Murder
Krempletz	Spenser	159186	W	M	12/11/1986	Elkhart	3/30/2006	Murder
Laux	Fredrick	125893	W	M	4/1/1965	Grant	11/18/2002	Murder
Leone	Jeff	106789	W	M	2/13/1963	Greene	5/14/2002	Murder
Lichtenberger	Mark	105140	W	M	6/30/1960	Adams	7/10/2000	Murder
Logan	Sirlando	973822	B	M	6/15/1974	Allen	4/18/1997	Murder
Long	Roger	915530	W	M	4/5/1952	Greene	5/12/1999	Murder
Losch	David	137913	W	M	11/4/1981	Elkhart	2/6/2004	Murder
Lucio	Juan	998680	H	M	4/7/1984	Hamilton	5/15/2008	Murder
Mason	Henry	983734	B	M	12/6/1976	Allen	9/29/1997	Murder
Mathisen	Ronald	964387	W	M	3/18/1967	Marion	9/6/1996	Murder
Mathisen	Thomas	964397	W	M	3/9/1970	Marion	9/4/1996	Murder
McIntyre	Robert	957178	W	M	8/13/1970	LaPorte	12/11/1995	Murder
Melcher	Zachariah	971590	W	M	10/3/1977	Clark	8/3/2006	Murder
Mosley	Corey	974831	B	M	3/24/1976	Marion	8/22/1997	Murder

Last Name	First Name	IDOC #	Race	Sex	Date of Birth	Committing County	Sentence Date	Offense
Mull	Wayne	954934	W	M	9/10/1965	Wayne	9/7/1995	Murder
Newton	Larry	914382	W	M	11/9/1976	Delaware	12/29/1995	Murder
Ortiz	Jeffrey	984672	H	M	4/29/1978	Lake	6/12/1998	Murder
Payne	Toby	195043	W	M	8/2/1976	Hamilton	5/14/2009	Murder
Pittman	Hobert	126381	W	M	11/5/1980	Harrison	8/10/2006	Murder
Plumadore	Michael	188374	W	M	11/16/1972	Allen	6/18/2012	Murder
Pope	Bryce	985038	B	M	7/10/1977	Allen	6/19/1998	Murder
Powell	Jason	113805	W	M	10/16/1980	Elkhart	3/14/2002	Murder
Powers	Stephen	970651	W	M	10/9/1975	Vanderburgh	2/27/1997	Murder
Price	Kerrie	856296	B	M	4/15/1968	Marion	3/2/2000	Murder
Priest	Casey	951864	W	M	12/2/1978	Marion	4/24/1998	Murder
Redman	John	971774	W	M	1/16/1957	Greene	7/28/1999	Murder
Rice	Ronnie	221051	B	M	6/28/1981	Lake	1/12/2012	Murder
Richards	Stephen	145891	W	M	9/28/1979	Lake	9/27/2004	Murder
Rogers	Thomas	872945	W	M	12/9/1964	Lake	4/26/1996	Murder
Rohr	Aaron	150684	W	M	1/14/1971	Jennings	8/24/2005	Murder
Romine	Keith	22403	W	M	3/16/1957	St. Joseph	9/27/2006	Murder
Rouse	Danny	184602	W	M	5/5/1955	Cass	12/14/2007	Murder
Russell	Jerry	918733	W	M	9/8/1962	Greene	11/12/1999	Murder
Salyers	Frankie	148067	W	M	6/29/1978	Elkhart	5/6/2005	Murder
Schlabach	Gerald	964410	W	M	1/12/1968	Elkhart	8/29/1996	Murder
Shank	Craig	161050	W	M	10/26/1982	Madison	10/5/2006	Murder
Shannon	Michael	988424	W	M	1/28/1982	Marion	3/19/2003	Murder
Sholes	David	973468	W	M	12/3/1955	Wabash	3/7/1997	Murder
Slater	Reggion	112650	B	M	12/18/1969	Porter	10/29/2001	Murder
Smallwood	Howard	900079	B	M	6/24/1963	St. Joseph	11/1/2001	Murder
Sotelo	Joseph	946008	H	M	2/19/1974	Lake	10/21/1994	Murder
Stevens	Christopher	952131	W	M	9/2/1972	Tippecanoe	11/23/2009	Murder
Stockelman	Anthony	159336	W	M	11/16/1966	Jackson	4/20/2006	Murder
Strominger	Raymond	160814	W	M	2/23/1967	Marion	9/8/2006	Murder
Stroud	Phillip	932249	B	M	12/30/1978	St. Joseph	12/5/2000	Murder
Sturgeon	Charles	984270	W	M	1/28/1944	Marion	4/17/1998	Murder
Treadway	Jeffrey	942643	W	M	3/2/1959	Marion	11/13/2007	Murder
Turner	Desmond	953755	B	M	2/24/1978	Marion	11/20/2009	Murder
Turner	Duane	952429	B	M	11/13/1974	Delaware	6/8/1995	Murder
Veal	Paul	106131	B	M	11/19/1977	Marion	10/19/2000	Murder
Verner	Louie	128857	B	M	9/7/1968	Delaware	2/24/2005	Murder
Voss	Jeffrey	905676	W	M	2/9/1965	Marion	4/20/2007	Murder
Walls	James	957011	W	M	6/2/1973	Hamilton	10/30/1995	Murder
Warlick	Rickey	984859	B	M	10/18/1960	Allen	5/29/1998	Murder

Last Name	First Name	IDOC #	Race	Sex	Date of Birth	Committing County	Sentence Date	Offense
Washington	Jeffrey	862899	B	M	12/28/1968	Posey	6/14/2002	Murder
West	Michael	995573	W	M	12/8/1974	Marion	10/1/1999	Murder
Wilkes	Daniel	108002	W	M	7/30/1968	Clark	1/25/2008	Murder
Williams	Darnell	872037	B	M	7/31/1966	Lake	3/25/1987	Murder
Wilson	Kerry	971994	B	M	9/22/1964	Floyd	9/20/2005	Murder
Witt	Darren	923458	W	M	1/3/1973	Lake	7/10/1995	Murder

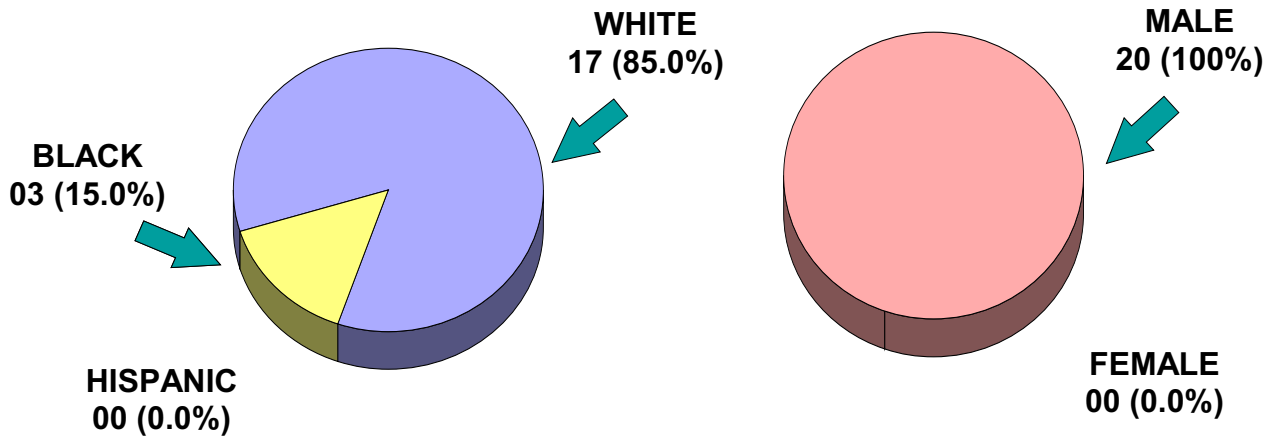
Life Without Parole was added as an option in death penalty cases by a 1993 amendment to IC 35-50-2-9 (P.L. 250, § 2). The Legislature added a savings clause that made LWOP available only where the murder is committed after June 30, 1993. A defendant who commits murder before this date, but is sentenced after, is not eligible for LWOP. State v. Alcorn, 638 N.E.2d 1242 (Ind.1994), Azania v. State, 730 N.E.2d 646 (Ind.2000).

A 1994 amendment to IC 35-50-2-9 (P.L. 158, § 7) added provisions allowing the State to seek Life Without Parole without seeking a death sentence, but with the same procedures and burdens.

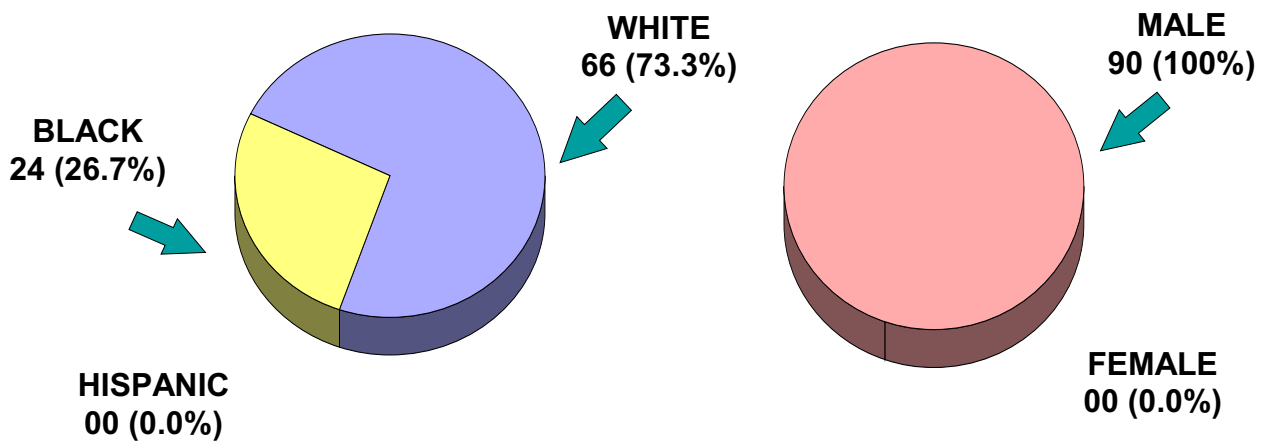
In 1994 (P.L.158, § 6), IC 35-50-2-8.5 was created, establishing Indiana's version of the "three strikes" law, authorizing a sentence of Life Without Parole for Habitual Offenders upon a third unrelated conviction for a felony listed under IC 25-50-2-2 (b) (4) as non-suspendable.

Additionally, Michael Daniels (01-07-05) and Darnell Williams (07-02-04) had their death sentences commuted to Life Imprisonment Without Parole by Indiana Governor Joe Kernan. Arthur Baird (08-29-05) had his death sentence commuted to Life Imprisonment Without Parole by Indiana Governor Mitch Daniels. They are the only three convicted murderers to have their death sentences commuted by a Governor since the death penalty was reinstated in Indiana in 1977.

Executions in Indiana Since 1977 = 20



Executions in Indiana Since 1900 = 90



- ✓ The last fifteen executions in Indiana have been of white males.
- ✓ Indiana conducted more executions in 2005 (5) than in any year since 1938, when 8 convicted murderers were executed.
- ✓ Texas, Oklahoma, Virginia, Missouri and Indiana are the only states that have executed more convicted murderers since 1976 than are currently on death row.

INDIANA EXECUTIONS SINCE 1977

<u>Inmate</u>	<u>County</u>	<u>Date of Execution</u>	<u>Method of Execution</u>
1. Steven T. Judy*	Morgan	03-09-1981	Electrocution
2. William Vandiver*	Lake	10-16-1985	Electrocution
3. Gregory D. Resnover	Marion	12-08-1994	Electrocution
4. Tommie J. Smith	Marion	07-19-1996	Lethal Injection
5. Gary Burris	Marion	11-20-1997	Lethal Injection
6. Robert A. Smith*	Sullivan	01-29-1998	Lethal Injection
7. D. H. Fleenor	Johnson	12-09-1999	Lethal Injection
8. Gerald W. Bivins*	Boone	03-14-2001	Lethal Injection
9. James Lowery	Tippecanoe/Boone	06-27-2001	Lethal Injection
10. Kevin Lee Hough	Allen	05-02-2003	Lethal Injection
11. Joseph L. Trueblood	Tippecanoe	06-13-2003	Lethal Injection
12. Donald Ray Wallace	Vanderburgh/Vigo	03-10-2005	Lethal Injection
13. Bill J. Benefiel	Vigo	04-21-2005	Lethal Injection
14. Gregory Scott Johnson	Madison	05-25-2005	Lethal Injection
15. Kevin A. Conner	Marion	07-27-2005	Lethal Injection
16. Alan L. Matheney	St.Joseph/Lake	09-28-2005	Lethal Injection
17. Marvin L. Bieghler	Howard	01-27-2006	Lethal Injection
18. David Leon Woods	Dekalb/Boone	05-04-2007	Lethal Injection
19. Michael Allen Lambert	Delaware	06-15-2007	Lethal Injection
20. Matthew E. Wrinkles	Vanderburgh	12-11-2009	Lethal Injection

* Waived appeals

EXECUTED IN TEXAS WHILE ON INDIANA DEATH ROW:

Michael Lee Lockhart	Lake	12-09-1997	Lethal Injection
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EXECUTED IN OHIO WHILE ON INDIANA DEATH ROW:

Alton Coleman	Lake	04-26-2002	Lethal Injection
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INDIANA EXECUTIONS SINCE 1977

<u>Inmate</u>	<u>Date of Murder</u>	<u>Date of Sentencing</u>	<u>Sentencing Judge</u>
1. Steven T. Judy*	04-28-1979	02-25-1980	Judge Jeffrey V. Boles
2. William Vandiver*	03-20-1983	01-20-1984	Judge James E. Letsinger
3. Gregory Resnover	12-11-1980	07-23-1981	Judge Jeffrey V. Boles
4. Tommie J. Smith	12-11-1980	07-23-1981	Judge Jeffrey V. Boles
5. Gary Burris	01-29-1980	02-20-1981	Judge John Tranberg
6. Robert A. Smith*	06-30-1995	07-12-1996	Judge P.J. Pierson
7. D. H. Fleenor	12-12-1982	01-04-1984	Judge Larry J. McKinney
8. Gerald W. Bivins*	01-16-1991	06-05-1992	Judge Thomas K. Milligan
9. James Lowery	09-30-1979	07-11-1980	Judge Paul H. Johnson Jr.
10. Kevin Lee Hough	11-06-1985	06-11-1987	Judge Edward J. Meyers
11. Joseph L. Trueblood	08-15-1988	08-12-1990	Judge Ronald E. Melichar
12. Donald Ray Wallace	01-14-1980	10-21-1982	Judge Hugh D. McQuillan
13. Bill J. Benefiel	08-15-1988	08-12-1990	Judge Michael H. Eldred
14. Gregory Scott Johnson	06-23-1985	06-19-1986	Judge Thomas Newman, Jr.
15. Kevin A. Conner	01-26-1988	11-03-1988	Judge John W. Tranberg
16. Alan L. Matheney	03-04-1989	05-11-1990	Judge James E. Letsinger
17. Marvin L. Bieghler	12-10-1981	03-25-1983	Judge Dennis H. Parry
18. David Leon Woods	04-07-1984	03-28-1985	Judge Donald R. Peyton
19. Michael Allen Lambert	12-28-1990	01-17-1992	Judge Robert L. Barnet, Jr.
20. Matthew E. Wrinkles	07-21-1994	06-14-1995	Judge Richard L. Young

* Waived appeals

EXECUTED IN TEXAS WHILE ON INDIANA DEATH ROW:

Michael Lee Lockhart	03-22-1988	10-26-1988	Judge James E. Letsinger
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EXECUTED IN OHIO WHILE ON INDIANA DEATH ROW:

Alton Coleman	07-11-1984	06-24-1985	Judge Richard W. Maroc
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	<u>Age At Murder</u>	<u>Age At Sentencing</u>	<u>Age At Execution</u>	<u>Sentence to Execution Time on Death Row</u>
Judy*	22 yr, 339 d	23 yr, 277 d	24 yr, 289 d	01 yr, 012 d
Vandiver*	34 yr, 206 d	35 yr, 147 d	37 yr, 051 d	01 yr, 269 d
Resnover	29 yr, 121 d	29 yr, 345 d	43 yr, 118 d	13 yr, 138 d
T. Smith	26 yr, 309 d	27 yr, 167 d	42 yr, 163 d	14 yr, 361 d
Burris I	23 yr, 043 d	24 yr, 034 d	40 yr, 338 d	09 yr, 185 d
Burris II	23 yr, 043 d	34 yr, 340 d	40 yr, 338 d	05 yr, 363 d
R. Smith*	45 yr, 119 d	46 yr, 131 d	47 yr, 332 d	01 yr, 201 d
Fleenor	31 yr, 042 d	33 yr, 067 d	48 yr, 039 d	15 yr, 339 d
Bivins*	31 yr, 030 d	32 yr, 181 d	41 yr, 097 d	08 yr, 282 d
Lowery I	32 yr, 198 d	33 yr, 117 d	54 yr, 103 d	21 yr, 351 d
Lowery II	32 yr, 198 d	35 yr, 297 d	54 yr, 103 d	18 yr, 171 d
Hough	26 yr, 081 d	27 yr, 298 d	43 yr, 258 d	15 yr, 325 d
Trueblood	31 yr, 233 d	33 yr, 107 d	46 yr, 169 d	13 yr, 062 d
Wallace	22 yr, 133 d	25 yr, 048 d	47 yr, 188 d	22 yr, 140 d
Benefiel	32 yr, 073 d	34 yr, 070 d	48 yr, 322 d	14 yr, 252 d
Johnson	20 yr, 125 d	21 yr, 121 d	40 yr, 096 d	18 yr, 340 d
Conner	22 yr, 305 d	23 yr, 221 d	40 yr, 122 d	16 yr, 266 d
Matheney	38 yr, 118 d	39 yr, 186 d	54 yr, 326 d	15 yr, 140 d
Bieghler	33 yr, 360 d	35 yr, 100 d	58 yr, 043 d	22 yr, 308 d
Woods	19 yr, 244 d	20 yr, 233 d	42 yr, 270 d	22 yr, 037 d
Lambert	20 yr, 068 d	21 yr, 088 d	36 yr, 237 d	15 yr, 149 d
Wrinkles	34 yr, 199 d	35 yr, 162 d	49 yr, 342 d	14 yr, 180 d
➤ AVG	28 yr, 349 d	30 yr, 207 d	46 yr, 109 d	16 yr, 092 d

	<u>Murder to Death Sentence</u>	<u>Sentence to Direct Appeal Opinion</u>	<u>Murder to Execution</u>	<u>Direct Appeal Opinion to Execution</u>
Judy*	00 yr, 303 d	00 yr, 339 d	01 yr, 315 d	00 yr, 038 d
Vandiver*	00 yr, 306 d	01 yr, 190 d	02 yr, 210 d	00 yr, 079 d
Resnover	00 yr, 224 d	02 yr, 126 d	13 yr, 362 d	10 yr, 264 d
T. Smith	00 yr, 224 d	03 yr, 001 d	15 yr, 220 d	11 yr, 360 d
Burris I	01 yr, 022 d	03 yr, 159 d	17 yr, 295 d	13 yr, 144 d
Burris II	11 yr, 297 d	02 yr, 347 d	17 yr, 295 d	03 yr, 016 d
R. Smith*	01 yr, 012 d	01 yr, 103 d	02 yr, 213 d	00 yr, 098 d
Fleenor	01 yr, 023 d	03 yr, 282 d	16 yr, 362 d	12 yr, 057 d
Bivins*	01 yr, 141 d	02 yr, 152 d	10 yr, 057 d	06 yr, 130 d
Lowery I	00 yr, 285 d	01 yr, 298 d	21 yr, 270 d	19 yr, 053 d
Lowery II	03 yr, 099 d	02 yr, 148 d	21 yr, 270 d	16 yr, 023 d
Hough	01 yr, 217 d	03 yr, 125 d	17 yr, 177 d	12 yr, 210 d
Trueblood	01 yr, 240 d	01 yr, 322 d	14 yr, 302 d	11 yr, 105 d
Wallace	02 yr, 280 d	03 yr, 046 d	25 yr, 055 d	19 yr, 094 d
Benefiel	01 yr, 362 d	01 yr, 036 d	16 yr, 249 d	13 yr, 215 d
Johnson	00 yr, 361 d	05 yr, 222 d	19 yr, 345 d	13 yr, 118 d
Conner	00 yr, 282 d	02 yr, 355 d	17 yr, 182 d	13 yr, 276 d
Matheney	01 yr, 068 d	01 yr, 243 d	16 yr, 208 d	13 yr, 262 d
Bieghler	01 yr, 105 d	02 yr, 128 d	24 yr, 048 d	20 yr, 180 d
Woods	00 yr, 355 d	04 yr, 245 d	23 yr, 027 d	17 yr, 157 d
Lambert	01 yr, 020 d	02 yr, 323 d	16 yr, 169 d	12 yr, 191 d
Wrinkles	00 yr, 328 d	02 yr, 200 d	15 yr, 143 d	11 yr, 345 d
➤ AVG	01 yr, 061 d	02 yr, 287 d	18 yr, 095 d	14 yr, 021 d

* Judy, Vandiver, Robert Smith, and Bivins waived remaining appeals and were executed by consent. (Direct Appeal cannot be waived. All those executed by consent waived after Direct Appeal, except Bivins, who waived after unsuccessful Direct and PCR appeals.)

** Burris' original 1981 death sentence was reversed on appeal by the Indiana Supreme Court. On remand, he was again sentenced to death in 1991.

** Lowery's original 1980 death sentence was reversed on appeal by the Indiana Supreme Court. On remand, he was again sentenced to death in 1983.

► In calculating averages: (1) For *Age at Murder*, all inmates are counted, Burris and Lowery only once; (2) For *Age at Sentencing*, all inmates are counted, Burris and Lowery twice; (3) For *Age at Execution*, only those inmates who did not waive appeals are counted, Burris and Lowery only once; (4) For *Sentence to Execution*, only those inmates who did not waive appeals are counted, Burris and Lowery from last death sentence only once; (5) For *Murder to Death Sentence*, all inmates are counted, Burris and Lowery from first death sentence only once; (6) For *Sentence to Direct Appeal*, all inmates are counted, Burris and Lowery twice; (7) For *Murder to Execution*, only those inmates who did not waive appeals are counted, Burris and Lowery only once; (8) For *Direct Appeal to Execution*, only those inmates who did not waive appeals are counted, Burris and Lowery from last direct appeal only once.

INDIANA EXECUTIONS SINCE 1977

WRINKLES, MATTHEW ERIC # 20

Executed December 11, 2009 at 12:39 a.m. by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

52nd murderer executed in U.S. in 2007
1188th murderer executed in U.S. since 1976
2nd murderer executed in Indiana in 2007
20th murderer executed in Indiana since 1976
90th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
12-11-09	Lethal Injection	Matthew E. Wrinkles W / M / 34 - 49	01-03-60	Debbie Wrinkles W / F / 31 Tony Fulkerson W / M / 28 Natalie Fulkerson W / W / 26	07-21-94	.357 Handgun	Wife Brother in Law Sister in Law	06-14-95

Judge / County: Vanderburgh County Circuit Court Judge Richard L. Young

Trial Prosecutor(s): Stanley M. Levco, Mary Margaret Lloyd

Aggravating Circumstances: b (8) 3 Murders

Summary:

After continuous marital problems with her husband Matthew Wrinkles, Debbie moved out of the house with their two children, going to live with Debbie's brother, Tony, and his wife, Natalie, on Tremont Drive in Evansville. Twice in the past Wrinkles had threatened Debbie with a gun. Soon after, Wrinkles filed for divorce. His mother was concerned about his behavior and had him committed. After three days of evaluation, he was released. In the next two weeks, despite a Protective Order in effect, Wrinkles went looking for Debbie. On July 20, 1994 Wrinkles, Debbie and their attorneys met for a provisional hearing in their divorce proceeding. They reached an agreement to set aside the Protective Order, and for Wrinkles to have visitation. They also agreed for Debbie to meet Wrinkles with the kids at a restaurant later that day. Debbie decided not to show up for the meeting. Later that night, Wrinkles again dressed up in camouflage and drove to the home of Tony Fulkerson, where Debbie and the kids were staying. He parked a block away, cut the telephone wires, and kicked in the back door. He was armed with a .357 handgun and a knife. When he was finished, Natalie was dead on the front porch with a gunshot wound to her face; Tony was dead in the bedroom with four gunshot wounds; Debbie was dead in the hallway with a gunshot wound to her chest/shoulder area. One of the children (Lindsay) saw her father shoot her mother, then attempt CPR. Lindsay told him she was going to call police, and he fled from the house. Wrinkles was later arrested at the home of his cousin, where the .357 murder weapon was recovered.

Final / Special Meal: Prime rib with a loaded baked potato, pork chops with steak fries, and two salads with ranch dressing and rolls.

Final Words: "Not at this time, let's get it done. Let's lock and load. It's plagiarized, but what the hell."

Michael Allen Lambert #19

Executed June 15, 2007 12:29 a.m. by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

23rd murderer executed in U.S. in 2007
1080th murderer executed in U.S. since 1976
2nd murderer executed in Indiana in 2007
19th murderer executed in Indiana since 1976
89th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
06-15-07	Lethal Injection	Michael Allen Lambert W / M / 20 - 36	10-21-70	Officer Greg Winters W / M / 31	12-28-90	.25 Handgun	Arrestee	01-17-92

Judge / County: Delaware County Superior Court Judge Robert L. Barnet, Jr.

Trial Prosecutor(s): Richard W. Reed, J. A. Cummins, Jeffrey L. Arnold

Aggravating Circumstances: b (6) Victim was law enforcement officer

Summary:

Muncie Police Officers were dispatched to a traffic accident and observed an abandoned utility truck. The truck was towed and Lambert was found nearby crawling under a vehicle. Lambert had spent most of the night getting drunk and after telling officers he was trying to sleep, was arrested by Officer Kirk Mace for Public Intoxication. He was patted down and placed into the back of a police car driven by Officer Gregg Winters for transport to jail. A few minutes later, the police vehicle was observed sliding off the road into a ditch. Lambert was still handcuffed in the backseat and Officer Winters had been shot 5 times in the back of the head and neck. A .25 handgun was found laying on the floorboard. It was later learned that Lambert had stolen the .25 pistol from his employer. A demonstration/re-enactment video was introduced into evidence showing the manner in which a gun could be retrieved and fired while handcuffed. A statement by the defendant was admitted despite his .18 BAC.

Final / Special Meal:

Declined.

Final Words:

None.

David Leon Woods #18

Executed May 5, 2007 1:35 a.m. by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

17th murderer executed in U.S. in 2007
1074th murderer executed in U.S. since 1976
1st murderer executed in Indiana in 2007
18th murderer executed in Indiana since 1976
88th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
05-04-07	Lethal Injection	David Leon Woods W / M / 19 - 42	08-07-64	Juan Palencia H / M / 77	04-07-84	Stabbing With Knife	Neighbor	03-28-85

Judge / County: Boone County Superior Court Judge Donald R. Peyton (Venued from DeKalb County)

Trial Prosecutor(s): Paul R. Cherry, Ora A. Kincaid, III

Aggravating Circumstances: b (1) Robbery

Summary:

Woods, Greg Sloan, and Pat Sweet went to the home of Juan Placencia in Garrett, Indiana to steal a television. Woods was armed with a knife. Sweet stayed in the yard, while Woods and Sloan rang the doorbell. When Placencia answered, Woods immediately jumped in and stabbed him with the knife. When he fell back and asked for help, Woods then stabbed him again repeatedly and took money from his wallet. Woods and Sloan then carried out the television, hid it, and later sold it. They washed their clothes and threw the knife in the creek. When police arrived the next morning in response to a call of a man needing help, Woods was on the porch of Placencia's apartment complex crying and saying that he had gone there to use the telephone and found the body. While questioning Woods, his mother came to the scene and told police that she thought her son was involved in the murder. She consented to a search of her residence, which revealed a knife sheath and a stained towel. Woods was taken to the station and while preparations were being made for a polygraph, Woods broke down and gave a complete confession. Sloan testified at trial after entering a guilty plea to Aiding in Murder.

Final / Special Meal:

Woods shared a last meal of birthday cake and pizza with his family Wednesday. Prison officials had him on a liquid diet Thursday.

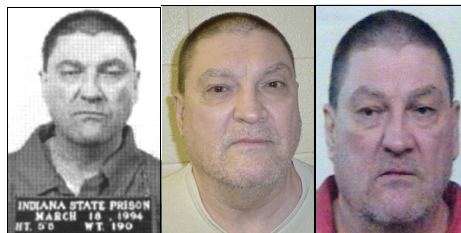
Final Words:

"I want Juan's family to know I truly am sorry, and I do have remorse. I want everybody to know that I do have peace, and it's through Jesus Christ that I have this peace.

Marvin Bieghler #17

Executed January 27, 2006 1:17 a.m. by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

4th murderer executed in U.S. in 2006
1008th murderer executed in U.S. since 1976
1st murderer executed in Indiana in 2006
17th murderer executed in Indiana since 1976
87th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
01-27-06	Lethal Injection	Marvin Bieghler W / M / 33 - 58	12-15-47	Tommy Miller W / M / 21 Kimberly Miller	12-10-81	Handgun	Drug Customer and Wife	03-25-83

Judge / County: Howard County Superior Court Judge Dennis H. Parry

Trial Prosecutor(s): Richard L. Russell, Charles J. Myers

Aggravating Circumstances: IC 35-50-2-9 b (1) Burglary; b (8) 2 murders

Summary:

Bieghler was in the business of buying and selling marijuana. Tommy Miller occasionally sold drugs for Bieghler. After one of Bieghler's chief operatives was arrested and a large shipment of marijuana seized, he was effectively put out of business. Bieghler told others that if he discovered who had "dropped a dime" on him, he would "blow him away." Bieghler suspected Miller of "snitching" on him. Bieghler and Brook drove to Miller's trailer near Kokomo, and while his bodyguard waited outside, Bieghler went in and shot both Tommy Miller and his pregnant wife Kimberly with a .38 pistol. A dime was placed near each body. He was later arrested in Florida. Brook reached a plea agreement with the prosecutor for a reduced sentence, and testified as a witness for the State at trial. While the gun was never recovered, nine .38 casings found at the scene matched those found at Bieghler's regular target shooting range. At trial, Bieghler claimed that he was on his way to Florida at the time of the shootings and that his pistol had gone missing prior to the shootings.

Final / Special Meal:

Shrimp, mushrooms and deep-fried onion appetizers, New York strip steak, a chicken breast, baked potato, salad, and 7-Up soft drink.

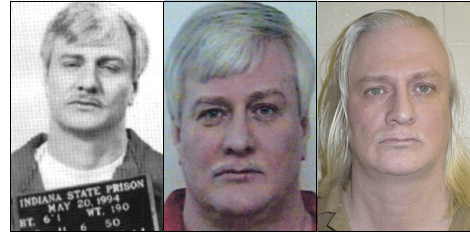
Final Words:

"Let's get it over with."

Alan Lehman Matheney #16

Executed September 28, 2005 12:27 a.m. by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

41st murderer executed in U.S. in 2005
985th murderer executed in U.S. since 1976
5th murderer executed in Indiana in 2005
16th murderer executed in Indiana since 1976
86th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
09-28-05	Lethal Injection	Alan Lehman Matheney W / M / 38 - 54	11-06-50	Lisa Bianco W / F / 34	03-04-89	Beating with shotgun	Ex-Wife	05-11-90

Judge / County: Lake County Superior Court Judge James E. Letsinger
(Venued from St. Joseph County)

Trial Prosecutor(s): John D. Krisor

Aggravating Circumstances: b (1) Burglary; b (3) Lying in wait

Summary:

Matheney was convicted and sent to prison in 1987 for Battery of his ex-wife, Lisa Bianco, and Confinement for taking the children out of state. While in prison, Matheney had repeatedly expressed a desire to kill Bianco, and attempted to solicit others to do so. After serving almost 2 years, he was given an 8-hour furlough from Pendleton, where he was an inmate. Although the pass authorized a trip to Indianapolis, Matheney headed straight for St. Joseph County. Once there, he changed clothes and took a shotgun from a friend's house, then drove to Mishawaka. He parked the car in a lot two doors down from his ex-wife's house, then broke in through the back door. Bianco ran from the home, pursued by Matheney through the neighborhood. When he caught her, he beat her with the shotgun that broke into pieces. He then got into his car and drove away. Bianco died as a result of this blunt force trauma. Matheney unsuccessfully asserted an insanity defense at trial. (This case generated massive amounts of publicity and led to state legislation requiring the Indiana DOC to notify victims of release from prison)

Final / Special Meal:

Chicken wings, a fried chicken dinner, large wedges of potatoes, corn on the cob, biscuits and a chocolate shake.

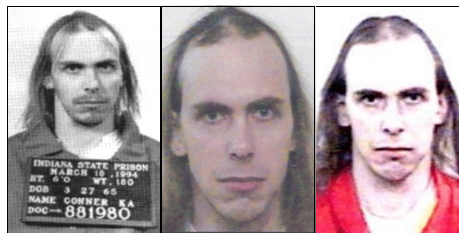
Final Words:

"I love my family and my children. I'm sorry for the pain I've caused them. I thank my friends who stood by me . . . I'm sure my grandchildren will grow up happy and healthy in the care of their wonderful parents," Matheney said in a final statement read by his lawyer.

Kevin Aaron Conner #15

Executed July 27, 2005 12:31 a.m. by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

31st murderer executed in U.S. in 2005
975th murderer executed in U.S. since 1976
4th murderer executed in Indiana in 2005
15th murderer executed in Indiana since 1976
85th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
07-27-05	Lethal Injection	Kevin Aaron Conner W / M / 22 - 40	03-27-65	Steve Wentland W / M / 19 Tony Moore W / M / 24 Bruce Voge W / M / 19	01-26-88	Stabbing with knife Shotgun Shotgun	Acquaintances	11-03-88

Judge / County: Marion County Superior Court Judge John W. Tranberg

Trial Prosecutor(s): John V. Commons, David E. Cook

Aggravating Circumstances: IC 35-50-2-9 b (8) 3 murders

Summary:

Conner was drinking with friends Steve Wentland, Tony Moore, and Bruce Voge at Moore's home. Wentland left for a drive with Moore in the front seat and Conner in the back. Wentland and Moore argued and Moore struck Wentland with Conner's knife. Wentland fled from the car but was chased down and run over by Moore. Conner then stabbed him to death. They drove to the warehouse of Conner's employer, where Conner and Moore began arguing about the nights events. Cooner shot Moore to death with a shotgun. Conner then returned to Moore's home and shot Voge on the couch. Conner then fled to Texas.

Final / Special Meal:

His final meal came from Dairy Queen: four chili dogs, onion rings, a banana split and an Oreo-cookie Blizzard ice-cream drink, Correction Department spokeswoman Java Ahmed said. Conner also smoked two cigars -- an exception to the prison's no-smoking policy granted to condemned inmates.

Final Words:

In an obscenity-laced final statement related by a prison spokeswoman, Conner said, "Everybody has to die sometime, so . . . let's get on with the killing."

Gregory Scott Johnson #14

Executed May 25, 2005 12:28 a.m. by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

26th murderer executed in U.S. in 2005
970th murderer executed in U.S. since 1976
3rd murderer executed in Indiana in 2005
14th murderer executed in Indiana since 1976
84th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
05-25-05	Lethal Injection	Gregory Scott Johnson W / M / 20 - 40	02-18-65	Ruby Hutslar W / F / 82	06-23-85	Stomping beating	None	06-19-86

Judge / County: Madison County Superior Court Judge Thomas Newman, Jr.

Trial Prosecutor(s): William F. Lawler, Jr.

Aggravating Circumstances: IC 35-50-2-9 b(1) Burglary

Summary:

A newspaper delivery boy noticed the home of 82 year old Ruby Hutslar on fire and roused a neighbor to call police. He returned but could not enter the home due to the fire and smoke. Firemen were able to put out the fire in about a half hour. Ruby Hutslar was found 5 feet from the front door with broken bones on her nose and cheek and 20 fractured ribs. Her larynx and spine were also fractured. An autopsy revealed that she died as a result of these injuries and not fire or smoke inhalation. A dispatch was sent out that Johnson was a suspect in several fires in the area. Johnson was seen by Officers watching the firemen fight the fire and was arrested for Public Intoxication. In custody, Johnson initially denied any involvement, but admitted setting 4 recent fires in the area. During a later interrogation, Johnson was asked if by killing Hutslar he was trying to join his friend, Mark Wisheart, on death row. Johnson became emotional and gave a full confession. (Johnson had testified as a prosecution witness against his friend Mark Wisheart charged with capital murder) Johnson stated that he had entered the home by breaking a front window with a broom and immediately confronted 90 pound Hutslar in her night clothes. Hutslar slumped to the floor, breathing heavily. Johnson said he stepped on her as he moved around the house. He took a watch and silver dollars, found matches, started the fire and fled.

Final / Special Meal:

Johnson ate his traditional last meal Monday with his attorneys. He had ribs, pulled pork, sauteed mushrooms, soda and chocolate cheesecake (he wanted Oreo pie, but they were out). For his attorneys, he ordered pizza.

Final Words:

"Everyone has been professional." After the execution, a handwritten statement from Johnson was distributed. In it, he expressed hope that his sister would survive even without his liver. "There are those who claim that Debi will have a new liver three weeks after being placed on the list. I'll be watching from above and expect her to be recuperating at that time." He was critical of the Indiana Parole Board for refusing to believe he sincerely wanted to help his sister, that he could have changed in 20 years. The board, he wrote, violated the Indiana Constitution, which states the penal code is "founded on the principles of reformation, and not of vindictive justice." He then thanked others for their prayers. "I'll see you on the other side."

Bill J. Benefiel #13

Executed April 21, 2005 12:35 a.m. by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

16th murderer executed in U.S. in 2005
960th murderer executed in U.S. since 1976
2nd murderer executed in Indiana in 2005
13th murderer executed in Indiana since 1976
83rd murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
04-21-05	Lethal Injection	Bill J. Benefiel W / M / 30 - 48	06-03-56	Delores Wells W / F / 19	02-07-87	Asphyxia by Superglue	None	11-03-88

Judge / County: Vigo County Superior Court Judge Michael H. Eldred

Trial Prosecutor(s): Phillip I. Adler

Aggravating Circumstances: IC 35-50-2-9 b(1) Rape; b(1) Criminal Deviate Conduct

Summary:

17 year old Alicia was kidnapped on the way to a store two blocks from her home in Terre Haute by Benefiel, who was armed with a gun and wearing a mask. Alicia was tied-up and gagged, driven to Benefiel's home and taken inside. During 4 months of captivity inside Benefiel's home, Alicia was raped and sodomized over 60 times at gunpoint. Most of this time she was chained and handcuffed to a bed. He glued her eyelids shut, put tape over her eyes, and toilet paper in her mouth. She was cut with a knife and beaten. After 3½ months, Alicia saw a second girl, Delores Wells, in the home. She was naked and handcuffed on the bed, with tape over her eyes and mouth. She later saw Benefiel beat Delores and put superglue in her nose, then pinch it together. Benefiel left the home for 2 hours and upon his return, confessed to Alicia that he had killed and buried Delores. When police knocked on the door, Benefiel stuffed Alicia into a ceiling crawl space. The police entered with a search warrant and rescued her. The body of Delores was found soon after in a wooded area. An autopsy revealed injuries to her vagina and anus, and established asphyxia as the cause of death. (insanity defense)

Final / Special Meal:

One large pizza with sausage, pepperoni, mushrooms, onions, green pepper, black olives and tomatoes; One 12-inch Italian beef sandwich with cheese; Four pints of Ben & Jerry's ice cream: Butter Pecan, Cherry Garcia, New York Super Fudge Chunk and Oatmeal Cookie Chunk; One Dutch apple pie; Six cans of RC cola; Six cans of Pepsi cola.

Final Words:

When asked for a final statement, Benefiel said, "No, let's get this over with. Let's do it."

Donald Ray Wallace Jr. #12

Executed March 10, 2005 12:23 a.m. by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

9th murderer executed in U.S. in 2005
953rd murderer executed in U.S. since 1976
1st murderer executed in Indiana in 2005
12th murderer executed in Indiana since 1976
82nd murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
03-10-05	Lethal Injection	Donald Ray Wallace Jr. W / M / 22 - 47	09-03-57	Patrick Gilligan W / M / 30 Teresa Gilligan W / F / 30 Lisa Gilligan W / F / 5 Gregory Gilligan W / M / 4	01-14-80	Handgun	None	10-21-82

Judge / County: Vigo County Circuit Court Judge Hugh D. McQuillan
(Venued from Vanderburgh County)

Trial Prosecutor(s): Stanley M. Levco, Robert J. Pigman

Aggravating Circumstances: IC 35-50-2-9 b (1) Burglary; b (8) 4 murders

Summary:

As attested by the admission of Wallace to friends after the fact, after burglarizing the home of Ralph Hendricks, he "got greedy" and decided to break into the house next door. However, when he did so, he was surprised to find the family inside. Patrick and Teresa Gilligan and their two children, aged 4 and 5, were confronted by Wallace with a gun. All four were tied up and shot in the head. Wallace would say to friends later that he shot Mr. Gilligan because he was "giving him trouble"; he shot Mrs. Gilligan because she was screaming and he "had to shut her up"; and he shot the children because he "could not let the children grow up with the trauma of not having parents." Wallace then took guns, a CB, a scanner, and other property, all of which was later recovered from or traced to Wallace. Wallace was found incompetent and confined in a mental hospital for almost 2 years prior to trial. His IQ was measured at 130. In the weeks before his execution Wallace admitted that he had "faked" mental illness, and that he had in fact committed the murders.

Final / Special Meal:

Filet mignon, baked potato, soup and chocolate truffle cake from a local Damon's Grill.

Final Words:

"I hope everyone can find peace with this."

Joseph L. Trueblood #11

Executed June 13, 2003 12:24 a.m. by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

38th murderer executed in U.S. in 2003
858th murderer executed in U.S. since 1976
2nd murderer executed in Indiana in 2003
11th murderer executed in Indiana since 1976
81st murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
06-13-03	Lethal Injection	Joseph L. Trueblood W / M / 31 - 46	12-26-56	Susan Bowsher W / F / 23 Ashlyn Bowsher W / F / 2 William Bowsher W / M / 17 mo	08-15-88	Handgun	Ex-Girlfriend and her children	04-12-90

Judge / County: Tippecanoe County Circuit Court Judge Ronald E. Melichar

Trial Prosecutor(s): Jerry J. Bean, John H. Meyers, IV

Aggravating Circumstances: IC 35-50-2-9 (b) (12) 2 victims less than 12 years of age; b (8) 3 murders

Summary:

Trueblood was upset with his former girlfriend, Susan Bowsher, because she expressed her intention of going back with her ex-husband. Trueblood picked up Susan and her two small children one day and while they were in the car he shot Susan 3 times in the head, and shot each child once in the head. He then drove to the home of his twin brother, admitted to him what he had done, borrowed a shovel, then drove to a secluded area and buried all three in a shallow grave. After 4 witnesses had testified at trial, Trueblood indicated a desire to plead guilty and did so. When interviewed by the Probation Officer for the Presentence Report, Trueblood claimed that Susan had shot the kids, then killed herself. He then sought to withdraw his guilty plea, which was denied.

Final / Special Meal:

Trueblood refused a special last meal. "This is the way I'm protesting what the state is getting ready to do." Instead, he was given the same dinner as other inmates: a bologna sandwich, a cheese sandwich, cookies and fruit.

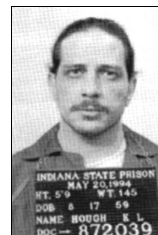
Final Words:

In a final statement, Trueblood reiterated his innocence, asserting that Bowsher had killed herself and her children and that his attorneys had told him that pleading guilty was the best way to avoid the death penalty. "That's the only reason I pleaded guilty," he said, in a statement given through attorney John Sommers. "If I had been given a lie detector test, it would have proven I was telling the truth."

Kevin Lee Hough #10

Executed March 14, 2003 by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

30th murderer executed in U.S. in 2003
850th murderer executed in U.S. since 1976
1st murderer executed in Indiana in 2003
10th murderer executed in Indiana since 1976
80th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
05-02-03	Lethal Injection	Kevin Lee Hough W / M / 31 - 41	08-17-59	Ted Bosler W / M / 49 Gene Rubrake W / M / 56	11-06-85	Handgun	None	06-11-87

Judge / County: Allen County Superior Court Special Judge Edward J. Meyers

Trial Prosecutor(s): Stephen M. Sims, Robert E. Love

Aggravating Circumstances: IC 35-50-2-9 b (1) Robbery; b (7) Prior murder conviction; b (8) 2 murders

Summary:

Hough was upset with his cousin's landlords, Ted Bosler and Gene Rubrake. When his cousin failed to pay rent, his landlords took his cousin's property. Along with his brother, Duane Lapp, Hough went to their residence in Fort Wayne "to get the property back." They were invited inside and once downstairs, Hough pulled a .45 automatic pistol. When Rubrake swung at him, Hough shot him in the chest. Bosler dropped to the floor and Hough shot him in the back. Hough then shot Rubrake again in the face. Hough took a TV remote and a beer which he thought may have fingerprints and left. Lapp testified at trial as the State's star witness.

In a separate trial, Hough was also convicted for murdering Antoni Bartkowiak during a home invasion 11 days before the murder of Bosler and Rubrake.

Final / Special Meal:

Hough declined a last meal.

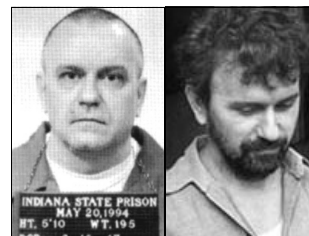
Final Words:

"I hope the victims families get some measure of satisfaction. Hopefully their grief won't be so much."

James Lowery #9

Executed June 27, 2001 12:29 a.m. by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

39th murderer executed in U.S. in 2001
722nd murderer executed in U.S. since 1976
2nd murderer executed in Indiana in 2001
9th murderer executed in Indiana since 1976
79th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
06-27-01	Lethal Injection	James Lowery W / M / 32 - 54	03-16-47	Mark Thompson W / M / 80 Gertrude Thompson W / F / 80	09-30-79	Handgun	Former Employers	07-11-80 01-07-83

Judge / County: Boone County Superior Court Judge Paul H. Johnson, Jr.
(Venued from Tippecanoe County)
Hendricks County Circuit Court Judge Jeffrey V. Boles (On remand)

Trial Prosecutor(s): John H. Meyers, IV, John W. Barce

Aggravating Circumstances: IC 35-50-2-9 b (1) Burglary; b (1) Robbery; b (8) 2 murders

Summary:

Mark and Gertrude Thompson were 80 years of age, in declining health, and needed assistance in caring for themselves and their property. Both were found shot to death in their country home in West Point, Indiana. The Thompsons had earlier employed Lowery and his wife as caretakers. The Thompsons, dissatisfied with the Lowerys, asked them to leave. Lowery and his friend Jim Bennett discussed committing robbery and Lowery told Bennett he knew where he could get some money. Bennett picked Lowery up and followed Lowery's directions. Lowery told Bennett they were going to the Thompson's residence to force him to write a check for \$9,000, then to kill and bury both Thompsons. Lowery forced housekeeper Janet Brown into the kitchen where Mark Thompson was standing. He told Thompson he was being held up and then shot him in the stomach. Lowery then went to another room, forced Mrs. Thompson into the kitchen and shot her in the head. He also shot Brown, but Brown had her hand over her head when Lowery fired at her, causing injury to her hand and her head, but not fatally wounding her. When an alarm began sounding, he went back to and shot Mr. Thompson in the head and fled. Lowery admitted the killings during penalty phase testimony. Bennett pled guilty by agreement, received a 40 year sentence, and testified against Lowery at his first trial. Following reversal on direct appeal for failure to sequester the jury, a second trial ended with the same result. At the second trial, Bennett refused to testify and his previous testimony was admitted against Lowery, who was sentenced to death a second time.

Final / Special Meal:

He declined a special last meal in favor of standard inmate fare.

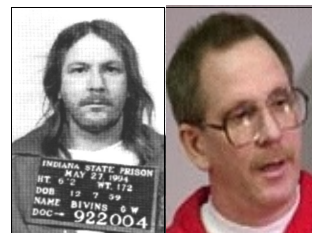
Final Words:

Afterward, his attorney, Monica Foster read a lengthy handwritten statement from Lowery that ended with the words: "I am so very sorry."

Gerald W. Bivins #8

Executed March 14, 2001 by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

19th murderer executed in U.S. in 2001
702rd murderer executed in U.S. since 1976
1st murderer executed in Indiana in 2001
8th murderer executed in Indiana since 1976
78th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
03-14-01	Lethal Injection	Gerald W. Bivins W / M / 31 - 41	12-07-59	Rev. William H. Radcliffe W / M / 39	01-16-91	Handgun	None	06-05-92

Judge / County: Boone County Superior Court Special Judge Thomas K. Milligan

Trial Prosecutor(s): Rebecca S. McClure, Bruce E. Petit

Aggravating Circumstances: IC 35-50-2-9 b(1) Robbery

Summary:

Bivins, Chambers, and Weyls engaged in a 2-day central Indiana crime spree. They shoplifted blue jeans at gunpoint from a Lafayette Lazarus. They then drove to a Holiday Inn in Lebanon, forced their way into a guest's room, robbed him, stole his vehicle, and left him tied to the bathtub. Heading back toward Lafayette, they stopped at a rest stop north of Lebanon, and robbed Reverend Radcliffe at gunpoint in the restroom. After taking his wallet, Bivins turned Radcliffe around into a stall and shot him in the head. Later, Bivins said he did so "because he wanted to know what it felt like to kill." Full confessions followed. After losing direct and PCR appeals, Bivins waived federal appeals.

Final / Special Meal:

Earlier he had consumed a last meal of German ravioli and chicken and dumplings prepared by his mother in the prison kitchen under supervision. Prison officials said it was the first time the state had granted a condemned inmate's request for a final meal cooked by a family member.

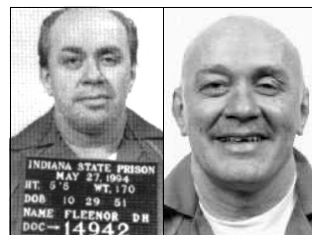
Final Words:

"I wish to apologize to the victim's family for the pain I have caused and the pain I have caused my family and friends and I ask that they, who did this to me, be forgiven."

D. H. Fleenor #7

Executed December 9, 1999 by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

94th murderer executed in U.S. in 1999
594th murderer executed in U.S. since 1976
1st murderer executed in Indiana in 1999
7th murderer executed in Indiana since 1976
77th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
12-09-99	Lethal Injection	D. H. Fleenor W / M / 31 - 48	10-29-51	Nyla Harlow W / F / 49 Bill Harlow W / M / 58	12-12-82	Handgun	Mother-in-Law Her Husband	01-04-84

Judge / County: Johnson County Circuit Court Judge Larry J. McKinney
(Venued from Jefferson County)

Trial Prosecutor(s): Merritt K. Alcorn, Wilmer E. Goering II, Robert C. Shook

Aggravating Circumstances: IC 35-50-2-9 b (1) Burglary; b (3) Lying in Wait; b (8) 2 murders

Summary:

Fleenor went to an evening church service attended by his estranged wife, Sandra Sedam, and her parents, Bill and Nyla Harlow. He stayed briefly, then left. When Sandra and her parents returned to their home, Fleenor appeared in the hallway and immediately shot Bill with a .22 he purchased earlier in the day. Fleenor ordered Sandra, her mother, and 3 grandchildren to sit on the couch. He allowed Nyla to go to her husband. As Nyla assisted Bill on the floor, Fleenor shot her in the head. He ordered Sandra and the kids to carry her body to the bedroom. He forced Sandra to drive to her brother's home to tell him they would be out of town for a few days, then returned to the Harlow home. Bill was still alive and asked about his wife. Fleenor said, "I can't let him suffer" and shot him dead. The next morning, Fleenor fled to Tennessee with Sandra and the children in tow. The bodies were not discovered until 4 days later. Police captured Fleenor at the home of relatives in Tennessee.

Final / Special Meal:

None.

Final Words:

"I am not guilty."

Robert Allan Smith #6

Executed January 29, 1998 by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

3rd murderer executed in U.S. in 1998
435th murderer executed in U.S. since 1976
1st murderer executed in Indiana in 1998
6th murderer executed in Indiana since 1976
76th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
01-29-98	Lethal Injection	Robert Allan Smith W / M / 45 - 47	03-03-50	Michael Wedmore W / M / 33	06-30-95	Stabbing w/ putty knife	Fellow DOC Inmate	07-12-96

Judge / County: Sullivan County Circuit Court Judge P. J. Pierson

Trial Prosecutor(s): Robert E. Springer

Aggravating Circumstances: IC 35-50-2-9 b (9) In Custody of DOC

Summary:

Smith, serving a 38 year sentence for Battery, was an inmate at the Indiana DOC, Wabash Correctional Institution in Sullivan County. Along with inmate Lunsford, Smith stabbed inmate Michael Wedmore 37 times with a sharpened putty knife. The attack was witnessed by correctional officers. Both Smith and Lunsford surrendered immediately, turning over the murder weapons. Smith proceeded pro-se, pled guilty, and agreed to a Death Sentence. The Court nevertheless appointed standby counsel who raised competency as an issue. At the guilty plea hearing, Smith stated, "I'm telling the court that the next person I go at won't be a baby killer, it will be a state employee and I will butcher him." (Wedmore was serving a 60 year sentence for the murder of his girlfriend's 2 year old child in Hamilton County). Accomplice Lunsford received a 40 year sentence.

Final / Special Meal:

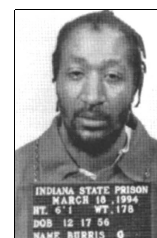
Final Words:

Smith apologized for being such a screw-up during his life and then quoted Eleanor Roosevelt: "You gain strength, courage and confidence by every experience in which you really stop to look fear in the face."

Gary Burris #5

Executed November 20, 1997 by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

69th murderer executed in U.S. in 1997
427th murderer executed in U.S. since 1976
1st murderer executed in Indiana in 1997
5th murderer executed in Indiana since 1976
75th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
11-20-97	Lethal Injection	Gary Burris B / M / 23 - 40	12-17-56	Kenneth Chambers B / M / 31	01-29-80	Handgun	None	02-20-81 11-22-91

Judge / County: Marion County Superior Court Judge John W. Tranberg
Marion County Superior Court Judge Judge Patricia J. Gifford (On remand)

Trial Prosecutor(s): J. Gregory Garrison, John D. Tinder

Aggravating Circumstances: IC 35-50-2-9 b(1) Robbery

Summary:

Kenneth Chambers was a cab driver in Indianapolis. His nude body was found in an alley near Fall Creek Parkway, face down and stuck to the ground by a pool of his frozen blood. There was a small caliber gunshot wound to the right temple. The cab company log revealed that Burris had called for a cab and was Chambers' last fare. A witness testified that Burris returned to his apartment with Emmett Merriweather and James Thompson with wads of money and a cab driver's run sheet and clipboard. Burris was arrested at the apartment of his girlfriend where a .38 caliber handgun was found. The ISP Lab confirmed it to be the murder weapon.

Final / Special Meal:

Final Words:

Tommie J. Smith #4

Executed July 18, 1996 by Lethal Injection
at Indiana State Prison, Michigan City, Indiana

21st murderer executed in U.S. in 1996
334th murderer executed in U.S. since 1976
1st murderer executed in Indiana in 1996
4th murderer executed in Indiana since 1976
74th murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
07-18-96	Lethal Injection	Tommie J. Smith B / M / 26 - 42	02-06-54	Jack Ohrberg W / M / 44	12-11-80	Automatic Rifle	None	07-23-81

Judge / County: Marion County Superior Court Judge Jeffrey V. Boles
(Originally venued to Hendricks County; by agreement, returned to Marion, with
Hendricks Circuit Judge Jeffrey V. Boles presiding - Joint trial with Gregory Resnover)

Trial Prosecutor(s): J. Gregory Garrison, David E. Cook (Stephen Goldsmith)

Aggravating Circumstances: IC 35-50-2-9 b (6) Victim was law enforcement officer

Summary:

On December 11, 1980 at 5:30 a.m., Indianapolis Police Sergeant Jack Ohrberg and other officers went to 3544 North Oxford in Indianapolis attempting to serve papers on persons believed to be at that location. Ohrberg banged on the door several times and identified himself as a police officer. Two other officers on the front porch were in uniform. After the next door neighbor told officers that there was noise from inside the apartment, Ohrberg crouched and pounded with his shoulder on the door, which began to open. Officers saw furniture blocking the door, and saw 2 or 3 muzzle flashes from two different locations inside. Ohrberg was shot and collapsed on the porch. Officers took cover and saw a man come out onto the porch, point a rifle, and fire at least 2 additional shots into Ohrberg. Officers took cover and returned fire. Shots continued to come from inside the house. After a few minutes, Gregory Resnover came out, threw down an AR-15 rifle and surrendered. Earl Resnover followed, laying down an AR-15 and a pistol. Ohrberg's business card was found in Earl's wallet. Two women then came out, leaving wounded Smith inside. An AR-15 which was recovered next to Smith was found to be the murder weapon. An arsenal of weapons and ammunition was recovered inside the apartment. Accomplice Resnover was also sentenced to death and executed December 8, 1994.

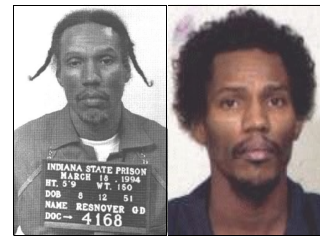
Final / Special Meal:

Final Words:

Gregory Resnover #3

Executed December 8, 1994 by Electric Chair
at Indiana State Prison, Michigan City, Indiana

30th murderer executed in U.S. in 1994
256th murderer executed in U.S. since 1976
1st murderer executed in Indiana in 1994
3rd murderer executed in Indiana since 1976
73rd murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
12-08-94	Electric Chair	Gregory Resnover B / M / 29 - 43	08-12-51	Jack Ohrberg W / M / 44	12-11-80	Automatic Rifle	None	07-23-81

Judge / County: Marion County Superior Court Judge Jeffrey V. Boles
(Originally venued to Hendricks County; by agreement, returned to Marion, with
Hendricks Circuit Judge Jeffrey V. Boles presiding - Joint trial with Tommie Jo Smith)

Trial Prosecutor(s): J. Gregory Garrison, David E. Cook (Stephen Goldsmith)

Aggravating Circumstances: IC 35-50-2-9 b (6) Victim was law enforcement officer

Summary:

On December 11, 1980 at 5:30 a.m., Indianapolis Police Sergeant Jack Ohrberg and other officers went to 3544 North Oxford in Indianapolis attempting to serve papers on persons believed to be at that location. Ohrberg banged on the door several times and identified himself as a police officer. Two other officers on the front porch were in uniform. After the next door neighbor told officers that there was noise from inside the apartment, Ohrberg crouched and pounded with his shoulder on the door, which began to open. Officers saw furniture blocking the door, and saw 2 or 3 muzzle flashes from two different locations inside. Ohrberg was shot and collapsed on the porch. Officers took cover and saw a man come out onto the porch, point a rifle, and fire at least 2 additional shots into Ohrberg. Officers took cover and returned fire. Shots continued to come from inside the house. After a few minutes, Gregory Resnover came out, threw down an AR-15 rifle and surrendered. Earl Resnover followed, laying down an AR-15 and a pistol. Ohrberg's business card was found in Earl's wallet. Two women then came out, leaving wounded Smith inside. An AR-15 which was recovered next to Smith was found to be the murder weapon. An arsenal of weapons and ammunition was recovered inside the apartment. Accomplice Smith was also sentenced to death and executed July 18, 1996.

Final / Special Meal:

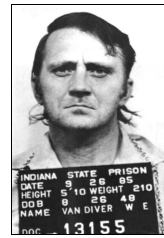
He refused a last meal and shower he was offered.

Final Words:

William E. Vandiver #2

Executed October 16, 1985 by Electric Chair
at Indiana State Prison, Michigan City, Indiana

17th murderer executed in U.S. in 1985
49th murderer executed in U.S. since 1976
1st murderer executed in Indiana in 1985
2nd murderer executed in Indiana since 1976
72nd murderer executed in Indiana since 1900



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
10-16-85	Electric Chair	William E. Vandiver W / M / 34 - 37	08-26-48	Paul Komyatti W / M / 62	03-20-83	Stabbing with knife x100	Father-in-Law	01-20-84

Judge / County: Lake County Superior Court Judge James E. Letsinger

Trial Prosecutor(s): Thomas W. Vanes

Aggravating Circumstances: IC 35-50-2-9 b (3) Lying in wait; b (4) Hired to kill

Summary:

Paul Komyatti, Sr. on occasion drank to excess and became loud and violent. He was disliked by members of his immediate family, which included his wife, Rosemary, his son Paul Jr., and his daughter, Mariann. Paul Sr. had demanded that Mariann divorce Vandiver because of his criminal past., and threatened to inform the police on him. Vandiver joined with the family in a conspiracy to kill Paul Sr. Pursuant to their agreement, several attempts to poison him were made without success. Finally, they decided to put him under with ether and inject air into his veins. One evening, Vandiver and Mariann waited outside the home for a signal from Paul Jr. that Paul Sr. was asleep. Upon seeing the signal, they entered the house and changed the plan at the last moment for lack of ether. Instead they entered the bedroom intending to smother Paul Sr., and sprang on him in his bed. Paul Sr. fought hard for his life and yet another attempt at murder was bungled. Vandiver, however, terminated the resistance by stabbing him in the back with a fish filet knife "at least 100 times." 34 deep knife wounds were later discovered on the body. He hit him in the head 5 or 6 times with his gun, but he was still breathing. By Vandiver's own admission, decapitation was the immediate cause of death. Vandiver and the other family members then sectioned up the body while making jokes. Evidence was also presented that Vandiver had gotten a "loan" of \$5000 from Paul Jr., as well as \$1700 and Paul Sr.'s truck from Rosemary. At trial, Vandiver recanted his prior confessions and placed the entire blame on Paul Jr. for the murder and dissection. Vandiver waived all appeals.

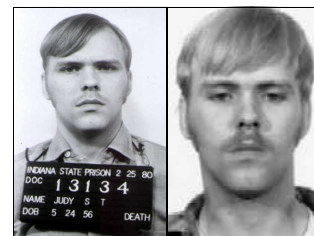
Final / Special Meal:

Final Words:

Steven Timothy Judy #1

Executed March 9, 1981 by Electric Chair
at Indiana State Prison, Michigan City, Indiana

1st murderer executed in U.S. in 1981
4th murderer executed in U.S. since 1976
1st murderer executed in Indiana in 1981
1st murderer executed in Indiana since 1976
71st murderer executed in Indiana since 1976



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
03-09-81	Electric Chair	Steven Timothy Judy W / M / 22 - 24	05-24-56	Terry Chasteen W / F / 21 Misty Zollers W / F / 5 Stephen Chasteen W / M / 4 Mark Chasteen W / M / 2	04-28-79	Strangulation with cloth, Drowning, Drowning, Drowning	None	02-25-80

Judge / County: Morgan County Superior Court Special Judge Jeffrey V. Boles

Trial Prosecutor(s): G. Thomas Gray, Stephen A. Oliver

Aggravating Circumstances: IC 35-50-2-9 b (1) Rape; b (8) 4 murders

Summary:

Hunters discovered Terry Chasteen's body in White Lick Creek. A police search of the creek led to the discovery of the bodies of 3 small children, aged 2, 4 and 5. Terry Chasteen was found naked, bound and gagged. She had been raped and died of strangulation, while the children died of asphyxia due to drowning. At trial, Judy presented an insanity defense and testified at length concerning his commission of the rape and murders. Judy stated that he was driving on Interstate 465 in Marion County when he passed Terry Chasteen's car. He testified that he motioned for her to pull over and purported to assist the victims, offering her a ride. Judy then drove the victims to the creek directing the children down the path ahead of Terry and him. Judy testified that he then raped Terry Chasteen and bound her hands and feet and gagged her. When Terry cried out, the children ran back standing around him yelling. He then strangled Terry and threw her body into the creek. He then threw each of the children as far as he could into the water and fled. Judy's version of the was substantially corroborated by the evidence presented by the State. At the death phase of the trial, Judy ordered his attorneys not to present any evidence of mitigating circumstances. Judy stated to the jury in open court at the sentencing hearing that he would advise them to give him the death sentence, because he had no doubt that he would kill again if he had an opportunity, and some of the people he might kill in the future might be members of the jury. He also directed a similar comment to the trial judge.

Final / Special Meal:

Prime rib, lobster, baked potatoes, salad and dinner rolls.

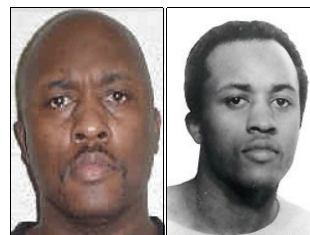
Final Words:

"I don't hold no grudges. This is my doing. I'm, sorry it happened."

Alton Coleman

EXECUTED IN OHIO WHILE ON DEATH ROW IN INDIANA

Executed April 26, 2002 10:13 a.m. by Lethal Injection
at Southern Ohio Correctional Facility, Lucasville, Ohio



22nd murderer executed in U.S. in 2002

771st murderer executed in U.S. since 1976

2nd murderer executed in Ohio in 2002

4th murderer executed in Ohio since 1976

Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
04-26-02	Lethal Injection	Alton Coleman B / M / 28 - 46	11-06-55	Tonnie Storey B / F / 15 Marlene Walters W / F / 44	07-11-84	Strangled	None	06-24-85
					07-13-84	Beaten		05-06-85

Summary:

At the time of Coleman's execution, there were approximately 3,700 convicted murderers on death row in the United States. Coleman was the only one with death sentences from 3 different states: Indiana, Ohio, and Illinois. These sentences were the culmination of a 1984 midwestern crime spree by Coleman and accomplice Deborah Brown that included up to 8 murders, 7 rapes, 3 kidnappings, and 14 armed robberies.

Ohio

On July 11, 1984, 15 year old Tonnie Storey left her home in Cincinnati to attend a computer class at a junior high school. Eight days later, her bound and partially decomposed body was discovered in an abandoned building. The cause of death was strangulation. A classmate testified and identified Coleman in the company of a woman talking to the victim on July 11th, when she was last seen alive. A fingerprint from the scene also matched Coleman's. Both Coleman and Brown received death sentences. On appeal, Coleman's death sentence was set aside due to ineffective counsel. Brown's death sentence was commuted in 1991 by Ohio Governor Celeste as he was leaving office.

Coleman and Brown bicycled into Norwood, Ohio, on July 13, 1984. About three hours later, they drove away in Harry Walters' car, leaving Harry Walters unconscious and Marlene Walters dead. Harry Walters survived. He testified that Coleman and Brown inquired about a camping trailer he had been offering for sale. Upon inviting Coleman and Brown into his home, he sat on the couch discussing the trailer title. Coleman picked up a wooden candlestick and, after admiring it, hit Harry Walters on the back of the head, knocking him unconscious. A few hours later, Sheri Walters came home from work and at the bottom of the basement steps, she found her father, barely alive, and her mother, dead. Both had ligatures around their throats and electrical cords tied around their bare feet. Her mother's hands were bound behind her back and her father's hands were handcuffed behind his back. Her mother's head was covered with a bloody sheet.

Indiana

7 year old Tamika and her 9 year old niece, Annie, were walking back from the candy store to their home when they were confronted by Debra Denise Brown and Coleman. Brown and Coleman convinced them to walk into the woods to play a game. Once there, they removed Tamika's shirt and tore it into small strips which they used to bind and gag the children. When Tamika began to cry, Brown held her nose and mouth while Coleman stomped on her chest. After carrying Tamika a short distance away, Annie was forced to perform oral sex on both Brown and Coleman, then Coleman raped her. Brown and Coleman then choked her until she



was unconscious. When she awoke, they were gone. Tamika was found dead in the bushes nearby, strangled with an elastic strip of bedsheet. The same fabric was later found in the apartment shared by Coleman and Brown. Annie received cuts so deep that her intestines were protruding into her vagina. Evidence of a remarkably similar murder in Ohio was admitted at trial.

Judge / County: Lake County Superior Court Judge Richard W. Maroc

Trial Prosecutor(s): Thomas W. Vanes, Richard Cook

Aggravating Circumstances: IC 35-50-2-9 b (1) Child Molesting; b (7) 2 prior murder convictions in Ohio

Illinois

Juanita Wheat, the victim's mother, testified that at the time of the offense she resided in Kenosha, Wisconsin, with her daughter, Vernita, and her seven- year-old son, Brandon. At the end of April or beginning of May of 1984, the defendant introduced himself to Juanita as Robert Knight, showed her an identification card bearing that name, and told her he lived two blocks away. Coleman visited often and ate dinner with the family over the next few weeks. On May 29, 1984, Juanita allowed Vernita to accompany Coleman to his apartment "to pick up a stereo system." Three weeks later the strangled body of Vernita Wheat was discovered in the bathroom of an abandoned building in Waukegan, Illinois. A fingerprint from Coleman was taken from the scene.

Final / Special Meal:

Filet mignon with mushroom gravy, biscuits and gravy, fried chicken, French fries, broccoli with cheese, collard greens, onion rings, corn bread, a salad, sweet potato pie, butter pecan ice cream and cherry cola.

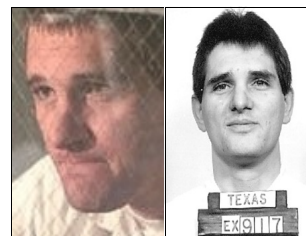
Final Words:

"The Lord is my shepherd," which he repeated over and over again.

Michael Lee Lockhart

EXECUTED IN TEXAS WHILE ON DEATH ROW IN INDIANA
Executed December 9, 1997 by Lethal Injection in Texas

72nd murderer executed in U.S. in 1997
430th murderer executed in U.S. since 1976
37th murderer executed in Texas in 1997
144th murderer executed in Texas since 1976



Date of Execution	Method	Murderer (Race/Sex/Age at Murder-Execution)	Date of Birth	Victim(s) (Race/Sex/Age at Murder)	Date of Murder	Method of Murder	Relationship to Murderer	Date of Sentence
12-09-97	Lethal Injection	Michael Lee Lockhart W / M / 27 - 37	09-30-60	Paul Douglas Hulsey, Jr. (Police Officer)	03-22-88	Handgun	None	10-26-88

Summary:

Lockhart was convicted for the capital murder of police officer Paul Hulsey Jr. in Beaumont, Texas. Hulsey had followed Lockhart driving a stolen corvette to a local hotel, then followed him into his room. As he was making the arrest, Lockhart punched the officer, grabbed a gun and shot him. According to a statement later given by Lockhart, he then shot him a second time and fled. (During trial, Lockhart bolted and jumped through a third story courthouse window. His escape was unsuccessful.)

Lockhart was also implicated in a series of gruesome offenses during the five months preceding the Texas murder, including the sexual assault, murder and mutilation of 16-year-old Wendy Gallagher in Griffith, Indiana on October 13, 1987, and the sexual assault of Lockhart's former wife in Toledo, Ohio on November 7-8, 1987; and the sexual assault, murder and mutilation of 14-year-old Jennifer Colhouer in Land O' Lakes, Florida on January 20, 1988. Lockhart was convicted of murder and was on death row in Indiana and Florida at the time of his execution in Texas.

Indiana

The body of 16 year old Windy Gallagher was found by her sister in the bedroom of their home in Griffith, Indiana. She was nude from the waist down with her hands tied behind her back, and her bra pushed up above her breasts. She was stabbed with a large knife 4 times in the neck and 17 times in the abdomen. There was a large pool of blood and her intestines were hanging out. Missing from her room was a photo of Windy and a small purse. Fingerprints in the room were identified as Lockhart's. The day before in Chicago, a woman was robbed of her purse at knifepoint. She identified Lockhart as her attacker. She was fortunate to recover her purse 3 days later. Inside it, she found the small purse belonging to Windy Gallagher. In January 1988, a 14 year old girl was raped and stabbed to death in Florida. Lockhart was identified by witnesses and DNA as the murderer. Because of striking similarities, evidence of this crime was admitted at trial. Lockhart's crime spree ended in Texas, where he murdered a police officer in Beaumont. He was convicted of Capital Murder in Texas in October 1988. This crime and conviction was kept from the jury until the penalty phase of the trial. Following the trial, Lockhart was returned and held on Texas Death Row until his execution on 12-09-97.

County / Judge: Lake County Superior Court Judge James E. Letsinger

Trial Prosecutor(s): Thomas W. Vanes, Joan Kuoros

Aggravating Circumstances: IC 35-50-2-9 b (1) Robbery; b (7) Convicted of another murder in Texas

Final / Special Meal:

Double-meat cheeseburger, fries and a Coke.

Final Words: Just before the lethal drugs were administered, Lockhart looked through a window to five family members of his murder victims and asked for their forgiveness. "I am deeply sorry. It is my hope my death will give you some kind of comfort." Then, he expressed love and thanks to his friends and family. "A lot of people view what is happening here as evil, but I want you to know that I found love and compassion here. The people who work here, I thank them for the kindness they have shown me and I deeply appreciate all that has been done for me by the people who work here. That's all, Warden, I'm ready. I am really at peace."

INDIANA EXECUTIONS SINCE 1900

<u>Inmate</u>	<u>Sentencing County</u>	<u>Race/Sex/Age At Sentencing</u>	<u>Date of Sentencing</u>	<u>Date of Execution</u>
1. Joseph Keith	Gibson	W/M/40	02/09/1901	11/15/1901
2. John Rinkard	Wabash	W/M/63	05/07/1901	01/17/1902
3. Willis Wheeler	Warrick	W/M/45	10/22/1901	06/06/1902
4. Lewis Russell	Gibson	B/M/48	05/10/1902	09/26/1902
5. Matthew Alexander	Vigo	B/M/28	12/19/1902	04/16/1903
6. William Jackson	Vanderburgh	B/M/45	02/21/1903	06/12/1903
7. Ora Copenhaver	Marion	W/M/26	10/28/1902	06/13/1903
8. Edward Hoover	Marion	W/M/26	06/10/1903	11/13/1903
9. Benjamin Springs	Vigo	B/M/34	03/16/1904	07/01/1904
10. Jerry Duggins	Vigo	W/M/28	03/23/1904	07/08/1904
11. Berkley Smith	Marion	B/M/30	02/04/1905	06/30/1905
12. George Williams	Marion	B/M/28	10/25/1906	02/08/1907
13. John Chirka	Lake	W/M/40	09/22/1913	02/20/1914
14. Harry Rasico	Vigo	W/M/35	09/20/1914	02/20/1914
15. Robert Collier	Vanderburgh	W/M/34	06/18/1914	10/16/1914
16. Kelly Robinson	Marion	B/M/28	05/22/1915	02/01/1916
17. William Ray	Marion	B/M/18	04/27/1920	08/05/1920
18. Will Thornton	Lake	B/M/21	07/30/1920	12/10/1920
19. William Donovan	Montgomery	W/M/35	01/21/1922	06/01/1922
20. Ben Brooks	Bartholomew	W/M/33	01/14/1922	12/01/1922
21. Harry Diamond	Porter	W/M/25	06/07/1923	11/14/1924
22. Peter Vergolini	Lake	W/M/29	10/15/1924	01/30/1925
23. John Koval	Lake	W/M/32	07/02/1925	10/16/1925
24. Edward Stewart	Marion	W/M/25	10/08/1925	01/08/1926
25. Peter Jankowski	Lake	W/M/26	10/13/1925	01/22/1926
26. Henry Smith	Porter	B/M/26	12/10/1925	03/26/1926
27. Roosevelt Hicks	Marion	B/M/23	03/27/1926	07/29/1927
28. John Hall	Elkhart	W/M/20	10/03/1926	04/10/1928
29. James Britt	Lake	B/M/42	12/06/1929	03/21/1930
30. Ignacio Saragova	Laporte	W/M/26	02/23/1931	06/24/1931
31. Herbert Johnson	Lagrange	W/M/33	10/12/1931	02/12/1932
32. Ulysses Mackneezer	Porter	B/M/29	11/18/1929	07/01/1932
33. Charles Witt	Boone	W/M/26	01/28/1932	11/24/1932
34. John Moore	Blackford	W/M/28	11/17/1932	03/02/1933
35. Glen Shustrom	Lake	W/M/23	06/03/1932	02/28/1933
36. Richard Perkins	Hancock	B/M/31	03/19/1932	01/01/1934
37. Harley Edwards	Jackson	W/M/39	03/17/1933	03/02/1934
38. Louis Hamilton	Boone	W/M/27	12/26/1932	09/28/1934
39. Edward Coffin	Clark	W/M/22	06/09/1934	10/09/1934
40. Gaston Slaughter	Vigo	B/M/35	10/01/1934	04/17/1935
41. Olivett Griggs	Lake	B/M/32	03/07/1935	06/14/1935
42. Richard Chapman	Lake	W/M/20	02/04/1935	10/19/1935
43. Clarence Thomas	Whitley	W/M/31	07/06/1936	10/19/1936
44. Harry Singer	Wabash	W/M/25	09/15/1936	12/26/1936
45. Chester Arkuszewski	Laporte	W/M/24	11/18/1936	03/12/1937
46. William Kuhlman	Franklin	W/M/28	02/18/1937	06/10/1937
47. John Poholsky	Franklin	W/M/35	02/24/1937	06/10/1937
48. Frank Williams	Franklin	W/M/39	02/24/1937	06/10/1937

<u>Inmate</u>	<u>Sentencing County</u>	<u>Race/Sex/Age At Sentencing</u>	<u>Date of Sentencing</u>	<u>Date of Execution</u>
49. Raymond Fortune	Huntington	W/M/26	10/18/1936	09/17/1937
50. Willis Fuller	Vigo	W/M/28	10/31/1936	01/14/1938
51. Monroe White	Newton	B/M/32	01/22/1938	05/03/1938
52. Heber Hicks	Franklin	W/M/39	12/21/1936	05/06/1938
53. John Smith	Whitley	W/M/22	02/14/1938	06/01/1938
54. Robert Shaw	Lagrange	W/M/29	03/09/1938	06/28/1938
55. Hugh Marshall	Shelby	W/M/19	04/05/1937	07/08/1938
56. Vurtis Neal	Shelby	W/M/22	04/05/1937	07/08/1938
57. Henry Noelke	Vanderburgh	W/M/32	11/10/1937	09/30/1938
58. Orells Easton	Floyd	W/M/25	08/31/1938	06/03/1939
59. James Swain	Vanderburgh	B/M/18	12/15/1937	06/23/1939
60. Adrian Miller	Allen	W/M/31	05/06/1939	08/16/1939
61. Milton Hawkins	Floyd	W/M/24	12/24/1940	11/14/1941
62. Virginius Carter	Dearborn	W/M/33	10/21/1941	02/10/1942
63. Cleveland Greathouse	Lake	B/M/63	06/23/1945	11/26/1945
64. Frank Quarles	Vanderburgh	B/M/44	02/15/1945	04/02/1946
65. Frank Badgley	Jasper	W/M/49	12/02/1947	02/23/1949
66. Robert Brown	Jasper	W/M/37	12/02/1947	02/23/1949
67. Thomas Kallas	Lake	W/M/58	01/14/1948	03/29/1949
68. Franklin Click	Allen	W/M/30	12/01/1949	12/30/1950
69. Robert Watts	Bartholomew	B/M/27	03/31/1950	01/16/1951
70. Richard Kiefer	Allen	W/M/37	06/19/1959	06/15/1961
71. Steven T. Judy	Morgan	W/M/23	02/25/1980	03/09/1981
72. William Vandiver	Lake	W/M/35	01/20/1984	10/16/1985
73. Gregory Resnover	Marion	B/M/29	07/23/1981	12/08/1994
74. Tommie J. Smith	Marion	B/M/27	07/23/1981	07/18/1996
75. Gary Burris	Marion	B/M/34	11/22/1991	11/20/1997
76. Robert A. Smith	Sullivan	W/M/46	07/12/1996	01/29/1998
77. D.H. Fleenor	Johnson	W/M/33	01/04/1984	12/09/1999
78. Gerald W. Bivins	Boone	W/M/32	06/05/1992	03/14/2001
79. James Lowery	Boone	W/M/35	01/07/1983	06/27/2001
80. Kevin Lee Hough	Allen	W/M/27	06/11/1987	05/02/2003
81. Joseph L. Trueblood	Tippecanoe	W/M/33	08/12/1990	06/13/2003
82. Donald Ray Wallace	Vigo	W/M/25	10/21/1982	03/10/2005
83. Bill J. Benefiel	Vigo	W/M/34	08/12/1990	04/21/2005
84. Gregory Scott Johnson	Madison	W/M21	06/19/1986	05/25/2005
85. Kevin A. Conner	Marion	W/M/23	11/03/1988	07/27/2005
86. Alan L. Matheney	Lake	W/M/39	05/11/1990	09/28/2005
87. Marvin Bieghler	Howard	W/M/35	03/25/1983	01/27/2006
88. David Leon Woods	Boone	W/M/20	03/28/1985	05/04/2007
89. Michael Allen Lambert	Delaware	W/M/21	01/17/1992	06/15/2007
90. Matthew E. Wrinkles	Vanderburgh	W/M/49	06/14/1995	12-11-2009

In addition, James Dalhover was executed on December 13, 1938 under federal authority for the murder of a state policeman during a bank robbery.

Harry Risico (1914) and John Chirka (1914) were the first murderers executed in Indiana by electrocution. Tommie J. Smith (1996) was the first murderer executed in Indiana by lethal injection.

Steven Judy (1981), William Vandiver (1985), and Robert A. Smith (1998) waived all appeals. Gerald Bivins (2001) waived the remainder of his appeals after unsuccessful Direct and PCR appeals.

There were more executions in Indiana in 2005 (5) than in any year since 1938.

The last 15 executions in Indiana have been of white males.

INDIANA EXECUTIONS SINCE 1900

MOST ACTIVE COUNTIES

13 Lake
12 Marion
08 Vigo
06 Vanderburgh
05 Boone
04 Franklin
04 Allen
03 Porter

EXECUTIONS BY DECADE

1900 - 09 = 12 1950 - 59 = 02
1910 - 19 = 04 1960 - 69 = 01
1920 - 29 = 12 1970 - 79 = 00
1930 - 39 = 32 1980 - 89 = 02
1940 - 49 = 07 1990 - 99 = 05
2000 - 07 = 13

Most active year = 08 executions in 1938

Most active day = 03 executions on June 10, 1937

METHOD OF EXECUTION

Prior to 1913, all executions in Indiana were by hanging. From 1913 through 1994, all executions were by electric chair. In 1995, IC 35-38-6-1 was amended by P.L. 294-1995, §1, changing the prescribed method of execution from electrocution to lethal injection:

"(a) The punishment of death shall be inflicted by ~~causing to pass through the body of the convicted person a current of electricity of sufficient intensity to cause death. The application of the current must continue until the person is dead.~~ **intravenous injection of a lethal substance or substances into the convicted person:**

(1) in a quantity sufficient to cause the death of the convicted person;

and

(2) until the convicted person is dead. " [IC 35-38-6-1].

"The lethal injection procedure to be used on Lambert, called Operational Directive ISP 06-26, requires the introduction by intravenous catheter of 5 grams of sodium pentothal (an anesthetic to render the prisoner unconscious), followed by 50 mg of sterile saline, followed by 100 mg of pancuronium bromide (a paralytic agent), followed by 50 mg of sterile saline, followed by 200 mEq of potassium chloride. The final drug stops the heart. This protocol is the same one used by Indiana to execute Mr. Woods last month." *Lambert v. Buss*, ___ F.3d ___, 2007 WL 1710939 (7th Cir. June 14, 2007) (Stay / Injunction denied in lawsuit challenging lethal injection method of execution)

Current death penalty procedure is found at IC 35-38-6 and requires that the execution take place inside the walls of the state prison before sunrise. All executions since July 1, 1995 have been by lethal injection.

AGE Average age at sentencing = 31 years
 Oldest age at sentencing = 63 years (Rinkard 1902 & Greathouse 1945)
 Youngest age at sentencing = 18 years (Ray 1920 & Swain 1939)

RACE White = 66 (73.3%)
 Black = 24 (26.7%)

GENDER Male = 90 (100%)
 Female = No women have been executed
 in Indiana this century.

Shortest time between Death Sentence and execution = 99 days
(Olivett Griggs was executed on June 14, 1935 after sentencing on March 7, 1935)

Longest time between Death Sentence and execution = 22 years, 308 days
(Marvin Bieghler was executed on 01/27/2006 after sentencing on 03/25/1983)

Source: Indiana Department of Corrections

PRE-1900 INDIANA EXECUTIONS

<u>Inmate</u>	<u>Race/Sex/Age</u> <u>At Execution</u>	<u>Occupation</u>	<u>Conviction</u>	<u>Date of</u> <u>Execution</u>	<u>Sentencing</u> <u>County</u>
1. Slaughter	?/M/?	?	Murder	??/??/1814	Knox
2. Chryst, Henry	W/M/?	?	Murder	04/01/1817	Wayne
3. Ouley, James	W/M/?	Wheelwright	Murder	01/01/1818	Crawford
4. Fuller, Amasa	W/M/?	?	Murder	03/31/1820	Dearborn
5. Dahmen, John	W/M/?	Farmer	Murder-Robb	07/26/1821	Floyd
6. Mckinney, Thomas	W/M/?	Counterfeiter	Murder	01/22/1822	Knox
7. Pitts, Hampshire	B/M/?	?	Murder	12/06/1822	Wayne
8. Harvey, John	W/M/50	?	Murder	06/27/1823	Vanderburgh
9. Cox, William	B/M/?	?	Rape	04/09/1824	Knox
10. Hudson, James	W/M/?	Farmer	Murder	01/12/1825	Madison
11. Bridge, John	W/M/?	Farmer	Murder	06/03/1825	Madison
12. Sawyer, Stephen	W/M/?	Farmer	Murder	06/03/1825	Madison
13. Swanson, Edward	W/M/?	?	Murder	05/11/1829	Rush
14. Richardson, John	W/M/?	?	Murder	11/12/1830	Fountain
15. Herring, Kader	W/M/?	Farmer	Murder	06/11/1833	Bartholomew
16. Jones, John	W/M/?	?	Murder	06/11/1833	Bartholomew
17. Heller, Isaac	W/M/?	Farmer	Murder	04/25/1836	Union
18. Staves, Francis	W/M/?	Laborer	Murder-Robb	??/??/1837	Porter
19. Scott, David	W/M/?	Farm Hand	Murder-Robb	06/15/1838	La Porte
20. Lechner, John	W/M/?	?	Murder	11/03/1840	Noble
21. Thompson, William	W/M/?	?	Murder-Robb	02/12/1841	Putnam
22. Sumner, James	W/M/?	?	Murder	01/07/1841	Jackson
23. Beauchamp, Noah	W/M/?	Farmer	Murder	12/30/1842	Parke
24. Dyas, Henry	W/M/?	?	Murder	07/05/1844	Vigo
25. Fields, James	W/M/?	?	Murder	12/18/1846	Crawford
26. Gross, Ernest	W/M/?	Laborer	Murder-Robb	12/13/1850	Floyd
27. Bennett, John	W/M/?	?	Murder	12/05/1851	Ripley
28. Madden, Benjamin	W/M/?	?	Murder-Robb	05/03/1855	Allen
29. Keefer, George	W/M/?	?	Murder-Robb	05/03/1855	Allen
30. Hubbard, John	W/M/?	?	Murder-Robb	12/13/1855	Wabash
31. Mullinix, Greenbury	W/M/25	Farmer	Murder	12/18/1857	Putnam
32. Harden, Henry	W/M/?	Convict	Murder	06/17/1864	Clark
33. Hendley, John	?/M/?	?	Murder	12/29/1865	Marion
34. Sage, George	?/M/?	?	Murder-Burg	05/25/1866	Jennings
35. White, Milton	W/M/23	Farmer	Murder	11/01/1867	Madison
36. Morgan, Oliver	W/M/26	Blacksmith	Murder-Burg	12/23/1869	Vigo
37. Sawyer, Ben	B/M/?	Steamboat Wkr	Murder	05/26/1871	Vanderburgh
38. Brooks, Jerome	W/M/22	?	Murder-Robb	01/27/1871	Carroll
39. Camp, Thomas	W/M/?	?	Murder	11/22/1872	Gibson
40. Beavers, John	W/M/35	?	Murder-Robb	02/15/1878	Jefferson
41. Achey, John	W/M/?	Gambler	Murder	01/29/1879	Marion
42. Merrick, William	W/M/?	Livery Propr	Poisoning	01/29/1879	Marion
43. Watson, Walter	W/M/27	?	Murder	04/03/1879	Vermillion
44. Guetig, Louis	W/M/29	?	Murder	09/19/1879	Marion
45. Stout, Buck	W/M/21	Farm Hand	Murder-Robb	08/08/1883	Parke
46. McDonald, Samuel	W/M/?	Laborer	Murder-Robb	01/10/1883	Allen
47. Anderson, John	W/M/17	Bootblack	Murder-Robb	01/25/1884	Posey
48. Snyder, Zachary	W/M/21	?	Murder-Robb	01/25/1884	Posey
49. Butler, Charles	W/M/27	?	Murder	01/10/1884	Whitley
50. Coffey, John	W/M/21	?	Murder-Robb	01/16/1885	Montgomery

<u>Inmate</u>	<u>Race/Sex/Age</u> <u>At Execution</u>	<u>Occupation</u>	<u>Conviction</u>	<u>Date of</u> <u>Execution</u>	<u>Sentencing</u> <u>County</u>
51. Wartena, Weibern	W/M/?	Fisherman	Murder-Robb	02/26/1886	Jasper
52. Phillips, Robert	B/M/?	?	Murder	04/08/1886	Marion
53. Henning, John	W/M/55	Tinker	Murder	05/27/1886	Montgomery
54. Archer, Sam	W/M/28	Farmer	Murder	07/09/1886	Martin
55. Bates, Nathaniel	W/M/26	Farm Laborer	Murder	08/26/1886	Wayne
56. Warner, Macy	W/M/25	Convict	Murder	03/09/1888	Clark
57. Grubb, Sylvester	W/M/?	?	Murder	04/19/1889	Knox
58. Stone, James	W/M/?	?	Murder	02/16/1894	Daviess
59. Jones, Harry	B/M/27	Convict	Murder	05/07/1897	Marion

All executions in Indiana prior to 1914 were by hanging.

These Pre-1900 Indiana Executions were extracted from the database of executions, "Executions in the United States, 1608-2002: The ESPY File." (4th Edition, 2004) This list of 15,269 executions performed under the civil authority in the United States and American Colonies was compiled by researchers M. Watt Espy, and John Ortiz Smykla. The work was funded by the National Science Foundation, and is available through the Inter-University Consortium for Political and Social Research (1994). The "ESPY Files" are available on the web at:

Inter-University Consortium for Political and Social Research

<http://www.icpsr.umich.edu/icpsrweb/NACJD/studies/08451/detail>

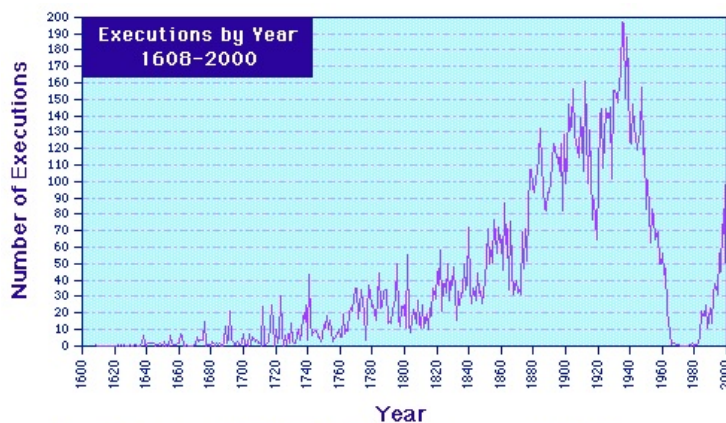
<http://www.stanford.edu/group/ssds/dewidocs/icpsr8451/cb8451.pdf>

"Before the Needles: Executions in America before Lethal Injection," by Rob Gallagher.

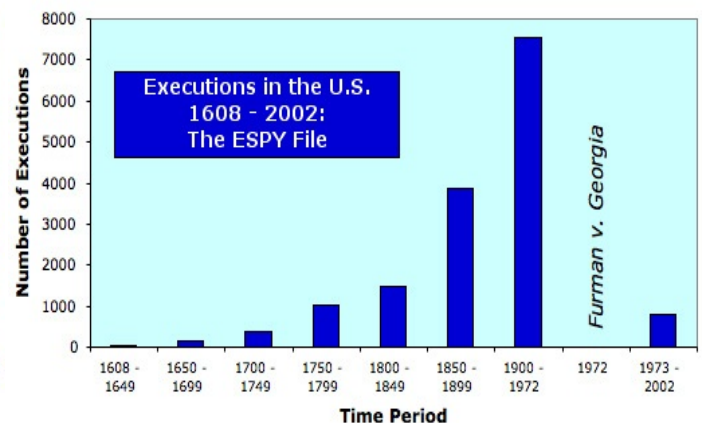
<http://users.bestweb.net/~rg/execution.htm>

Death Penalty Information Center

<http://www.deathpenaltyinfo.org/article.php?scid=8&did=269>



(Source: "Executions in the U.S. 1608-1987: The Espy File," with recent years added by DPIC)



INDIANA SUPREME COURT

Since 1977, 103 cases resulting in a Death Sentence were reviewed by the Indiana Supreme Court on Direct Appeal. This number includes Opinions on Rehearing only if the original decision was changed. (Evans). Also included are Opinions issued after remand by the U.S. Supreme Court. (Daniels). Joint Appeals are counted separately for each Defendant. (McCollum / Townsend, Rouster / D. Williams). Direct appeals by Defendants sentenced to death again after reversals are counted twice. (Averhart, Burris, Kennedy, Kubsch, J. Lowery, Minnick, Moore, Roark, J.K. Thompson, Ward). Remands for more specific sentencing order are not included.

DIRECT APPEAL (103 cases)

Death Sentence Affirmed 80 (77.7%)

Death Sentence Vacated 23 (22.3%)

Of those vacated death sentences:

- 8 for new guilt trial
(Kubsch, James Lowery, Minnick, Patton, Roark, Stroud, J.K. Thompson, Ward)
- 5 for new sentencing hearing only (Barker, Castor, Kennedy, Landress, Thompson)
- 1 for new judicial sentencing only (Bellmore)
- 8 remanded to impose imprisonment
(Cooper, Evans, Ingle, Jackson, Kennedy, Martinez, Roark, Thacker)
- 1 for either new sentencing hearing or imprisonment (James)

Murder conviction affirmed 91 (91.9%)

Murder conviction reversed 08 (08.1%)

- (Kubsch, James Lowery, Minnick, Patton, Roark, Stroud, J.K. Thompson, Ward)
- In Averhart, Burris, Kennedy and Ward the appeal was on the death sentence only, not the conviction.

	<u>Participating in Decision</u>	<u>Wrote Opinion</u>	<u>Voted to Affirm DP</u>	<u>Voted to Vacate DP</u>
DICKSON	83	15	56 (67.5%)	27 (32.5%)
RUCKER	16	02	10 (62.5%)	06 (37.5%)
DAVID	00	00	00 (00.0%)	00 (00.0%)
MASSA	00	00	00 (00.0%)	00 (00.0%)
RUSH	00	00	00 (00.0%)	00 (00.0%)
SULLIVAN	35	08	26 (74.3%)	09 (25.7%)
SHEPARD	85	18	66 (77.6%)	19 (22.4%)
BOEHM	28	07	21 (75.0%)	07 (25.0%)
SELBY	14	01	12 (85.7%)	02 (14.3%)
DEBRULER	75	08	27 (36.0%)	48 (64.0%)
GIVAN	72	14	65 (90.3%)	07 (09.7%)
KRAHULIK	24	07	15 (62.5%)	09 (37.5%)
PIVARNIK	44	18	41 (93.2%)	03 (06.8%)
PRENTICE	20	01	13 (65.0%)	07 (35.0%)
HUNTER	15	04	13 (86.7%)	02 (13.3%)
		103	365 (71.4%)	146 (28.6%)

Hunter did not participate (Bieghler, Moore, Vandiver); Givan did not participate (Johnson).

Affirmed DP on Direct Appeal: (80 total cases)	$\frac{5-0}{40}$	$\frac{4-1}{23}$	$\frac{3-2}{13}$	$\frac{4-0}{3}$	$\frac{3-1}{1}$
Vacated DP on Direct Appeal: (23 total cases)	$\frac{5-0}{11}$	$\frac{4-1}{5}$	$\frac{3-2}{7}$		

Justice Debruler was the lone dissenter in 20 cases on Direct Appeal, each time voting to vacate the death sentence. Justice Debruler also voted to vacate the death sentence in all 17 cases where the death sentence was vacated on direct appeal during his tenure. 24 of 27 cases decided on direct appeal since June 1, 1997 were decided unanimously 5-0.

POST-CONVICTION RELIEF (67 cases)

Since 1977, 61 cases resulting in a Death Sentence were reviewed by the Indiana Supreme Court after a denial of Post-Conviction Relief by the trial court, and 6 were reviewed on State's Appeal of the granting of Post-Conviction Relief by the trial court. (Dye, Holmes, Huffman, Spranger, Daniels, and McManus). Not included in this number are Wilkes, Moore, Van Cleave, F. Davis, and Games, where death sentences were vacated upon granting Post-Conviction Relief, but only the convictions were at issue on appeal. Daniels is included although the conviction was not an issue on appeal. This number includes Opinions on Rehearing only if the original PCR decision was changed. (Saylor). Also included are Opinions issued after remand by the U.S. Supreme Court. (Coleman). Orders granting or denying permission to file successive PCR are not included.

Death Sentence Affirmed 54 (80.6%)

Death Sentence Vacated 13 (19.4%)

- (L. Williams, Burris, Charles Smith, Averhart, Huffman, Spranger, Schiro, Rondon, Prowell, G. Davis, Azania, Dye, Saylor)

Murder conviction affirmed 62 (93.9%)

Murder conviction reversed 04 (06.1%) (Dye, Charles Smith, Huffman, Prowell)

- In Daniels, the conviction was not an issue on appeal.

	<u>Participating in Decision</u>	<u>Wrote Opinion</u>	<u>Voted to Affirm DP</u>	<u>Voted to Vacate DP</u>
DICKSON	66	07	54 (81.8%)	12 (18.2%)
RUCKER	26	05	18 (69.2%)	08 (30.8%)
DAVID	02	00	02 (100%)	00 (00.0%)
MASSA	01	00	01 (100%)	00 (00.0%)
RUSH	00	00	00 (00.0%)	00 (00.0%)
SULLIVAN	53	12	44 (83.0%)	09 (17.0%)
SHEPARD	65	15	57 (87.7%)	08 (12.3%)
BOEHM	46	10	40 (87.0%)	06 (13.0%)
SELBY	23	02	21 (91.3%)	02 (08.7%)
DEBRULER	19	05	07 (36.8%)	12 (63.2%)
GIVAN	17	04	14 (82.4%)	03 (17.6%)
KRAHULIK	03	01	02 (66.7%)	01 (33.3%)
PIVARNIK	11	05	10 (90.9%)	01 (09.1%)
PRENTICE	01	00	01 (100%)	00 (00.0%)
HUNTER	00	00	00 (00.0%)	00 (00.0%)
		<hr/> 66	<hr/> 271 (80.5%)	<hr/> 62 (19.5%)

1 Per Curiam opinion (Averhart); Hunter did not participate (Schiro); Rucker did not participate (Coleman).

Affirmed DP on PCR: (54 total cases)	<u>5-0</u> 42	<u>4-1</u> 5	<u>4-0</u> 1	<u>3-2</u> 5	<u>3-1</u> 1
Vacated DP on PCR: (13 total cases)	<u>5-0</u> 6	<u>4-1</u> 5	<u>3-2</u> 2		

Justice Debruler voted to vacate the Death Sentence in all 7 cases where a death sentence was vacated on PCR during his tenure.

INDIANA SUPREME COURT JUSTICES 1977 - 2013

	<u>Tenure</u>	<u>Governor</u>	<u>Replaced</u>
Brent E. Dickson	01-06-86 - present	Orr	Prentice
Robert Rucker, Jr.	11-19-99 - present	O'Bannon	Selby
Steven H. David	10-18-10 - present	Daniels	Boehm
Mark S. Massa	04-02-12 - present	Daniels	Shepard
Loretta H. Rush	11-07-12 - present	Daniels	Sullivan
Frank Sullivan, Jr.	1993 - 2012	Bayh	Krahulik
Randall T. Shepard	1985 - 2012	Orr	Hunter
Theodore R. Boehm	1996 - 2010	Bayh	Debruler
Myra C. Selby	1995 - 1999	Bayh	Givan
Roger O. Debruler	1968 - 1996	Branigin	Mote
Richard M. Givan	1969 - 1995	Branigin	Lewis
Jon D. Krahulik	1990 - 1993	Bayh	Pivarnik
Alfred J. Pivarnik	1977 - 1990	Bowen	Arterburn
Dixon W. Prentice	1971 - 1986	Whitcomb	Jackson
Donald H. Hunter	1967 - 1985	Branigin	Rakestraw

Pursuant to Indiana Code 35-50-2-9(j), Indiana Appellate Rule 4(A), and Art. 7, § 4 of the Indiana Constitution, the Indiana Supreme Court has exclusive jurisdiction over all appeals from cases resulting in a Death Sentence, and over direct appeals from cases resulting in a sentence of Life Without Parole. The appellate review is automatic and given priority over all other cases.

Indiana Supreme Court and Indiana Court of Appeals REPORTED CASES - July 1, 2009 to June 1, 2013

Pruitt v. State, 907 N.E.2d 973 (Ind. June 16, 2009)(On Rehearing)
Ward v. State, 908 N.E.2d 595 (Ind. June 26, 2009) (On Rehearing)
Ben-Yisrayl v. State, 908 N.E.2d 1223 (Ind. App. July 10, 2009) (Direct Appeal 150 yr Sentence)
Overstreet v. State, 910 N.E.2d 272 (Ind. App. July 17, 2009) (Motion for Return of Property)
Wrinkles v. State, 915 N.E.2d 963 (Ind. November 3, 2009) (Successive PCR)
Wilkes v. State, 917 N.E.2d 675 (Ind. December 10, 2009) (Direct Appeal)
Ben-Yisrayl v. State, 923 N.E.2d 27 (Ind. App. February 10, 2010) (Successive PCR)
Kubsch v. State, 934 N.E.2d 1138 (Ind. October 05, 2010) (PCR)
Ben-Yisrayl v. State, 939 N.E.2d 130 (Ind. App. December 14, 2009) (Direct Appeal 150 yr Sentence)
Baer v. State, 942 N.E.2d 80 (Ind. January 26, 2011) (PCR)
Minnick v. State, 965 N.E.2d 124 (Ind. April 3, 2012) (Direct Appeal 160 yr Sentence)
Ward v. State, 969 N.E.2d 46 (June 21, 2012) (PCR)
Wilkes v. State, 984 N.E.2d 1236 (Ind. April 4, 2013) (PCR)

ISSUES RAISED ON APPEAL

ALLEN, HOWARD A., JR.

Allen v. State, 686 N.E.2d 760 (Ind. September 25, 1997) (49S00-9207-DP-566)

Confessions - Miranda	Victim Impact Evidence
Confessions - Polygraph	IAC - Failure to Investigate Mitigation
<u>Doyle v. Ohio</u> - Using Silence	Jury Deliberations - Ex Parte Contact
Perjured Testimony, Use of	Speedy Appeal
Hearsay - Written Note	Mental Retardation - Retroactivity
Photos, Gruesome Autopsy	Aggravators, Use of Non-Statutory
Lesser Included - Robbery/Theft	Sentencing - Personal Conclusions
Competency - Sua Sponte	Remand for New Sentencing Order

Allen v. State, 749 N.E.2d 1158 (Ind. June 29, 2001) (49S00-9804-PD-249)

PCR - General Standard of Review	IAC - General Standard of Review
Opening Door to Prior Criminal Record	IAC - Appellate Counsel
Juror Misconduct - Prior Arrests	IAC - Waiver, Res Judicata
Remand for New Sentencing Order	IAC - Mitigation - Family Background
IAC - Mitigation - Abuse at Boys School	

Allen v. Wilson, 2012 WL 2577492 (S.D. Ind. July 3, 2012) (1:01-cv-1658-JDT-TAB)

Mental Retardation

AVERHART, RUFUS LEE (Zolo Agona Azania)

Averhart v. State, 470 N.E.2d 666 (Ind. October 29, 1984) (1182-S-414)

Lesser Included - Manslaughter	Change of Venue - Publicity
Sentencing - Manifestly Unreasonable	Photos, Automatic Camera
Probable Cause for Arrest	Photo of Victim Alive
Motion to Dismiss Untimely	Photos, Gruesome Autopsy
Grand Jury - Bias	Shackling of Defendants
Grand Jury - Pro-Death Witnesses	Police in Courtroom
Joinder of Defendants	Identification - Eyewitness Showups
Joinder - Public Defender Conflicts	Eyewitness Descriptions of Defendant
Voir Dire - Death Qualified Jury	Discovery Violation - Remedy
Voir Dire - Batson Challenge	Sufficiency of Evidence
Jury Sequestration	Deliberations - Jury Questions
Felony Murder - "During" Robbery	Advisory Death Recommendation
Pro-Se, Standby Counsel	Aggravator - Law Enforcement Victim
DP - Appropriateness	

Averhart v. State, 614 N.E.2d 924 (Ind. 1993) (02S00-8808-PC-751)

IAC - Photo of Victim Alive	Juror Impeaching Verdict
IAC - Mitigation - Upbringing, Education	Felony Murder - Instructions
IAC - Failure to Investigate	Exculpatory - In Camera Ex Parte Review
IAC - Experts on DP Law	Exculpatory - Gunshot Residue
Separation of Witnesses	

Azania v. State, 730 N.E.2d 646 (Ind. June 6, 2000) (02S00-8808-PC-751)

Grand Jury - DP Indictment	DP Sentencing Order
Family History Opens Door to Character	State Changing Theories on Retrial
Knowing Use of False ID Testimony	Deliberations - Bailiff Communication
Felony Murder - Instructions	Exculpatory - Lost Evidence

Azania v. State, 778 N.E.2d 1253 (Ind. November 22, 2002) (02S00-0009-SD-538)

Jury Pool - Race	Change of Judge
Jury Pool - Computer Error	Witness Recantation

State v. Azania, 865 N.E.2d 994 (Ind. May 10, 2007) (02S03-0508-PD-364)

Indiana/Federal Constitution	DP - Unavailable Mitigation Witnesses
Speedy Trial - Time on Death Row	Due Process - Time on Death Row

State v. Azania, 875 N.E.2d 701 (Ind. November 7, 2007) (On Rehearing) (02S03-0508-PD-364)

Which DP Statute to Apply	LWOP Not Retroactive
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BAER, FREDERICK MICHAEL

Baer v. State, 863 N.E.2d 301 (Ind. March 26, 2007) (48S00-0404-DP-181)

Prosecutorial Misconduct - Grave Peril	Insanity - Jury Instructions on Consequences of Verdicts
DP Argument - Consequences of GBMI Verdict	Recordings of Telephone Calls From Jail
Voir Dire - Swearing of Jury Panel	Fundamental Error

Baer v. State, 942 N.E.2d 80 (Ind. January 26, 2011) (48S00-0709-PD-362)

Rejection of GBMI Plea	IAC - Failure to Discover Witness to Hallucinations
IAC - Performance / Prejudice	IAC - Letting the Prosecutor Discredit Himself
IAC - Failure to Seek Continuance	IAC - Appellate Counsel
IAC - Failure to Withdraw Insanity Defense	IAC - Failure to Object to Photo Projection
IAC - Failure to Tender Prelim Instr on GBMI	IAC - Present Only One Expert for Mitigation
PCR - Standard of Review	Consequences of GBMI Verdict
Jury Instruction - Intoxication No Defense	Voir Dire - Death Qualifying Jury
Jury Instruction - Intoxication as Mitigator	Voir Dire - Extensive Facts of the Crime, Stripping
PCR - Res Judicata	Jury Instruction - Jury may accept or reject opinion
Former Jail inmate, Defendant Heard Voices	Mental Retardation

BAIRD, ARTHUR PAUL, II

Baird v. State, 604 N.E.2d 1170 (Ind. December 1, 1992) (54S00-8804-CR-428)

Insanity	Lesser Included - Manslaughter
Voluntariness of Act - Irresistible Impulse	Sudden Heat - Mere Words
Circumstantial Evidence	DP Instructions - Mitigating Circumstances
Instructions - Premeditation not Required	DP Instructions - Burden of Proof
Direct Appeal of DP Mandatory	DP Instructions - Vindictive Justice
DP Aggravators in High/Low Range	DP Instructions - Multiple Murders
DP Mitigators in High/Low Range	DP - Aggravating "Outweighs" Mitigating
Joinder of Offenses - Common Scheme	DP - Cruel & Unusual Punishment
Depositions to Preserve Testimony	Voir Dire - Death Qualified Jury
Experts, Refusal to Appoint Voir Dire	Voir Dire - Individual, Segregated
Feticide	Voir Dire - Additional Peremptory Challenges
Confessions - Voluntariness	Voir Dire - Challenge for Cause
Photos - Gruesome	Advisory Death Recommendation

Baird v. State, 688 N.E.2d 911 (Ind. 1997) (54S00-9304-PD-434)

PCR - Standard of Appellate Review	Insanity - Irresistible Impulse
PCR - Psych Exam not "New" Evidence	IAC - Failure to Strike Jurors
PCR - Res Judicata	Voir Dire - Striking Non-Householder
PCR - Fundamental Error	

Baird v. State, 831 N.E.2d 109 (Ind. July 19, 2005) (54S00-0505-SD-240)

Mentally Ill short of insanity when murders committed not a defense, Irresistible Impulse	
Successive PCR - Standard	DP - Violates International Treaties, Executing Mentally Ill
Successive PCR - Waiver, Procedural Default	DP - Standing to Claim Violation of International Treaties
Successive PCR - Res Judicata	DP - Cruel and Unusual Executing Mentally Ill
PCR - IAC Standard	PCR - IAC - Jurors Worked for Same Company as Def
PCR - IAC - Failure to Argue Mitigators	

Baird v. State, 833 N.E.2d 28 (Ind. August 25, 2005) (54S00-0505-SD-240)

DP - Competency at Execution	DP - Executing Mentally Ill
DP - Executing Insane	Successive PCR - Res Judicata

Baird v. Davis, 388 F.3d 1110 (7th Cir. November 12, 2004) (03-3170)

Mitigating - State Court Must Consider	Habeas - DP for Mental Disorders
Mitigating - No Fixed Weight Required	Habeas - Failure to Exhaust State Remedies
Mitigating - Irresistible Impulse	Habeas - Bound by Factual Findings of Motive

BARKER, CHARLES E.

Barker v. State, 695 N.E.2d 925 (Ind. June 12, 1998) (49S00-9411-DP-1107)

Other Crimes - Details of Prior Assaults	Lesser Included - Manslaughter
Other Crimes - Harmless Error	Sudden Heat / Provocation
Knowing or Reckless Conduct	DP Instructions - Penalties / LWOP
Voir Dire - Death Qualified Jury	

State v. Barker, 768 N.E.2d 425 (Ind. April 26, 2002) (49S00-0110-DP-461)

DP - Advisory Death Recommendation	<u>Appendi v. New Jersey</u>
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Barker v. State, 809 N.E.2d 312 (Ind. May 25, 2004) (49S00-0308-DP-392)

<u>Ring v. Arizona</u>	DP - Aggravating "Outweighs" Mitigating
Statutory Construction - Constitutional	DP - Hung Jury
Statutory Construction - Severable	DP - Court shall sentence "accordingly"
DP - Prosecutorial Discretion	DP - Ex Post Facto

BELLMORE, LARRY

Bellmore v. State, 602 N.E.2d 111 (Ind. October 29, 1992) (55S00-8703-CR-328)

Change of Venue - Publicity	DP Instructions - Reasonable Doubt
Sequestration of Jury	DP - Using Non-Statutory Aggravator
Witness Competency, Mental Evaluation	DP Sentencing Statement
Photos, Gruesome	Instructions - Clarion Call
Witness - Plea Deal	Instructions - Flight
Witness - Paid Expenses	Exculpatory - Witness Expense Payment
Witness - Incredible Dubiosity	Exculpatory - Witness Polygraph
"Wolf in Sheep's Clothing" Statue	Argument - Objections Waived
IAC - Failure to Investigate Mitigating	Newly Discovered Evidence
IAC - Two Attorneys	Burglary - "Breaking"
IAC - Abandoning Alibi Defense	DP filed one month before trial

BENEFIEL, BILL J.Benefiel v. State, 578 N.E.2d 338 (Ind. September 18, 1991) (84S00-8906-CR-483)

Search Warrant - Emergency Exception	Defendant Refusal to Answer on Cross
Search Warrant - Hearsay	DP - Incorporation of Evidence
Insanity - Opening Door	Stipulation by Defendant Rejected
Insanity - Sufficiency of Evidence	Res Gestae Evidence
Insanity - Irresistible Impulse	Competent to Stand Trial
Other Crimes - 8 year old Rape	Directed Verdict

Benefiel v. State, 716 N.E. 2d 906 (Ind. September 29, 1999) (84S00-9207-PD-590)

PCR - Super Appeal	Argument - Expert was "hired gun"
PCR - Res Judicata	<u>Doyle v. Ohio</u> - Using Silence
IAC - PCR Waiver	Advisory Death Recommendation
IAC - DP Psychiatric Evidence	Defendant Refusal to Attend Trial
IAC - DP Adoption Records	DP - Written Findings of Mitigators Not Required
IAC - DP Instructions Defining Mitigation	DP - Method of Execution Procedures
IAC - Eyewitness Unreliability	DP - Incorporation of Evidence
Felony Murder	DP - Mitigating Circumstances Burden of Proof
Motion to Correct Error	

Benefiel v. Davis, 357 F.3d 655 (7th Cir. January 30, 2004) (03-1968)

Competent to Stand Trial	Instructions Taken as a Whole
Other Crimes - 9 year old Rape	IAC - DP Instructions Defining Mitigation
	IAC - Mitigators Unlimited

BENIRSCHKE, WILLIAM J.Benirschke v. State, 577 N.E.2d 576 (Ind. September 4, 1991) (45S00-8902-CR-00108)

Victim Impact Evidence	Felony Murder - Robbery
Aggravator - Multiple Murders	Voir Dire - Death Qualifying Jury
DP Mitigator - Alcohol	DP Sentencing Statement
	DP Mitigator - Mental Illness

BIEGHLER, MARVINBieghler v. State, 481 N.E.2d 78 (Ind. July 31, 1985) (1183S409)

Sufficiency of Evidence	Argument - "Finish the Job"
Witness - Incredible Dubiosity	Argument - "We Gave You Everything"
Burglary - "Breaking"	Motion in Limine - Prior Convictions
DP - Written Jury Findings	DP - Advisory Death Recommendation
DP Sentencing Statement	DP Instructions - Reasonable Doubt
Voir Dire - Death Qualifying Jury	DP - Second Voir Dire After Verdict
Voir Dire - Additional Peremptories	DP - Prosecutorial Discretion
Expert - Time of Death	DP - Information or Indictment
Appeal - Cogent Argument Required	IAC - Counsel Conflict of Interest
Extradition - Speedy Trial	IAC - Trial Strategy
Discovery	IAC - Defendant's Drug Background
Motion in Limine - Prior Convictions	IAC - Venued Back to Original County
<u>Doyle v. Ohio</u> - Using Silence	

Bieghler v. State, 690 N.E.2d 188 (Ind. December 19, 1997) (34S00-9207-PD-583)

IAC - Standard of Proof	Alternate Jurors in Jury Room
IAC - Res Judicata	Use of Bible by Jury
IAC - <u>Doyle v. Ohio</u> - Using Silence	IAC - Define Mitigation DP Instruction

IAC - Sufficiency of Evidence
 IAC - Defendant's Drug Background
 IAC - Failure to Pursue Alibi
 IAC - Counsel Conflict of Interest
 IAC - Post Traumatic Stress
 IAC - Accomplice Instruction

IAC - Burglary DP Instruction
 IAC - Sympathy DP Instruction
 IAC - Reasonable Doubt Instruction
 IAC - Circumstantial Evidence Instruction
 IAC - Inconsistent Statement Instruction

Biegler v. State, 839 N.E.2d 691 (Ind. December 28, 2005) (34S00-0511-SD-679)

Successive PCR - Lethal Injection Method of Execution Cruel and Unusual
 Successive PCR - Res Judicata
 Successive PCR - Time on Death Row Cruel and Unusual
 Successive PCR - Waiver, Procedural Default
 Successive PCR - Burden of Proof Should Be Higher

BIVINS, GERALD W.

Bivins v. State, 642 N.E.2d 928 (Ind. November 4, 1994) (06S00-9105-DP-00401)

Shackles at Trial	DP - Non-Statutory Aggravators
Confession - Waiver of Rights	DP - Prosecutorial Discretion
Confession - Voluntariness	DP - Law and Facts
Polygraph Statements	DP - Aggravating "Outweighs" Mitigating
Confession - Offer of Leniency	DP Mitigation - Mercy
Confession - Asking for Lawyer	DP Mitigation - Mentally Ill
Miranda Readvisements	Jury Nullification
Instructions - Escape	DP - Unanimous Aggravators
Victim Impact Evidence	DP - Non-Unanimous Mitigators
Single Larceny Rule	DP Mitigator - Drinking Heavily, Alcoholic
Lesser Included - Robbery/Theft	DP Aggravator - Robbery
Double Jeopardy - Robbery/Confinement	DP Instruction - Moral Certainty
DP - Proportionality Review	DP Instruction - Presumption No Aggravator
DP - State Closes First and Last	DP Instruction - Sympathy
DP Instruction - Mitigator Standard of Proof	

Bivins v. State of Indiana, 735 N.E.2d 1116 (Ind. September 26, 2000) (06S00-9602-PD-173)

PCR - Standard of Review	Exculpatory - Accomplice Statements
IAC - Standard of Proof	Exculpatory - Impeachment Evidence
PCR - Waiver	Negative Flyers in Courthouse
PCR Findings - Clear Error	Aggravating "Outweighs" Mitigating
Mitigator - Stuttering	Mitigator - Stuttering
IAC - Failure to Investigate Mitigating	Mitigator - Attention Deficit Disorder
IAC - DP Instruction "Look to your own feelings"	

BOYD, RUSSELL ERNEST

Boyd v. State, 494 N.E.2d 284 (Ind. June 24, 1986) (384-S-113)

Change of Venue	Leading Question - "Any doubt about ID?"
Voir Dire, Individual	Motion in Limine - Prior Convictions
Mistrial - Prior Criminal Record	Admissions to Friends of Defendant
Other Crimes - Prior Burglary	Confession, Post-Initial Hearing
Photos, Guesome	Confession - Tape/Transcript
Hearsay - Truth of Matter Asserted	Recall of Detective Witness
Hearsay - Excited Utterance	DP Sentencing Statement Prepared Beforehand
Chain of Custody - Victim Clothing	DP Appropriate

BREWER, JAMES

Brewer v. State, 417 N.E.2d 889 (Ind. March 6, 1981) (678-S-119)

Circumstantial Evidence	DP Indictment Not on Separate Page
Cause of Death	DP Aggravator - Robbery
Other Crimes - Robbery Same Day	DP - Mandatory Review
IAC - Putting Defendant on Stand	DP - Vindictive Justice
DP - Incorporation of Evidence	DP - Cruel and Unusual
DP - Jury Advised of Other Penalties	DP Not Unconstitutional Per Se
DP Continuance of Sentencing Denied	DP Accomplice Liability
DP Accomplice Leniency	

Brewer v. State, 496 N.E.2d 371 (Ind. August 6, 1986) (485-S-167)

PCR - Standard of Proof	DP - Jury Advised of Other Penalties
IAC - Pursuing Phony Alibi Defense	DP - Death Qualifying Jury
DP Continuance of Sentencing Denied	DP - Triggerman/Accomplice
PCR - Fundamental Error	DP - Expert Statistician Denied
DP Sentencing - Psychiatric Exam	DP Instructions - "May" Recommend Death

Brewer v. Aiken, 935 F.2d 850 (7th Cir. June 14, 1991) (90-2530)

Habeas - Finding of Fact Presumed Correct	DP - Failure to Investigate
Habeas - Conclusions of Law De Novo	IAC - Presentation of Perjured Testimony
DP Mitigation - Mental & Family History	

BROWN, DEBRA DENISE

Brown v. State, 577 N.E.2d 221 (Ind. August 29, 1991) (45S00-8703-CR-271)

Identification - Eyewitness Showup	DP - Other Crimes to Rebut Defense Experts
Other Crimes - Ohio Child Murder	DP - Character Evidence Opening Door
Confession - Book In Information	DP - Instructions on Aggravators
Confession - Request for Lawyer	DP Mitigator - Little Criminal History
Video of Defendant Testimony in Ohio	DP Mitigator - Dominated by Accomplice
Video/Transcript	DP Mitigator - Young Age

Brown v. State, 698 N.E.2d 1132 (Ind. July 17, 1998) (45S00-9212-PD-939)

Exculpatory - FBI Documents Re: Domination	DP Mitigation Expert Excluded
PCR - Fishing Expedition	DP Trial Counsel Opinion on Own Effectiveness
IAC - Arguing Domination by Accomplice	DP - Others Crimes as Rebuttal
IAC - Family & Social History	DP - Public Defender Appointed by Trial Judge
IAC - Confession, Mental Illness & Low IQ	

BURRIS, GARY

Burris v. State, 465 N.E.2d 171 (Ind. June 29, 1984) (981-S-250)

Voir Dire - Death Qualifying Jury	Witness - Plea Deal
Voir Dire, Individual	Chain of Custody - Bullet, Blood
Information Sufficient - Felony-Murder	Advisory Death Recommendation
Search of Girlfriend Apt. - Standing	Argument - Personal Knowledge
Search of Girlfriend Apt. - Consent	DP - Jury Not Advised of Other Penalties
DP Instructions - May / Shall Recommend	DP Aggravator - Robbery
DP - No Written Jury Findings	DP - Triggerman / Accomplice
DP - Proportionality Review	IAC - No Jury Sequestration
DP - Appropriateness	IAC - No Objection to Other Crimes

Burris v. State, 558 N.E.2d 1067 (Ind. August 24, 1990) (49S00-8610-PC-917)

PCR - Standard of Review	IAC - Failure to Investigate Mitigators
IAC - Advisory Death Recommendation	IAC - Mitigation - Background
IAC - No Objection to Argument	IAC - Arguing Defendant was "Street Person"

Burris v. State, 642 N.E.2d 961 (Ind. November 4, 1994) (49S00-9203-DP-187)

Remand - New Jury Assembled	DP Instruction - If no death then term of years
Jury - Impeaching Verdict	DP Mitigator - Deprived Childhood
Photos, Gruesome	Victim Background Info Harmless
DP Aggravator - Robbery	Voir Dire - Retrial After 11 Years on Death Row
DP - Hung Jury	

Burris v. Farley, 51 F.3d 655 (7th Cir. November 22, 1995) (94-1328)

Habeas - Abuse of Writ	Robbery Must be Class A Felony for DP
Habeas - Separate Claims for Conviction/DP	Information Felony Murder, Robbery Elements
Habeas - Waiver, State Remedy	IAC - Witness - Plea Deal
IAC - No Objection to Other Crimes	IAC - Arguing Defendant was "Street Person"

CANAAN, KEITH BRIAN

Canaan v. State, 541 N.E.2d 894 (Ind. July 28, 1989) (82S00-8705-CR-521)

Advisory Death Recommendation	Appeals Court Does Not Reweigh Evidence
DP and Habitual Charges	Burglary - "Breaking"
Chain of Custody - Fingerprints	Attempted CDC - Penetration Not Required
Hearsay - Self-Serving Statements	Attempted CDC - Substantial Step
Circumstantial Evidence	Instructions - Jury Nullification
Sufficiency of Evidence	DP Argument - Protecting Other Inmates
Instructions - Jury Nullification	DP Instructions - Mercy

Canaan v. State, 683 N.E.2d 227 (Ind. June 23, 1997) (82S00-9012-PD-816)

PCR - Standard of Review	PCR - Waiver; Fundamental Error
IAC - Burden of Proof	PCR - Consent Search of Brother
IAC - Failure to Call Defendant as Witness	IAC - Failure to Investigate Mitigators
IAC - Trying Habitual Before DP	IAC - Jury Drawn From Adjoining County

Canaan v. McBride, 395 F.3d 376 (7th Cir. January 11, 2005) (03-1384)

Habeas - Procedural Default	IAC - Odds of Different Result
Habeas - Standard of Review	DP Mitigator - Troubled History
IAC - Failure to Notify of Right to Testify	Instructions - Attempted CDC
IAC - Standard of Proof	IAC - ABA Standards Used as Guides

CASTOR, MARVIN D.

Castor v. State, 587 N.E.2d 1281 (Ind. March 2, 1992) (89S00-9006-DP-409)

Voir Dire, Individual	DP - Expert Psychologist Denied
Photos, Gruesome	DP - Pro Se Request After Verdict
Mistake of Fact Defense	DP Aggravator - "Knew" Victim was Law Enforcement
DP - Social Psychology Expert Denied	DP- Death Qualifying Jury

COLEMAN, ALTON

Coleman v. State, 558 N.E.2d 1059 (Ind. August 24, 1990) (45S00-8610-CR-937)

Victim Impact Testimony	DP - Prosecutorial Discretion
Bench Proceedings	DP - Appropriateness
Identification - Vision of Eyewitness	Contempt - Note: Pissy, Balls to Testify
Identification - Photopack, Lineup	

Coleman v. State, 703 N.E.2d 1022 (Ind. 1998) (45S00-9203-PD-158)

PCR - Super Appeal	IAC - Instructions Defining Knowingly/Intentionally
PCR - Burden of Proof	IAC - Instructions on Other Penalties
IAC - Burden of Proof	IAC - Eyewitness ID Expert Denied
IAC - Failure to Request Hair Expert	Pointing Out Co-Defendant to Jury
IAC - Failure to Investigate Mitigators	PCR - Use of Magistrate after Change of Judge
IAC - Mitigator, Mental Illness	County Public Defender - Systematic Defects
	DP Sentencing Statement - Failure to Include Mitigators

Coleman v. State, 741 N.E.2d 697 (Ind. December 29, 2000) (45S00-9203-PD-158)

PCR - Burden of Proof	IAC - Failure to Present Unknown Hairs
IAC - Failure to Present Mental Illness	IAC - Failure to Raise IAC on Appeal
IAC - Failure to Present Troubled Childhood	IAC - Failure to Request Hair Expert
IAC - Failure to Request Hair Expert	

CONNER, KEVIN AARON

Conner v. State, 580 N.E.2d 214 (Ind. October 24, 1991) (49S00-8904-CR-00314)

Voir Dire, Individual	DP - Prosecutorial Discretion
Jury Questionnaires	DP - Jury Guidance, Arbitrariness
Confession - Request for Lawyer	DP - Mandatory Review
Joinder / Severance of Offenses	DP - Narrowing Class of Homicides
Prior Threats to Victim	DP - Advisory Death Recommendation
Sufficiency of Evidence	DP Sentencing Hearing Continuance
Expert Polygraphist Denied	DP - Amendment of Information

Conner v. State, 711 N.E.2d 1238 (Ind. May 25, 1999) (49S00-9207-PD-00591)

PCR - Super Appeal	PCR - Ex-Parte Jury Communication with Bailiff
PCR - Burden of Proof	Exculpatory - Competency Psychiatrist Report
PCR - Findings of Fact Presumed Correct	PCR - Waiver, Fundamental Error
PCR - Conclusions of Law De Novo	PCR - Res Judicata
Instructions - May / Shall Acquit	IAC - Standard of Proof
Confession - Voluntariness	IAC - Failure to Seek Lesser Included
Instruction - Reasonable Doubt	IAC - Failure to Present Mental Illness Defense
IAC Appellate - Standard of Proof	IAC - Failure to Present Intoxication Defense
DP - Public Defender, Systemic Defects	IAC - DP Argument to Study Defendant
DP - Expert Psychiatrist Appointed	PCR - Discretionary Exclusion of Affidavits

Conner v. State, 829 N.E.2d 21 (Ind. June 16, 2005) (49S00-0504-SD-164)

Successive PCR - Standard	Successive PCR - Waiver, Procedural Default
Lesser Included Manslaughter	Successive PCR - Fundamental Error
Sudden Heat Burden of Proof	Successive PCR - Res Judicata
Intoxication Jury Instruction - Sua Sponte	

Conner v. McBride, 375 F.3d 643 (7th Cir. July 20, 2004) (03-1951).

Habeas - Exhaust State Remedies	Confession - Voluntariness
Habeas - State Procedural Rule	Ex-Parte Jury Communication with Bailiff
Habeas - Contrary to Federal Law	IAC - No Lesser Manslaughter
Habeas - Fact Finding Presumed Correct	IAC - Intoxication Defense
Habeas - AEDPA	IAC - No Insanity Defense
DP - Failure to Investigate	IAC - Instructions Considered as Whole

COOPER, PAULA R.Cooper v. State, 540 N.E.2d 1216 (Ind. July 13, 1989) (45S00-8701-CR-61)

DP - Mandatory Review

DP - Cruel & Unusual on 15 year old

DP - Disproportionate on 15 year old

DP - Imposition of Maximum Sentence

CORCORAN, JOSEPH EDWARDCorcoran v. State, 739 N.E.2d 649 (Ind. December 6, 2000) (02S00-9805-DP-293)

DP - Arbitrary and Capricious

DP Argument - Inflammatory Rhetoric

DP - Death/LWOP Rational

DP - Non Statutory Aggravators

DP - Plea Offer for LWOP

DP - Sentencing Statement

DP Aggravator - Multiple Murders

DP - Written/Oral Sentencing Statement

Waiver / Fundamental Error

Corcoran v. State, 820 N.E.2d 655 (Ind. January 11, 2005) (02S00-0304-PD-00143)

PCR - Competency to Waive

PCR - No automatic Review

PCR - Atty Standing to Raise Incompetency

PCR Petition - Unsigned

Corcoran v. State, 827 N.E.2d 542 (Ind. May 12, 2005) (On Rehearing) (02S00-0304-PD-00143)

PCR - Standing of Attorney to File

PCR - Case Management Filing Deadline

PCR - No Automatic Collateral Review

PCR - Waiver

Corcoran v. State, 845 N.E.2d 1019 (Ind. April 18, 2006) (02S00-0508-PD-350)

PCR Petition - Unsigned

PCR - Public Interest in Finality

PCR Petition - Relation Back

PCR - Case Management Order

PCR Petition - Timeliness

PCR - Waiver

Corcoran v. Buss, 483 F.Supp. 709 (N.D. Ind. April 9, 2007) (#3:05-cv-00389-AS-CAN)

Habeas - 1 Year Statute of Limitations

Habeas - Waiver by State of Statute of Limitations

Prosecutorial Discretion - Offer Plea to LWOP

Prosecutorial Discretion - Offer to Drop DP if Waive Jury Trial

Competency to Stand Trial; Waiver

Competency to Waive PCR

Corcoran v. Levenhagen, 593 F.3d. 547 (7th Cir. January 27, 2010) (07-2093, 07-2182)

Plain Error, Sua Sponte

DP - Closing Argument

Procedural Default

DP - Non-Statutory Aggravators

DP - Cruel and Unusual Punishment/LWOP

DP - Incompetent to be Executed - Ripeness

DANIELS, MICHAEL WILLIAMDaniels v. State, 453 N.E.2d 160 (Ind. September 9, 1983) (380-S-66)

Plea Agreement - Court Discretion

Opening Door to Prior Conviction

Plea Agreement - Victim Ex Parte

DP Argument - No Evidence of Remorse

DP - Death Qualifying Jury

DP - Arbitrary & Capricious

Jury Fair to State & Defendant

DP - Aggravating "Outweighs" Mitigating

Sufficiency of Evidence

DP Aggravator - Robbery

Change of Venue

DP - Sentencing Statement

Exculpatory - Prior Witness Statements

DP - Amended Information to Add DP

Daniels v. State, 528 N.E.2d 775 (Ind. September 23, 1988) (49S00-8601-PC-33)

Identification - Witness Hypnosis

PCR - Res Judicata

IAC - No Challenge to ID by Victim Son

Victim Impact Evidence

Arrest - Probable Cause

DP - Electrocutation Not Cruel & Unusual

Lesser Included Manslaughter

Expert Denied - Statistician on Race

Information - Concise and Sufficient

Joinder of Offenses

State v. Daniels, 680 N.E.2d 829 (Ind. May 16, 1997) (49S00-9411-SD-1079)

PCR - Summary Judgment

Acceptance of Guilty Plea

PCR - Res Judicata

PCR - Waiver / Fundamental Error

Daniels v. State, 741 N.E.2d 1177 (Ind. January 12, 2001) (49S00-9411-SD-1079)

PCR - Successive Petition

IAC - Triggerman

PCR - Right to Counsel Not Guaranteed

PCR - Res Judicata

PCR - Failure to Investigate Mitigators

Daniels v. Knight, 476 F.3d 426 (7th Cir. February 5, 2007) (05-2620)

Habeas - Procedural Default

Habeas - IAC - The "Real" Killer

Habeas - Independent State Grounds

Habeas - IAC - Prejudice

Habeas - Finality, Comity, Orderly Administration of Justice

Habeas - IAC - Deferential Review

Habeas - Contrary to Clearly Established Federal Law

Habeas - IAC - Hypnosis of Witness

DAVIS, FRANK R.

Davis v. State, 477 N.E.2d 889 (Ind. May 22, 1985) (484-S-142)

DP - Sentencing Statement

DP Aggravator - Lying in Wait

DP Aggravator - Child Molesting

DP - More Than One Aggravator

DP - Court Can Find Aggravator Not Alleged

DP - Arbitrary & Capricious

DAVIS, GREAGREE C. (Chijioke Bomani Ben-Yisrayl)

Davis v. State, 598 N.E.2d 1041 (Ind. September 1, 1992) (50S00-9008-PD-539)

Sufficiency of Evidence

Circumstantial Evidence

Burglary - Intent to Commit Felony

Rape - Victim Liked Bondage Defense

Deadly Weapon - Intent to Kill

Telephone - Voice Identification

Victim Impact Testimony

IAC - Standard of Proof

Other Crimes - Depraved Sexual Instinct

Other Crimes - Signature M.O.

Waiver / Fundamental Error

Expert Serologist - Foundation

Hearsay Victim Statements - State of Mind

DP - Death Qualifying Jury

DP Argument - Legislature Approved

Ben-Yisrayl v. State, 738 N.E.2d 253 (November 8, 2000) (49S00-9307-PD-826)

PCR - Super Appeal

PCR - Standard of Proof

PCR - Res Judicata

PCR - No Reweighting of Evidence

PCR - Findings of Fact Presumed Correct

PCR - Conclusions of Law De Novo

IAC - Appellate

Instructions - Reasonable Doubt

Instructions - Should / May Acquit

IAC - Failure to Present Mitigators

Exculpatory - Lab Report, Butts at Scene

Jury - We Can't Reach Verdict Due to Race

PCR - State No Answer Filed, Default

DILLON, RICHARD

Dillon v. State, 454 N.E.2d 845 (Ind. October 3, 1983) (282-S-67)

IAC - Standard of Proof

IAC - Counsel Divorce, Family III

Confession - Voluntariness

Confession - Voluntary to Police Station

Dillon v. Duckworth, 751 F.2d 895 (7th Cir. December 28, 1984) (84-2208)

IAC - Standard of Proof

IAC - Counsel Bet on Outcome of Trial

DP - Incorporation, Defendant Testimony

DP - Vindictive Justice

DP - Cruel & Unusual Per Se

DP - Arbitrary & Capricious; Not Manifestly Unreasonable

Continuance

DP - Sentencing Statement

IAC - Personal Crisis

DYE, WALTER L.

Dye v. State, 717 N.E.2d 5 (Ind. September 30, 1999) (49S00-9801-DP-55)

Discovery Violations - Remedies	Confessions - Custodial Interrogation
Discovery - Local Rules	DP - Death Qualifying Jury
Discovery - Prosecutor Duty	DP - Jury Pool Not Representative
Depositions - Re-Deposing Witnesses	DP - No Judicial Notice of Race Study
DP Instructions - Clemency "Rare"	DP - Residual Doubt
DP Mitigator - Compliance in Jail	DP Sentencing Statement - Omitting Mitigator

State v. Dye, 784 N.E.2d 469 (Ind. March 6, 2003) (49S00-0002-PD-112)

PCR - Standard of Proof	IAC - Failure to Question "Automatic Death" Juror
Sufficiency of Evidence	Voir Dire - Juror Failure to Disclose
PCR - State's Appeal	Voir Dire - Juror's Brother Received DP
Post-Trial Investigations of Jurors	Voir Dire - Juror Raped as a Child

EVANS, CHARLES G.

Evans v. State, 563 N.E.2d 1251 (Ind. December 7, 1990) (49S00-8704-CR-453)

DP Sentencing Statement	Change of Venue - Publicity
DP - Advisory Death Recommendation	Confessions - Intoxication
DP - Death Qualifying Jury	Confessions - Voluntariness
Overbearing Trial Hours	Confessions - Corpus Delicti
Instructions - Lay/Expert Testimony	Voir Dire, Individual
Refresh Recollection -Pathologist	Voir Dire - Additional Peremptories
Insanity - Opening Door to Priors	DP Argument - Legislature Passed
PSI - Victim Impact Statements	DP Instructions - No Other Penalties
Photos, Gruesome	DP - Mercy
DP - Override	DP - Prosecutorial Discretion
DP - Meaningful Appellate Review	DP - Allowing State Final Argument
DP - No Deterrence	DP - Arbitrary & Discriminatory

FLEENOR, D. H.

Fleenor v. State, 514 N.E.2d 80 (Ind. October 13, 1987) (1184-S-458)

Intent to Kill	DP Instructions - Law and Facts
Photos, Gruesome	DP Instructions - Burden of Proof
DP - Death Qualifying Jury	DP Sentencing Statement - Advance Preparation
DP - Aggravating "Outweighs" Mitigating	DP - Consideration of Mitigators
DP Aggravator - Burglary	DP - Arbitrary & Capricious
DP - Proportionality Review	DP - Electrocution Cruel & Unusual
DP - Mandatory Review Sufficient	DP - Vindictive Justice
DP - Jury Guidance on Weighing	DP - Prosecutorial Discretion
	DP - Written Jury Findings Not Required

Fleenor v. Anderson, 171 F.3d 1096 (7th. Cir. 1999) (98-1916)

Judge Can Ignore Jury Recommendation	DP Rebuttal - Insanity Expert Psychiatrist
DP Argument - Verdict Will Be Appealed	DP Rebuttal - Future Dangerousness
DP - Death Qualifying Jury	

Fleenor v. State, 622 N.E.2d 140 (Ind. 1993) (41S00-9106-PD-433)

PCR - Standard of Proof	Instructions - Prior Inconsistent Statements
PCR - Standard of Review	Voluntary Intoxication Defense
DP - Advisory Death Recommendation	DP Instruction - No Sympathy

DP - No Sentencing Alternatives
Lesser Included Manslaughter
Insanity - Burden of Proof
DP Aggravator - Burglary
Newly Discovered Evidence

Psychiatric Exam - Advice of Rights
Insanity - Waiver of Rights
DP - Future Dangerousness
DP Aggravator - Lying In Wait
IAC - Failure to Present Mitigators - Upbringing

GAMES, JAMES

Games v. State, 535 N.E.2d 530 (Ind. March 14, 1989) (185-S-7)

DP Information Filed After Omnibus
DP - Arbitrary & Capricious
DP - Jury Override
DP - Prosecutorial Discretion
DP - Meaningful Appellate Review
DP - Proportionality Review
DP Aggravator - Robbery

Discovery - All State Homicides for Decade
Discovery Violations - Sanctions
DP - Jury Questionnaire
Presence of Elected Prosecutor at Trial
Photos, Gruesome
Accomplice Witness - Plea Deal
Accomplice - Disparate Treatment
DP - Vindictive Justice

Games v. State, 684 N.E.2d 466 (Ind. July 22, 1997) (49S00-9002-PD-114)

IAC - Standard of Review
Sufficiency of Evidence
Lesser Included Manslaughter
IAC Appellate - Standard of Review

Double Jeopardy - Murder/Robbery
Double Jeopardy - Conspiracy
Exculpatory - Accomplice Bloody Jeans
Exculpatory - Accomplice Statements
Public Defender - Systemic Defects

HARRIS, JAMES ALLEN

Harris v. State, 499 N.E.2d 723 (Ind. November 5, 1986) (784-S-270)

DP - Guilty But Mentally Ill Plea
DP - GBMI Cruel & Unusual
DP - Deterrence
DP- Appropriateness

DP - Aggravating "Outweighs" Mitigating
DP Mitigator - Mentally Ill
DP - Sentencing Statement
Intent to Kill - Duration of Attack; Strength of Def/Victim

HARRISON, JAMES P.

Harrison v. State, 644 N.E.2d 1243 (Ind. January 4, 1995) (65S00-9105-DP-380)

Intent to Kill - Arson
Inconsistent Verdicts - Murder Acquittal
Change of Venue - Publicity
Voir Dire - 20 Minute Limit Per Group
DNA - Frye Hearing Not Required
DNA Expert Denied
Continuance
Photos, Gruesome
DP - Aggravating "Outweighs" Mitigating
DP - Meaningful Appellate Review
DP - Victim Impact Testimony
DP - PSI Victim Impact

Alibi Defense Excluded
Confession - Custodial Interrogation
Confession - Requesting Lawyer
DP - Arbitrary & Capricious
DP - Death Qualifying Jury
DP - Vindictive Justice
DP - Cruel & Unusual
DP - Prosecutorial Discretion
DP - Unanimous Mitigators Not Required
DP - Written Jury Findings Not Required
DP - Sentencing Statement
DP - Sentencing Statement Remand

Harrison v. State, 707 N.E.2d 767 (Ind. 1999) (65S00-9605-PD-318)

PCR - Standard of Proof
PCR - Standard of Review
Change of Judge for Bias
Police Destruction of Tapes
Funds for Out of State Investigation
Motion In Limine - Other Suspects
Continuance

IAC - Standard of Proof
IAC - Counsel With Another Pending DP
IAC - Failure to File Alibi
IAC - Failure to Renew Change of Venue Motion
IAC - Failure to Object to "Mug Shots"
IAC - Failure to Hire Eyewitness ID Expert
IAC - Failure to Object to Identification

DP - Right to Be Present, Waiver
DP Hearing - Continuance Due to Illness
IAC Appellate - Standard of Review
IAC Appellate - Sufficiency of Evidence
Exculpatory - Reward to Witness
PCR Discovery - DNA Lab Notes

IAC - Failure to Impeach Jail Informants
IAC - Failure to Hire Arson Investigator
IAC - Trying HBO Before DP
IAC - Failure to Impeach Jail Informants
Change of PCR Judge for Bias

Harrison v. Anderson, 300 F.Supp.2d 690 (S. D. Ind. January 22, 2004) (IP 99-C-0933-B/S)

Habeas - Deferential Review	Habeas - Judicial Bias of Trial Court
Habeas - Exhaustion of State Remedies	Habeas - Judicial Bias, Harmless Error n/a
Habeas - Actual Innocence	Habeas - AEDPA
Habeas - Independent State Grounds	

Harrison v. McBride, 428 F.3d 652 (7th Cir. October 27, 2005) (04-1398)

Habeas - Judicial Bias of Trial Court	Habeas - Denial of Attorneys Fees
AEDPA - Deferential Standard	Habeas - Contrary to Clearly Established Federal Law
Habeas - Exhaustion; Fair Presentation to State Court	

HOLMES, ERIC D.

Holmes v. State, 671 N.E.2d 841 (Ind. August 7, 1996) (49S00-9002-DP-00104)

Photos - Victim When Alive	Argument - "I'm Gonna Fight For Victims"
Harmless Error - Vindictive Justice	Argument - "The Judge Can't Stop Me"
DP Mitigator - 21 Years of Age	Argument - Admonishment
DP Mitigator - Adapt to Jail Life	Argument - Prosecutorial Misconduct
DP Mitigator - IQ 79	Exculpatory - Change in Officer Testimony
DP Hung Jury	DP - Victim Impact Testimony
DP - Advisory Death Recommendation	DP Aggravator - Robbery; Multiple Murder
DP Instructions - Should/Must Acquit	DP - Weighing Not Sufficient Guidance
DP Instructions - Other Penalties	Hearsay - Victim's Note of Firing
DP - Special Verdicts Not Required	Voir Dire, Individual
DP Instructions - Law and Facts	Instructions - Voluntariness of Confession
DP - Sequestration of Jury Panel	Instructions - Limited to 15
DP - Prosecutorial Discretion	Instructions - Diminished Capacity Rejected

Holmes v. State, 728 N.E.2d 164 (Ind. May 19, 2000) (49S00-9808-PD-436)

PCR - Standard of Proof	PCR - Findings of Fact Presumed Correct
PCR - Super Appeal	PCR - Conclusions of Law De Novo
PCR - Standard of Review	IAC - Standard of Review
PCR - Res Judicata/Waiver	IAC - Failure to Present Mitigator of Mental Illness
Dismissal and Refiling of Charges	IAC - Failure to Present Accomplice Character

Holmes v. Levenhagen, 600 F.3d 756 (7th Cir. April 2, 2010) (04-3549, 06-2905)

Habeas Competency	Habeas - Forced Medications
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HOUGH, KEVIN LEE

Hough v. State, 560 N.E.2d 511 (Ind. October 4, 1990) (02S00-8712-CR-1179)

PSI - Victim Impact	DP Aggravator - Prior Murder Conv
Expert Psychologist Denied	DP Aggravator - Multiple Murders
Expert Ballistics Denied	DP Aggravator - Robbery
Chain of Custody - Shell Casings	DP Instructions - Typographical Error

Hough v. State, 690 N.E.2d 267 (Ind. 1997) (02S00-9305-PD-497)

IAC - Standard of Proof	DP Argument - Bad Element
DP - Advisory Death Recommendation	DP Argument - Future Dangerousness
DP - Incorporation of Evidence	DP Instructions - Reading List of All Mitigators
Hearsay - Prior PC Affidavit	PSI - Probation Death Recommendation
DP Instructions - Fact of Conviction	IAC - Failure to Hire DP Psychologist
DP Sentencing Statement - Mitigators	DP Verdict - Unanimous
DP - Guidance for Jury	DP - Aggravating "Outweighs" Mitigating
DP Aggravator - Multiple Murders	

Hough v. Anderson, 272 F.3d 878 (7th Cir. November 20, 2001) (99-3968)

Habeas - AEDPA	Habeas - Exhaustion of State Remedies
Habeas - AEDPA, Unreasonable Application	Habeas - Procedural Default
IAC - Standard of Proof	IAC - Cross Exam Opening Door
IAC - Deferential Review	IAC - PC Affidavit
IAC - Effect on Outcome	IAC - Mitigator Opening Door to Juvenile Record
IAC - Cumulative Effect	IAC - Prosecutor Argument, No Objection
IAC - Mitigators Beyond Reasonable Doubt	IAC - Mitigators Unanimous
IAC - Invalid Aggravator - Future Dangerousness	

HUFFMAN, RICHARD D., JR.

Huffman v. State, 543 N.E.2d 360 (Ind. September 7, 1989) (49S00-8602-CR-207)

Vindictiveness - No Plea, Then File DP	Photo Lineup
Joinder/Severance of Defendants	Photos, Gruesome
Severance - Accomplice No Testify	Photos, Scene, Change in Season
Change of Venue - Publicity	Diagram, Scene, Not to Scale
Confession - Voluntariness	Instructions - Voluntary Intoxication
Confession - Intoxication	Instructions - Lesser Included Battery
Intoxication - OWI Chart Irrelevant	DP - Advisory Death Recommendation
Information to Jury room	DP - Proportionality
Spectator Outburst - Victim Mother	DP - PD Testimony on Other Cases
Jury Note Taking	DP Mitigator - Offered Plea
Jail Informant - Accomplice Admissions	DP Mitigator - Intoxication
Seeing Defendant in Handcuffs	DP - Narrowing Class of DP Eligible
Instructions - Conspiracy	Accomplice Liability
Intent to Kill - Use of Deadly Weapon	Conspiracy - Circumstantial evidence

INGLE, JOHN E.

Ingle v. State, 746 N.E.2d 927 (Ind. May 8, 2001) (22S00-9611-DP-724)

Sudden Heat - Provocation	Motion for Special Prosecutor
Sudden Heat - Define	Prosecutor as Defense Witness
Lesser Attempted Manslaughter	Kidnapping - Hostage
DP Aggravator - Lying in Wait	

JACKSON, DONALD LEE, JR.

Jackson v. State, 597 N.E.2d 950 (Ind. August 19, 1992) (24S00-8811-CR-906)

DP - Jury Override	Confession - Voluntariness
Warrantless Arrest - Probable Cause	Confession - Ambiguous Request for Lawyer
Confession - Voluntariness	Hair, Blood Without Search Warrant
Robbery - "Results In" SBI	Felony Murder - Robbery Before Murder
DP - Death Qualifying Jury	Photos - Mug Shots, Redaction
Jury View of Scene	Photos, Gruesome
Accomplice - Triggerman	

JAMES, VINCENT (a/k/a Victor James)

James v. State, 613 N.E.2d 15 (Ind. April 29, 1993) (64S00-9012-DP-01050)

Experts - Blood Spatter	Experts - Qualifications
Deliberations - Replay of Trial Testimony	Mistrial / Admonishment
Newly Discovered Evidence	Rights of Society and Criminal Defendant
Habitual - Reproof of Instant Felony	Confession - Ambiguous Request for Lawyer
Photo Identification	Change of Venue
Photo Identification - Mug Shots	Change of Venue - State's Strike, Race

JOHNSON, GREGORY SCOTT

Johnson v. State, 584 N.E.2d 1092 (Ind. January 27, 1992) (48S00-8611-CR-992)

Confession - Burden on State	DP Mitigator - Intoxication
Confession - Voluntariness	DP Instruction - Other Penalties
Confession - Intoxication	Change of Judge - Bias
Voluntary Intoxication Defense	Discovery - Police, Fire Reports, Work Product
Victim had "Scared Look" on Face	Exculpatory - Police Reports
Sufficiency of Evidence	Impeachment by Jail Write-Ups
Other Crimes - Prior Arsons	IAC - Standard of Proof
DP Argument - There is no LWOP	DP - Electrocution, Cruel & Unusual
DP - Standard of Review	DP - Appropriateness

Johnson v. State, 693 N.E.2d 941 (Ind. 1998) (48S00-9305-PD-00498)

PCR - Standard of Review	Exculpatory - Standard of Review
PCR - Appellate	Exculpatory - Other Suspect, Hair Tests, Prints
PCR - Disqualify Prosecutor	Exculpatory - Available to Defendant at Trial
PCR - Erroneous Findings of Fact	Exculpatory - Inconsistent Statements of Witness
IAC - Counsel Not Paid Enough	Exculpatory - Police Reports
IAC - Standard of Review	IAC - Mitigation, Childhood

Johnson v. McBride, 381 F.3d 587 (7th Cir. August 20, 2004) (04-1354)

Habeas - One Year Limitations Period	Habeas - Right to Counsel
Client Bound by Attorney Acts	

JUDY, STEVEN T.

Judy v. State, 416 N.E.2d 95 (Ind. January 30, 1981) (580-S-128)

Right to Appeal, Waiver	DP - Mandatory Appeal
DP - Multiple Aggravators	DP - Vindictive Justice
DP - Appropriateness	DP - Constitutional

KENNEDY, STUART S.

Kennedy v. State, 578 N.E.2d 633 (Ind. September 19, 1991) (16S00-8808-CR-785)

Photos, Gruesome	Expert - Eyewitness Memory
Consent to Search Bag by Girlfriend	DP - Jury Override
Chain of Custody - Hair, Fibers	Witness List - Amended at Trial
Experts at Public Expense	Hearsay - Drivers License to Prove Green Eyes

KUBSCH, WAYNE D.

Kubsch v. State, 784 N.E.2d 905 (Ind. March 14, 2003) (71S00-9904-DP-239)

<u>Doyle v. Ohio</u> - Using Silence	Confession - Unredacted, Request for Lawyer
Search - Pirtle Warnings	Hypothetical Questions
Search, Warrantless - Burden on State	Hearsay - "He Still Wants to Kill Me"
Search, Consent - Voluntariness	Hearsay - Opening Door
Search, Consent - Scope	Photos, Gruesome
Expert - Covering Face of Victim	Pathologist - Time of Death

Kubsch v. State, 866 N.E.2d 726 (Ind. May 22, 2007) (71S00-0507-DP-333)

Special Prosecutor - Conflict of Interest	DP - Aggravating "Outweighs" Mitigating
Hearsay - Past Recorded Recollection	DP - Independent Review by Trial Court
DP - Pro-Se - Waiver of Counsel	DP - Right to Proceed Pro-Se

Kubsch v. State, 934 N.E.2d 1138 (Ind. October 05, 2010) (71S00-0708-PD-335)

IAC - Life Insurance Proceeds	Failure to turn over exculpatory evidence
IAC - Expert Observing DNA tests	

LAMBERT, MICHAEL ALLEN

Lambert v. State, 643 N.E.2d 349 (Ind. December 6, 1994) (18S00-9107-DP-544)

Jury Panel - Voter Registration Only	DP - Death Qualifying Jury
Confession - Voluntariness	Trial - Handcuff Demonstration
Lesser Included Manslaughter	DP - Advisory Death Recommendation
	DP Mitigator - Intoxication

Lambert v. State, 743 N.E.2d 719 (Ind. March 5, 2001) (18S00-9702-PD-96)

PCR - Standard of Review	Change of Judge - Same Trial and PCR Judge
IAC - Standard of Review	Trial - Police in Courtroom
PCR - Finding of Fact Presumed Correct	Trial - Handcuffing Demonstration
PCR - Conclusions of Law De Novo	DP Argument - Assassin, Executioner, Ruthless
Instructions - Missing Witness	DP Argument - Memory Loss Convenient Self-Serving
Instructions - Singling Out Witness	DP Argument - Defendant Laughing During Trial
Photos of Victim While Alive	DP Argument - Poem of Slain Police Officers
IAC - Failure to Present Mitigators	DP Argument - Aggravator Entitled to Great Weight
IAC - Failure to Investigate Mental Illness	Remand for New Sentencing Statement
IAC - Appellate	Jail Informant - Undisclosed Plea Deal
IAC - Failure to Seek Continuance	

Lambert v. McBride, 365 F.3d 557 (7th Cir. April 7, 2004) (03-1015)

Habeas - Retroactivity of Ring	Habeas - Victim Impact Evidence
Jail Informant - Undisclosed Plea Deal	IAC - Argument - Poem of Slain Police Officers
IAC - Failure to Object to Police in Courtroom	

Lambert v. Davis, F.3d (7th Cir. May 31, 2006) (05-2610)

Habeas - State Law Claim Not Cognizable	Habeas - Successive Petition
Habeas - <u>Saylor</u> Rule	

Lambert v. State, 867 N.E.2d 134 (Ind. May 21, 2007) (18S00-0412-SD-503)

Successive PCR	DP - Victim Impact Evidence
New Rule of Law - Appellate Application	

LANDRESS, CINDY LOU

Landress v. State, 600 N.E.2d 938 (Ind. October 15, 1992) (45S00-8911-CR-837)

Intent to Kill - Accomplice	Sufficiency of Evidence
Intent to Kill - Use of Deadly Weapon	Inference Upon Inference

LOCKHART, MICHAEL LEE

Lockhart v. State, 609 N.E.2d 1093 (Ind. March 8, 1993) (45S00-8911-CR-851)

Other Crimes - Prior Robbery	DP - Criminal Record
Other Crimes - Signature Murder	DP - Non-Statutory Aggravators
Other Crimes - Pathologist on Similarities	DP Instructions - Wrong Aggravator
Expert - Pathologist	DP Argument - Conviction Means "Judgment"
DNA - Lab Procedures	

LOWERY, JIM

Jim Lowery v. State, 434 N.E.2d 868 (Ind. May 5, 1982) (1280-S-448)

Jury Sequestration	DP - Mandatory Appeal
Accomplice - Plea Bargain	Photo at Arrest - Change of Appearance
Accomplice - Polygraph	

James Lowery v. State, 478 N.E.2d 1214 (Ind. June 4, 1985) (483-S-116)

Expert - Juristic Psychologist	DP - Vindictive Justice
Voir Dire, Individual	DP - Meaningful Appellate Review
Confession - Voluntariness	Trial - Handcuffing Demonstration
Confession - Volunteered Admissions	Plea Agreement - Admitted, Not Shown to Jury
Confession - Life Rather Than DP	Expert Pathologist - Qualifications
First Trial Testimony - Unavailable	Pathologist Opinion - Gun to Victim Distance
Unavailability - Taking 5th	Photo Identification Testimony
Prior Consistent Statements	Instructions - Accomplice Liability
Photos, Gruesome	Accomplice - Uncorroborated Testimony
Sufficiency of Evidence	DP Aggravator - Attempted Burglary
DP - Arbitrary & Capricious	DP Mitigator - Prior Parental Problems
	DP - Appropriateness

Lowery v. State, 640 N.E.2d 1031 (Ind. 1994) (32S00-9008-PD-542)

PCR - Standard of Review	DP Argument - Victims Given No Due Process
PCR - Res Judicata	DP Argument - Society Interest in Conviction
PCR - Failure to Raise Defense of Waiver	DP Argument - Souls of Victims Cry Out
Prosecutorial Discretion	DP Argument - Victims Helpless and Productive
Conflict - Prosecutor Knew Attorney Victim	Attempted Murder - Intent to Kill
Reference to "Mug Shots"	Defendant Jailed 40 Miles from Courthouse
Unavailable Witness - Taking 5th	IAC - Standard of Proof
Prior Consistent Witness Statements	IAC - Phot Identification at Hospital
DP - Advisory Death Recommendation	IAC - Failure to Present Mitigators
DP - Proportionality Review	Wrong Aggravator - "Committed" Another Murder
Felony Murder - Attempted Burglary	IAC - Failure to Present Mitigators

Lowery v. Anderson, 225 F.3d 833 (7th Cir. August 29, 2000) (99-3227)

AEDPA	Habeas - Harmless Error
Habeas - Finding of Fact Presumed Correct	DP - Advisory Death Recommendation
Habeas - Conclusions of Law De Novo	IAC - Standard of Proof
First Trial Testimony - Unavailable	IAC - Trial Strategy
First Trial Testimony - Confrontation	IAC - Failure to Present Inconsistent Statements
	IAC - Failure to Present Mitigators

LOWERY TERRY LEE (a/k/a Terry Lee Spencer)

Lowery v. State, 547 N.E.2d 1046 (Ind. December 8, 1989) (02S00-8606-CR-591)

Voir Dire, Individual	Accomplice - Uncorroborated Testimony
Confession - Right to Silence	Convictions of Murder and Aiding Murder
"Regular Sex" = Penetration	Insanity - Sufficiency of Evidence
Sufficiency of Evidence	Insanity - "I'll Make Them Think I'm Crazy"
Photos, Gruesome	DP Instructions - "By Electrocution"
First Trial Testimony - Unavailable	DP Instructions - Mitigators Beyond Reasonable Doubt
Sufficiency of Evidence	DP Instructions - "Bound by Law" Consider Mitigators
DP - Reckless Indifference to Life	DP Instructions - Mercy
DP Mitigator - No Significant Priors	Accomplice 14 Years Old - Disparity in Treatment
DP Mitigator - Emotional and Mental Problems	

MARTINEZ-CHAVEZ, ELADIO

Martinez-Chavez v. State, 534 N.E.2d 731 (Ind. March 1, 1989) (1085-S-426)

Felony Murder - Intent to Kill	Voir Dire, Individual
Felony Murder - Accomplice Liability	DP - Mandatory Review
Accomplice Was Leading Actor	DP - Jury Override
Trial - Interpreter for Defendant	Murder / Felony Murder Merged

MATHENEY, ALAN LEHMAN

Matheney v. State, 583 N.E.2d 1202 (Ind. January 9, 1992) (45S00-9002-DP-116)

Lesser Included Manslaughter	Prosecutor as Defense Witness
Sudden Heat - Provocation	Prosecutor - Defendant is "Sick and Troubled"
Sudden Heat - Words Alone	DP Mitigators - No Obligation to Find
Insanity - Jury Question	DP - Burglary With Intent to Commit Murder
	DP Aggravator - Lying in Wait

Matheney v. State, 688 N.E.2d 883 (Ind. 1997) (45S00-9207-PD-584)

PCR - Super Appeal	Discovery - Jury Names Denied
PCR - Standard of Review	Magistrate Bias
PCR - Competency of Defendant	Magistrate Ex Parte With Prosecutor
PCR - Waiver	IAC Waiver / Fundamental Error
Conflict - Prosecutor Knew Attorney Victim	IAC - Presenting "No Hope" Insanity Defense
IAC - Failure to Present Psychiatrist at DP	IAC - No Competency Hearing
IAC Appellate	DP Instructions - "May" Consider Aggravators
IAC - No Sympathy	DP Instructions - Reciting All Statutory Mitigators
DP Mitigators - Burden of Proof	DP - Failure to Define "Mitigating"
DP Mitigators - Unanimity	DP Instructions - Incorporation
Death Qualifying Jury	DP Instructions - Other Penalties
Felony Murder - Vague "While Committing"	DP Instructions - "May" Consider Aggravators
Psychiatrists - Jury Can Reject	DP - Narrowing Class of Murderers
PSI Psychological Questionnaire	DP - Appropriateness

Matheney v. Anderson, 253 F.3d 1025 (7th Cir. June 18, 2001) (99-3657)

Pre-AEDPA	IAC - Standard of Proof
IAC - Competency Hearing at Trial	IAC - Failure to Present Psychiatrist
DP Mitigator - Not Considered in Isolation	DP Aggravator - Lying in Wait

Matheney v. State, 833 N.E.2d 454 (Ind. August 29, 2005) (45S00-0506-SD-271)

Successive PCR - Competent to be Executed	Mentally Ill Not Same as Mentally Retarded
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Matheney v. State, 834 N.E.2d 658 (Ind. September 23, 2005) (45S00-0509-SD-425)
 Successive PCR - Basis for Seeking Successive PCR - DNA Testing, Materiality
 Successive PCR - Waiver, Procedural Default Successive PCR - IAC Res Judicata
 Successive PCR - IAC PCR Counsel Successive PCR - Stay of Execution

MCMANUS, PAUL MICHAEL

McManus v. State, 814 N.E.2d 253 (Ind. August 31, 2004) (82S00-0104-DP-188)
 DP - Aggravating "Outweighs" Mitigating Trial - Drugs to Make Competent
 DP - Advisory Death Recommendation Trial - Incompetency
 Harmless Error Insanity Psychiatrist - "Depression Did Not Mitigate"

State v. McManus, 866 N.E.2d 726 (Ind. June 27, 2007) (82S00-0503-PD-78)
 DP - Retarded - Statute DP - Retarded - Trial Court Findings
 DP - Retarded - Waiver DP - Retarded - IQ Tests
 DP - Retarded - Burden of Proof DP - PCR - Discovery - Failure to List Expert
 DP - IAC - Burden of Proof DP - IAC - Competency
 DP - IAC - Conflict of Interest

McManus v. Wilson, 2011 WL 1257969 (S.D. Ind. April 1, 2011) (1:07-CV-1483-TWP-MJD)

Forced Medications at Trial / Incompetent DP - IAC - Failure to Investigate Education
 DP - Mental Retardation DP - IAC - Failure to Interview Friends, Family

MCCOLLUM, PHILLIP

Townsend v. State, 533 N.E.2d 1215 (Ind. February 14, 1989) (885-S-339)
 DP - Prosecutorial Discretion Confession - Voluntariness
 DP - Information or Indictment Joinder of Defendants - Confession Redacted
 DP - Prosecutorial Policy Search - Consent by Landlord
 DP - Proportionality Review Sufficiency of Evidence
 DP - Triggerman, Accomplice Psychiatrist Report - Exaggerate Illness
 DP Aggravator - Robbery Conflict - PD from Same Office, Both Defendants
 DP Aggravator - Multiple Murders Accomplice Liability
 DP - IAC - Only One Defense Attorney DP - Clear & Objective Standards
 IAC - Strategy to Attack DP Per Se DP Mitigator - Youth, Not Substantial
 IAC - No Motion for Severance DP - Proportionality Review
 IAC - Standard of Proof DP - Arbitrary & Capricious
 IAC - Failure to Present Mitigators DP - Appropriateness
 DP - Duty to Follow Recommendation

MILLER, PERRY S.

Miller v. State, 623 N.E.2d 403 (Ind. October 26, 1993) (64S00-9012-DP-817)
 Argument - "I Don't Think" DP - Aggravating "Outweighs" Mitigating
 Argument - "I Don't Believe" DP - Mercy
 Argument - "Mean S.O.B." DP Mitigators - Burden of Proof
 Waiver / Fundamental Error DP Instructions - Reciting Statutory List of Mitigators
 DP - Limiting Jury Discretion DP Instructions - Law and Facts
 DP - Prosecutorial Discretion DP - Jury Override
 Voir Dire, Individual DP - Advisory Death Recommendation
 Conspiracy - "Have Fun With Clerk" DP - Open and Close Argument
 Conspiracy - Circumstantial Evidence DP - Cruel & Unusual
 Alternate Jurors in Jury Room DP - More Aggravators Than Mitigators
 DP Rebuttal - Other Victims DP - Psychological Profile Opening Door

Miller v. State, 702 N.E.2d 1053 (Ind. 1998) (64S00-9408-PD-00742)

DP - Mandatory Appeal	IAC - Defense Investigator, Photos of Juror Homes
PCR - Standard of Review	IAC - Cross of Clerk, Wrong Brand Shotgun Shells
IAC - Standard of Review	IAC - Accomplice Testimony of Other Crimes
IAC - Failure to Plead Waiver	IAC Waiver / Fundamental Error
IAC - Failure to Seek Continuance	IAC - Presenting "No Hope" Insanity Defense
IAC - Failure to Present Hair Expert	IAC - No Competency Hearing
IAC - Failure to Present Blood Expert	DP Instructions - "May" Consider Aggravators
IAC - Failure to Present DNA Expert	DP Instructions - Reciting All Statutory Mitigators
IAC - Failure to Argue Residual Doubt	DP Rebuttal - Other Crimes
IAC - Calling Psychologist, Opening Door	DP Mitigator - Social History
IAC - Duty to Investigate Mitigators	DP Mitigator - Positive Jail Adjustment
IAC - Appellate - Standard of Proof	DP - Meaningful Appellate Review
Alternate Juror Replacing Regular Juror	DP - Meaningful Appellate Review
<u>Doyle v. Ohio</u> - Using Silence	Accomplice Prior Consistent Statement

Miller v. Anderson, 255 F.3d 455 (7th Cir. June 29, 2001) (00-2979)

IAC - Tactical Decision	IAC - Cross of Clerk, Wrong Customer
IAC - Calling Psychologist, Opening Door	IAC - Chance at Acquittal Less Than 50% Enough
IAC - Failure to Consult and Present DNA, Hair, Treadmark, Footprint Experts	
IAC - Referral of Defense Counsel to Disciplinary Commission	

MINNICK, WILLIAM A.

Minnick v. State, 467 N.E.2d 754 (Ind. September 7, 1984) (1282-S-467)

Confession - Request for Lawyer	Confession - Custodial Interrogation
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Minnick v. State, 544 N.E.2d 471 (Ind. October 2, 1989) (47S00-8603-CR-314)

Hair Expert - Misstatement	DP - Equal Protection
Newly Discovered Evidence	DP - Cruel & Unusual
Information for Murder - Vagueness	Probable Cause For Arrest / Hearing
Initial Hearing Delay	Sequestration of Jury, Family Visits
Search Warrant Return - Discrepancies	Photo of Victim During Life
Search Warrant Admitted, Not Shown	Police Ill Will Toward Defendant
CDC - Anal Penetration, After Death	Chain of Custody - Retrial
Res Gestae Evidence	Exhibit "Turned Over to Court" - Retrial
Admissions - Overheard in Jail	Jury Override
DP - Non-Statutory Aggravators	DP Sentencing Statement - No PSI Reference

Minnick v. State, 698 N.E.2d 745 (Ind. 1998) (47S00-9008-PD-497)

PCR - Standard of Review	DP - Appropriateness
PCR - Denial of Experts, Delay in Fees	Exculpatory - Blood Tests
PCR - Waiver, Not Alleged in Petition	DP - Non-Statutory Aggravators
IAC - Presumption of Ineffectiveness	Retroactivity - Using Non-Statutory Aggravators
IAC - Appellate - Standard of Review	Waiver / Fundamental Error
IAC - Standard of Review	PCR - Res Judicata
IAC - Waiver	Jury Override
IAC - Failure to Present Mitigators	Catch-All Mitigator - No Dilution of Potential Mitigators
IAC - Prejudice, Fair and Reliable Trial	

MOORE, RICHARD D.

Moore v. State, 479 N.E.2d 1264 (Ind. June 26, 1985) (1082-S-400)

Guilty Plea - Waiver of Rights	DP - "Knew" Victim was Law Enforcement
DP - Court Not Required to State Weight	DP Aggravator - Multiple Murders
DP - Incorporation of Evidence	DP Mitigator - Mental and Emotional
DP - Proportionality Review	DP Mitigator - "Significant" Criminal History

State v. Moore, 678 N.E.2d 1258 (Ind. April 23, 1997) (29S00-9008-PD-543)

PCR - Standard of Review	IAC - Change of Venue
PCR - Facts Accepted Unless Clear Error	IAC - Inadequate Resources to Counsel
IAC - Standard of Review	IAC - Perfect Trial
IAC - Strategy Decisions	IAC - Failure to Pursue Insanity Defense
Guilty Plea - Heightened Scrutiny in DP Case	Guilty Plea - Voluntariness

Moore v. State, 771 N.E.2d 46 (Ind. June 26, 2002) (06S00-0006-PD-389)

Guilty Plea - Waiver of DP Trial	"Knew" Victim was Law Enforcement
DP Sentencing Statement	Psychologist Opinion - "He Didn't Know"
Lethal Injection - Not Cruel & Unusual	20 Years on Death Row - Not Cruel & Unusual

OVERSTREET, MICHAEL DEAN

Overstreet v. State, 783 N.E.2d 1140 (Ind. February 24, 2003) (41S00-9804-DP-217)

DNA - Reliable in Scientific Community	Sufficiency of Evidence - Rape
DNA Expert - Qualifications	Exculpatory - Wife's Changed Story
Marital Privilege - Disclosure to Others	Exculpatory - Impeachment Evidence
Harmless Error	DP - Specific Verdict Forms
Search Warrant - Blood, Hair	DP Aggravators - Same Element
Search Warrant - Probable Cause	DP Aggravator - Victim of Sex Crime
Search Warrant - Description of Items	DP Aggravator - Rape
Search Warrant - Plain View Map	DP Instruction - Lingering/Residual Doubt
Search - Consent	DP - Aggravating "Outweighs" Mitigating
Double Jeopardy - Murder/Confinement	DP - Meaningful Appellate Review

Overstreet v. State, 877 N.E.2d 144 (Ind. November 27, 2007) (41S00-0306-PD-249)

PCR - Waiver; Claim Preclusion	IAC - Failure to Pursue Mental Illness Defense
PCR - Burden / Standard of Proof	IAC - Failure to Impeach Wife
IAC - Standard of Review	IAC - Failure to Object to Evidentiary Harpoon
IAC - Appellate - Standard of Review	IAC - Failure to Object to Spectators Wearing Buttons
IAC - Appellate - Presumed Adequate	IAC - Failure to Object to Appearing in Handcuffs
PCR - Refusal to Admit Schizophrenia Movie	IAC - Failure to Hire Genetics Expert
PCR - Refusal to Admit NeuroPsych Affidavit	IAC - Failure to Hire Eyewitness ID Expert
PCR - Rebuttal Psychiatrist Testimony	PCR - Attempt to Subpoena Prosecutor for Questioning
PCR - Inaccuracies in PCR Transcript	Incompetency to be Executed

Overstreet v. Superintendent, 2011 WL 836800 (N.D. Ind. March 04, 2011) (3:08-CV-226 PS)

DP - IAC - Failure to Convey LWOP Plea Offer	DP - Duplicate Aggravators
DP - IAC - Public Symbols of Mourning in Gallery	DP - Habeas Discovery
DP - IAC - Failure to Present Schizophrenia	DP - Aggr need not outweigh beyond reas doubt
DP - IAC - Failure to Present Childhood	State Withholding of Wife's Changed Statement
IAC - Failure to Impeach w/Prior Statements	IAC - Failure to Present GBMI Evidence
IAC - Failure to Call Eyewitness ID Expert	

Overstreet v. Superintendent, 686 F.3d 404 (7th Cir. July 11, 2012) (11-2276)

DP - IAC - Failure to Convey LWOP Plea Offer	DP - IAC - Failure to Present Schizophrenia
DP - IAC - Public Symbols of Mourning in Gallery	

PATTON, KEITH LAMONT

Patton v. State, 517 N.E.2d 374 (Ind. December 30, 1987) (1284-S-488)

Guilty Plea - Unqualified Admission

Guilty Plea - Factual Basis

Guilty Plea - Asserting Innocence at Sentencing

PETERSON, CHRISTOPHER DWAYNE (Obadyah Ben-Yisrayl)

Peterson v. State, 674 N.E.2d 528 (Ind. December 13, 1996) (45S00-9103-DP-223)

Search - Standard of Review

Warrantless Arrest - Probable Cause

Search - Standing, Mother's Apt.

Probable Cause - Reliability of Informant

Search - State Constitution

DP - Vindictive Justice

Search - Open View

DP - Proportionality Review

Confession - Voluntariness

DP - Jury Override

Initial Hearing - Without Undue Delay

DP - Weight of Advisory Verdict

DP - Appropriateness

Ben-Yisrayl v. State, 729 N.E.2d 102 (Ind. May 25, 2000) (45S00-9708-PD-460)

PCR - Super Appeal

PCR - Waiver

PCR - Standard of Review

Instructions - Knowingly/Intentionally

IAC - Standard of Review

Instructions - Reasonable Doubt "Arises"

IAC - No Change of Venue

Instructions - Assume Witnesses Tell truth

IAC - Appellate

IAC - Failure to Present Family Mitigation

IAC - Failure to Call Witness Near Scene

IAC - Failure to Argue Residual Doubt

IAC - Failure to Call False Confession Expert

"Sawed-Off" Shotgun - Contraband

Ben-Yisrayl v. Davis, 245 F.Supp.2d 960 (N.D.Ind. December 27, 2002) (3:01-CV-65-AS)

Instructions - Reasonable Doubt

IAC - Failure to Present False Confessions Expert

IAC - Failure to Call Witness Near Crime Scene

PETERSON, CHRISTOPHER DWAYNE (Obadyah Ben-Yisrayl)

Ben-Yisrayl v. State, 690 N.E.2d 1141 (Ind. December 31, 1997) (64S00-9103-DP-00229)

Joinder of Offenses

Joinder/Severance - Same M.O., Motive

Appeal - Reconstruction of Record

Other Crimes - Other Murders

Comment on Failure to Testify

Argument - None Confesses Murder Unless Guilty

Waiver / Fundamental Error

Instruction - Accomplice Liability

Confession - State Constitution

Instruction - Inconsistent Statements

Initial Hearing - Without Undue Delay

DP Aggravator - Other Murders

DP - Appropriateness

DP - Incorporation of Evidence

Ben-Yisrayl v. State, 753 N.E.2d 649 (Ind. August 28, 2001) (64S00-9808-PD-429)

PCR - Super Appeal

DP - Death Qualifying Jury

PCR - Standard of Review

Exculpatory - Witness Relationship With FBI

Polygraph - Unreliable

Instructions - Reasonable Doubt "Arises"

Polygraph, Private - Self-Serving Hearsay

PCR - Inadequate Transcript "Undecipherable"

PCR - Res Judicata

Not Entitled to Transcripts from Voir Dire Mistrial

PCR - Meaningful Collateral Review

Appeal - Failure to Record Bench Conferences

Ben-Yisrayl v. Davis, 431 F.3d 1043 (7th Cir. December 13, 2005) (03-3169)

Habeas - Comment on Failure to Testify

Habeas - Harmless Error

POTTS, LARRY DALE

Potts v. State, 594 N.E.2d 438 (Ind. June 23, 1992) (45S00-8907-CR-536)

Lesser Included Manslaughter	DP - Disproportionate
Manslaughter - No Provocation	DP - Appropriateness
Comment on Failure to Testify	DP Mitigator - Back Pain, Alcohol, Depression

PROWELL, VINCENT JUAN

Prowell v. State, 687 N.E.2d 563 (Ind. November 4, 1997) (82S00-9407-DP-666)

Guilty Plea - PCR Not Direct Appeal	DP - Sentencing Statement
DP Mitigator - Paranoid Schiz	DP - Judge Personal Conclusion
DP - Non-Statutory Aggravators	DP - Including Facts of Case OK
DP - Victim Impact Evidence	DP - Not Obligated to Credit All Mitigators

Prowell v. State, 741 N.E.2d 704 (Ind. January 11, 2001) (82S00-9803-PD-138)

PCR - Adopting Findings	IAC - Standard of Review
PCR - Standard of Review	IAC - Failure to Develop Expert Psych Testimony
PCR - Findings of Fact Presumed Correct	IAC - Failure to Seek GBMI Plea/Verdict
PCR - Conclusions of Law De Novo	IAC - Prejudice
DP - Rule 24 Caseload Non-Compliance	DP - Failure to Prepare for Sentencing

PRUITT, TOMMY RAY

Pruitt v. State, 834 N.E.2d 90 (Ind. September 13, 2005) (15S00-0109-DP-393)

DP - Retarded - Burden of Proof	DP - Retarded - Subject to Clearly Erroneous Std.
DP - Retarded - Clear and Convincing	DP - Retarded - Sufficiency of Evidence
DP - Retarded - Waiver in Trial Court	DP - Retarded - Pretrial Does Not Violate <u>Blakely</u>
DP Statute - "accordingly" Retroactive	Confession - Burden of Proof
Gruesome Photos - In Hospital	Confession - Voluntariness
DP Jury Instruction - Pardon, Commutation	Confession - Intoxication by Drugs
DP - Allocution at Close of Defendant Case	Confession - Request for Counsel
DP - Appropriateness of Sentence	Confession - Miranda

Pruitt v. State, 903 N.E.2d 899 (Ind. March 31, 2009) (15S00-0512-PD-617)

PCR - Burden of Proof	IAC - Burden of Proof
PCR - Standard of Review	IAC - Failure to Investigate/Present Retardation
PCR - Waiver and Res Judicata	IAC - School Records
Retardation / Schizophrenia	IAC - Flynn Effect on IQ Scores
Judge not Jury to Decide Retardation	IAC - Failure to Impeach
IAC - Failure to Prepare Social History	IAC - Failure in Selection of Mental Experts
IAC - Retardation Instruction	IAC - Defense Strategy
Prosecutorial Misconduct - Reading Poem	IAC - Failure to Present Family Impact Evidence
Prosecutorial Misconduct - Gruesome Photos	Prosecutorial Misconduct - Comparing to Dahmer/Hitler
IAC - Appellate - Standard of Review	DP Voir Dire - Exclusion Based on Religious Beliefs
PCR - Refusal to Reopen Evidence	PCR - Adoption of State's Findings
PCR - Newly Discovered Evidence	PCR - Change of Judge - PCR Judge Same as at Trial

Pruitt v. Wilson, 2012 WL 4513961 (N.D. Ind. October 2, 2012) (3:09cv380RLM)

Exclusion of Witness - Hospital Malpractice	DP - Instruction on Clemency, <u>Caldwell v. Miss</u>
DP - IAC - Closing Argument	DP - IAC - Failure to Investigate Mental Mitigators
DP - IAC - Mental Retardation	DP - Aggr need not outweigh beyond reas doubt

RESNOVER, GREGORY

Resnover v. State, 460 N.E.2d 922 (Ind. March 19, 1984) (182-S-21)

Continuance - Publicity	DP - Jury Guidance
Jury - Exposure to Publicity	DP - Cruel & Unusual
Confession - Volunteered in Transport	DP - Arbitrary & Capricious
Confession to News Reporter	DP - Aggravating "Outweighs" Mitigating
Confession to Jail Informant	DP - Prosecutorial Discretion
Recording - Police Radio	DP - Proportionality Review
Recording - Identity of Voices	DP - Meaningful Appellate Review
Separation of Witnesses	DP Aggravator - "Knew" Was Law Enforcement
DP - Triggerman	DP - Prosecutorial Discretion
DP - No Mitigators	DP - Proportionality Review
DP - Appropriateness	DP - Meaningful Appellate Review

Resnover v. State, 507 N.E.2d 1382 (Ind. 1987) (1285-S-515)

Judge Bias - Expressed Frustration	IAC - Failure to Distance From Accomplice
Reopening of PCR Evidence After Hearing	IAC - Failure to Call Expert Firearms
Witness Taking 5th At PCR Hearing	IAC - AR-15 Really for Hunting
State Not Required to Grant Immunity	IAC - Failure to Present Mitigators
DP - Racial Bias, No Showing	IAC - Statements of Co-Defendant
	Failure to Attend DP Trial - Explanation to Jury

Resnover v. State, 547 N.E.2d 814 (Ind. 1989) (49S00-8904-CR-261)

IAC - PCR, Appellate	Newly Discovered Evidence, Merely Impeaching & Cumulative
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Resnover v. Pearson, 965 F.2d 1453 (7th Cir. 1992) (91-1367)

Habeas - Exhaustion of State Remedies	IAC - Standard of Review
Confession to Jail Informant	IAC - Failure to Present Mitigators
Witness Taking 5th At PCR Hearing	IAC - Defendant Refuses to Attend DP Trial
State Not Required to Grant Immunity	IAC - Failure to Call Executioner
DP - Racial Bias, No Showing	IAC - Using Law Professor
Sufficiency of Evidence	IAC - Defendant Refuses to Attend DP Trial
Instructions - Accomplice Liability	IAC - Failure to Call Executioner
IAC - Using Law Professor	Failure to Attend DP Trial - Explanation to Jury

RITCHIE, BENJAMIN DONNIE

Ritchie v. State, 809 N.E.2d 258 (Ind. May 25, 2004) (49S00-0011-DP-638)

Misconduct - Charging Defense Witness	DP - Vindictive Justice
Mistrial - Deference on Appeal	DP - Lethal Injection - Cruel & Unusual
Intent to Kill or "Slow Down" - 4 Shots	DP - Cruel & Unusual, Due Process
Knowingly Kill - Using Handgun	DP - "Sentence Accordingly" Retroactive
Defense Argument - Singling Out Juror	DP - Trial Rule 59 for New Trial n/a to DP

Ritchie v. State, 875 N.E.2d 706 (Ind. November 8, 2007) (49S00-0409-PD-420)

PCR - Standard of Review	IAC - Standard of Review
IAC - Performance Presumed Effective	IAC - Failure to Hire Second Ballistics Expert
IAC - Statements to Media While in Shackles	IAC - Failure to Investigate / Present Mitigation
IAC - Failure to Submit Social History Report	IAC - Appellate - Standard of Review
IAC - Appellate - Failure to Object to Juror Stricken for Cause	

ROARK, DENNIS RAY

Roark v. State, 573 N.E.2d 881 (Ind. June 21, 1991) (45S00-9004-CR-260)

Lesser Included Manslaughter Waiver, Judicial Economy on Appeal

Roark v. State, 644 N.E.2d 565 (Ind. December 19, 1994) (45S00-9302-DP-234)

Confessions - Voluntariness	DP - Mandatory Independent Review
Confessions - Mental Illness	Jury Override
Confessions - Miranda Waiver	DP - Sentencing Statement on Jury Override
Manslaughter - Provocation	DP Mitigating - Jury Override

ROCHE, CHARLES EDWARD, JR.

Roche v. State, 596 N.E.2d 896 (Ind. July 20, 1992) (45S00-9012-DP-812)

Accomplice - Disparity of Sentence	DP - Proportionality Review
Accomplice - Triggerman	DP - Victim Impact Evidence
DP - Hung Jury Not Mitigating	Mistrial - Prior Burglary
	No Ruling on Objection

Roche v. State, 690 N.E.2d 1115 (Ind. December 30, 1997) (45S00-9305-PD-588)

PCR - Standard of Proof	IAC - Failure to Present Mitigators - Upbringing
PCR - Role of Magistrate	IAC - Failure to Present Mitigators - Mental
PCR - Testimony by Affidavit	IAC - Shackles at Trial
PCR - Contact With Jurors	IAC - Failure to Present Opening Statement
PCR - Discovery Abuse	IAC - Allowing Defendant to Take Stand
PCR - Discovery - State's "Complete File"	IAC - Failure to Present Intoxication Defense
PCR - Discovery - Why No Accomplice DP	DP Instructions - Presumed Innocent of Aggravators
PCR - Role of Magistrate	DP Instructions - No Obligation to Impose DP
Public Defender - Systemic Defects	DP Instructions - Mitigators Beyond Reason Doubt
Felony Murder - Self-Defense No Defense	DP Instructions - Burden of Proof on Mitigators
IAC - Failure to Seek Separate Trial	DP Instructions - Definition of Mitigation
IAC - Failure to Seek Co-Counsel	DP Instructions - Reciting All Statutory Mitigators
DP Instructions - Presumed Innocent of Aggravators	

Roche v. Davis, 291 F.3d 473 (7th Cir. May 28, 2002) (01-1664, 01-1665)

IAC - Standard of Review	Shackles at Trial
IAC - Prejudice - "Reasonable Probability"	Habeas - Procedural Default
Indiana LWOP Not Retroactive	Shackles - Effecting DP, Not Guilt

ROUNDON, REYNALDO GORIA

Rondon v. State, 534 N.E.2d 719 (Ind. March 1, 1989) (1085-S-427)

DP - Death Qualifying Jury	Identification - Lineup
Voir Dire, Individual	Slight Relevance Effects Weight Not Admissibility
No New Jury Required for DP	Slight Connection to Defendant
Jury Goes Home Reconvenes for DP	Chain of Custody - Ashtray, Fingerprints
Circumstantial Evidence Alone	Joinder of Defendants
DP Rebuttal - Prior Rape Charge	Joinder/Severance - Testifying Co-Defendant
Mistrial - Harmless Error	Trial - One Translator for Both Defendants
Witness - Inherently Unreliable	Torture - 15 Stab Wounds to 82 Year Old
Murder/Felony Murder - One Victim	

Rondon v. State, 711 N.E.2d 506 (Ind. May 25, 1999) (45S00-9403-PD-229)

DP - Retarded Exemption Not Retroactive	DP - Privileges & Immunities, Due Process
Defendant Chooses Time of Crime	Legislation - Savings Clause
11 States Exempt Retarded No Consensus	Expert Psychiatrist - Excluding as Cumulative
IAC - Standard of Review	Expert/Lay Testimony on Retardation
IAC - Failure to Investigate	IAC - Failure to Present Intoxication Defense
IAC - Skeptical of Client Claims, Strategy	IAC - Failure to Investigate and Present Mitigators
IAC - Strategy, Putting State to Burden	DP - Public Defender Systemic Defects
PCR - Waiver, Res Judicata	

ROUSTER, GREGORY ANTHONY (Gamba Mateen Rastafari)

Rouster v. State, 600 N.E.2d 1342 (Ind. October 16, 1992) (45S00-8710-CR-914)

Joinder of Defendants	Severance - Mutually Antagonistic Defenses
DP - Triggerman	Severance Waiver - Failure to Renew
DP - Other Crimes to Disprove Mitigator	DP - Failure to Define "Recommendation"
	DP - Appropriateness

Rouster v. State, 705 N.E.2d 999 (Ind. February 19, 1999) (45S00-9304-PD-408)

PCR - Standard of Review	IAC - Standard of Review
PCR - Super Appeal	IAC - Failure to Request Severance
PCR - Waiver, Res Judicata	Self-Defense Not Defense to Robbery
Intoxication - Defense and Mitigator	IAC - Failure to Present Self-Defense Expert
DP Instructions - Mitigator Unanimity	IAC - Instruction to Consider Defendants Separately
Photos of Scene Staged, Manipulated	IAC - Failure to Request Other Penalties Instruction
	PSI Psychological Questionnaire

Rastafari v. Anderson, 278 F.3d 673 (7th Cir. January 22, 2002) (00-4063)

Habeas - AEDPA	Habeas - State Court Incorrect and Unreasonable
IAC - Failure to Present Self Defense Expert	IAC - Failure to Seek Severance, Mutually Antagonistic

SAYLOR, BENNY LEE

Saylor v. State, 686 N.E.2d 80 (Ind. September 19, 1997) (48S00-9301-DP-6)

Jurors - Background Checks by State	Indiana LWOP Not Retroactive
Circumstantial Evidence	DP - No Obligation to Find Mitigator
Confession to Jail Informant	DP Mitigator - Chemical Dependency
DP - Jury Override	DP Mitigator - Works Well in Jail
DP - Vindictive Justice	DP - Low Range Mitigators
DP - Proportionality Review	DP - Supreme Court Independent Review
	DP - Advisory Death Recommendation

Saylor v. State, 765 N.E.2d 535 (Ind. March 20, 2002) (48S00-9712-PD-647)

PCR - Standard of Review	IAC - Standard of Review
PCR - Super Appeal	IAC - Prejudice, Reasonable Probability
PCR - Waiver	IAC - Failure to Hire Investigator
Exculpatory - Witness Criminal History	IAC - Voir Dire, Failure to Ask if Acquainted
Exculpatory - Fibers on Knife	IAC - Failure to Object to Victim Impact
IAC - Appellate	IAC - Failure to Object to DP Argument
IAC - Failure to Cite Main Case on Appeal	IAC - Failure to Seek 404(b) Notice
DP Mitigator - Juvenile Crimes to Negate	IAC - Opening Door to Prior Arrests
Remand - Right to be Present	IAC - Trial Strategy
Cross - Hypos Based Not in Record	IAC - Mitigation Expert One Year After Charge
Instructions - Voluntary Intoxication	IAC - Emphasis on Mitigator of Child Abuse
Change of Judge - Ex Parte With Prosecutor	Cross Exam - Hypos Based On Facts Not in Record
PCR - Adopting Findings of Fact	Cross Exam - Going Beyond Direct Exam
	DP - <u>Appendi</u> Does Not Require Jury DP Verdict

SCHIRO, THOMAS N.

Schiro v. State, 451 N.E.2d 1047 (Ind. August 5, 1983) (1181-S-329)

Confession - Custodial Interrogation	DP - Arbitrary & Capricious
Search Warrant - Commissioner	DP - Sentencing Statement Remand
Authenticity - Letter from Defendant	DP - Nunc Pro Tunc Sentencing Entry
Verdict Forms	DP - Jury Override, Double Jeopardy
PSI - Non Statutory Aggravators	DP - Low Range Mitigators
DP - Proportionality Review	DP - Supreme Court Independent Review
	DP - Advisory Death Recommendation

Schiro v. State, 479 N.E.2d 556 (Ind. June 28, 1985) (1084-S-423)

PCR - Standard of Review	PSI - Lack of Remorse
Faking Mental Illness, "Rocking"	Judicial Bias - Defendant Will "Live or Die"
Defendant's Behavior in Courtroom	IAC - Standard of Review
	IAC - Guilty But Mentally Ill Instructions

Schiro v. State, 533 N.E.2d 1201 (Ind. February 8, 1989) (07S00-8807-PC-656)

PCR - Standard of Review	IAC - Standard of Review
PCR - Waiver, Res Judicata	IAC - Failure to Pursue Leads
Other Crimes - 23 Sexual Assaults	IAC - Failure to Request Sequestration
Psychiatrist Shakedown for Good Report	IAC - Mitigators Brought By Insanity Defense
Felony Murder - Intent to Kill	IAC - Appellate
	Guilty Felony Murder, No Finding on Murder

Schiro v. State, 669 N.E.2d 1357 (Ind. August 7, 1996) (07S00-9403-SD-273)

Jury Override - Stricter Standard	Jury Override - Martinez Rule Retroactive
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SMITH, CHARLES

Smith v. State, 475 N.E.2d 1139 (Ind. March 25, 1985) (584-S-195)

Accomplice - Uncorroborated	DP - No Separate Standard of Review
Witness Immunity - Plea Deal Disclosed	DP - Incorporation of Evidence
Jury Pool - Registered Voters	Habitual - Certified Court Records
Jury Pool - Computer Generated	Habitual - Defendant's Statements
Judge Bias at Trial	Habitual - Incorporation of Evidence
Photos, Gruesome	DP - Pro Se Sequestration Motion
Shackles at Trial	Appeal - Waiver If Not in Brief

Smith v. State, 547 N.E.2d 817 (Ind. December 13, 1989) (02S00-8805-PC-489)

Instructions - Alibi Defense	IAC - Failure to Present Any Evidence
Polygraph Reference, Mistrial	IAC - Failure to Investigate
Habitual - Sufficiency of Evidence/Sequence	

SMITH, ROBERT ALLAN

Robert Smith v. State, 686 N.E.2d 1264 (Ind. October 23, 1997) (77S00-9508-DP-950)

Plea Agreement for Death Penalty	DP - Vindictive Justice
Competency to Plead Guilty	DP - Appropriateness
Voluntariness - Prison Solitary	DP - Mandatory Review
Safekeeping at Prison - Dangerousness	DP - Non-Statutory Aggravators, Harmless
	DP - Victim Impact, Harmless

SMITH, TOMMIE JOE

Smith v. State, 465 N.E.2d 1105 (Ind. July 24, 1984) (182-S-19)

Voir Dire, Individual	DP - Vindictive Justice
Jury Pool - Racial Composition	DP - Massachusetts Law Not Binding
DP - Racial Bias of Prosecutor	DP - Proportionality Review
Change of Venue - Publicity	DP - Same Jury Reconvenes
Invited Error	DP - Death Qualifying Jury
Venue - Back to Original County	DP - Arbitrary & Capricious
Experts and Investigators	DP - Appropriateness
IAC - Standard of Review	Joinder of Offenses - Murder/Conspiracy
IAC - Weapons Were for Hunting	Conspiracy - Circumstantial Evidence
IAC - Failure to Call Witness	Double Jeopardy - Murder/Conspiracy
IAC - Attorney Former Deputy Prosecutor	Confession to News Reporter
IAC - No Evidence at DP Phase	Gunshot Residue Tests
IAC - Guilty Does Not Mean Ineffective	Police Radio - Intelligible
IAC - Caseload and Continuances	Sufficiency of Evidence

Smith v. State, 516 N.E.2d 1055 (Ind. December 16, 1987) (49S00-8610-PC918)

PCR - Standard of Review	IAC - Standard of Review
PCR - Waiver, Res Judicata	IAC - Appellate, 796 Page Brief
Statements of Non-Testifying Co-Defendant	Exculpatory - Path of Bullets
Sufficiency of Evidence	Conspiracy - Circumstantial Evidence
DP Instructions - Absence of Defendant	Argument - "Superfly" "Shucking & Jiving"
DP - Right to be Absent	Argument - "Do your Duty"
DP - Police Officer "In Course of Duty"	

Smith v. State, 613 N.E.2d 412 (Ind. May 12, 1993) (49S00-9008-PD-538)

PCR - Super Appeal	PCR - Successive
PCR - Res Judicata	Change of Judge

Smith v. Farley, 59 F.3d 659 (7th Cir. July 5, 1995) (94-3818)

DP - Triggerman	Argument - Gratuitous References to Race
Statements of Non-Testifying Co-Defendant	Argument - "Superfly" "Shucking & Jiving"
IAC - Failure to Present "Hunting" Defense	Argument - "Our Police are Watching You"
IAC - Appellate	Argument - Citing from <u>Gregg v. Georgia</u>
IAC - No Mitigating Evidence	Argument - "Sowing the Seeds of Anarchy"
IAC - Path of Bullets	DP Instructions - "Knowing" Victim to be Officer
IAC - Search of House, Protective Sweep	

SPRANGER, WILLIAM J.

Spranger v. State, 498 N.E.2d 931 (Ind. October 15, 1986) (684-S-216)

Continuance to Prepare Denied	Sufficiency of Evidence
Discovery - List of State Witnesses	Accomplice - Triggerman
Discovery - Motion to Compel	Accomplice - Disparity in Sentences
Expert Sociologist Denied	DP - Former Death Row Inmate as Witness
Photos, Gruesome	DP - Aggravating "Outweighs" Mitigating
Exhibits - Victim's Gun Cleaned	DP - Marshall Outside Town Limits "On Duty"
Other Crimes - Other Car Vandalism	DP - Sentencing Statement
Jury View Denied	DP Mitigator - Youth Not Substantial
Trial - Demonstration Denied	DP - Arbitrary & Capricious
Instructions - Intent May be Inferred	DP - Appropriateness

Spranger v. State, 650 N.E.2d 1117 (Ind. May 22, 1995) (89S00-9008-PD-540)

PCR - Standard of Review	Exculpatory - Credibility of State's Witness
PCR - Waiver, Res Judicata	IAC - Conflict of Attorney - Former Client as Witness
IAC - Failure to Assert Sudden Heat	IAC - Appellate - 150 Page Brief
Duty to Submit to Lawful Arrest	IAC - Failure to Present Psychological Mitigators
IAC - Two Attorneys	IAC - Telling Defendant to Lie and Deny Shooting

STEPHENSON, JOHN MATTHEW

Stephenson v. State, 742 N.E.2d 463 (Ind. January 25, 2001) (87S00-9605-DP-398)

Hearsay - Prior Consistent Statements	Impeachment - Prior Conviction 10+ Years Old
Newly Discovered Evidence	Speedy Trial - Late State Discovery Responses
Jury - Impeaching Verdict	Continuance - Ex Parte Request by State
Juror Notes - Transcribing at Home	Deliberations - Request to Hear Statement
Lay Opinion - Car Was Cleaned	Jury View Without Defendant
Coroner - Time of Death	Photos, Gruesome
Harmless Error - Cumulative	Accomplice Testimony Subject to High Scrutiny
Other Crimes - Failure to Pay Bills	Sufficiency of Evidence
Other Crimes - Visible Means of Support	Witness - Incredible Dubiosity
Asking Judge to be "Just as Picky"	Alibi - No Duty to Directly Rebut
	DP - Appropriateness

Stephenson v. State, 864 N.E.2d 1022 (Ind. April 26, 2007) (87S00-0106-PD-285)

PCR - Standard of Review	Jail Clothes at Trial
PCR - Waiver, Res Judicata	Shackles - Stun Belt at Trial
PCR - Burden of Proof	PCR - IAC - Presumption of Competent Counsel
PCR - IAC - Anticipating Changes in Law	PCR - IAC Appellate Counsel
PCR - IAC - Reasonable Judgment by Counsel	PCR - IAC - Failure to Present Intoxication Expert
PCR - Newly Discovered Evidence	DP - IAC - Failure to Present Character Mitigation
PCR - The "Real" Killer	PCR - Juror Misconduct, Reading Murder Mysteries
Exculpatory Evidence - Store Security Tape	PCR - Juror Misconduct; Acquainted with Victim's Sister
	PCR - Juror Misconduct; Talking About Matters Not in Evidence

Stephenson v. Levenhagen, 2009 WL 1886081 (N.D. Ind. July 01, 2009) (3:07-CV-539-TS)

Stephenson v. Wilson, 629 F.3d 732 (7th Cir. January 14, 2011) (09-2924)

IAC - Failure to Object to Use of Stun Belt

Stephenson v. Wilson, 619 F.3d 664 (7th Cir. August 26, 2010) (09-2924)

IAC - Failure to Object to Use of Stun Belt	Impeachment of Verdict by Jury
IAC - Rhetoric, Error Free Lawyer Not Required	Courtroom Security, Shackles

STEVENS, CHRISTOPHER M.

Stevens v. State, 691 N.E.2d 412 (Ind. December 31, 1997) (79S00-9507-DP-828)

Voir Dire - Reading Full DP Statute	Voir Dire - You Can't Hear "Victim Impact"
Relationship With Victim, Two Months	This Taped Statement Has Been Redacted
Other Crimes - Not Prior Contact	Inadvertent Failure to Redact
Warrantless Arrest - Probable Cause	Waiver - Failure to Object to Argument
Confession - Miranda	Lesser Included Manslaughter
Confession - Corpus Delicti	Sudden Heat - Threat to Tell Not Provocation
DP - Character Evidence Opening Door	Sudden Heat - Cooling Off Period
DP - Sentencing Statement	DP Mitigators - No Duty to Give Weight
DP Mitigator - Confession	DP - Judge Not Jury is Sentencer
DP Mitigator - Troubled Childhood	DP - Complete Discretion to Choose LWOP/DP

DP Aggravator - Under 12, Child Molest
DP Aggravator - On Probation, Proof
DP -Proportionality Review

DP - No Requirement to Know Age of Victim
DP Instructions - Burden on "Each Element" of Aggravators
DP Instructions - Presumed Innocent of Aggravators

Stevens v. State, 770 N.E.2d 739 (Ind. June 26, 2002) (79S00-9804-PD-00250)

PCR - Standard of Review
PCR - Findings of Fact Presumed Correct
PCR - Conclusions of Law De Novo
Jury Questionnaires
IAC - Failure to Present Law and Facts
PCR - Waiver
IAC - Failure to Present Drug Use Mitigator
IAC - Nothing "Explained or Excused"
IAC - DP Instruction Defining LWOP
My Counsel Disliked Me
Shackles - Stun Belt at Trial
Attorney Fees Dispute
Ex Parte Request for Funds

IAC - Standard of Review
IAC - Prejudice, "Reasonable Probability"
IAC - Request for Funding 4 Months After Arrest
IAC - Failure to Pursue Insanity Defense
IAC - Failure to Seek Suppression of Confession
IAC - Failure to Seek Second Change of Venue
IAC - Appellate, Standard of Review
IAC - Failure to Exhaust Peremptory Challenges
IAC - Photo of Victim Alive
IAC - Advice to Defendant Not to Testify
Confession - Voluntariness Expert
PCR - Adopting State's Findings/Conclusions
PCR - Seeking to Call Trial Judge as Witness

Stevens v. McBride, ___ F.3d ___, 2007 WL 1732539 (7th Cir. June 18, 2007) (05-1442)

DP - Mental Illness Mitigator
DP - IAC - Reasonable Strategic Choice
IAC - Failure to Present Insanity Defense
DP - IAC - Prejudice
DP - Habeas Discovery - Witness Plea Deal

DP - IAC - Standard of Review
DP - IAC - Failure to Present Psychiatric Expert
DP - IAC - Failure to Investigate Mitigation
DP - IAC - Stun Belt

STROUD, PHILLIP A.

Stroud v. State, 809 N.E.2d 274 (Ind. May 25, 2004) (71S00-0011-DP-00642)

Pro Se - Clear and Unequivocal
Speedy Trial - Pro Se Request
Hearsay - PC Affidavit
Lay Testimony - Reebok Runs Small
DP Instruction - Jury Only Recommends

DP - Jury Sentencing - Ex Post Facto
DP - Jury Sentencing - Retroactive
DP Request - Which Murder Not Specified
DP Request - Burglary, Felony Intended

THACKER, LOIS ANN

Thacker v. State, 556 N.E.2d 1315 (Ind. July 23, 1990) (1285-S-506)

Adding DP Aggravators at Trial
Other Crimes - Killing First Husband
Photos, Gruesome
Accessory Liability - Triggerman
Information - Aiding, Accessory Liability
Sufficiency of Evidence

DP Instructions - Undue Demands of State
DP Aggravator - Lying in Wait
DP Aggravator - Hiring to Kill
DP - Triggerman
Lesser Included - Assisting Criminal

THOMPSON, JAY R.

Thompson v. State, 492 N.E.2d 264 (Ind. April 25, 1986) (882-S-303)

Jury Sequestration, Timeliness
Entering Judgment Before DP Sentencing
Jury Panel Orientation
Voir Dire - TV Show on Death Penalty
Photos, Gruesome
Photos, Scene
Discovery - Not on Witness List

DP - Jury Override
DP - Juveniles
DP - Meticulous Procedural Obedience
DP - Other Murder Conviction at Commission
DP - Mandatory Review
Statements at Polygraph
Newly Discovered Evidence-Recanting Witness
Character Evidence - Opening Door

THOMPSON, JERRY K.

Thompson v. State, 690 N.E.2d 224 (Ind. December 23, 1997) (49S00-9507-DP-869)

Voir Dire - Advising of Prior Conviction	Other Crimes - Stolen Murder Weapon
DP Information - On Separate Page	Other Crimes - Guns Not Murder Weapon
Accomplice Testimony - Uncorroborated	Other Crimes - Prejudicial/Probative
Double Jeopardy - Retrial	Other Crimes - Details

TIMBERLAKE, NORMAN H.

Timberlake v. State, 690 N.E.2d 243 (Ind. December 30, 1997) (49S00-9305-DP-577)

Sufficiency of Evidence	DP Aggravator - "Officer" Cumulative Evid
Appeal - No Reweighing of Evidence	DP Argument - "Community Self-Defense"
Appeal - No Credibility of Witnesses	DP Argument - "He Might Get Out"
Accomplice Testimony - Uncorroborated	DP - Arbitrary & Capricious
Witness - Incredible Dubiosity	DP Mitigating - Not Required to Give Weight
Use of Perjured/Inconsistent Testimony	DP - Non-Statutory Aggravators
Impeachment - Playing Inconsistent Tape	DP - Proportionality Review
Argument - "Mean, Senseless" Man	DP - Victim Impact in PSI
Argument - "Hated Authority, Hated Badge"	DP - Alternate Jurors
Argument - "Evidence Uncontradicted"	DP Instructions - Other Penalties
Accomplice - Bad Acts, Threats	DP Instructions - All Witnesses Telling Truth
Change of Venue - Publicity	DP - Appropriateness
Accomplice Testimony - Uncorroborated	IAC - Standard of Review
No Obligation to Reveal Order of Witnesses	IAC - Opening Statement
Voir Dire, Individual, Sequestered	IAC - Failure to Cross Exam Accomplice
Jury Questionnaire	IAC - Failure to Tender DP Instructions
Voir Dire - "For Cause" "Follow the Law"	IAC - Failure to Present any DP Evidence
Voir Dire - Reasonable Doubt Defined	Trial - Judge Bias
Trial - Refusal to Recess Until Morning	Trial - Defense Re-Enactment Redacted

Timberlake v. State, 753 N.E.2d 591 (Ind. August 20, 2001) (49S00-9804-PD-252)

PCR - Standard of Review	IAC - Raised on Appeal, Res Judicata on PCR
PCR - Super Appeal	IAC - Standard of Review
PCR - Waiver, Res Judicata	IAC - Appellate, Standard of Review
PCR - Competency at Trial	IAC - Trail Counsel as Co-Counsel on Appeal
PCR - Competency on Appeal	IAC - Failure to Pursue Voluntary Intoxication
PCR - Competency on PCR	Failure to Medicate Defendant During PCR
PCR - Judge Bias	Judge Ex Parte With Expert - Ministerial

Timberlake v. Davis, 409 F.3d 819 (7th Cir. May 27, 2005) (04-2315)

IAC - Waiver	IAC - Indiana Law History
Incompetency During Trial	IAC - Refusal to Present Mitigators
	Defendant Refusal to Attend DP Trial

Timberlake v. State, 858 N.E.2d 625 (Ind. December 15, 2006) (49S00-0606-SD-235)

Successive PCR - Standard of Review	Competency/Sanity to be Executed
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TOWNSEND, JOHNNY, JR.

Townsend v. State, 533 N.E.2d 1215 (Ind. February 14, 1989) (885-S-339)

DP - Prosecutorial Discretion	Confession - Voluntariness
DP - Information or Indictment	Joinder of Defendants - Confession Redacted
DP - Prosecutorial Policy	Search - Consent by Landlord

DP - Proportionality Review
 DP - Triggerman, Accomplice
 DP Aggravator - Robbery
 DP Aggravator - Multiple Murders
 DP - IAC - Only One Defense Attorney
 IAC - Strategy to Attack DP Per Se
 IAC - No Motion for Severance
 IAC - Standard of Proof
 IAC - Failure to Present Mitigators

Sufficiency of Evidence
 Psychiatrist Report - Exaggerate Illness
 Conflict - PD Same Office, Both Defendants
 Accomplice Liability
 DP - Clear & Objective Standards
 DP Mitigator - Youth, Not Substantial
 DP - Proportionality Review
 DP - Arbitrary & Capricious
 DP - Appropriateness

TRUEBLOOD, JOSEPH L.

Trueblood v. State, 587 N.E.2d 105 (Ind. February 28, 1992) (79S00-9004-DP-00304)

Guilty Plea - Maintaining Innocence	DP Mitigator - Mixed Personality Disorder
Guilty Plea - Factual Basis	DP Mitigator - Kind to Children
Guilty Plea - Highly Scrutinized	DP Mitigator - Adjust Well to Prison
Guilty Plea - Withdrawal at Sentencing	DP - "Cold-Blooded and Premeditated"
	DP - Non-Statutory Aggravators

Trueblood v. State, 715 N.E. 2d 1242 (Ind. September 9, 1999) (79S00-9211-PD-887)

PCR - Standard of Review	IAC - Standard of Review
PCR - Super Appeal	IAC - Failure to Hire Neuropsychologist
PCR - Waiver, Res Judicata	IAC - Failure to Pursue Sudden Heat
PCR - Summary Judgment, Designation	IAC - Advice to Plead Guilty
DP - Proportionality Review	IAC - Pressure to Plead Guilty During Trial
DP Mitigator - Lost his Dog	IAC - Failure to Seek Change of Trial Judge, "Lying"
DP Mitigator - Victim Was Bad Person	IAC - Failure to Present Post Traumatic Stress
DP Mitigator - Guilty Plea, Withdraw	IAC - Appellate, Standard of Review
DP Rebuttal - Spouse Abuse	Defendant Thought He Would Serve Only 15 Years
Guilty Plea - Voluntariness	Hearsay - Admissible at Sentencing

Trueblood v. Davis, 301 F.3d 784 (7th Cir. August 20, 2002) (01-3281, 3282)

Guilty Plea - Advice as to Consequences	DP - Non-Statutory Aggravators
AIC - Failure to Accompany at PSI	DP - Victims Were "Helpless" - Non-Statutory
	DP - Murders "Cold Blooded" - Non-Statutory

UNDERWOOD, HERBERT A.

Underwood v. State, 535 N.E.2d 507 (Ind. March 10, 1989) (49S00-8602-CR-206)

Change of Venue	Warrantless Arrest - Probable Cause
Voir Dire, Individual	Search Incident to Arrest
Voir Dire - Credibility of Accomplice	Information - Two Homicides, One Victim
Joinder of Defendants	Victim's Clothing Admissible
Severance - Testifying Co-Defendant	Outburst - Victim's Mother Crying
Severance - Antagonistic Defenses	Mistrial/Admonishment
Right to Competency Hearing	Juror Notetaking
Joinder of Defendants	Defendant Seen in Handcuffs
Photos, Scene - Changed Season	Trial - Comments While Making Objection
Photos, Gruesome	Conspiracy - Circumstantial Evidence
Trial - Diagram Not to Scale	Juror - Failure to Reveal Friend in Pros Office
DP Mitigator - Electrocution	Juror - Failure to Reveal Lesbian
DP - Electrocution Not Cruel & Unusual	DP - Prosecutorial Discretion
	DP Mitigators - Not Required to Believe

VAN CLEAVE, GREGORY

Van Cleave v. State, 517 N.E.2d 356 (Ind. December 30, 1987) (384-S-109)

Discovery - Prior Clean-Up Statement	IAC - Failure to Seek Continuance
Exculpatory - Impeachment Evidence	DP - Racial Discrimination
Discovery - All Homicides Since 1977	DP - Prosecutorial Discretion
Eyewitness Refusal to Talk to Defense	DP - Proportionality Review
Prison Refusal to Allow Polygraph	DP - Independent Review by Supreme Court
Discovery Violation - Waiver	DP - Appropriateness

State v. Van Cleave, 674 N.E.2d 1293 (Ind. December 19, 1996) (49S00-9008-PD-541)

Guilty Plea	IAC - Standard of Review
Waiver of Jury DP Recommendation	IAC - Prejudice, "Reasonable Probability"
IAC - Failure to Pursue Intoxication Defense	

VANDIVER, WILLIAM C.

Vandiver v. State, 480 N.E.2d 910 (Ind. July 29, 1985) (984-S-341)

Waiver of Appeals - Competency	DP - Mandatory Review
DP - Appropriateness	DP - Lack of Mitigation

WALLACE, DONALD RAY, JR.

Wallace v. State, 486 N.E.2d 445 (Ind. December 6, 1985) (583-S-190)

Competency Hearing - Sua Sponte	Trial - Medication for Mental Illness
Competency Hearing After Commitment	Change of Judge - Letter to Mental Health
Competency Hearing - 4th	Trial - Witness on Anti-Psychotic Drugs
Competency - Not Bound by Experts	Other Crimes - Burglaries, Mistrial
Competency - No Stated Burden of Proof	Seizure of Vehicle
Competency - Feigning Psychosis	Hearsay - Self-Serving Statements
	DP - Appropriateness

Wallace v. State, 553 N.E.2d 456 (Ind. April 17, 1990) (84S00-8803-PC-00298)

PCR - Standard of Review	Newly Discovered Evidence
PCR - Waiver Must be Asserted by State	Instructions - Reasonable Doubt
PCR - Allowing Def to Act as Co-Counsel	DP - Advisory Death Recommendation
PCR - Expert Social Psychologist Denied	DP Instructions - Could Still Vote Against DP
PCR - Expert Attorney Not Qualified	DP - Non-Statutory Aggravators
PCR - Polygraph Not Admissible	DP - Electrocution Not Cruel & Unusual

Wallace v. State, 640 N.E.2d 374 (Ind. September 28, 1994) (84S00-9305-DP-527)

Successive PCR - Standard of Review	PCR IAC - State PD Not Skilled in DP Cases
Successive PCR - Res Judicata	DP - Mistreatment as Child Not Mitigator
Competency - Faking It	Defendant was Brains Behind Burglaries
No Intoxication at Time of Burglary	

WARD, ROY LEE

Ward v. State, 810 N.E.2d 1042 (Ind. June 30, 2004) (74S00-0108-DP-00361)

Change of Venue - Publicity; Inadmissible Evidence, Misstatements and Distortions of Evidence
Change of Venue - Publicity; Exposure and Prejudice Required
Change of Venue - Publicity; Inability to Set Aside Preconceived Notions of Guilt
Change of Venue - Publicity; Burden on Defendant

Ward v. State, 903 N.E.2d 946 (Ind. April 07, 2009) (74S00-0707-DP-263)

Jury Selection - Clerk's Written Plan	Gruesome Photographs
Jury Selection - Substantial Compliance	Search Incident to Arrest
DP - Voir Dire - Challenge for Cause	DP Judge to Sentence "accordingly"
DP - Voir Dire - Individual / Group	DP Aggravator - Torture
DP Mitigator - Exhibitionism	DP Aggravator - Mutilation
DP Sentence Appropriateness	

Ward v. State, 908 N.E.2d 595 (Ind. June 26, 2009) (74S00-0707-DP-263)

DP Voir Dire - Support for DP Not Ground to Exclude for Cause

Ward v. State, 969 N.E.2d 46 (June 21, 2012) (74S00-0907-PD-320)

PCR - Waiver	DP - LWOP Inmates Recreational Activities
PCR - Standard of Review	DP - Reduction in Death Sentences not cruel
DP - IAC - Prejudice; Presumption of Prejudice	DP - Denial of Trial Continuance
DP - IAC - Failure to Investigate Mitigation	DP - Denial of Sex Offender Expert
DP - IAC - Failure to Argue Guilty Plea as Mitigator	

DANIEL RAY WILKES

Wilkes v. State, 917 N.E.2d 675 (Ind. December 10, 2009) (10S00-0808-DP-453)

Confession - Voluntariness - Intoxication	DP - Hung Jury
Confession - Voluntariness - Offering Cigarette	DP - Special Verdicts
Confession - <u>Edwards</u> - Equivocal Request	DP Aggravator - Admission in Closing
Confession - Redaction of Detective Statement	DP Mitigator - Adjusted Well to Prison
Media Statements - <u>Miranda</u>	DP Aggravator - Victim Less Than 12
DNA Phenolphthalein	DP - Incorporation of Trial Evidence
Sentencing - Not Inappropriate	DP Mitigator - Uncharged Crimes to Rebut

WILLIAMS, DARNELL

Rouster v. State, 600 N.E.2d 1342 (Ind. October 16, 1992) (45S00-8710-CR-914)

Joinder of Defendants	Severance - Mutually Antagonistic Defenses
DP - Triggerman	Severance Waiver - Failure to Renew
DP - Other Crimes to Disprove Mitigator	DP - Failure to Define "Recommendation"
	DP - Appropriateness

Williams v. State, 706 N.E.2d 149 (Ind. 1999) (45S00-9303-PD-397)

PCR - Standard of Review	IAC - Standard of Review
PCR - Super Appeal	IAC - Prejudice, "Reasonable Probability"
PCR - Waiver, Res Judicata	IAC - Jury Seeing Defendant in Dungarees
PCR - Expert Lawyer for IAC Excluded	IAC - Inadequate Review of Blood Evidence
PCR - Expert Nurse for Traumatic Birth	IAC - Failure to Present Mitigators
PSI - Psychological Questionnaire	DP - Intoxication Defense
Accomplice Liability/Triggerman	DP - Arbitrary & Capricious
Joinder/Severance of Defendants	DP Statute - In Effect at Time of Crime
DP - Cruel & Unusual	DP Instructions - Other Penalties
DP - Public Defender Systemic Defects	DP - Major Participation if Not Triggerman

Williams v. Davis, 301 F.3d 625 (7th Cir. August 29, (2002) (01-4225)

Habeas - Unreasonable Application of Law	IAC - Standard of Review
IAC - Prejudice, "Reasonable Probability"	IAC - Blood on Shorts
	IAC - Failure to Review Serologist Report

WILLIAMS, EDWARD EARL

Edward Williams v. State, 669 N.E.2d 1372 (Ind. August 7, 1996) (45S00-9210-DP-770)

Voir Dire - Batson v. Kentucky	Voir Dire - Batson Challenge by State or Defense
Voir Dire - Broad Authority of Trial Court	Voir Dire - Race-Neutral Justification
Mitigation Expert - 25 Hour Limit	Voir Dire - Requiring Justification W/Out Objection
Continuance	Intentional Murder - Sufficient Evidence
Causation - Accelerating Death	DP - Independent Review
DP - Sentencing Statement	DP Instructions - All Statutory Aggravators
DP - Independent Decision by Judge	DP Aggravator - Multiple Murders
DP Information - Multiple Murders	

Edward Williams v. State, 724 N.E.2d 1070 (Ind. February 23, 2000) (45S00-9701-PD-45)

PCR - Standard of Review	IAC - Standard of Review
PCR - Super Appeal	IAC - Inadequate Funding of Mitigation Expert
PCR - Waiver, Res Judicata	IAC - Failure to Spend More Time With Defendant
PCR - Lake County Magistrate Power	IAC - Failure to Interview Witnesses Pre-Trial
Murder Victim was Child Molester	IAC - Appellate, Standard of Review
PSI Psychological Questionnaires	IAC - Joint Representation of Co-Defendant on Appeal
DP - Appropriateness	Exculpatory - Co-Defendant Misdemeanor Convictions
IAC - Failure to Depose State Witnesses	Exculpatory - Victim Had Robbery Charges Pending
IAC - Intoxication Defense	Exculpatory - Reward Money to Informants
Exculpatory - Jail Informant, The Real Killer	Exculpatory - Witness Treatment Center Records

WILLIAMS, LARRY C.

Larry Williams v. State, 430 N.E.2d 759 (Ind. January 19, 1982) (1280-S-443)

Accomplice - Disparity in Sentences	DP - Cruel & Unusual
Habitual - Using Same Priors As Before	DP - Prosecutorial Discretion
Marital Privilege - 3rd Party	DP - Vindictive Justice
Amend DP Info to Add Aggravator	DP - Meaningful Appellate Review
Double Jeop - Murder/Felony Murder	DP - Sufficient Guidelines for Jury
DP Aggravator - Prior Murder Conviction	

Williams v. State, 525 N.E.2d 1238 (Ind. July 8, 1988) (985-S-372)

PCR - Witness Threatened by Police	IAC - Conflict - Represented State Witness
Habitual - Sequence of Prior Felonies	DP Instructions - "Should" Recommend Death

WISEHART, MARK ALLEN

Wisehart v. State, 484 N.E.2d 949 (Ind. October 31, 1985) (384-S-89)

Confessions - Voluntariness	DP Instructions - No Other Penalties
Confessions - <u>Miranda</u>	Hearsay - Self-Serving Statement
Voir Dire, Individual	Separation of Witnesses
Expert Sociologist Denied	Trial - One Person at Counsel Table
Lay Testimony - Mental Incapacity	Confession - Info From Newspaper Articles
DP - Arbitrary & Capricious	DP - Personal Opinion Testimony on DP
False Confession - Inconsistencies	DP - Appropriateness
Masters in Preclinical Psychology - Incompetent to Diagnose Mental Disease	

Wisehart v. State, 693 N.E.2d 23 (Ind. 1998) (48S00-9005-PD-378)

Newly Discovered Evidence	Police Reports Admissible as Public Record IRE 803
Accomplices Involved Not "New"	IAC - Standard of Review
DP - Accomplice Liability	IAC - Presenting Innocence and Insanity Defenses
Mention of Polygraph of State's Witness	IAC - Ineffective Opening Statement
Insanity - Jury Not Bound by Experts	IAC - Inexperienced Counsel
Instructions - Accomplice Liability	IAC - Stipulating Competency for Trial
Instructions - Law and Facts	IAC - Hiring Psychologist Instead of Psychiatrist
DP - Advisory Death Recommendation	DP Instructions - Mitigators Not Beyond Reasonable Doubt
DP - Catch-All Mitigator	IAC - Failure to Challenge Jurors
DP - Defining "Mitigation"	IAC - Failure to Object to Photopack
DP - Death Qualifying Jury	IAC - Failure to Present Mitigators, Cumulative
DP - Public Defender Systemic Defects	IAC - Admitting Defendant Was at Scene
Exculpatory - Agreements With Witnesses	IAC - Appellate, Standard of Review
DP - Other Penalties, Only 30 Years In	Argument - Defendant's Actions Were "Scary"
DP Mitigators - Not Required to Recognize	State Recruiting Friend to Elicit Statements
Plea Offer to Dismiss DP Not Mitigating	Information for Felony Murder/Burglary Sufficient
Jury Exposed to Extrinsic Evidence	Jury Heard About Polygraph
	Commenting on Refusal to Give Voice Exemplar

WOODS, DAVID LEON

Woods v. State, 557 N.E.2d 1325 (Ind. November 23, 1990) (On Rehearing)

Confession - In Custody	Warrantless Arrest - Probable Cause
Confession - Voluntarily Go to Station	Argument - "Fight Against Crime"
Confession - Police Coercion	Argument - "Strike Blow Against Evil"
Juror Exclusion if Served Within Year	Argument - "For the Sanctity of the Home"
Amend Information - 6 Months to Trial	DP Aggravator - Sufficiency of Evidence
Continuance - Time to Prepare	DP - Appropriateness
Competency Hearing Required	DP Instruction - No Sympathy or Prejudice
Accomplice - Agreement With State	DP Instruction - Mercy
Murder - Corpus Delicti	DP Instruction - Vindictive Justice
Chain of Custody - Dead Body	DP Instruction - Reasonable Doubt, Subsidiary
Chain of Custody - Non-Fungible	DP - Sufficient Guidance for Jury
Photos, Gruesome	DP - Cruel & Unusual
Photos, Scene	DP - Sentencing Statement, Personal
Voir Dire, Individual	DP - Information or Indictment
Psych Exam After Verdict Denied	DP - Non-Statutory Aggravators, Age, Infirmary
Accomplices - Disparity in Sentences	DP - Incorporation of Evidence
Double Jeopardy - Murder/DP, Robbery	Amend Information - No Need to Refile DP
DP - Rebuttal Evidence by State	Newly Elected Judge Replaces Special Judge

Woods v. State, 701 N.E.2d 1208 (Ind. 1998) (06S00-9403-PD-224)

PCR - Standard of Review	IAC - Standard of Review
PCR - Super Appeal	IAC - Prejudice, "Reasonable Probability"
PCR - Waiver	IAC - If Raised on Appeal, No PCR
DP - Advisory Death Recommendation	IAC - Actual Conflict, Prejudice Presumed
	IAC - Attorney Represented Mother in CHINS

Woods v. McBride, 430 F.3d 813 (7th Cir. November 30, 2005) (04-1776)

Habeas - Standard	Habeas - Conflict With PCR Counsel
Habeas - State Court Incorrect & Unreasonable	Competency - Test
Drug-Induced Drowsiness During Trial	Anti-Psychotic Medication During Trial
Habeas - Trial Court Failure to Conduct Competency Hearing	
Habeas - IAC - Failure to Seek Competency Hearing	
Habeas - IAC - Failure to Present Mitigators (Abusive Mother)	

Woods v. State, 863 N.E.2d 301 (Ind. March 26, 2007) (06S00-0612-SD-544)

Successive PCR - Standard

DP - Mental Retardation

Successive PCR - Waiver, Procedural Default

DP - Conflict with Attorneys Strategy

Woods v. Buss, ___ F.3d ___, 2007 WL 1302114 (7th Cir. May 2, 2007) (07-1951)

Habeas - Successive Petition

DP - Mental Retardation

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Wrinkles v. State, 690 N.E.2d 1156 (Ind. December 31, 1997) (82S00-9408-DP-741)

Hearsay - Victim Statements

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Chain of Custody - Ballistics Sample

DP - Independent Role of Judge

Chain of Custody - Serology Evidence

DP Instruction - No Other Penalties

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DP - Cross Exam - Victim Impact on Child

Defense - Accidental Discharge

DP - Proportionality Review

Defense - Mistake of Fact

DP - Advisory Death Recommendation

Instruction - Reckless Homicide

DP Mitigator - No Significant History, Vagueness

DP - Written Findings Not Required

Wrinkles v. State, 749 N.E.2d 1179 (Ind. June 29, 2001) (82S00-9803-PD-170)

PCR - Standard of Review

DP Aggravator - Multiple Murders

PCR - Super Appeal

IAC - Standard of Review

PCR - Waiver, Fundamental Error

IAC - Prejudice, "Reasonable Probability"

PCR - Res Judicata, DP Appropriate

IAC - Failure to Pursue Insanity Defense

IAC - Caseload Restrictions

IAC - Failure to Pursue Meth Addiction

IAC - 40 Page Sentencing Memo

IAC - Ineffective Preparation of Expert

IAC - Mishandling of Murder Weapon

IAC - Failure to Object to Stun Belt

IAC - Appellate, Standard of Review

IAC - Failure to Object to Prior Battery to Wife

IAC - No Need to Duplicate Evidence At DP

IAC - Failure to Object to Argument, "Psychopath"

IAC - Mitigation Specialist for Family

IAC - Trial Witness Not on Witness List

Wrinkles v. State, 915 N.E.2d 963 (Ind. November 03, 2009) (82S00-0905-SD-249)

Stun Belt Restraint

INDIANA CODE AND RULE PROVISIONS RELATING TO THE DEATH PENALTY

Indiana Code 35-50-2-3 Murder Penalties
Indiana Code 35-50-2-9 Death Sentence
Indiana Code 35-38-6 Death Penalty Procedure
Indiana Code 35-36-9 Pretrial Determination of Mental Retardation
Indiana Criminal Rule 24 Capital Cases

IC 35-50-2-3 MURDER PENALTIES

(a) A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), a person who was:

(1) at least eighteen (18) years of age at the time the murder was committed may be sentenced to:

(A) death; or

(B) life imprisonment without parole; and

(2) at least sixteen (16) years of age but less than eighteen (18) years of age at the time the murder was committed may be sentenced to life imprisonment without parole;

under section 9 of this chapter unless a court determines under IC 35-36-9 that the person is an individual with mentally retardation.

[As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.116; P.L.332-1987, SEC.1; P.L.250-1993, SEC.1; P.L.164-1994, SEC.2; P.L.158-1994, SEC.5; P.L.2-1995, SEC.128; P.L.148-1995, SEC.4.; P.L.117-2002, SEC.1; P.L.71-2005, SEC.6, effective April 25, 2005; P.L. 99-2007, SEC. 212]

Summary: Murder is punishable by a fixed term of 45-65 years imprisonment, with an advisory sentence of 55 years, and up to a \$10,000 fine. Alternatively, if at least 16 years of age at the time of the murder, the defendant may be sentenced to life without parole, and if at least 18 years of age at the time of the murder, may be sentenced to death, unless found to be mentally retarded.

2007 - P.L. 99-2007, § 212 (effective May 2, 2007)

- Makes minor change in wording of statute, changing “a mentally retarded individual” to an individual with mental retardation.”

2005 - P.L. 71-2005, § 6 (effective April 25, 2005)

- Eliminates “presumptive” sentences, instead making 55 years imprisonment an “advisory” sentence, all in an effort to bypass Blakely v. Washington so that a sentence greater than the “advisory” sentence can be given without a jury determination of aggravating circumstances.

2002 - P.L. 117-2002, § 1 (effective July 1, 2002)

- Amends (b) raising the minimum age for the death penalty from 16 to 18 years of age at the time of the murder. Retains 16 years of age as the minimum age for life without parole.

1995 - P.L. 2-1995, § 128 (Approved May 5, effective July 1, 1995)

- ▶ Resolves the conflicting versions of the statutes by adopting 1994 changes from both P.L.164-1994, § 2 and P.L.158-1994, § 5.

1995 - P.L. 148-1995, § 4 (effective July 1, 1995)

- ▶ Changes the penalty for murder from 40-60 years imprisonment with a presumptive sentence of 50 years, to 45-65 years imprisonment, with a presumptive sentence of 55 years.

1994 - P.L.164-1994, § 2 (Approved March 11, 1994, effective July 1, 1994)

- ▶ Changes the penalty for murder from 30-60 years imprisonment with a presumptive sentence of 40 years, to 40-60 years imprisonment, with a presumptive sentence of 50 years.

1994 - P.L.158-1994, § 5 (Approved March 15, 1994, effective July 1, 1994)

- ▶ Adds a provision exempting mentally retarded individuals from a death sentence or life without parole.
- ▶ Note that this statute was passed without incorporating the changes of P.L. 164-1994 § 2, which was approved 4 days earlier. The Indiana Supreme Court held in Smith v. State, 675 N.E.2d 693 (Ind. 1996) that the subsequently passed statute prevails.

1993 - P.L. 250-1993, § 1 (effective July 1, 1993)

- ▶ Amends (b) allowing life without parole as an option in murder cases, also with a minimum age of 16.
- ▶ Applies only to murders committed after June 30, 1993.

1987 - P.L. 332-1987, § 1 (effective July 1, 1987)

- ▶ Amends (b) making the minimum age for the death penalty 16 years of age at the time of the murder. (Prior to this time, the only Indiana statute relating to minimum age was the juvenile waiver statutes, which allowed waiver to adult court in some cases for the crime of murder committed by a 10 year old.)
- ▶ Not applicable to death sentences imposed before September 1, 1987.

IC 35-50-2-9 DEATH SENTENCE

(a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is an individual with mentally retardation.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

- (A) Arson (IC 35-43-1-1).
- (B) Burglary (IC 35-43-2-1).
- (C) Child molesting (IC 35-42-4-3).
- (D) Criminal deviate conduct (IC 35-42-4-2).
- (E) Kidnapping (IC 35-42-3-2).

- (F) Rape (IC 35-42-4-1).
 - (G) Robbery (IC 35-42-5-1).
 - (H) Carjacking (IC 35-42-5-2).
 - (I) Criminal Gang Activity (IC 35-45-9-3).
 - (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- (2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure person or damage property.
 - (3) The defendant committed the murder by lying in wait.
 - (4) The defendant who committed the murder was hired to kill.
 - (5) The defendant committed the murder by hiring another person to kill.
 - (6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, judge, or law enforcement officer, and either:
 - (A) the victim was acting in the course of duty; or
 - (B) the murder was motivated by an act the victim performed while acting in the course of duty.
 - (7) The defendant has been convicted of another murder.
 - (8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.
 - (9) The defendant was:
 - (A) under the custody of the department of correction;
 - (B) under the custody of a county sheriff;
 - (C) on probation after receiving a sentence for the commission of a felony; or
 - (D) on parole;
 at the time the murder was committed.
 - (10) The defendant dismembered the victim.
 - (11) The defendant burned, mutilated, or tortured the victim while the victim was alive.
 - (12) The victim of the murder was less than twelve (12) years of age.
 - (13) The victim was a victim of any of the following offenses for which the defendant was convicted:
 - (A) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.
 - (B) Kidnapping (IC 35-42-3-2).
 - (C) Criminal confinement (IC 35-42-3-3).
 - (D) A sex crime under IC 35-42-4.
 - (14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.
 - (15) The defendant committed the murder by intentionally discharging a firearm (as defined by IC 35-47-1-5):
 - (A) into an inhabited dwelling; or
 - (B) from a vehicle.
 - (16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).
- (c) The mitigating circumstances that may be considered under this section are as follows:
- (1) The defendant has no significant history of prior criminal conduct.
 - (2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.
 - (3) The victim was a participant in, or consented to, the defendant's conduct.
 - (4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.
 - (5) The defendant acted under the substantial domination of another person.
 - (6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.
 - (7) The defendant was less than eighteen (18) years of age at the time the murder was committed.
 - (8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (l) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

- (1) the aggravating circumstances alleged; or
- (2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or (2) life imprisonment without parole; only if it makes the findings described in subsection (l). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or (2) impose a term of life imprisonment without parole; only if it makes the findings described in subsection (l).

(h) If a court sentences the defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If the court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

- (1) conviction and sentence was in violation of the:
 - (A) Constitution of the State of Indiana; or
 - (B) Constitution of the United States;
- (2) sentencing court was without jurisdiction to impose a sentence; and
- (3) sentence:
 - (A) exceeds the maximum sentence authorized by law; or (B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) A person who has been sentenced to death and who has completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging

the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without first providing the attorney general with an opportunity to be heard on the matter.

(l) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:

(1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists;

and

(2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

[As added by Acts 1977, P.L.340, § 122; Amended by P.L.336-1983, § 1; P.L.212-1986, § 1; P.L.332-1987, § 2; P.L.320-1987, § 2; P.L.296-1989, § 2; P.L.138-1989, § 6; P.L.1- 1990, § 354; P.L.230-1993, § 5; P.L.250-1993, § 2; P.L.158-1994, § 7; P.L.306-1995, § 1; P.L. 216-1996, § 25; P.L. 228-1996, §1; P.L. 261-1997, § 7; P.L. 80-2002, §1; P.L. 117-2002, § 2; P.L. 1-2003, § 97; P.L. 147-2003, § 1; P.L. 99-2007, SEC. 213]

[Formerly: IC 35-13-4-1; IC 35-21-4-3; Acts 1941, P.L.148, § 1.]

Summary: (Trial Procedures; Aggravating/Mitigating Circumstances; Appeals) Murder is the only crime for which a death sentence may be imposed. At the discretion of the Prosecuting Attorney, the State may seek a death sentence (or Life Without Parole) by allegations on a separate page of the Indictment or Information. Upon request of the defendant, it is required that the jury be sequestered (not separated even at night) during the trial. A bifurcated (two-stage) hearing is required. In the first stage, the guilt or innocence of the defendant on the charge of murder is determined. If found guilty, the same jury reconvenes for the second (sentencing) phase of the trial. The State must allege and prove beyond a reasonable doubt at least 1 of 16 aggravating circumstances listed in the statute. The most common is intentional murder while committing another serious felony. A special verdict form is provided for each aggravating circumstance alleged. Mitigating Circumstances can also be raised. While not limited by statute, they often include the young age of the defendant, the lack of a prior criminal record, and mental illness. All evidence presented at the first phase of the trial may be considered. The jury of 12 is given 3 verdicts to choose from: death penalty, life imprisonment without parole, or neither. Any verdict must be unanimous. Any verdict is binding and the trial judge must sentence in accordance with the verdict. The jury is advised as to the statutory penalties for murder and any available good time credit or clemency. If the jury cannot reach a unanimous verdict, the trial Judge alone shall determine the sentence. In order to return a verdict for the death penalty or life without parole, the State must prove beyond a reasonable doubt the existence of an aggravating circumstance, and that any mitigating circumstances are outweighed by the aggravating circumstance(s). If neither, the defendant is sentenced to a determinate term of between 45 and 65 years of imprisonment. The trial Judge may receive victim impact evidence at sentencing. There is an automatic expedited appeal of a death sentence to the Indiana Supreme Court.

2007 - P.L. 99-2007, § 213 (effective May 2, 2007)

- Makes minor change in wording of statute, changing "a mentally retarded individual" to an individual with mental retardation" in Subsection (a).

2006 - P.L. 1, § 550 (effective March 24, 2006)

- Under subsection (d), changed reference from subsection (k) to subsection (l), to be consistent with 2003 change moving the former subsection (k) to subsection (l).

2003 - P.L. 147, § 1 (effective July 1, 2003)

- ▶ Added new subsection (k), authorizing the defendant, after state post-conviction review, to file a petition directly to the Indiana Supreme Court challenging guilt or death sentence based upon “new evidence.”

2002 - P.L. 80, § 1 (effective upon passage)

- ▶ Allows for victim impact statement “after a court pronounces sentence.” (Applies to any murder conviction obtained after passage)

▶

2002 - P.L. 117, § 1, § 2 (effective July 1, 2002)

- ▶ Increases the minimum age of eligibility for a death sentence from 16 to 18 years “at the time the murder was committed.” Minimum age for Life Without Parole remains at 18 years. (Amending IC 35-50-2-3)
- ▶ Requires a special verdict form for each aggravating circumstance alleged.
- ▶ Eliminates judicial override; requires the court to sentence in accordance with jury verdict. (Applies to any sentencing after June 30, 2002)

1997 - P.L. 261, § 7 (effective Jan 22, 1998)

(Vetoed by Governor O'Bannon May 12, 1997 - Passed over veto January 22, 1998)

- ▶ Added intentional killing of a viable fetus carried by murder victim as an aggravating circumstance under (b) (16).

1996 - P.L. 216, § 25 (effective July 1, 1996)

- ▶ Allows the court to receive victim impact evidence after jury recommendation.

1996 - P.L. 228, §1 (effective July 1, 1996)

- ▶ Added burning, mutilation, or torture of the victim while alive as aggravating circumstance under (b) (11).
- ▶ Renumbers b (11) (Victim < 12 years old) to b (12).
- ▶ Renumbers b (12) (Victim was prior victim of defendant convicted of felony battery, kidnapping, confinement, or sex crime) to b (13).
- ▶ Renumbers b (13) (Victim was witness against defendant) to b (14).
- ▶ Renumbers b (14) (Drive-By shootings) to b (15).

1995 - P.L.306, § 1 (effective July 1, 1995)

- ▶ Added provisions requiring execution within 1 year and a day after sentencing, which can only be stayed by the Indiana Supreme Court.
- ▶ Added provisions commanding the Attorney General to answer PCR petitions on behalf of state. Prosecutor must assist if requested.
- ▶ Requires trial court to set hearing on PCR within 90 days after Petition filed; and must rule on PCR within 90 days after hearing.
- ▶ Requires the Indiana Supreme Court to consider all possible claims of error on direct appeal.
- ▶ See also P.L. 294-1995; § 1 (amending IC 35-38-6-1) Changes the method of execution from electrocution to lethal injection.

1994 - P.L. 158, § 7

- ▶ Added provisions allowing State to seek Life Without Parole without seeking a death sentence, but with the same procedures and burdens.

- ▶ Added Criminal Gang Activity to the list of crimes eligible under (b) (1).
- ▶ Added provisions prohibiting State from seeking death sentence where defendant is mentally retarded.
- ▶ Added drive-by shootings as aggravating circumstance under (b) (14).

1993 - P.L. 250, § 2, § 3, § 5

- ▶ Added probation officer, parole officer, community corrections officer, and home detention officer to list of victims under (b) (6) aggravating circumstance.
- ▶ Added requirement under (d) that jury be instructed as to full range of possible penalties for murder, including consecutive sentences, good time, and clemency.
- ▶ Added jury option of recommending Life Without Parole under same standards as required for recommendation of death.
- ▶ Added Carjacking to the list of crimes eligible under (b) (1).
- ▶ "IC 35-50-2-3 and IC 35-50-2-9, as amended by this act, only apply to murders committed after June 30, 1993."

1990 - P.L. 1, § 354 (effective March 20, 1990)

- ▶ Corrected statutory citations for Kidnapping and Confinement under (b) (12).

1989 - P.L. 138, § 6

- ▶ Amended statute without apparent change.

1989 - P.L. 296, § 2, § 3

- ▶ Added Dealing in Cocaine or Narcotic Drug to the list of crimes eligible under (b) (1).
- ▶ Added statutory citations to crimes listed under (b) (1).
- ▶ Repealed the former (b) (9) and (b) (10) relating to murders committed while in prison, and added a new aggravating circumstance under (b) (9) relating to murders committed while imprisoned, on probation, or on parole.
- ▶ Renumbers (b)(11) (dismemberment) as (b) (10).
- ▶ Renumbers (b) (12) victim less than 12 years as (b) (11).
- ▶ Added aggravating circumstance under (b) (12) where the defendant is convicted of Battery, Kidnapping, Confinement, or a sex crime upon the murder victim.
- ▶ "This act does not apply to an offense that is committed before July 1, 1989."

1987 - P.L. 320, § 2

- ▶ Added aggravating circumstance under (b) (12) where victim is less than 12 years of age.

1987 - P.L. 332, § 2, § 3

- ▶ Corrected statute to make gender-neutral.
- ▶ Added mitigating circumstance under (c)(7) if the defendant is less than 18 years of age.
- ▶ "This act does not apply to a case in which a death sentence has been imposed before September 1, 1987."

1986 - P.L. 212, § 1

- ▶ Added aggravating circumstance under (b) (11) where the murder victim is dismembered.

1983 - P.L. 336, § 1, § 2

- ▶ Added aggravating circumstance under (b) (10) where murder committed while the defendant is imprisoned with 20 or more years remaining on sentence to serve.
- ▶ "This act takes effect June 1, 1983."

1977 - P.L. 340, § 122

- ▶ Established new death sentence statute, in compliance with recent decisions of U.S. Supreme Court, enumerating aggravating circumstances and requiring the State to prove at least one aggravating circumstance beyond a reasonable doubt, and that any mitigating circumstances are outweighed by the aggravating circumstance(s).
- ▶ Repeals the former IC 35-13-4-1.

1973 - P.L. 328, § 1

- ▶ Established mandatory death sentence upon conviction of First Degree Murder where aggravating circumstances exist.

1971 - P.L. 454, § 1

- ▶ Established life imprisonment or a death sentence as jury penalty options upon conviction of First Degree Murder, where explosives used or underlying Rape, Arson, Burglary or Robbery committed.

IC 35-38-6 DEATH PENALTY PROCEDURE

IC 35-38-6-1

(a) The punishment of death shall be inflicted by intravenous injection of a lethal substance or substances into the convicted person:

- (1) in a quantity sufficient to cause the death of the convicted person; and
- (2) until the convicted person is dead.

(b) The death penalty shall be inflicted before the hour of sunrise on a date fixed by the sentencing court. However, the execution must not occur until at least one hundred (100) days after the conviction.

(c) The superintendent of the state prison, or persons designated by the superintendent, shall designate the person who is to serve as the executioner.

(d) The department of correction may adopt rules under IC 4-22-2 necessary to implement subsection(a).
[As added by P.L.311-1983, SEC.3. Amended by P.L.294-1995, SEC.1; P.L.20-2002, SEC.1.]

IC 35-38-6-2

The court in which a death sentence is ordered shall issue a warrant to the sheriff within fourteen (14) days of the sentence:

- (1) that is under the seal of the court;
- (2) that contains notice of the conviction and the sentence;
- (3) that is directed to the superintendent of the state prison; and
- (4) that orders the superintendent to execute the convicted person at a specified time and date in the state prison.

[As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.2]

IC 35-38-6-3

A sheriff who receives a warrant under section 2 or section 7 of this chapter shall immediately:

- (1) transport the person to the state prison;
- (2) deliver the person and the warrant to the superintendent of the prison;
- (3) obtain a receipt for the delivery of the person; and
- (4) deliver the receipt to the clerk of the sentencing court.

[As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.3]

IC 35-38-6-4

(a) The convicted person shall be confined in the state prison until the date of the convicted person's execution. The convicted person may temporarily be held in a maximum security facility for security purposes or during renovation of the state prison. A convicted female shall be confined in a maximum security women's prison until not more than thirty (30) days before the date of her execution. A convicted female shall be segregated from the male prisoners after her transfer from the women's prison.

(b) The convicted person's:

- (1) attorney;
- (2) physician;
- (3) relatives;
- (4) friends; and
- (5) spiritual advisor;

may visit the convicted person while the convicted person is confined. The department of correction shall adopt rules, under IC 4-22-2, governing such visits.

[As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.4]

IC 35-38-6-5

The execution must take place inside the walls of the state prison in a room arranged for that purpose. The department of correction shall provide the necessary room and appliances to carry out the execution as provided in this chapter. [As added by P.L.311-1983, SEC.3. Amended by P.L.294-1995, SEC.2.]

IC 35-38-6-6

- (a) Only the following persons may be present at the execution:
- (1) The superintendent of the state prison.
 - (2) The person designated by the superintendent of the state prison and any assistants who are necessary to assist in the execution.
 - (3) The prison physician.
 - (4) One (1) other physician.
 - (5) The spiritual advisor of the convicted person.
 - (6) The prison chaplain.
 - (7) Not more than five (5) friends or relatives of the convicted person who are invited by the convicted person to attend.
 - (8) Except as provided in subsection (b), not more than eight (8) of the following members of the victim's immediate family who are at least eighteen (18) years of age:
 - (A) The victim's spouse.
 - (B) One (1) or more of the victim's children.
 - (C) One (1) or more of the victim's parents.
 - (D) One (1) or more of the victim's grandparents.
 - (E) One (1) or more of the victim's siblings.
- (b) If there is more than one (1) victim, not more than eight (8) persons who are members of the victims' immediate families may be present at the execution. The department shall determine which persons may be present in accordance with procedures adopted under subsection (c).
- (c) The department shall develop procedures to determine which family members of a victim may be present at the execution if more than eight (8) family members of a victim desire to be present or if there is more than one (1) victim. Upon the request of a family member of a victim, the department shall establish a support room for the use of:
- (1) an immediate family member of the victim described in subsection (a)(8) who is not selected to be present at the execution; and
 - (2) a person invited by an immediate family member of the victim described in subsection (a)(8) to offer support to the immediate family member.
- (d) The superintendent of the state prison may exclude a person from viewing the execution if the superintendent determines that the presence of the person would threaten the safety or security of the state prison and sets forth this determination in writing.
- (e) The department of correction:
- (1) shall keep confidential the identities of persons who assist the superintendent of the state prison in an execution; and
 - (2) may: (A) classify as confidential; and withhold from the public; any part of a document relating to an execution that would reveal the identity of a person who assists the superintendent in the execution.
- [As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.5; P.L. 56-2006, SEC. 1]

IC 35-38-6-7

- (a) If the convicted person:
- (1) escapes from custody before the date set for execution; and
 - (2) is recaptured before the date set for execution;
- the convicted person shall be confined and executed according to the terms of the warrant.
- (b) If the convicted person:
- (1) escapes from custody before delivery to the superintendent of the state prison; and
 - (2) is recaptured after the date set for execution;
- any person may arrest and commit the convicted person to the jail of the county in which the convicted person was sentenced. The sheriff shall notify the sentencing court of the recapture, and the court shall fix a new date for the execution. The new execution date must not be less than thirty (30) nor more than sixty (60) days after the recapture of the person. The court shall issue a new warrant in the form prescribed by section 2 of this chapter.

(c) If the convicted person:

- (1) escapes from confinement; and
- (2) is recaptured after the date set for his execution;

any person may arrest and commit the convicted person to the department of correction. When the convicted person is returned to the department of correction or a facility or place designated by the department of correction, the department shall notify the sentencing court, and the court shall fix a new date for the execution. The new execution date must not be less than thirty (30) nor more than sixty (60) days after the recapture of the person. The court shall issue a warrant to the department of correction directing the superintendent of the state prison to execute the convicted person at a specified time and date in the state prison.

[As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.6, Effective March 14, 2002]

IC 35-38-6-8

(a) If the execution of the death sentence is suspended, the department of correction shall note the reason for the delay on the warrant but shall proceed with the execution when the period of suspension ends.

(b) The warrant shall be returned to the clerk of the sentencing court after:

- (1) the convicted person is executed;
- (2) the convicted person has been pardoned;
- (3) the convicted person's judgment has been reversed;
- (4) the convicted person's sentence has been commuted; or
- (5) the convicted person dies before his execution;

with a statement concerning the completion of the execution or the reason why the person was not executed.

[As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.7]

IC 35-38-6-9

The provisions of this chapter in relation to the infliction of the death penalty extend equally, so far as applicable, to the case of any woman convicted and sentenced to death.

[As added by P.L.311-1983, SEC.3.]

IC 35-38-6-10

If the physician of the state prison and one (1) other physician certify in writing to the superintendent of the state prison and the sentencing court that a condemned woman is pregnant, the superintendent shall suspend the execution of the sentence. When the state prison physician and one (1) other physician certify in writing to the superintendent of the state prison and the sentencing court that the woman is no longer pregnant, the sentencing court shall immediately fix a new execution date.

[As added by P.L.311-1983, SEC.3; Amended by P.L.20-2002, SEC.8]

Summary: The prescribed method of execution is by lethal injection, to be carried out at the Indiana State Prison in Michigan City, before sunrise by the Indiana Department of Corrections. Witnesses are limited to the warden and assistants, the prison physician and chaplain, 5 guests and spiritual advisor of the inmate, and up to 8 members of the victim's immediate family. If the inmate is pregnant, the execution is suspended until no longer pregnant.

2006 - P.L. 56, § 1 (Effective March 13, 2006)

- ▶ Reduces from 10 to 5 the number of the inmate's friends or relatives who may attend execution.
- ▶ For first time, allows up to 8 members of victim's immediate family to attend execution.
- ▶ Allows other members of victim's immediate family and guests to use "support room."
- ▶ Authorizes DOC to adopt rules for selection when more than 1 victim or more than 8 family members.

2002 - P.L. 20-2002, § 1-8 (Effective March 14, 2002)

- ▶ Substitutes "superintendent" for "warden" and authorizes superintendent to designate an "executioner."
- ▶ Authorizes death row prisoners to be held in maximum security outside the Indiana State Prison for security or during renovations.
- ▶ Mandates female death row prisoners to be held at a maximum security women's prison.
- ▶ Mandates female death row prisoners to be segregated from male prisoners after transfer to Indiana State Prison, which must be not more than 30 days before execution.
- ▶ Allows Superintendent to exclude execution witnesses for security reasons, if done so in writing.
- ▶ Requires DOC to keep the identities of those assisting in execution confidential.
- ▶ Made changes to reflect gender-neutral language.

1995 - P.L. 294-1995, § 1-2 (Effective July 1, 1995)

- ▶ Amended IC 35-38-6-1 changing the method of execution from electrocution to lethal injection.
- ▶ Prior to this time, the statute provided: "The punishment of death shall be inflicted by causing to pass through the body of the convicted person a current of electricity of sufficient intensity to cause death. The application of the current must continue until the person is dead."
- ▶ Empowers the Department of Correction to implement rules to carry out executions.

Formerly:

IC 35-1-46-9.

Acts 1913, c. 315, § 1.

- ▶ Changed method of execution from hanging to electrocution.

Acts 1905, c. 169, § 310.

IC 35-36-9 PRETRIAL DETERMINATION OF MENTAL RETARDATION

IC 35-36-9-1

This chapter applies when a defendant is charged with a murder for which the state seeks a death sentence under IC 35-50-2-9.

[As added by P.L.158-1994, SEC.3. Amended by P.L.2-1996, SEC.283.]

IC 35-36-9-2

As used in this chapter, "individual with mental retardation" means an individual who, before becoming twenty-two (22) years of age, manifests: (1) significantly subaverage intellectual functioning; and (2) substantial impairment of adaptive behavior; that is documented in a court ordered evaluative report.

[As added by P.L.158-1994, SEC.3; P.L. 99-2007, SEC. 201.]

IC 35-36-9-3

- (a) The defendant may file a petition alleging that the defendant is an individual with mental retardation.
- (b) The petition must be filed not later than twenty (20) days before the omnibus date.
- (c) Whenever the defendant files a petition under this section, the court shall order an evaluation of the defendant for the purpose of providing evidence of the following:

- (1) Whether the defendant has a significantly subaverage level of intellectual functioning.
- (2) Whether the defendant's adaptive behavior is substantially impaired.
- (3) Whether the conditions described in subdivisions (1) and (2) existed before the defendant became twenty-two (22) years of age.

[As added by P.L.158-1994, SEC.3 ; P.L. 99-2007, SEC. 202.]

IC 35-36-9-4

- (a) The court shall conduct a hearing on the petition under this chapter.
- (b) At the hearing, the defendant must prove by clear and convincing evidence that the defendant is an individual with mental retardation.

[As added by P.L.158-1994, SEC.3; P.L. 99-2007, SEC. 203.]

IC 35-36-9-5

Not later than ten (10) days before the initial trial date, the court shall determine whether the defendant is an individual with mental retardation based on the evidence set forth at the hearing under section 4 of this chapter. The court shall articulate findings supporting the court's determination under this section.

[As added by P.L.158-1994, SEC.3; P.L. 99-2007, SEC. 204.]

IC 35-36-9-6

If the court determines that the defendant is an individual with mental retardation under section 5 of this chapter, the part of the state's charging instrument filed under IC 35-50-2-9(a) that seeks a death sentence against the defendant shall be dismissed. [As added by P.L.158-1994, SEC.3; P.L. 99-2007, SEC. 205.]

IC 35-36-9-7

If a defendant who is determined to be an individual with mental retardation under this chapter is convicted of murder, the court shall sentence the defendant under IC 35-50-2-3(a). [As added by P.L.158-1994, SEC.3; P.L. 99-2007, SEC. 207.]

Summary: (Exempting Mentally Retarded from Execution) Allows a capital defendant to file a petition 20 days before Omnibus Date alleging that he is mentally retarded. Upon filing, the court orders a mental evaluation, and a hearing is held. The burden of proof is on the defendant to show by clear and convincing evidence that he is mentally retarded. If this burden is met, the death penalty allegations must be dismissed. "Mentally Retarded" is defined as one who, before 22 years of age, manifests: (1) significantly subaverage intellectual functioning; and (2) substantial impairment of adaptive behavior; that is documented in a court ordered evaluative report.

Indiana Criminal Rule 24 - Capital Cases

(A) Supreme Court Cause Number. Whenever a prosecuting attorney seeks the death sentence by filing a request pursuant to Ind. Code § 35-50-2-9, the prosecuting attorney shall file that request with the trial court and with the Court Administrator, Indiana Supreme Court, 315 State House, Indianapolis, Indiana 46204. Upon receipt of same, the Court Administrator shall open a cause number in the Supreme Court and notify counsel.

(B) Appointment of Qualified Trial Counsel. Upon a finding of indigence, it shall be the duty of the judge presiding in a capital case to enter a written order specifically naming two (2) qualified attorneys to represent an individual in a trial proceeding where a death sentence is sought. The provisions for the appointment of counsel set forth in this section do not apply in cases wherein counsel is employed at the expense of the defendant.

(1) Lead Counsel; Qualifications. One (1) of the attorneys appointed by the court shall be designated as lead counsel. To be eligible to serve as lead counsel, an attorney shall:

- (a) be an experienced and active trial practitioner with at least five (5) years of criminal litigation experience;
- (b) have prior experience as lead or co-counsel in no fewer than five (5) felony jury trials which were tried to completion;
- (c) have prior experience as lead or co-counsel in at least one (1) case in which the death penalty was sought; and
- (d) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

(2) Co-Counsel, Qualifications. The remaining attorney shall be designated as co-counsel. To be eligible to serve as co-counsel, an attorney shall:

- (a) be an experienced and active trial practitioner with at least three (3) years of criminal litigation experience;
- (b) have prior experience as lead or co-counsel in no fewer than three (3) felony jury trials which were tried to completion; and
- (c) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

(3) Workload of Appointed and Salaried Capital Counsel. In the appointment of counsel, the nature and volume of the workload of appointed counsel must be considered to assure that counsel can direct sufficient attention to the defense of a capital case.

(a) Attorneys accepting appointments pursuant to this rule shall provide each client with quality representation in accordance with constitutional and professional standards. Appointed counsel shall not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.

(b) A judge shall not make an appointment of counsel in a capital case without assessing the impact of the appointment on the attorney's workload, including the administrative duties of a chief or managing public defender.

(c) Salaried or contractual public defenders may be appointed as trial counsel in a capital case, if:

- (i) the public defender's caseload will not exceed twenty (20) open felony cases while the capital case is pending in the trial court;
- (ii) no new cases will be assigned to the public defender within thirty (30) days of the trial setting in the capital case;
- (iii) none of the public defender's cases will be set for trial within fifteen (15) days of the trial setting in the capital case; and
- (iv) compensation is provided as specified in paragraph (C).

(d) The workload of full-time salaried capital public defenders will be limited consistent with subsection (B)(3)(a) of this rule. The head of the local public defender agency or office, or in the event there is no agency or office, the trial judge, shall not make an appointment of a full-time capital public defender in a capital case without assessing the impact of the appointment on the

attorney's workload, including the administrative duties of a chief or managing public defender. In assessing an attorney's workload, the head of the local public defender agency or office, or in the event there is no agency or office, the trial judge shall be guided by Standard J of the Standards for Indigent Defense Services in Non-Capital cases as adopted by the Indiana Public Defender Commission, effective January 1, 1995, and shall treat each capital case as the equivalent of forty (40) felonies under the Commission's "all felonies" category. Appointment of counsel shall also be subject to subsections (B)(3)(c)(ii), (iii) and (iv) of this rule.

(C) Compensation of Appointed Trial Counsel. All hourly rate trial defense counsel appointed in a capital case shall be compensated under subsection (1) of this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Hourly rate counsel shall submit periodic billings not less than once every thirty (30) days after the date of appointment by the trial court. All salaried capital public defenders compensated under subsection (4) of this provision shall present a monthly report detailing the date, activity, and time duration of services rendered after the date of appointment. Periodic payment during the course of counsel's representation shall be made.

(1) Hours and Hourly Rate. Defense counsel appointed at an hourly rate in capital cases filed or remanded after appeal on or after January 1, 2001, shall be compensated for time and services performed at the hourly rate of ninety dollars (\$90.00) only for that time and those services determined by the trial judge to be reasonable and necessary for the defense of the defendant. The trial judge's determination shall be made within thirty (30) days after submission of billings by counsel. Counsel may seek advance authorization from the trial judge, ex parte, for specific activities or expenditures of counsel's time.

The hourly rate set forth in this rule shall be subject to review and adjustment on a biennial basis by the Executive Director of the Division of State Court Administration. Beginning July 1, 2002, and July 1st of each even year thereafter, the Executive Director shall announce the hourly rate for defense counsel appointed in capital cases filed or remanded after appeal on or after January 1, of the years following the announcement. The hourly rate will be calculated using the Gross Domestic Product Implicit Price Deflator, as announced by the United States Department of Commerce in its May report, for the last two years ending December 31st preceding the announcement. The calculation by the Executive Director shall be rounded to the next closest whole dollar.

In the event the appointing judge determines that the rate of compensation is not representative of practice in the community, the appointing judge may request the Executive Director of the Division of State Court Administration to authorize payment of a different hourly rate of compensation in a specific case.

(2) Support Services and Incidental Expenses. Counsel appointed at an hourly rate in a capital case shall be provided, upon an ex parte showing to the trial court of reasonableness and necessity, with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase. In addition to the hourly rate provided in this rule, all counsel shall be reimbursed for reasonable and necessary incidental expenses approved by the trial judge. Counsel may seek advance authorization from the trial judge, ex parte, for specific incidental expenses.

Full-time salaried capital public defenders shall be provided with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase, as determined by the head of the local public defender agency or office, or in the event there is no agency or office, by the trial judge as set forth above.

(3) Contract Employees. In the event counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty case to reflect the limitations of case assignment established by this rule.

(4) Salaried Capital Public Defenders. In those counties having adopted a Comprehensive Plan as set forth in I.C. 33-9-15 et. seq., which has been approved by the Indiana Public Defender Commission, and who are in compliance with Commission standards authorized by I.C. 33-9-13-3(2), a full-time salaried capital public defender meeting the requirements of this rule may be assigned in a capital case by the head of the local public defender agency or office, or in the event there is no agency or office, by the trial judge. Salaried capital public defenders may be designated as either lead counsel or co-counsel. Salaried capital lead counsel and co-counsel must be paid salary and benefits

equivalent to the average of the salary and benefits paid to lead prosecuting attorneys and prosecuting attorneys serving as co-counsel, respectively, assigned to capital cases in the county. Each year, by July 1, those counties wishing to utilize full-time salaried capital public defenders for capital cases shall submit to the Executive Director of the Division of State Court Administration the salary and benefits proposed to be paid the capital public defenders for the upcoming year along with the salaries and benefits paid to lead prosecutors and prosecutors serving as co-counsel assigned capital cases in the county in the thirty-six (36) months prior to July 1, or a certification that no such prosecutor assignments were made. The Executive Director shall verify and confirm to the Indiana Public Defender Commission and the requesting county that the proposed salary and benefits are in compliance with this rule. In the event a county determines that the rate of compensation set forth herein is not representative of practice in the community, the county may request the Executive Director to authorize a different salary for a specific year.

(D) Transcription of Capital Cases. The trial or post-conviction court in which a capital case is pending shall provide for stenographic reporting with computer-aided transcription of any and all oral testimony, argument, or other matters required to be reported under Criminal Rule 5.

(E) Imposition of Sentence. Whenever a court sentences a defendant to death, the court shall pronounce said sentence and issue its order to the Department of Correction for the defendant to be held in an appropriate facility. A copy of the order of conviction, order sentencing the defendant to death, and order committing the death-sentence inmate to the Department of Correction shall be forwarded by the court imposing sentence to the Indiana Supreme Court Administrator's Office. When a trial court imposes a death sentence, it shall, on the same day sentence is imposed, order the court reporter and clerk to begin immediate preparation of the record on appeal.

(F) Setting of Initial Execution Date--Notice. In the sentencing order, the trial court shall set an execution date one (1) year from the date of judgment of conviction. Copies of said order shall be sent by the trial court to:

- (i) the prosecuting attorney of record;
- (ii) the defendant;
- (iii) the defendant's attorney of record;
- (iv) the appellate counsel, if such has been appointed;
- (v) the Attorney General;
- (vi) the Commissioner of the Department of Correction;
- (vii) the Warden of the institution where the defendant is confined; and
- (viii) the State Public Defender.

Contemporaneously with the service of the order setting the date of execution to the parties listed in this section, the trial court shall forward to the Supreme Court Administrator's Office a copy of the order, with a certification by the clerk of the court that the parties listed in this section were served a copy of the order setting the date of execution.

(G) Stay of Execution Date. This section governs the stay of execution for defendants sentenced to death.

(1) Stay of Execution--General. The Supreme Court shall have exclusive jurisdiction to stay the execution of a death sentence. In the event the Supreme Court stays the execution of a death sentence, the Supreme Court shall order the new execution date when the stay is lifted. A copy of an order to stay an execution or set a new date for execution will be sent to the persons set forth in section (F) of this rule.

(2) Stay of Initial Execution Date. Upon petition or on its own motion, the Supreme Court shall stay the initial execution date set by the trial court. On the thirtieth (30th) day following completion of rehearing, the Supreme Court shall enter an order setting an execution date, unless counsel has appeared and requested a stay in accordance with section (H) of this rule. A copy of any order entered under this provision will be sent to the persons set forth in section (F) of this rule.

(H) Post-Conviction Relief--Stay--Duty of Counsel. Within thirty (30) days following completion of rehearing, private counsel retained by the inmate or the State Public Defender (by deputy or by special assistant in the event of a conflict of interest) shall enter an appearance in the trial court, advise the trial court of the intent to petition for post-conviction relief, and request the Supreme Court to extend the stay of execution of the death sentence. A copy of said appearance and notice of intent to file a petition for post-conviction relief shall be served by counsel on the Supreme Court Administrator. When the request to extend the stay is received, the Supreme Court will direct the trial court to submit a case management schedule

consistent with Ind. Code § 35-50-2-9(i) for approval. On the thirtieth (30th) day following completion of any appellate review of the decision in the post-conviction proceeding, the Supreme Court shall enter an order setting the execution date. It shall be the duty of counsel of record to provide notice to the Supreme Court Administrator of any action filed with or decision rendered by a federal court that relate to defendants sentenced to death by a court in Indiana.

(I) Initiation of Appeal. When a trial court imposes a death sentence, it shall on the same day sentence is imposed order the court reporter and clerk to begin immediate preparation of the record on appeal.

(J) Appointment of Appellate Counsel. Upon a finding of indigence, the trial court imposing a sentence of death shall immediately enter a written order specifically naming counsel under this provision for appeal. If qualified to serve as appellate counsel under this rule, trial counsel shall be appointed as sole or co-counsel for appeal.

(1) Qualifications of Appellate Counsel. An attorney appointed to serve as appellate counsel for an individual sentenced to die, shall:

(a) be an experienced and active trial or appellate practitioner with at least three (3) years experience in criminal litigation;

(b) have prior experience within the last five (5) years as appellate counsel in no fewer than three (3) felony convictions in federal or state court; and

(c) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

(2) Workload of Appointed Appellate Counsel. In the appointment of Appellate Counsel, the judge shall assess the nature and volume of the workload of appointed appellate counsel to assure that counsel can direct sufficient attention to the appeal of the capital case. In the event the appointed appellate counsel is under a contract to perform other defense or appellate services for the court of appointment, no new cases for appeal shall be assigned to such counsel until the Appellant's Brief in the death penalty case is filed.

(K) Compensation of Appellate Counsel. Appellate counsel appointed to represent an individual sentenced to die shall be compensated under this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Counsel shall submit periodic billings not less than once every thirty (30) days after the date of appointment. Attorneys employed by appellate counsel for consultation shall be compensated at the same rate as appellate counsel.

(1) Hours and Hourly rate. Appellate defense counsel appointed on or after January 1, 2001, to represent an individual sentenced to die shall be compensated for time and services performed at the hourly rate of ninety dollars only for that time and those services determined by the trial judge to be reasonable and necessary for the defense of the defendant. The trial judge's determination shall be made within thirty (30) days after submission of billings by counsel. Counsel may seek advance authorization from the trial judge, ex parte, for specific activities or expenditures of counsel's time. The hourly rate set forth above shall be subject to review and adjustment as set forth in section (C)(1) of this rule. In the event the appointing judge determines that this rate of compensation is not representative of practice in the community, the appointing judge may request the Executive Director of the Division of State Court Administration to authorize payment of a different hourly rate of compensation in a specific case.

(2) Contract Employees. In the event appointed appellate counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty appeal to reflect the limitations of case assignment established by this rule.

(3) Salaried Capital Public Defenders. In the event appointed appellate counsel is a salaried capital public defender, as described in section (C)(4) of this rule, the county must comply with, and counsel shall be compensated according to, the requirements of section (C)(4).

(4) Incidental Expenses. In addition to the hourly rate or salary provided in this rule, appellate counsel shall be reimbursed for reasonable incidental expenses as approved by the court of appointment.

(L) Briefing on Appeal. In capital cases, counsel may place the verbatim judgment of the trial court and verbatim instructions and the verbatim objections thereto required by Appellate Rule 50B in an Addendum to Brief, and these documents shall not count against the word limit of the brief.

Summary: (Minimum Qualifications, Caseloads and Compensation of Trial and Appellate Counsel; Ex Parte Experts and Services; Execution Dates; Transcripts) When a Prosecuting Attorney files a request for a death sentence, the request must also be filed with the Indiana Supreme Court Administrator. When a Public Defender is appointed, the trial court must appoint 2 qualified attorneys. Lead counsel must have 5 years criminal litigation experience, with at least 5 felony jury trials and 1 death penalty case as lead or co-counsel. Co-counsel must have 3 years criminal litigation experience, with at least 3 felony jury trials as lead or co-counsel. Additionally, both attorneys must have completed 12 hours of training in capital cases in the last 2 years. The caseload of either attorney may not exceed 20 open felony cases, with no new cases assigned within 30 days of trial. No other cases can be set for trial within 15 days of capital trial. Counsel shall be paid at an hourly rate of \$90 per hour, with no limitation on the number of hours. The trial court shall provide adequate funds for investigators, experts, and other services reasonable and necessary upon an ex parte showing by counsel. Counties can receive 50% reimbursement from the state of all expenses in a capital case. Computer-aided transcription is required in all cases. The trial court shall set an execution date one year from conviction, which may be stayed pending appeal, but only by the Indiana Supreme Court. Appointed appellate counsel must have 3 years criminal litigation experience, with at least 3 felony appeals within the last 5 years, with 12 hours of training in capital cases in the last 2 years. Compensation is also set at \$90 per hour with no limitation on the number of hours.

[Adopted Nov. 30, 1989, effective Jan. 1, 1990; amended Oct. 21, 1991, effective Jan. 1, 1992; amended Jan. 22, 1993, effective Feb. 1, 1993; amended effective March 28, 1996; amended Feb. 4, 2000, effective Jan. 1, 2001; amended Dec. 22, 2000, effective Jan. 1, 2001; amended effective March 5, 2001; amended December 21, 2001, effective April 1, 2002; amended May 29, 2013, effective May 29, 2013.]

Amended 05-29-13 (effective 05-29-13)

- ▶ Mandates that the Court take into account the administrative workload of a Local Public Defender before appointment in a capital case.

Amended 12-21-01 (effective 04-01-02)

- ▶ Makes minor changes in wording to mirror new wording of Indiana Appellate Rules.

Amended 03-05-01 (effective 03-05-01)

- ▶ Rewrote subsection (K), increasing the hourly rate for compensation to APPELLATE defense counsel from \$70 to \$90, and authorizing ex parte requests by APPELLATE defense counsel for authorization of specific activities or expenditures of counsel's time. Requires at least monthly claims.

Amended 12-22-00 (effective 01-01-01)

- ▶ Added subsection (B) (3) (d), requiring the local PD to take into account caseload when assigning a capital case, with guidance from Standards for Indigent Defense adopted by Public Defender Commission.
- ▶ Added subsection (C) (4), requiring that salaried public defenders who are assigned capital cases for trial must be paid salary and benefits equal to prosecutors.
- ▶ Rewrote subsection (C) (1), increasing the hourly rate for compensation to TRIAL defense counsel from \$70 to \$90, and authorizing ex parte requests by TRIAL defense counsel for authorization of specific activities or expenditures of counsel's time.

Amended 02-04-00 (effective 01-01-01)

- ▶ In subsection (A), substituted "315" for "312" in state House address of Supreme Court Administrator.
- ▶ In subsection (E), added the final sentence requiring the trial court to order immediate preparation of the record following sentencing.

- ▶ In subsection (L), substituted "shall" for "may", "50B" for "8(A)", and "attachment" for "appendix" relating to appellate briefs.

Amended 03-28-96 (effective 03-28-96)

- ▶ Rewrote subsections (E), (F), & (G), requiring that an execution date be set within one year from judgment of conviction, and giving Indiana Supreme Court exclusive jurisdiction to issue stay.
- ▶ Rewrote subsection (H), requiring PCR counsel to enter appearance within 30 days of completion of direct appeal and to file notice of intent to file Petition; and upon completion of PCR appeal to notify Supreme Court Administrator of any federal court action.

Amended 01-22-93 (effective 02-01-93)

- ▶ Rewrote subsection (G), to require that no execution date be set until final decision of Indiana Supreme Court.

Amended 10-21-91 ((effective 01-01-92)

- ▶ Added subsections (B), (C), and (K), and rewrote subsection (J).
- ▶ Added subsection (B) (1) & (2), requiring that two attorneys be appointed for defendant at trial, with lead counsel having at least 5 years in criminal litigation, 5 felony jury trials, 1 prior death penalty case, and 12 hours of training; co-counsel to have 3 years in criminal litigation, 3 felony jury trials, and 12 hours of training.
- ▶ Added subsection (B) (3), limiting the caseload of appointed trial attorney public defender to 20 open felony cases, with no new cases assigned within 30 days of trial, and no other trial settings within 15 days of trial.
- ▶ Added subsection (C), setting the hourly rate of \$70 for appointed trial counsel, with no limits; requiring adequate funds for investigators and experts, with no limits.
- ▶ Added subsection (K), setting similar compensation for appellate counsel.
- ▶ Rewrote subsection (J), setting minimum qualifications for appointed appellate counsel, requiring 3 years in criminal litigation, 3 cases as appellate counsel on felony conviction, and 12 hours of training.

Adopted 11-30-89 (effective 01-01-90)

- ▶ Prosecutor required to notify Supreme Court Administrator of death penalty filing.
- ▶ Trial or PCR Court required to use computer-aided transcription.
- ▶ Specific duties given to trial court and parties on the setting of execution dates.
- ▶ Trial defense counsel must be appointed sole or co-counsel for appeal.

PUBLIC OPINION

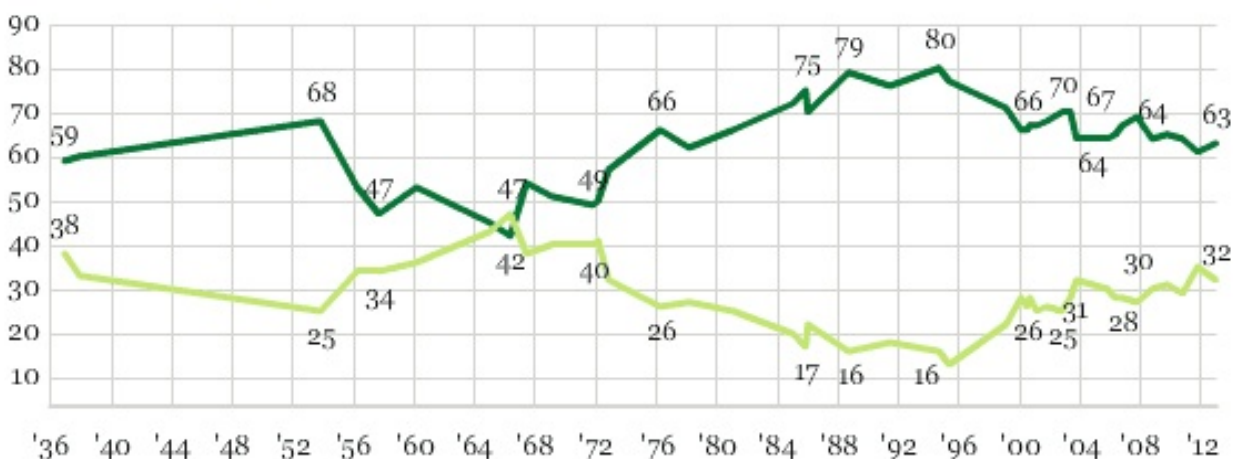
GALLUP POLLS

“ARE YOU IN FAVOR OF THE DEATH PENALTY FOR A PERSON CONVICTED OF MURDER?”

	<u>Favor</u>	<u>Oppose</u>	<u>Unsure/No Opinion</u>
2012 Dec 19-22	63 %	32 %	06 %
2011 Oct 6-9	61 %	35 %	04 %
2010 Oct 7-10	64 %	29 %	06 %
2009 Oct 1-4	65 %	31 %	05 %
2008 Oct 3-5	64 %	30 %	05 %
2007 Oct 4-7	69 %	27 %	04 %
2006 Oct 9-12	67 %	28 %	05 %
2006 May 2-5	65 %	28 %	07 %
2005 Oct 13-16	64 %	30 %	06 %
2005 May 2-5	74 %	23 %	03 %
2004 Oct 11-14	64 %	31 %	05 %
2004 May 2-4	71 %	26 %	03 %
2003 Oct 6-8	64 %	32 %	04 %
2003 May 19-21	70 %	28 %	02 %
2003 May 5-7	74 %	24 %	02 %
2002 Oct 14-17	70 %	25 %	05 %
2002 May 6-9	72 %	25 %	03 %
2001 Oct 11-14	68 %	26 %	06 %
2001 May 10-14	65 %	27 %	08 %
2001 Feb 19-21	67 %	25 %	08 %
2000 Aug 29-Sep 5	67 %	28 %	05 %
2000 Jun 23-25	66 %	26 %	08 %
2000 Feb 14-15	66 %	28 %	06 %
1999 Feb 8-9	71 %	22 %	07 %
1995 May 11-14	77 %	13 %	10 %
1994 Sept 6-7	80 %	16 %	04 %
1991 June 13-16	76 %	18 %	06 %
1988 Sept 25-Oct 1	79 %	16 %	05 %
1986 Jan 10-13	70 %	22 %	08 %
1985 Nov 11-18	75 %	17 %	08 %
1981 Jan 30-Feb 2	66 %	25 %	09 %
1978 Mar 3-6	62 %	27 %	11 %
1976 Apr 9-12	66 %	26 %	08 %
1972 Nov 10-13	57 %	32 %	11 %
1972 Mar 3-5	50 %	41 %	09 %
1971 Oct 29-Nov 2	49 %	40 %	11 %
1969 Jan 23-28	51 %	40 %	09 %
1967 Jun 2-7	54 %	38 %	08 %
1966 May 19-24	42 %	47 %	11 %
1965 Jan 7-12	45 %	43 %	12 %
1960 Mar 2-7	53 %	36 %	11 %
1957 Aug 29-Sept 4	47 %	34 %	18 %
1956 Mar 29-Apr 3	53 %	34 %	13 %
1953 Nov 1-5	68 %	25 %	07 %
1937 Dec 1-6	60 %	33 %	07 %
1936 Dec 2-7	59 %	38 %	03 %

Are you in favor of the death penalty for a person convicted of murder?

■ % In favor ■ % Opposed



GALLUP

“NEXT, I’M GOING TO READ YOU A LIST OF ISSUES. REGARDLESS OF WHETHER OR NOT YOU THINK IT SHOULD BE LEGAL, FOR EACH ONE, PLEASE TELL ME WHETHER YOU PERSONALLY BELIEVE THAT IN GENERAL IT IS MORALLY ACCEPTABLE OR MORALLY WRONG. HOW ABOUT ...THE DEATH PENALTY ?

	Morally acceptable	Morally wrong	Depends on situation	Not a moral issue	No opinion
	%	%	%	%	%
2013 May 2-7	62	31	5	0	2
2012 May 3-6	58	34	6	0	1
2011 May 5-8	65	28	5	0	2
2010 May 3-6	65	26	7	-	2
2009 May 7-10	62	30	6	0	2
2008 May 8-11	62	30	5	0	3
2007 May 10-13	66	27	5	0	2
2006 May 8-11	71	22	5	0	2
2005 May 2-5	70	25	4	0	1
2004 May 2-4	65	28	4	1	2
2003 May 5-7	64	31	4	—	1
2002 May 6-9	65	28	5	0	2
2001 May 10-14	63	27	7	1	2

‘DO YOU FEEL THAT THE DEATH PENALTY ACTS AS A DETERRENT TO THE COMMITMENT OF MURDER, THAT IT LOWERS THE MURDER RATE, OR NOT?’

	Fairly	Unfairly	No Opinion
2011 Oct 6-9	32%	64%	04%
2006 May 8-11	34%	64%	02%
2004 May 2-4	35%	62%	03%
1991 June 13-16	51%	41%	08%
1986 Jan 10-13	61%	32%	07%
1985 Jan 11-14	62%	31%	07%

NEXT, I'M GOING TO READ YOU A LIST OF ISSUES. REGARDLESS OF WHETHER OR NOT YOU THINK IT SHOULD BE LEGAL, FOR EACH ONE, PLEASE TELL ME WHETHER YOU PERSONALLY BELIEVE THAT IN GENERAL IT IS MORALLY ACCEPTABLE OR MORALLY WRONG. HOW ABOUT ... [RANDOM ORDER]? (2007)

	Morally Acceptable %	Morally Wrong %	Net Acceptable
The death penalty	66	27	39
Divorce	65	26	39
Medical research using stem cells from human embryos	64	30	34
Gambling	63	32	31
Medical testing on animals	59	37	22
Sex between an unmarried man and woman	59	38	21
Buying and wearing clothing made of animal fur	58	38	20
Having a baby outside of marriage	54	42	12
Doctor-assisted suicide	49	44	5
Homosexual relations	47	49	-2
Abortion	40	51	-11
Cloning animals	36	59	-23
Suicide	16	78	-62
Cloning humans	11	86	-75
Polygamy	8	90	-82
Married men and women having an affair	6	91	-85

Liberal/Moderate/Conservative - Percentage Calling Each "Morally Acceptable"

	Liberals %	Moderates %	Conservatives %	Gap
Homosexual relations	83	50	23	+60
Sex between an unmarried man and woman	89	66	34	+55
Having a baby outside of marriage	83	59	33	+50
Abortion	67	39	24	+43
Divorce	87	68	49	+38
Doctor-assisted suicide	73	49	35	+38
Medical research using stem cells from human embryos	84	69	48	+36
Gambling	82	68	47	+35
Cloning animals	55	30	28	+27
Suicide	29	14	8	+21
Cloning humans	22	9	6	+16
Polygamy	19	5	4	+15
Married men and women having an affair	12	5	2	+10
Buying and wearing clothing made of animal fur	52	57	61	-9
Medical testing on animals	52	58	64	-12
Death penalty	54	66	73	-19

"IF YOU COULD CHOOSE BETWEEN THE FOLLOWING TWO APPROACHES, WHICH DO YOU THINK IS THE BETTER PENALTY FOR MURDER: [ROTATED] THE DEATH PENALTY OR LIFE IMPRISONMENT WITH ABSOLUTELY NO POSSIBILITY OF PAROLE?"

	<u>Death Penalty</u>	<u>LWOP</u>	<u>No Opinion</u>
2010 Oct 7-10	49%	46%	06%
2006 May 5-7	47%	48%	05%
2005 May 2-5	56%	39%	05%
2004 May 2-4	50%	46%	04%
2003 May 5-7	53%	44%	03%

2002 May 6-9	52%	43%	05%
2001 May 10-14	52%	43%	05%
2001 Feb 19-21	52%	42%	04%
2000 Aug 29-Sept 5	49%	47%	04%
2000 Feb 20-21	52%	37%	11%
1999 Feb 8-9	56%	38 %	06%
1997 Aug 12-13	61%	29%	10%
1994 June 22	50%	32%	18%
1993 Oct 13-18	59%	29%	12%
1992 Mar 30-Apr 5	50%	37%	13%
1991 Jun 13-16	53%	35%	11%
1986 Jan 10-13	55%	35%	10%
1985 Jan 11-14	56%	34%	10%

***“IN YOUR OPINION, IS THE DEATH PENALTY IMPOSED:
[ROTATED] TOO OFTEN, ABOUT THE RIGHT AMOUNT, OR NOT OFTEN ENOUGH?”***

	<u>Too Often</u>	<u>About Right</u>	<u>Not Enough</u>	<u>No Opinion</u>
2011 Oct 6-9	25%	27%	40%	08%
2010 Oct 7-10	18%	26%	49%	07%
2009 Oct 1-4	20%	24%	49%	07%
2008 Oct 3-5	21%	23%	48%	08%
2007 Oct 4-7	21%	26%	49%	04%
2006 May 8-11	21%	25%	51%	03%
2005 May 2-5	20%	24%	53%	03%
2004 May 2-4	23%	25%	48%	04%
2003 May 5-7	23%	26%	48%	03%
2002 May 6-9	22%	24%	47%	07%
2001 May 10-14	21%	34%	38%	07%

***‘GENERALLY SPEAKING, DO YOU BELIEVE THE DEATH PENALTY IS
APPLIED FAIRLY OR UNFAIRLY IN THIS COUNTRY TODAY?’***

	<u>Fairly</u>	<u>Unfairly</u>	<u>No Opinion</u>
2011 Oct 6-9	52%	41%	06%
2010 Oct 7-10	58%	36%	07%
2009 Oct 1-4	57%	34%	09%
2008 Oct 3-5	54%	38%	08%
2007 Oct 4-7	57%	38%	05%
2006 May 8-11	60%	35%	04%
2005 May 2-5	61%	35%	04%
2004 May 2-4	55%	39%	06%
2003 May 5-7	60%	37%	03%
2002 May 6-9	53%	40%	07%
2000 June 23-25	51%	41%	08%

“HOW OFTEN DO YOU THINK THAT A PERSON HAS BEEN EXECUTED UNDER THE DEATH PENALTY WHO WAS, IN FACT, INNOCENT OF THE CRIME HE OR SHE WAS CHARGED WITH? DO YOU THINK THIS HAS HAPPENED IN THE PAST FIVE YEARS, OR NOT?”

	<u>Yes, in Last 5 Years</u>	<u>No</u>	<u>No Opinion</u>
2009 Oct 1-4	59%	31%	10%
2006 May 8-11	63%	27%	10%
2005 May 2-5	59%	33%	08%
2003 May 5-7	73%	22%	05%

***“ARE YOU IN FAVOR OF THE DEATH PENALTY FOR A PERSON CONVICTED OF MURDER?”
(December 19-22, 2012 Gallup/USA Today)***

	<u>Favor</u>	<u>Oppose</u>	<u>Don't Know</u>
Conservative	75%	18%	07%
Moderate	60%	34%	06%
Liberal	47%	50%	03%
Republican	80%	15%	05%
Independent	65%	32%	03%
Democrat	51%	42%	07%
Men	67%	28%	05%
Women	59%	35%	06%
18-34 yr	61%	35%	04%
35-54 yr	62%	32%	06%
55 and older	67%	27%	06%
East	54%	40%	06%
Midwest	66%	31%	03%
South	68%	25%	07%
West	60%	33%	07%
Postgraduate	50%	45%	05%
College Graduate Only	57%	40%	03%
Small College	66%	30%	04%
No College	68%	24%	08%

***“ARE YOU IN FAVOR OF THE DEATH PENALTY FOR A PERSON CONVICTED OF MURDER?”
(October 4-7, 2007 Gallup)***

	<u>Favor</u>	<u>Oppose</u>	<u>Don't Know</u>
Conservative	81%	16%	03%
Republican	81%	16%	03%
Over 50 Male	78%	20%	04%
Male	76%	20%	04%
18-49 Male	74%	22%	04%
West	73%	25%	02%
Some College	73%	22%	05%
White	73%	23%	04%
Midwest	72%	24%	04%
High School or Less	72%	23%	05%
Total College	67%	29%	04%
Independent	67%	28%	05%
East	66%	30%	04%
South	66%	29%	05%
College Grad	66%	30%	04%
Over 50 Female	66%	30%	04%
Moderate	64%	32%	04%
Female	62%	33%	05%
18-49 Female	60%	37%	03%
Democrat	60%	35%	05%
Liberal	57%	41%	02%
Post-Grad Education	57%	41%	02%
Non-White	55%	41%	04%

“ARE YOU IN FAVOR OF THE DEATH PENALTY FOR A PERSON CONVICTED OF MURDER?”
(Combined results from 2001 to 2004 by Gallup Editors)

	<u>Favor</u>	<u>Oppose</u>	<u>Don't Know</u>
Male	74%	23%	03%
Female	62%	32%	06%
White	71%	24%	05%
Black	44%	49%	07%
18 - 29	69%	29%	02%
30 - 49	68%	27%	05%
50 - 64	68%	29%	03%
65 +	65%	26%	09%
Protestants	71%	24%	05%
Catholics	66%	30%	04%
No Religious Preference	57%	38%	05%
Church Weekly	65%	39%	05%
Church Monthly	69%	27%	04%
Church Seldom/Never	71%	26%	03%
Catholic - Church Weekly	62%	31%	07%
Catholic - Church Monthly	66%	25%	09%
Catholic - Church Seldom/Never	77%	18%	05%
Conservative	74%	21%	05%
Moderate	68%	27%	05%
Liberal	54%	42%	04%
REPUBLICAN	80%	17%	03%
INDEPENDENT	65%	30%	05%
DEMOCRAT	58%	36%	06%

- *Results are based on telephone interviews with 6,498 national adults, aged 18 and older, conducted Feb. 19-21, 2001; May 10-14, 2001; Oct. 11-14, 2001; May 6-9, 2002; Oct. 14-17, 2002; May 5-7, 2003; Oct 6-9, 2003; May 2-4, 2004; and Oct. 11-14, 2004. For results based on the total sample of national adults, one can say with 95% confidence that the maximum margin of sampling error is ± 2 percentage points.*

“WHY DO YOU FAVOR THE DEATH PENALTY FOR PERSONS CONVICTED OF MURDER?”

(Based only upon those who responded in favor of the death penalty)

	<u>May 2003</u>	<u>Feb 2001</u>	<u>Feb 2000</u>	<u>June 1991</u>
Eye for an Eye / Punishment Fits Crime	37%	48%	40%	40%
They Deserve It	13%	06%	05%	05%
Save Taxpayer Money / Prison Costs	11%	20%	12%	12%
Deterrent to Others/ Set an Example	11%	10%	08%	08%
Incapacitation / They Will Repeat Crime	07%	06%	04%	04%
Biblical Reasons	05%	03%	03%	03%
Depends on Type of Crime	04%	06%	06%	06%
Serve Justice	04%	01%	03%	02%
Fair Punishment	03%	01%	06%	06%
If There's No Doubt Person Committed Crime	03%	02%	00%	00%
I Support / Believe in death penalty	02%	06%	00%	00%
Can't Be Rehabilitated	02%	02%	01%	01%
Relieves Prison Overcrowding	01%	02%	00%	00%
Life Doesn't Really Mean Without Parole	01%	02%	00%	00%
Other	04%	03%	10%	10%
No Opinion	02%	01%	03%	03%

“WHY DO YOU OPPOSE THE DEATH PENALTY FOR PERSONS CONVICTED OF MURDER?”

(Based only upon those who responded in opposition to the death penalty)

	<u>May 2003</u>	<u>June 1991</u>
Wrong to Take a Life	37%	41%
Persons May Be Wrongly Convicted	25%	11%
Punishment Should Be Left to God	13%	17%
Murderers Need to Suffer/Think About Crime	05%	00%
Possibility of Rehabilitation	05%	06%
Depends on Circumstances	04%	00%
Unfair Application of Death Penalty	04%	06%
Does Not Deter	04%	07%
Other	03%	16%
No Opinion	04%	06%

“ARE YOU IN FAVOR OF THE DEATH PENALTY FOR A PERSON CONVICTED OF MURDER?”

(October - December 2005)

	<u>Favor</u>	<u>Oppose</u>
U. S. A.	64%	30%
Great Britain	49%	45%
Canada	44%	53%

CNN / Opinion Research Corporation Poll

Conducted by CNN Research of adult voters nationwide on May 14-17, 2009. (Margin of Error +/- 3.)

"IF YOU COULD CHOOSE BETWEEN THE FOLLOWING TWO APPROACHES, WHICH DO YOU THINK IS THE BETTER PENALTY FOR MURDER: THE DEATH PENALTY, OR LIFE IMPRISONMENT WITH ABSOLUTELY NO POSSIBILITY OF PAROLE?"

	<u>Death Penalty</u>	<u>Life Imprisonment</u>	<u>Unsure</u>
2009 May 14-17	53 %	46 %	02 %

"AS YOU MAY KNOW, ACCORDING TO THE U.S. CONSTITUTION, ANY PUNISHMENT THAT IS CONSIDERED 'CRUEL AND UNUSUAL' CANNOT BE USED ON PEOPLE CONVICTED OF ANY CRIME. DO YOU CONSIDER THE DEATH PENALTY TO BE A CRUEL AND UNUSUAL PUNISHMENT, OR DON'T YOU FEEL THAT WAY?"

	<u>Yes, Cruel & Unusual</u>	<u>No, Not Cruel& Unusual</u>	<u>Unsure</u>
2009 May 14-17	26 %	73 %	01 %

Fox News / Opinion Dynamics Poll

Conducted by Opinion Dynamics of 900 registered adult voters nationwide on March 29-30, 2005. (Margin of Error +/- 3.)

"DO YOU FAVOR OR OPPOSE THE DEATH PENALTY FOR PERSONS CONVICTED OF PREMEDITATED MURDER?"

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
2005 March 29-30	69 %	24 %	08 %
2003 June 3-4	69 %	23 %	08 %
2001 June 6-7	68 %	22 %	10 %
2001 April 18-19	66 %	23 %	11 %
2000 June 28-29	68 %	24 %	08 %
2000 February 9-10	67 %	22 %	11 %
1998 January 7-8	74 %	18 %	08 %
1997 June 25-26	73 %	18 %	09 %
1997 April 30 - May1	76 %	17 %	07 %

INDIANAPOLIS STAR POLL

(Conducted by the Indiana University Center for Survey Research March 26-29, 2000. A scientifically selected random sample of 825 adult Indiana residents was interviewed. The

"THE DEATH PENALTY IS APPLIED FAIRLY IN THE STATE OF INDIANA."

Strongly Agree	25.1 %
Somewhat Agree	39.3 %
Somewhat Disagree	11.5 %
Strongly Disagree	14.4 %
Don't Know / Refused	09.8 %

ABCNews / Washington Post Poll

Conducted by TNS Research by telephone interviews of 1000 adults nationwide on June 22-25, 2006.
(Margin of Error +/- 4.5 percentage points)

"DO YOU FAVOR OR OPPOSE THE DEATH PENALTY FOR PERSONS CONVICTED OF MURDER?"

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
2007 Dec 16-19	65%	30%	05%
2006 June	65 %	32%	03%
2005 April	65 %	26 %	09 %
2001 April	63 %	28 %	09 %
2000 June	63 %	27 %	10 %
2000 January	64 %	27 %	09 %
1998 August	69 %	27 %	04 %
1996 August	77 %	19 %	04 %

THE HARRIS POLL

(Results are based upon telephone interviews nationally with 1010 adults, on February 5-11, 2008.
(Margin of Error± 3 percentage points)

"DO YOU BELIEVE IN CAPITAL PUNISHMENT, THAT IS, THE DEATH PENALTY, OR ARE YOU OPPOSED TO IT?"

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
2008 Feb 5-11	63%	30%	07%
2003 Dec	69 %	22 %	09 %
2001 July	67 %	26 %	07 %
2000 July	64 %	25 %	11 %
1999 July	71 %	21 %	08 %
1997	75 %	22 %	03 %
1983	68 %	27 %	05 %

1976	67 %	25 %	08 %
1973	59 %	31 %	10 %
1970	47 %	42 %	11 %
1969	48 %	38 %	14 %
1965	38 %	47 %	15 %

***"IMAGINE FOR A MOMENT THAT YOU HAD TO CHOSE FOR YOURSELF:
WOULD YOU RATHER SERVE LIFE IN PRISON OR BE PUT TO DEATH?"***

	<u>Life in Prison</u>	<u>Death</u>	<u>Not Sure</u>
1999 July 16-20	34 %	48 %	18 %

***"DO YOU FEEL THAT EXECUTING PEOPLE WHO COMMIT MURDER DETERS OTHERS FROM
COMMITTING MURDER, OR DO YOU THINK SUCH EXECUTIONS DON'T HAVE MUCH EFFECT?"***

	<u>Deters</u>	<u>Not Much Effect</u>	<u>No Opinion</u>
2008 Feb 5-11	42%	52%	06%
2003 Dec	41 %	53 %	06 %
2001 July	42 %	52 %	07 %
2000 July	44 %	50 %	07 %
1999 July	47 %	49 %	04 %
1997	49 %	49 %	02 %
1983	63 %	32 %	05 %
1976	59 %	34 %	07 %

***"IN GENERAL, WOULD YOU LIKE TO SEE AN INCREASE OR DECREASE IN THE NUMBER OF
CONVICTED CRIMINALS WHO ARE EXECUTED, OR NO CHANGE?"***

	<u>Increase</u>	<u>Decrease</u>	<u>No Change</u>	<u>No Opinion</u>
2008 Feb 5-11	36%	26%	31%	07%
2003 Dec	36 %	21 %	33 %	11 %
2001 July	35 %	26 %	30 %	08 %
2000 July	36 %	22 %	31 %	11 %
1999 July	43 %	21 %	28 %	07 %
1997	53 %	14 %	27 %	06 %


***"DO YOU THINK THAT INNOCENT PEOPLE ARE SOMETIMES CONVICTED OF MURDER
OR THAT THIS NEVER HAPPENS?"***

	<u>Sometimes Happens</u>	<u>Never Happens</u>	<u>No Opinion</u>
2008 Feb 5-11	95%	04%	01%
2003 Dec 10-16	95 %	04 %	02 %
2001 July	94 %	03 %	03 %
2000 July	94 %	05 %	01 %
1999 July	95 %	03 %	01 %

The Polling Report, Inc. An independent, nonpartisan resource on trends in American public opinion.
<http://www.pollingreport.com/crime.htm>

CLOSING ARGUMENTS IN INDIANA CAPITAL CASES

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The arguments contained in these cases were not necessarily chosen because of the oratorical skill of the Prosecutor. The notoriety of the case, the skill of defense counsel, the existence of closing argument issues on appeal, and the easy availability of transcripts may have also played a part. You be the judge. The prosecution arguments included are not approved or recommended for use at trial. It is suggested that trial counsel carefully review West  Criminal Law #708-730 relating to closing arguments at trial.

CLOSING ARGUMENTS

State v. Isom Lake Superior Court 2013

CASE SUMMARY: Isom was convicted of the murders of his wife of 12 years, Cassandra, and her two teenage children from prior relationships, Michael Moore (16) and Ci'Andria Cole (13) in their apartment in Gary. The triple homicide was discovered when Gary police raided Isom's apartment after a standoff of several hours. All three victims had been shot at close range with a shotgun and with handguns. A neighbor of the family had alerted police to the sound of gunshots about 10:30 p.m. Isom was found on the floor of a bedroom with a revolver in his waistband and his wife and stepchildren shot dead. He told the police his wife was upset about his unemployment, and had mentioned leaving him a few days before the shootings. Though disputed by the defense, police also testified that Isom said, "I can't believe I killed my family."

The case was filed in the Lake County Superior Court, Judge Thomas Stefaniak, Jr. presiding. Lake County Deputy Prosecutors David Urbanski and Michelle Jatkiewicz represented the State of Indiana. Attorneys Herb Shaps and Casey McCloskey represented the Defendant.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF STATE OF INDIANA.

MR. URBANSKI : Thank you. Your Honor, counsel, ladies and gentlemen. Presentation of evidence in the penalty phase obviously has concluded. The evidence that's come before you, so you recall and understand, is that which was presented in the exhibits, in the live testimony that came in this phase. But additionally you will recall the State told you, ultimately acted upon it, the Court granted the motion of what we call incorporation.

And the Motion for Incorporation asked the Court to bring forward all of the evidence that was presented, all of the admissible evidence that was presented in the guilt phase. So, in fact, all of that evidence is before you in addition to what's come in this phase. All of that evidence is available for you to use in making your determination of the sentence in this case.

And where we are at clearly is ultimately each of you individually and collectively then as a jury of twelve making a decision about the appropriate sentence in this case. And what that process entails

is using the evidence to make a determination in regard to aggravating circumstance that the State has presented to you along the lines of making your decision.

That aggravating circumstance has been presented to you in somewhat of a technical sense. And it's there in the instructions, from the amended Information that was provided. But taking a step back from its language and its reading on its face is the concept of what the aggravating circumstance is. And the aggravating circumstance in this case, ladies and gentlemen, reduced quite frankly to its simplest reality is that of a multiple killing circumstance.

The aggravator speaks of an individual committing a murder having committed another murder at any time. Clearly our time frame is together. It's focused on the evening of August 6th, 2007.

Inherent within the Corporation Motion and granting by the Court were the verdicts that each and every one of you, again individually and collectively as a group, have already determined. We know in Count I the defendant was convicted of the murder of Cassandra Isom. In Count II, he was convicted, by you, of the killing, the murder of Michael Moore. Finally Count III, all of you agreed, returned a unanimous decision regarding the fact that the defendant killed Ci'Andria Cole. Murdered her.

Those decisions have been made by you. The component or the obligation, your duty, or job at this point in time is to examine those three verdicts as an aggravating circumstance and make a determination if the State has proved their allegation of aggravation.

And the way they read, in terms of the Counts of VIII, IX, and X, again individualized counts, giving uniqueness and identity to each of the deceased in this case. Count VIII: Speaks that Cassandra was murdered by the defendant and the defendant had also committed the murders of Michael and Ci'Andria. Count IX references the murder of Michael, against the backdrop of the killings of Cassandra and Ci'Andria. Ultimately Count X references and speaks to the murder of Ci'Andria at a time when the defendant has committed the murders of Cassandra and Michael.

In one sense, and sadly so, it's essentially a very technical and mechanical evaluation. Your verdicts

already speak to the existence of the murders. And quite frankly it's the facts and evidence that speak to the timing issue that allow you to endorse the fact that the State of Indiana has proven its aggravating factor, the multiple killing circumstance, in each and every one of those counts.

And there is a verdict form for you when you make that determination that the State has proven its aggravating circumstance beyond a reasonable doubt. The State is confident that, in fact, we have done that. Again, inherent in your initial verdicts on the murder counts basically you're simply putting them together at this point in time.

Moving along, you now deal then with the existence of mitigating factors, which each of you independently are provided the opportunity to determine on your own, to speak of collectively as a group.

Upon making the determination, and the State believes you will, of the existence of the aggravating factor having been proven beyond a reasonable doubt, you then deal with the notion of weighing the two against the other. Aggravating circumstance balanced against mitigating circumstance. At that point, it's the State's position that, in fact, the aggravating circumstance, the multiple killing, outweighs any mitigation you may have determined to exist in this matter.

There is a verdict form for that. The State ask that you find and indicate on that verdict form that the State has proven that the charge and the proven aggravating circumstance does, in fact, outweigh the mitigators.

And ultimately, ladies and gentlemen, that determination of the aggravating circumstance over the mitigators now solidly entrenches you in your final decision. The final decision of sentencing in this matter. The options before you, a term of years, life without parole, and death. Ladies and gentlemen, the State of Indiana endorses the penalty of death in this case. The State believes it is the appropriate penalty.

It's the appropriate penalty when you look at aggravating circumstance in this case. The aggravation relative to the multiple killing circumstance. That, in fact, three individuals were murdered by Mr. Isom. Those individuals were a mother, and her two children. That, in fact, those three individuals are family. Multiple killing dictates, tells us Mr. Isom eliminated a family from this earth.

That mother had two children, a 16-year-old son and a 13-year-old daughter. Neither provided, allowed the opportunity to grow and develop into adults. Their lives were terminated on August 6,

2007.

In regard to the aggravation in terms of the facts and circumstances, you will recall from the evidence brought forward Cassandra received that devastating shotgun blast that was put to her head as she was on the floor and evacuated her brain from her skull. That followed, were involved additionally, five entrance wounds from a small firearm, from the handguns, where the wounds were inflicted additionally to her chest, her abdomen, and her back.

Michael Moore also having received the shotgun blast, two additional handgun wounds to the back and flank area along with grace wounds to his arms.

And finally 13-year-old Ci'Andria. Ci'Andria's reward for being home that afternoon, that early evening was that she was shot with a 12-gauge pump action pistol grip Mossberg shotgun. That she received eight separate unrelated entry wounds from the handguns. One of those wounds to her head. Additional to her arms and her back.

Ladies and gentlemen, the State has proven to you the aggravating circumstance in this case. They have proven it beyond a reasonable doubt. The State has shown and believes that, in fact, the aggravating circumstance in this matter outweighs any mitigation that you may find. And finally, ladies and gentlemen, the appropriate penalty upon concluding your thoughts, your balancing is that a sentence of death deserves to be returned. Thank you.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF DEFENDANT.

MR. MCCLOSKEY: Honorable Court, esteem counsel. This is the opportunity, ladies and gentlemen, where I get to talk with you about what we proceeded through the last few days. This is my opportunity to summarize what I think have you been observing the last couple of days.

At this point in the trial, we are not trying to excuse. We are not trying to justify. We are trying to explain why it happened. The difficulty for me at this point is that you come to the realization that each of us are built upon a foundation, A foundation of time. From the point that we were born to the point where we die. You come to realize in doing this that the foundation that each of us have are distinct and separate.

Dr. Eisenberg talked to you about foundation. And he used an example of a house. You start at the bottom, which is your framework. I was lucky. If you

ask me what it was like as a child, I could tell you the street I grew up on. Tell you who my neighbors were. Tell you what my dad was doing, what my mom was doing.

But if you asked me thirty years later what block I grew up on, I couldn't tell you that. Thirty years later, this family -- and by the way, it's not easy standing up in front of strangers and bring the skeletons out of the closet to tell what the structure is.

You're going to get an instruction on the credibility of the witnesses. Do you think that from that chair they are happy to say where they lived, what they grew up on, who block they lived on? I grew tired of hearing block three, block seven, block eight. And how is it thirty years later to say who ran block three. Did they even take a gap? It was Vice Lord, Gangster Disciples.

That's the foundation we are talking about here, ladies and gentlemen. That's the foundation. So when we are talking about somebody's foundation, we are talking somebody's life history. We start at where -- we start at the bottom. And what do we know? What was the evidence that was presented?

Well, you heard the name Julia, Grandma Julia. Julia was a -- married to sharecropper down South. The first witness you heard, ladies and gentlemen, was Lula Isom, Kevin's mother. She was born in Arkansas in 1943. She was the youngest of seven children. She is the last one still alive.

What's important is establishing the background, the foundation that someone's life is built on. Lula moved to Chicago. Mother, Julia. And, ladies and gentlemen, their version of Chicago is not my version of Chicago, is not your version of Chicago. They moved from location to location to location. Julia was working as a domestic.

They moved. They kept moving. Everything about this family is moving and moving and moving. Lula at twenty-one, she had Kevin. Oh, by the way, over the last couple of days, you heard from the women. What is interesting about this family and this foundation is that it's all women. There are no men. No fathers, no uncles. Just women who are doing their best. It's not enough.

Kevin was born to Lula at age twenty-one. You know she drank during his pregnancy. When he was about born, he was born at a hospital in Chicago. Oh, by the way, education for Lula ended at eleventh grade. She went to work. She had Kevin at twenty-one. Born breech at the hospital in Chicago. She's by herself. Father wasn't there. Wouldn't even show up to sign the birth certificate.

In fact, as I talked to the family on the stand, you

think it was easy for them to say, I don't know whose Kevin's father is. I can't imagine that sort of life. Kevin lived it. And the Isoms lived it. By the way, father's name is Chester. You didn't hear from him, did you?

Now, you heard from the aunts, cousins, relatives. Grandma Julia was raising Kevin. Grandma Julia was a person that raised Kevin. Lula and Kevin stayed with Julia until Julia passed in 1989.

And what did Miss Stewart Anderson, Yvonne tell us? Told us that when Julia died Kevin stayed in his room until he was dragged out by his Aunt Maebell. Not an uncle, but his aunt.

Why is that important, ladies and gentlemen? It's important because it shows the framework, the ground that had been built by this point on this particular house. It was damaged. His friends were his family.

By the way, family was living at Altgeld Gardens at this point. Now Altgeld Gardens is on the far south side of Chicago. Now you look at the map of Chicago, we're just lakefront at Buckingham Fountain and Michigan Avenue. Well, you head south down 94, go a ways, keep going, keep going, keep going. Go south. You end up at Altgeld Gardens, the Garden.

And I started off the week by saying Altgeld Gardens, and even I started to adopt the Garden. That's what people called the Garden. The Garden is not a pleasant place to live. It's not a pleasant place to grow up.

And you heard from Dr. Garbarino today talking about the south side and war zones. I can't imagine growing up in a place that a school teacher, Miss VeDree, had to bribe parents for a PTA meeting and to buy books, clothing for the kids. Going to school, walking along a wall and seeing a list of names of people that have died.

Now, there are plenty people that grow up and become successful from a single parent home or from the projects. That happens. But what Dr. Eisenberg told you is that there are factors involved. And you can have two different kids in the same house and end up two different ways. Dr. Garbarino told you that as well.

For Kevin, the framework was being leveled. At his reaction, his life is being formed at a very young age in a war zone. Because that is what was. Family moves to Akron, Ohio, at age ten. And at age ten, his friend, his classmate unfortunately dies. Blames it on himself. The family ends up back, back in Chicago. Now That at this point, he's going to Harlan. And he is at Harlan School. And the family

told you about there is two different ways to get to school. You can't walk to school. I can't comprehend that. You can't walk to school. He took a separate bus to go over around certain areas. And that's what Kevin was doing. Kevin was jumped, beaten in an attempt to get him to join whatever gang was running Harlan at the time. Whatever gang that is. You have to stay inside and make sure the bus is right there so you can run right to the bus. Can you imagine living in an area like that? Could you? I can't imagine. When I got on the bus, I walked down my driveway, hopped on the bus, and went to school. But that's what he was doing.

And then family sends him to Piney. He's there for a year. And he ends up right back in the Garden. Right smack dap in the Garden again. Rather than keeping him at Piney, give him a chance to be out of Chicago, they bring him right back to the same spot, to the Garden. And what do we know about the Garden? Well, you can't go block three or block two. You can't go to this. You can't go to that. Especially if you're not a family of a gang. If you're a member of the gang, you can at least hang out in the area. You're okay.

But heaven forbid you're a neutron. That's a term I have learned and I have been doing this seventeen years and I never heard neutron. We learned about it, didn't we? If you're a neutron, means you're a target from everybody. So he's a neutron.

Goes to Carver and graduates. A lot has been made from graduation from Carver. And what did Miss VeDree tell you about Carver, the schools in Altgeld Gardens? Do you honestly believe that he was a straight A student. That it was - that he wasn't just taken his last year into.

Mrs. Isom, in all respect to Mrs. Isom, but to her Bs, and Cs, and Ds are okay. My house, Bs, and Cs, and Ds were not okay. In my house, education was important. How was a child to get an education if they moving every year from location to location to location to location? So now the building is starting to become fuller. For all intents and purposes, Kevin was the man of the house. We have heard that before. He was a homebody. He was expected to be the man of the house at a very young age. He was the only man in the house. And that's an awful hard place to be a man in that environment.

Again, ladies and gentlemen, this a not to excuse. This is not to justify. This is to give you the full picture of what we have here. Because, ladies and gentlemen, you are going to have an incredibly hard decision to make. And it has to be your individual decision.

This is why we presented the evidence that we did to give you the full picture of who Kevin Isom is. You saw part of it in the trial itself. We are giving you the full picture, ladies and gentlemen.

Now, Amy Nguyen provided you some maps to take a look at to sort of explain as a matter of statistics and what the census showed what the Garden in those particular areas were like. And I am sure they are fresh in your minds, ladies and gentlemen. The fact of the matter is Altgeld Gardens is the poorest section of Chicago. It's the most dangerous section of Chicago. It has the highest levels of single family households. Highest levels of dropout. That's what the Altgeld Garden is and that is why we showed you those pictures, those maps.

Now, we know in 1989 that Julia died, the person that he called mom, not Lu or Lula. Mom died. So Kevin and Lu end up moving to Gary, Gary, Indiana. Oh, by the way, part of the reason that we presented what we did is that you learned the family was expanding; his cousins having their own children, were getting married. Everybody was moving on but Kevin. Kevin was living at home with Lula.

Carol moves to Gary in a single story house that we showed you. And she didn't want to be alone. So the family, the family moved. Lu, Kevin, and quite a few other folks were living in one single house in Gary on Second Avenue. The family had one car. Kevin, you know, even though he wasn't employed at this point, provide transportation. He helped out as best he could. He took people to school. He picked people up. He cut people's hair. The families were just congregating on that one house.

We know Kevin became a security guard. That he worked as a security guard until he was - people said laid off. Some people said fired. Irrespective, he lost his job. We do know in 1994 that he met Cassandra. Cassandra had two children, Michael and Ci'Andria, beautiful children. They got married. They remained married for twelve years.

So August 6th of 2007 -- by the way, this was the first time that Kevin had a family of his own without Lu. And if you remember Yvonne said, I thought he was playing. I thought he was playing that he had a girlfriend. Strike you odd. Playing because he had a girlfriend. Because he never left the house, ever.

We know he hides in his room after Julia passes, after Maebell passes. He disassociates himself from the stress, of the event. Ladies and gentlemen.

So he gets married. Twelve years. And then the night happens. Three people die that night. And the question you have to ask yourself, ladies and gentlemen, is what happened that night that resulted

in the event? Because we know that Kevin doesn't have a criminal record. We know he does not spent a day in jail. Yes, he does drink. He does self medicate. We know he has back issues. He medicates himself.

What happened that night? Because I believe it was Mr. Aiken who said that he is a model prisoner after. So what happened that night that resulted in the death of three people?

Well, you heard from Dr. Parker. And Dr. Parker testified twice. He says that Kevin doesn't remember what happened. He says he's not malingering. He had an initial diagnosis of PTSD. But that cleared up. It doesn't answer the question. He then, based upon his testimony, tells you it had to have been an extreme emotional disturbing event. It had to been that. Because Kevin doesn't mangle. And based upon his social history and everything presented to him, including the statement that was given to Detective Bond, everything fits with extreme emotional disturbance. Ladies and gentlemen, the position of the defense was that it was extreme emotional disturbance.

Now we heard from Dr. Gelbort. Dr. Gelbort told us very important things. And I know that you paid attention to what Dr. Gelbort had to say. Dr. Gelbort was the neuropsychiatrist that examined Kevin. And he discussed the limitations that Kevin has. You remember the foundation we talked about, ladies and gentlemen. That's why that was important. That's why we painstakingly called member after family member. It wasn't to generate sympathy. It wasn't to generate anything but to lay the groundwork for why these doctors found what they did.

And Dr. Gelbort tells us that he's got frontal lobe limitations and impairments. That the deficits are present at all times and limits his capacity to adapt in situations requiring active and efficient cognitive endeavors in information process. Dr. Gelbort took you through Kevin's abilities to react, abilities to comprehend. And a big deal was made about, well, what's mild? A mild cancer is how he explained it. Less than five percent of the population explanation. The fact the matter is Kevin has significant issues in his brain. And Dr. Eisenberg explained to you how that happened. It's not something you're born with. It happens over time. Over time this has been building. Quite honestly, ladies and gentlemen, this event, this life that Kevin has led up to the point, and we heard unremarkable. It's unremarkable to me. That he basically was a homebody his whole life. Sheltered. When he got out, it was a dangerous and cruel world. And that is the way he looked at life.

Ladies and gentlemen, you are going to be allowed to consider in mitigation factors. You will receive an instruction on this. And I am not going to insult this jury and suggest to you, because, ladies and gentlemen, it's your individual determination, your individual, individual determination as to what mitigation you want to look at and what the aggravation is.

And, of course, the State is held to the burden of beyond a reasonable doubt to the aggravating factor. The standard is a little different in mitigation. That's called a preponderance standard. A preponderance standard is more probable than not.

And I am going to propose to you that there are quite a number of mitigating factors. And there going to be listed in the instructions. But what is clear in mitigation, ladies and gentlemen, is an extreme emotional disturbance. There is no question about that. The evidence presented, the argument is made. We are all talking about anger, we are all talking about leaving marriage, losing a job. Those are all, to someone of Kevin's makeup, is devastating. This is the man that locked himself in a room over the death of a family member.

We talked about terms like death of a thousand paper cuts. Well, that's what this is. This is a thousand paper cuts over and over and over again. Again, I am not offering it as an excuse. To explain what happened. His no absolutely history of any prior criminal conduct. Those are two of the three statutory mitigators we are asking this jury, each one of you, to make a determination. And there are suggested non statutory mitigators that you may consider. And they are 1 through 29.

I know, ladies and gentlemen, you have been paying attention throughout this entire trial. And first of all, I want to thank you. This has been a long road for all of us. You know it's taking us out of our lives, out of our family's lives going on five weeks. And I appreciate and I thank every one of you from the sacrifice that you had. But please understand, we all have been working as well. We all gone through this journey together.

And I know that the instructions that the Court will give, that you will, in fact, read, you will digest, and come to a conclusion. The State is suggesting that you sentence Kevin to death. I am suggesting that you sentence him to a term of years. He's 47 years old, ladies and gentlemen. You will receive an instruction as to what the penalty is for a murder case. He will die in prison. He's not going home. The question you have to ask is what is enough? There is nothing you can do today that will bring back these three people who are now dead.

You have to ask yourself, not knowing why you are in jail for the rest of your natural life beyond the fact that you presented -- you pronounced guilt on him, not knowing what happened on August 7th, 2007, August 7th, 2007, can you imagine living like that. Because that's Kevin's world. He will spend the rest of his life in jail. That's enough, ladies and gentlemen. Miss Gonzales testified yesterday. And I was very appreciated that a correctional officer was willing to come over and testify for Kevin. What did she tell you, ladies and gentlemen? She said we give on the fourth floor of the Lake County jail, give an hour opportunity to go to the range. She also told you that Kevin rarely takes advantage of that.

So for the past six years, he's lived in a six by eight cell, locked down twenty-four hours a day, seven days week. If you're going to create a problem or be an issue, you would you have done it in that time frame.

Mr. Menchaca testified, and again, I thank him as well, correctional officer. He went through all the Spillman report on the record. Didn't find one sort -- Didn't have one incident. Not one write up, nothing. And what did Mr. Aiken tell you based upon his review? That he could be housed. Ladies and gentlemen, I am asking you on behalf of Kevin to sentence him to a term of years. Thank you.

**CLOSING ARGUMENT (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF STATE OF INDIANA.**

MR. URBANSKI :

Ladies and gentlemen, the question, point belabored by defense counsel to some degree in the course of their opportunity to speak with you this morning, what happened in the apartment, we just don't know. How are we ever going to figure that out? Kevin has this memory loss. And we just don't know.

Well, ladies and gentlemen, we do know. The evidence tells us what happened there. And the evidence told us very clearly that Kevin Isom, the owner of the 12-gauge shotgun, a .357 magnum, and a .40 caliber handgun, used each of those weapons in the course of the evening hours to slaughter his family.

That is not up for dispute. Each of you have decided that for yourselves beyond a reasonable doubt. The question of what happened is not up for dispute. The facts speak for themselves. The State presented them. You evaluated them. You made a determination. You rendered your verdict of guilt beyond a reasonable doubt against the backdrop of the presentation of those facts.

Kevin Isom today, as we moved forward, is a convicted murderer. Kevin Isom murdered his wife and the two children. That is not for dispute.

One thing that is up for dispute is in a sense the picture created during the penalty phase of who Kevin Isom is. And there was a parade of family members and experts who wanted to tell you all sort of things about Mr. Isom in particular, relative to the family members and their personal knowledge. The experts have no personal knowledge of the life of Kevin Isom. And they basically presented for you a model of what their work would show or their investigation would show, their studies would show.

And defense has embraced for you the fact that the model created by the experts is the person who is Kevin Isom. That is not reality. The fact is Kevin Isom is not the person created through the drumbeat of the expert witnesses.

Dr. Parker today told you that Kevin had good family support. Granted absent a father. That the women in his life raised him. He was raised by his mother. If you recall repeatedly defense asked the questions over and over to the cousins and the family members, who raised Kevin, who raised Kevin? Was it Julia? The answer was always no to Grandma and Julia. Same person obviously. But the answer was always Lula. He was raised by his mother. Clearly entrenched with the aunties and grandma.

But the bottom line out of Dr. Parker's mouth today, good family support. No history of psychiatric problems. And ultimately spoke of a solid and unremarkable life. A solid life emerging from Kevin's existence. And actually taking it one step further in that regard, kind of fusing that notion of Kevin's education, which it was interesting that the school teacher that came in here and told you about the circumstances where she taught and the experiences of her children had, Kevin never attended that school.

It's little hard to imagine the relevance of that. But again, the supposed model that is being created, not Kevin. And bringing the educational component home, Kevin was a high school graduate. As the State understood the testimony, he was essentially the first male in the family to accomplish that goal, a tremendous goal in that sense. And bringing you back to Dr. Parker, Dr. Parker said that, in fact, Kevin as of average intelligence. Actually I think what he said, if I recall correctly, that he was at the low end of average intelligence. Nonetheless, average.

But most important the point that he hooked to

it was that Kevin's average intelligence was supported by the testing of Dr. Gelbort. So Gelbort, regardless of what he wants to say, establishes Kevin as a reasonably intelligent individual.

The most remarkable sort of image that defense attempted to create in one sense that certainly diverged from the model probably most uniquely I believe was Dr. Eisenberg in his discussion. And he went through all of these risk factors that one would expect to see in the context of a life of a person experiencing the reality that Kevin was experiencing.

Dr. Gelbort -- or excuse me. Dr. Eisenberg spoke of the risk factors. And when he fused them with Kevin's life, he was completely dumbfounded. Completely dumbfounded. And actually the word he used was troubled. Because, in fact, none of the risk factors that would explain future behavior coincided with Kevin's life. None of -- his words were, I believe, they didn't manifest themselves in his life. And the comment that he actually said, if you recall in summing up Kevin's life, he actually did pretty well. Those were his words. Their expert talking about the fact Kevin in the context of his life was doing pretty well.

So in that sense, ladies and gentlemen, the foundation in one sense that you can look at is the fact that Kevin had good family support, had achieved educational goals that no one in his family had previously seen, and that he had a total void of any prior psychiatric history. That's the foundation. Those are the bricks upon which you can analyze the aggravating and mitigating circumstances.

Something else you could look at is the credibility of witnesses. Dr. Parker, the defense's own witness, essentially impeached the testimony regarding Kevin's job status. Prior to Dr. Parker testifying, we had heard stories of Kevin being laid off and receiving severance packages. Not the reality from Dr. Parker, who, in fact, got his responses from an interview with Kevin. Kevin words were that he was terminated over a dispute where Kevin was discontent with the fact he did not receive a raise over the course of the last several years. Wildly diversion.

I believe it was that same witness whose testimony was impeached in regard to the job loss, which by the way if you recall, she had the opportunity to go to the employer who, of course, was willing to talk to with her about terminating one of his employees. Because that, of course, in today's world has so often. The reality of that

same witness, her testimony was later impeached by one of the State's witnesses that was called on rebuttal. A second defense witness' testimony rebutted by the State. Each of them impeached.

And you know, ladies and gentlemen, again the decision the State is going to ask you to make is to return a verdict of death. And asking you to return that verdict because it is appropriate. In terms of analyzing the appropriateness of that penalty, ask yourself, kind of take the big step back, in terms of the existence of the death penalty in the State of Indiana, and, you know, does it exist. On theoretical grounds of proportionality, does it exist for retribution? Does it exist on a deterrence level, whether generally or specifically from controlling people's conduct?

Ladies and gentlemen, simply in regard to answering that question, the State represents to you that the death penalty is in a sense -- in one sense a manifestation of community. And what the State means by that is that the death penalty is not a arbitrary penalty that is handed out.

The reason the State says is that the death penalty and it's existence is controlled in a sense by the legislature. The legislature, as we know, our people elected into office expressing the will of the people. They're voted into office. They are maintained in office for the purpose of carrying out the functions of their constituents. Constituents disagree, they take people out of office.

The fact that, that penalty exists is an endorsement of the community. And in the fact it exists, it exists for the fact that there are circumstances under which that penalty should apply. Again, regardless of its existence or not, when someone commits a criminal act and is convicted of it, a penalty should attach and will attach. And in determining that penalty, for either the smallest crime, there is a range. And in this context, ladies and gentlemen, under the circumstance of the multiple killing and the State proving its aggravating circumstance, the availability of the most extreme penalty for death is available.

And it's the State's contention that the act performed, the aggravating circumstance proven, which is that again multiple killing relative to Cassandra, Michael, Ci'Andria, is that it was an extreme act, it was a brutal act, it was a horrific act, and it was an act carried out solely and consciously by the defendant.

And in making that evaluation in terms of the balance, there is a very distinct point I believe that emerges in understanding and providing

guidance. And in getting to there, there are two circumstances, two sort of realities that unfold here under the notion of Kevin as protector and provider. And as a protector of his family, the physical components of his condition, the back, basically creating him the notion that he has failed and failing in that regard.

In terms of a second avenue, is that of provider. We know he was fired from his job. He is no longer providing. So he is no longer a provider; he is no longer a protector. That's against the backdrop of his troubled marriage.

And what now, ladies and gentlemen, is the tipping point in your determination? And quite frankly we will borrow from Dr. Gelbort in that examination. Because what emerged from Dr. Gelbort, the one sort of shining component that Gelbort put forward in regard to Kevin's decision making was that he did best in making slow and deliberate decisions.

Ladies and gentlemen, the State proposes to you that, in fact, those acts of murder, of killing, of slaughtering his family were the a culmination of Kevin Isom slowly and consciously and deliberating making those decisions. Retrieving his weapons, making sure they were loaded, and repeatedly firing them into his wife, and the children.

And that's the best that Kevin Isom's decision making comes to. And, ladies and gentlemen, that is what supports the notion of aggravation outweighing mitigating circumstances. And, ladies and gentlemen, that's what provides you the opportunity, the solace, and the intestinal fortitude to return the verdict that these facts demand. And those facts demand death.

Because ultimately, ladies and gentlemen, Kevin Isom failed Cassandra as a wife and as a life partner. He failed the children as a father. He failed himself as a man. He failed his mother as a son. And he failed the community as a productive and constructive member of that community.

And for what he did, under the constraints that you're given of balancing aggravating and mitigating facts, ladies and gentlemen, death is appropriate. And understanding Kevin Isom, he loved Cassandra and the children to death.

In his final acts, his show of love for Cassandra and the children, again to take his weapons, his shotgun, his .357, his .40 caliber, and repeatedly, consciously-- remember the open phone line. It was boom, boom, boom, repeatedly.

And, ladies and gentlemen, that understanding and that appreciation for the aggravation and the multiple killing circumstance relating to Cassandra, Michael, and Ci'Andria lay at your feet and dictate the appropriate verdict of death. Thank you.

CLOSING ARGUMENTS

State v. Wilkes Clark Circuit Court 2007

CASE SUMMARY: Wilkes met and befriended Donna Claspell while they were enrolled in an in-patient drug rehabilitation facility in Evansville. After completing treatment, Wilkes moved in with Donna and her two daughters, 13 year old Avery and 8 year old Sydne. Shortly thereafter, Wilkes began molesting Avery. While intoxicated, Wilkes murdered Donna in her bed, beating her with a hammer and wooden level which resulted in multiple skull fractures. He also cut her throat with a knife. Wilkes also attacked Sydne in Donna's bedroom, beating her with the hammer and level, causing massive skull fractures. Wilkes then went to Avery's bedroom, strangling her with a sports bra and leaving her naked on her bed with her hands tied behind her back and one of her legs tied to the footboard of the bed. Wilkes confessed to the crimes, but claimed at trial with the aid of an expert, that it was a false confession.

The case was filed in the Vanderburgh Circuit Court and venued by agreement to Clark County. Vanderburgh Circuit Court Judge Carl A. Heldt presided at trial. Prosecuting Attorney Stanley M. Levco and Deputy Prosecutor Donita F.M. Farr represented the State of Indiana. Attorneys Barbara Williams and Kurt Schnepfer represented the Defendant.

At the penalty phase of the trial, the jury hung 11-1, but in written findings unanimously found that the State had proved the aggravators beyond a reasonable doubt, and that they outweighed the mitigators. Judge Heldt later imposed a death sentence.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF STATE OF INDIANA.

MS. FARR: May it please the Court, counsel, members of the jury. There are three questions that you're going to have to answer today. The first one of which, did the State prove aggravating circumstances? By virtue of your verdicts, we know that they've already been proved. Arguably, one of the four, the murder of Donna and one other person, Sydne or Avery, two, the murder of Avery and either Donna and Sydne, three, the murder of Sydne and either Donna or Avery, and the fourth one, which

technically we didn't -- you didn't find but we proved beyond a reasonable doubt but it's uncontroverted, and that's the fact that Sydne was under the age of 12. So that's -- those have been -- we had the testimony from Sharon Shamo and also from Dr. LeVaughn that Sydne was eight years old.

The second question is, do the aggravating circumstances outweigh the mitigating circumstances, and that one has been answered as well, too. In opening statement, defense counsel stated that no mitigators outweigh the aggravators, so that has been answered, too, we know that the aggravators outweigh the mitigators.

The third is the final one, and that is, does Daniel Wilkes deserve the death penalty or life without parole? Basically, does he deserve your mercy, that's the question.

The Judge read to you the instructions and you don't have the verdict form yet, but I just want to -- it took me a couple of times to read through this and I just want to basically explain when you get back to the jury room what they're going to look like. There's a total of six verdict forms that you're going to have and whichever foreman you elect will be the one that signs it, and of the six verdict forms, the first four are stapled together and it's the verdict form for the charged circumstances.

The first one is -- like I said before, the first three, really, are the multiple murders. The fourth is whether or not Sydne was under the age of 12, so that will be - those have been proved, and that's the first section, that the State has proved them. And again, by virtue of your verdict on Wednesday, we know that's been done. The fifth one -- the last two are not stapled together, and the fifth one is the verdict form for aggravating circumstances and mitigating circumstances and the balancing test that you're going to be doing. The top part says that the State of Indiana has not proven, the bottom part is that the State of Indiana has proven. So defense has already agreed that we have proven those and that they outweigh, so it will be the bottom part.

And then the final one is a verdict form for recommending one of three choice, the first one

is term of years, the second one is life without parole, and the bottom one is death penalty. So I just wanted to explain that to you. This is the last chance that Donna, Avery, and Sydne will have to speak -- excuse me -- and this is what they're saying. What he did was unexcusable and unavoidable, It was violent. It was cruel. It was evil. It was painful. It was terrifying. The experts that we heard yesterday said that Daniel Wilkes needed love, attention, and affection, and I'm -we're not minimizing that, he had a terrible childhood. There's no question about it, he had a terrible childhood, but remember this, he had Aunt Norma, How cute was she, 77-year-old Norma. She's a loving, kind, caring person. You could tell that from the stand. You wanted to go up and hug her when she was up there.

Her dad, the defendant's grandfather, was a mean drunk, abused her, and sexually molested her, and it's interesting. She's 77. Whether it happened 60 or 70 years ago when she was molested by her father, the defendant's grandfather, how painful it was for her to talk about that and to admit that to you in court, and that's the horror of child molest, how it lasts for decades upon decades on a victim, but Norma survived the abuse and the torture that she was subjected to as a child and she chose to make good decisions and she became a good person and she raised a family, she's still raising her grandchildren at this point, and she cared for the defendant. She visited him when he was in the Soldiers' and Sailors' Home. She took him fishing with his cousin, I believe is what she said. She was a loving influence on his life.

The defendant also had love and affection and attention from somebody else in his life, and that was his sister, his older sister Lea Ann. Lea Ann survived the Gospel according to George's Christ, as she described it, George, their father, the defendant's father and Lea Ann's father. She survived the dirty home, the neglect, the abuse that she was subjected to and all of the kids were subjected to in that horrible home. She made good choices. She made good decisions. She went through medical school -- or not medical school. She went through nursing school. She's now a nurse at the Department of Corrections, and she offered her love and attention and affection to the defendant as well. But eventually the defendant turned on her, too. She told you how the defendant had taken advantage of her and her family even though she welcomed him into her own home and allowed him to be around

his -- her children, and she acknowledged that drugs had ruined her family and she even told you that the defendant needs to be punished. She acknowledges that.

The last person to offer love and affection and a home to the defendant was who? It was Donna. How did he repay her? He brutally massacred her and her entire family, Excuse me. A place where someone should feel safe and secure is your own home, in your own bed. He is a manipulator. The defendant is a manipulator, make no mistake. When he was at the youth home, the United Methodist Youth Home, he was described as a young man sneaky in his behavior. When he went to Stepping Stone, Southwest Mental Health records, he manipulated women and he told them he -- I don't want to say bragged about it, but he openly discussed how he would meet girls at work, move in with them, and when his drinking got bad, they would either kick him out or he would find somebody else who had better drugs and move in with them.

He wants you to have sympathy for him and for his 13-year-old daughter. The defense showed you pictures of her baby photo. She's now 13, I believe was the testimony, but yet he chose to re-enlist in the National Guard and take that 14 grand and blow it on drugs instead of taking care of his own daughter, yet he's using that and manipulating that photo.

The defendant told his own mitigating expert one year after the murders when he had been clean for a year and without drugs that he still doesn't remember anything about the murders and told yet another lie about Michael Baker and Donna and concocted the story about them getting into a fight on the porch. And probably the worst manipulation of all, he manipulated Avery in every sense of the word, and not just once but numerous times. He blames everyone else. It's everyone else's fault.

Is he taking responsibility for his behavior and his actions? His father was mean. His mother was inattentive and neglectful. We had experts come in and say that he should have been on medication earlier, there should have been an intervention. The treatment -- yes, he had treatment, but his treatment should have been better. The CHINS petition was dismissed too early. He was dismissed from the youth home at the age of 16 when it should have been 18. And Dr. Engum said if he had been raised in his home, that he would have been married with

a house and a couple of kids, but is the reverse true? We know it's not true. Lea Ann is proof positive of that, you know. She grew up in that horrible home, that horrible situation. She kept her bedroom clean. She grew up and became a productive member of society.

But the blame game comes down that he had the audacity to blame Avery for this situation and for what had happened. He said that Avery is the one who came onto him, he was sleeping and she came in and was hunching him. She didn't look like a 13-year-old, but she's the motive, and but for her coming onto him, he wouldn't have had to kill Donna because she wouldn't have found out about it. He's still blaming everybody else. He had a choice and he's had choices, like all of us do. As an adult, he made the right choices and he has the ability. We know that because he went into the National Guard. The first time -- he was in there twice, but the first time he got promotions and he did well for years, and this is as an adult, so we know he has the capabilities of making good choices and good decisions and he got his GED.

Tabula rasa means clean slate. Every one of us are born with a clean state and it's by the choices and decisions that we make in life is how that slate is filled up. He chose to do drugs. He chose to be sober but he also chose what he did on April 23rd and 24th, 2006. It was his choice. This was not a spontaneous drug-induced rage. It was not. It was a cold, calculated cover-up.

He tip-toed into Donna's room, opened the door and flicked on the light real quick to see the positioning of her body. He had to have had that weapon in his hand when he walked in and said, quote, I felt where her head was with my hand real soft, and then I hit her and broke her eye socket and cut her ear and slit her throat. What did it sound like when he took that hammer and crushed Sydne's skull on both sides of her head? At what point did she cover herself up with her little hands when she was subjected to the 27 impact injuries on her head, her face, her neck, her shoulders, and her hands? It wasn't spontaneous when he took off his bloody clothes and went back into Avery's room because he knew she wouldn't have done it, you know, messed around if she had seen that. He chose to fill his slate with the brutal and selfish murder of three people, a family, a mother and two girls,

The defense said in their opening that we're going to show you photographs, a lot of photographs, and it was to shock and awe and

that these photos are going to be etched in your brains forever, but I ask, of those 80 or so photos, that you remember three, Donna (indicating), Avery (indicating), and Sydne (indicating).

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF THE DEFENDANT.

MR. SCHNEPPER: May it please the Court, Your Honor, prosecution, defense. Members of the jury, this is probably the toughest morning you'll ever have in your entire life. It's the toughest morning I've had in my entire life. Today you're being asked to make a decision on whether someone lives or dies, and like I said in the first phase of this trial, I don't envy you.

The first thing I would like to talk to you about is the separation of phases and the fact that we're here for mitigation or what exactly is mitigation. The Court's instruction Number 4, I want to make it very clear to you, Mr. Levco asked a question to Dr. Smith whether or not Danny's intoxication, his drug use was being offered as an excuse or a justification for what happened. There is no -- there is no excuse or any justification for what happened to Donna, Sydne, and Avery. It's not possible. Mitigation has nothing to do with an excuse or a justification for the crimes. Instruction Number 4 that the Judge read to you, a mitigating circumstance can be anything, anything about the defendant. It lists age, character, education, environment, mental state, about his life, his background, or any aspect of the defendant that you, as an individual juror, might consider or think justifies giving him a sentence of life. Anything, We're not offering excuses or justifications for what happened.

They're three innocent people that were brutally murdered and there's a weighing that the Court has instructed you to do. When you take those three lives that were taken, there is no -- there is no mitigating evidence, there's nothing about Danny's past or his upbringing that can possibly ever outweigh those three lives that were lost, but the important thing about mitigation and about the instructions and what you're going to be instructed to do is that no matter what the weight of these two circumstances are, the aggravating and mitigating, no matter what weight is assigned to either, you have an absolute right at all times to choose life, an absolute right to choose life for

whatever reason even though the aggravators outweigh the mitigators. That has no impact on how you should vote.

A mitigating circumstance can be something that you heard during the first phase of this trial, during the second phase of this trial, something that you thought about but didn't hear, something that Norma said, something that Brenda said, something that Lea Ann might have said, or any of the doctors might have said. It can be something you just thought about it, it could be something that you didn't hear about. Anything that you can find within yourself that you think is a reason to choose life as a mitigating circumstance. Anything. It could be a feeling, as simple as a feeling, something that you can't even put into words for a reason not to put Daniel to death, and this is your own individual moral assessment, your own opinion as to what his sentence should be.

Like I said, no matter what, you are never required, never required to come back with a sentence of death under any circumstances. As jurors in this second phase, you have certain rights, duties, and obligations. You have an absolute right to choose life over death under any circumstances, an absolute right. You have an absolute right to your own moral opinion, your own individual assessment as to whether Danny should live or die. You have a right not to have that opinion criticized by other members of the jury. You have a duty not to criticize or bully anyone else because of the opinion or the beliefs that they've found. You have a duty to return only the sentence that is your personal moral opinion and a duty to stick to that opinion and not return to this -- to this courtroom with a unanimous verdict or sentence of death unless that sentence reflects your own moral opinion. You have an obligation to choose life. From everything you've heard, if you find one mitigating circumstance, if that is your own personal belief, that is something that you heard, something that you feel, it's just what you want to do, you have an obligation to return with a life verdict.

I want to remind you again that the State, the State of Indiana and its laws never in any circumstance ever requires the death penalty, even in the worst cases,

You need to ask yourself, why was Danny at Donna's house? There had to be something about Danny, and after working with Ms. Williams and Mr. Wilkes, Danny, for the past year and a

half, there is something about Danny. Donna saw that. He's likable. He's lovable. He's funny. She invited him into her home not knowing what she was getting into. There was something about him that made Donna trust her -- trust him, and that's still there today. Danny, please stand up, (Daniel Wilkes stood up.)

Our message to you is that Danny is not the worst of the worst. The Danny that committed these crimes is not the true Daniel Wilkes, not the true Daniel Wilkes that I've gotten to know over the past 18 months. I submit to you and my message to you is that this is the Daniel Wilkes that myself and Barbara Williams have gotten to know. The Daniel Wilkes that committed these crimes is not reflected here today, was not reflected during the first phase. That is a Daniel Wilkes that no one has ever seen before. He has no prior criminal history of any violence whatsoever. He's never hurt anyone before in his life. He went from drunk driving to triple homicide, and like Dr. Aiken said, he just -- he had to come meet him, he had to come sit and talk with him because he didn't fit the mold.

I ask you to find one reason, just one reason from anything that you have heard, seen, or felt during these past two weeks, find that one reason, that one mitigating circumstance, just find one, give that one reason weight, give that one reason, that one mitigating circumstance weight and assign it the weight of life. Thank you.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF THE DEFENDANT.

MS. WILLIAMS: Your Honor, prosecutor, ladies and gentlemen. Like Mr. Schnepfer, this is a very difficult morning for us, not anywhere near as difficult as it is for you. We've been together now for nine days and you've heard all of the evidence in both trials. It's now your decision to recommend life without parole or that Danny be executed. Like Mr. Schnepfer, on Mr. Wilkes' behalf, we are asking that you choose life for Danny Wilkes.

The Judge has read the instructions and, quite frankly, I wish there was a way that this legal information could be presented in a more logical way. Even having done this for years and years and we're sitting there going through instructions, it's confusing, but I think we need to remember that you folks who are going to make this decision this morning are in a very

rare and unique position. The decision of whether to recommend that Danny Wilkes be executed and killed or to recommend that he receive the sentence of life without parole which will ensure that he never walk out of a prison alive is only made in circumstances where, as the Court has instructed you, you may only consider recommending the sentence of death or life imprisonment without parole if you unanimously find that the aggravating circumstances outweigh the mitigating circumstances.

And, ladies and gentlemen, as I told you in our opening statement of the second phase, as Mr. Schnepfer told you and as I will tell you one more time, we do not believe that there is any mitigation that we could -- that there could be that could ever outweigh the tragedy of the loss of these three innocent people's lives. We offer no excuse for the conduct that resulted in their horrific death, as Ms. Farr described, but you've found him guilty of that and we acknowledge that the basis for bringing this charge that we'll ask you to recommend to the Court that Danny Wilkes be executed is based on the aggravating circumstances that more than one person, three people, two of them children, but more than one person and one of those people under the age of 12, that's what the aggravating circumstances are in this case, and we think there is nothing worse than that.

But as you know and as the Court has instructed you, now the decision is do you recommend that he be killed or do you recommend that he spend the rest of his life in prison, and that's where, as Mr. Schnepfer talked to you about, we're going to talk about mitigation.

We talked about that in jury selection. We talked about it a little bit in the opening, and as Mr. Schnepfer pointed out, mitigation, and as the Judge told you at jury selection, is anything at all that you think individually would permit you to weigh Mr. Wilkes' life in such a way that you believe that he does not deserve to be killed, but that rather you believe that life without parole is a sufficient punishment for someone like Mr. Wilkes.

By its definition, ladies and gentlemen, this phase of the trial is about Mr. Wilkes' background and you've all agreed, in fact, you've all promised and the Court has instructed you and will instruct you again, that mitigation must, must be considered and that mitigation is anything at all including the defendant's

character, education, environment, mental state, life, background, and any aspect of the offense which you believe weighs against the sentence and, ladies and gentlemen, as Mr. Schnepfer indicated, we believe that there are many mitigating circumstances that each of you could take into account and recommend that Mr. Wilkes' life be spared and that he serve the rest of his entire life in prison.

We believe, Your Honor -- we believe, ladies and gentlemen, that justice -- the interest of justice can be served by giving Mr. Wilkes life without parole. The reason, ladies and gentlemen, that we presented the evidence that we did was to -- as I said in, opening, to tell you about Mr. Wilkes' life. Now, you've heard the prosecutor in questions -- and, once again, Mr. Levco will be able to talk with you after I sit down and I won't be able to respond. You've heard the prosecutor ask questions and talk about the excuses that Mr. Wilkes has made and I'm just going to emphasize this one more time. Our information about Mr. Wilkes is not offered as an excuse. Mr. Wilkes has been convicted of this crime. We acknowledge that. He must be punished, and if the sentence is going to be life without parole or the death penalty, you need to look at the issues that we've -- the issues considering mitigation.

The reason we presented the mitigation that we did, ladies and gentlemen, is not -- it is not to make an excuse. We hear this all of the time. Oh, he's making excuses, he's blaming everybody. Ladies and gentlemen, if what happens in someone's early life isn't important, then why -- why do we all in our community, wherever we are, direct so much attention at trying to make sure that children are parented in a proper way, are clothed, fed, nurtured and loved? I think we all know the reason why, it's because it does matter. It matters -- it's the most important thing that matters in terms of how each of us live our lives.

Most of you when we talked about that issue and when we read that questionnaire -- most everybody on their questionnaire answered the question do they believe every family is dysfunctional, I think most of us would agree that there is something maybe a little dysfunctional in every family. Some of you, myself included, may have members of your family that grew up in the same household and made different decisions, but the fact of the matter, ladies and gentlemen, what's really

important and the reason we presented the evidence that we did on behalf of Mr. Wilkes is that from the moment he was born, he was treated worse than an animal. He was kicked to the curb, so to speak. By who? His father.

I submit to you, ladies and gentlemen, that if someone is the worst of the worst in this case, it's George Wilkes, and you heard -you heard Lea Ann talk about Danny got the worst treatment than anyone, and was Aunt Norma around? She was around for part of the time, and did she survive a horrible childhood and is she a remarkable person? Of course she is. But, ladies and gentlemen, do you know what George Wilkes did? Did you hear Norma tell you that she -- she did go to visit Danny when he was at the Indiana Soldiers' and Sailors' Home, and then a few months later -- he was there for a year or a few months -- a year and a few months and then he was back in Vincennes and then he was put in another institution for more than a year, I don't remember exactly if it was 17 months or 18 months, they sent him to the Methodist Youth Home for Children in Lebanon, and did you hear Norma tell you that it wasn't until a few weeks ago, a few weeks ago when we were talking with her about her relationship with Danny that she learned for the very first time that in 1982 and 1983 Danny was at the youth home where she could have gone to spend time with him and George deliberately didn't tell her that Danny was there, and she regrets that. She regrets that she didn't have that time with Danny. Could she be of help to him? Of course she could be.

The information that we talked to you about, about the trauma, the childhood trauma that Mr. Wilkes lived through, the long-term depression, the addiction to the drugs and the controlled substances, that's not an excuse, ladies and gentlemen, that's -- that was the reality of his life. He's had to contend with that. For some parts of his life, he's contended with that without -- without getting in trouble with the law. He has -- as Mr. Aiken indicated and as Mr. Schnepfer indicated, he has, for whatever reason, been able to operate or go through life without having any criminal behavior except the stuff that we talked about, 1994, 1992, 1997, almost 15, 16 years ago, but are we suggesting to you, ladies and gentlemen, that because he doesn't have a serious criminal record that he is someone who you consider a role model in the community or someone that you would want your son or daughter to turn out like? We're not suggesting

that, ladies and gentlemen, He was involved in using illegal drugs, We're not saying that he should get a citizens of the year award. We're saying that given the circumstances which were outside of his control in his childhood, he was functioning without being -- without being a criminal.

Does that mean that he was -- that he was making good decisions every day of his life? You heard Dr. Engum say that he was making decisions that would permit himself to become intoxicated or become drunk or high in an effort to sort of passively close off -- or to passively commit suicide. He didn't -- you heard testimony from witnesses who said that if he took enough drugs or alcohol that he didn't wake up the next day, that would be okay with him. Now, that's not -- that's not -- we're not suggesting that he was -- that he was someone who was -- had gotten his education and was making good decisions about what his life was going to be. He was doing the best that he could and he wasn't moving forward the way any of us would want our own children or our own brothers or sisters to move forward, but he hadn't -- he hadn't become a criminal, and as I talked with you earlier, the problem of the methamphetamine, the uncontrol- -- the un-, - the unlimited supply of methamphetamine that was available, that was made available by Mike Baker that he and Donna and Danny were ingesting was unbelievable.

You heard the talk about -- or the discussion about -- the testimony that was presented about the problems with what methamphetamine is. I've been doing this for a long time and I've had lots of people -- I've represented many, many people who have problems with methamphetamine. I -- you -- I don't understand, I don't understand how anyone could put that substance inside their body, but people do it and we know that these three people did and it had a horrific, horrific result.

Is Danny Wilkes responsible for the decision to consume and ingest methamphetamine in the last few -those days and weeks and months in the year before or years before? Of course he was. That was the wrong decision. He never should have done that. Should he have gone out and tried to find a way to pay his child support, get back in the National Guard and live a better life? Of course he should have. There's no excuse for that. He

was addicted to drugs and alcohol. Did he try to get some help? Many times. Should he have been in a long-term care facility? Of course he should have. Are we saying it's Stepping Stone's fault? No, we're not, but has Danny Wilkes, who's made the effort to try to deal- with some of these problems, is he the personification of evil who's just making excuse after excuse after excuse? We don't believe that about Danny Wilkes.

The prosecutor asked one of the witnesses if it was manipulative for him to sign up for the National Guard and not spend that bonus on his daughter. He probably should have done that, of course he should have done that, but for someone who is addicted to drugs, who didn't do that, is that going to be a reason that you're going to say that Danny Wilkes should be put to death? Of course he shouldn't have done that, but has Danny Wilkes any redeeming qualities? You heard Mr. Aiken say that he believes that -- he believes all human beings have redeeming qualities but he believes that Mr. Wilkes would make -- has made a good adjustment to incarceration, that he would probably be the kind of person who would be in prison for the rest of his life and ultimately be someone who would teach another inmate to write a letter home or teach another person to read at the first grade level. He's not the personification of evil. What happened was evil. It was evil what happened. It is unforgivable. In opening statement, ladies and gentlemen, I talked about the fact that by definition, murder is almost impossible for us to imagine because it's one human being actually taking another human being's life. It's so impossible to imagine. It is so horrific to imagine. I can't imagine it. But we know, ladies and gentlemen, we know, that human beings kill each other -- kill others.

I haven't heard much news in the last few days. I know it's snowing out west and it's coming east. I know that in -- where is that place? In the mall in Omaha, since this trial has begun, some young man went into the second floor of a department store during the middle of December, the busiest time of the year, and started shooting a gun and I think eight or nine people are killed. I can't imagine that, ladies and gentlemen. I can't imagine how another human being can do that, but human beings -- that's what murder is. They talked about that young man, he's been in and out of homes. There's no excuse for that, but that's what murder is, and the law, as I said a

couple -- yesterday, the legislature who sets the requirements and the availability of this penalty, of the death penalty, the legislature recognizes how horrific murder is, and as I said a few moments ago, you can't even consider life without parole as a penalty until you've decided that the aggravating circumstances that the prosecutor has alleged in this case are proven beyond a reasonable doubt, and the legislature in this State has made sure -- has -- the law says, based on what the legislature has provided, that if you choose to give life without parole in this case, that -- that penalty is sufficient. You can't choose life without parole until you decide that these horrible, horrible aggravating circumstances exist. In fact, if you read that instruction, if you were to go back there and decide that the State had not proven its aggravating circumstances, you couldn't even consider life without parole.

We're asking you, ladies and gentlemen, to give Mr. Wilkes the punishment that the legislature says can only be given in a case where the prosecutor has filed charges of murder and then filed aggravating circumstances on top of that, and that's this case and we believe that the information that's been provided to you through these witnesses should convince you and will convince you that Mr. Wilkes deserves to spend the rest of his life in prison. Thank you very much.

**CLOSING REBUTTAL (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF THE STATE.**

MR. LEVCO: First, on behalf of Vanderburgh County, I want to thank you for serving in this case. I particularly want to thank the alternate jurors. I think being an alternate juror has got to be one of the worst things to do, you've got to sit and hear all of this evidence and then you don't get to discuss it, but it's not that your service is not important. I've had a number of cases where at the last minute an alternate juror does have to serve and without you being here, you never know whether we would have been able to go with that and -although it certainly appears at this point that you're not going to be serving.

Mr. Schnepfer said that -- this morning, this is the toughest morning you're ever going to have in your entire life, and he also said in his closing argument that he didn't envy you because of the seriousness of this decision.

Well, I don't feel that way at all. This may be a difficult decision but this is an opportunity for you to do the right thing in a difficult situation. Almost every one of you said when I asked you, and that was the reason I asked you, would you like to serve on this case or not, I can't say for certainty all of you did, but I know most of you said that you wanted to serve on this case, and I'm sure you did not take that lightly. Maybe some of you are second guessing that decision now, I hope not, because you're in a unique position to make a significant decision whichever way it is. No one is in a better position to decide this case than you and your recommendation, if it is for the death penalty, will be totally justified by the evidence and you can take satisfaction in doing a job well done in a difficult situation.

Now, I want to talk first about Mr. Aiken since he just testified this morning. A couple of things he said, that Mr. Wilkes didn't fit the mold, and he meant that as to his prior history, but you heard that on death row now, there are roughly 15 people and of the 15, there may be three that have committed as many murders, so although I don't think he meant it, but in some way he doesn't fit the mold because he would be one of the worst people on death row or at least have committed one of the worst crimes on death row.

He also -- I want to talk about the costs a little bit and tell you that I don't think you should recommend the death penalty to save money. I don't think that -- it may be a factor but I think it should be a minor factor. I don't suggest that saying we're going to save some money here so we ought to execute him is a good reason to recommend the death penalty, but I thought Mr. Aiken's testimony about the cost, I think, was a bit hard to believe.

First of all, if you -- if he does get a term of years or life without parole, he'll get to appeal this case over and over again just as he will with the death penalty. Now, I don't want to suggest to you that the appellate costs for life without parole and the death penalty are the same. The death penalty probably would be greater in appellate costs, the appeals probably would go on longer, but it stands to reason that if somebody is going to spend the rest of his life in jail, particularly someone 37 years old, we could be talking 30, 40, or 50 years, and isn't it strange that this guy with all of these qualifications and head of the Indiana prison system has no idea how much it costs to keep a prisoner in the prison system for a year? When Ms. Farr suggested 20, 30,000, he

has no idea. Well, I'll tell you -- I'll suggest to you why, because if he committed himself to a number of 30,000 and you multiply that by 40 years, you come up with like a million and half, and there's no way you can say that -- I don't think that he could say the appellate costs would be that great. So my point is simply this, not that you should recommend the death penalty because you're going to save money but you shouldn't recommend against the death penalty because you think you're going to save money.

Now, I want to talk about the mitigating factors. As Ms. Williams said, mitigation must be considered and that's true, but that doesn't mean you have to give mitigation any particular weight or that the mitigation has to outweigh the aggravating circumstances. The ones they've asked you to consider are three, the defendant had no significant criminal history. That may be true. I mean, he's had -- it depends on how you define significant. He's had some DWI's, he's had some public intoxs, he's had the child support. Although, my guess is, if you talk to that mother and child whose child support hasn't been paid, particularly when he blew \$14,000 on drugs after re-entering the military, I'm guessing they'd tell you that's a pretty significant criminal history. And Ms. Williams says that alone is not a reason to put him to death. Absolutely.

I'm not asking you to put him to death on that reason alone, but I think that reason does tell you a lot about his character, and that was when he was in his 30s. That was not when he was 16 years old and in the Sailors' home, that's when he was an adult he does that. And also, she actually talks about criminal activity, so not only do you have the DWI's, the child support, you've got his history of illegal drugs, but I wouldn't dispute that you can certainly argue he doesn't have a significant history of criminal activity, particularly in the violent sense.

The other two factors that she wanted you to weigh are he's under the influence of extreme mental or emotional disturbance and substantial -- he had a substantial impairment to conform his conduct to the requirements of the law as a result of intoxication, essentially the drugs made me do it or I'm not totally responsible because the drugs made me do it, and I had written a note out to myself, totally out of context, but let me say it now so I don't forget. I know she didn't intend to mislead you, I'm sure she didn't, but I just want to make sure when she said -- talked about life without parole, there something about

saying that that's the punishment that can only be given when the aggravators outweigh the mitigators, and I'm sure you know by now it's not if the aggravators outweigh the mitigators you can only give life without parole. If that's the case, you can give life without parole or the death penalty or a term of years, which term of years has seemed to have gone by the wayside, so it seems pretty clear that we're talking about either life without parole or the death penalty.

Let me talk about drugs just for a minute. They may well have been a factor in this. If he hadn't taken those drugs, he may well not have committed the crime, but we don't know anything about Avery. Was he taking drugs during the time he repeatedly molested Avery? And even if so, he ingested those drugs voluntarily. He's totally responsible for his behavior from what the drugs did to him. You heard Dr. Engum say that he was psychologically addicted to drugs as opposed to physically, which essentially means it's more of his own choice. It's not his body telling him you have to do it, it's his mind saying to him I want the drugs, and this -- he committed this crime after going to rehabilitation, after being dried out, after having no physical addiction to the drugs, and after being given medication to make him stop taking drugs, he took the drugs and stopped taking the medication because the drugs were interfering with his enjoyment of his alcohol and illegal drugs.

Now, is he going to get rewarded for voluntarily taking these drugs particularly so soon after he's gone through rehabilitation? On the question of guilt, you know, the law says voluntary intoxication is no excuse for a crime, and I submit to you that voluntary intoxication should not give him a free pass to get out of the death penalty in this case either.

I want to talk to you just briefly about the process, Ms. Farr did too. We've got three forms. Essentially there's no question that you've -- we've proven that there are aggravating circumstances. They've essentially said that they admit that the aggravators outweigh the mitigators, but let me suggest to you, you need to independently come to that conclusion. Even though they've said it, I think you need to at least think about it because -- at least you ought to -- just like the mitigators, you need to think about it. I think you need to think about whether that's true, but after you've thought about it, I don't think that there is any question you will come to the same conclusion, that the aggravating

circumstances do outweigh the mitigators, and that being the case, then you have any of three penalties to recommend, the death penalty, life without parole, or a term of years.

In this case, you have four different legitimate reasons to give him the death penalty, the three multiple murders and killing Sydne, a child under the age of either ten or 12. You get all of these instructions. I can imagine what it's like. Aggravators, you must weigh the aggravating circumstances against the mitigating circumstances, all what that means, and it's difficult to plug in a formula when you're talking about whether to decide whether or not to recommend death or life without parole to someone.

Justice Potter Stewart had a case many years ago when pornography was more of an issue than it is today, and they had to define what pornography was, and Potter Stewart says, I can't define it but I know it when I see it. Now, in jury selection you were all asked what do you think a good death penalty case would be, who would you give the death penalty to, and a lot of you had difficulty answering that question, I think properly so, and I think probably you could have quoted Potter Stewart at that time and said, I can't define it but I'm going to know it when I see it.

The defense has said the death penalty should be reserved for the worst of the worst, and I would agree with that, and he's -- we've already shown he's not the worst of the worst, he's worse than the worst of the worst because of 15 people on death row, he's worse than 80 percent of those. If this case doesn't warrant the death penalty, what case does?

Ask yourself this question: What entitles Daniel Wilkes to receive a lesser penalty on what he inflicted on the three victims? We didn't have to prove motive in this case but we did, we proved it was because Donna caught him, and, you know, I don't know, maybe killing a woman and two children, maybe there are some circumstances where that wouldn't justify a death sentence in every case, but almost any other motive you can imagine would be better, that is, better for him, than this one.

Maybe this case would be a little less worthy of the death penalty if he and Donna had been married and he caught Donna cheating on someone. Not that that would justify it, but at least it would be a little less meritorious of the death penalty. Maybe it would be a little less

meritorious of the death penalty if he was in the middle of a robbery and somebody came after him and tried to stop him from robbing and he shot three people and killed them. Again, it would still be a terrible thing but it would be a little better argument against the death penalty. But, how could you possibly have a worse motive? She catches him molesting her child so he beats her to death and he beats the eight year old to death and then he strangles and strips Avery naked. No wonder he can't think about it or he doesn't want to think about it. You could not have a worst motive in this case.

Since April 26th, 2006, everything has been done to make sure Daniel Wilkes' rights were protected. These past two weeks have been all about making certain Daniel Wilkes' rights were protected. He had two attorneys who vigorously defended him. He had expert witnesses who were being paid tens of thousands of dollars to testify on his behalf. He had a fair judge. He had a fair jury to make sure he was afforded every protection of the law to guarantee he get a fair trial, and he got his fair trial, and the presumption of innocence that he had to begin with has been removed and you've properly found him guilty based on the evidence.

Finally, finally, after 20 months, 600 days, it's no longer just about Daniel Wilkes and his rights. Now it's time to start talking about the rights of the victims. Members of the jury, today belongs to Donna Claspell and Avery and Sydne, and on their behalf and on behalf of the State of Indiana, I ask you to return the only fair verdict in this case, and that's the recommendation for the death penalty. Thank you.

CLOSING ARGUMENTS

State v. Baer Madison Superior Court 2005

CASE SUMMARY: On the afternoon of February 25, 2004, 26-year-old Cory Clark and her youngest daughter were alone in their home near Lapel. Her 7-year-old daughter was at school and her husband was outside the state. Baer entered the residence and used a knife to slit the throat of Cory, then chased down 4-year-old Jenna and slit her throat as well. Baer had attempted to rape Cory before her death. Baer had been working at a nearby construction site that day, left work, committed the murders, then returned to the job. The apparent motive was to feed a drug habit and a deviate sexual appetite. Baer also faces Rape and Burglary charges in Marion and Hamilton Counties.

Madison County Circuit Court Fredrick Spencer presided at trial. Prosecuting Attorney Rodney J. Cummings and Deputy Prosecutor David L. Puckett represented the State. Attorney Jeffrey A. Lockwood and Bryan R. Williams represented the Defendant.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF STATE OF INDIANA.

MR. CUMMINGS: Ladies and gentlemen, Fredrick Michael Baer has earned the right to be sentenced to death. Because of the choices he made on February 25, 2004, to commit those horrible acts of violence that you already know about, to commit the murders against Jenna and Cory Clark, he's earned the right to be sentenced to death by the choices that he has made.

Mr. Lockwood said in his opening statement, We reserve the death penalty for the worst of the worst. Is this defendant so much among the worst of the worst that he deserves the death penalty?

In my career in law enforcement in this community, we have had at least 125 murders. That's a conservative estimate. Maybe even more than that. Three of those defendants have been sentenced to the death penalty and sentenced to die. Of those 125 or so, no murder

even comes close to the murders committed by Fredrick Michael Baer. Not even among the three men who have been sentenced to death. The depravity, the horror, I would challenge you to think, have you ever heard of a murder that you've heard in the news or seen in the news that was more heinous and more deserving of the death penalty than this case. You might say 9/11 because of the 3,000 or so people that died there. Maybe the Oklahoma City bombing because of the numbers.

But think about the violence, the horrific nature of this crime where Cory Clark was laying in her bedroom with her throat cut in the last few moments of her life while she's bleeding away, and her brain is still functioning, this defendant is chasing her four-year-old girl through the house, her four-year-old daughter through the house to cut her throat and murder her. I would challenge you to think of a crime you have ever heard of that is more horrific than that and more deserving of death penalty than the facts in this case. Is there anyone that deserves the death penalty more than Fredrick Michael Baer? I can't believe you will think of a single defendant that is more deserving than he.

The aggravating circumstances. I apologize while we adjust this just a shade. Can you bring that down just a little bit. There are five aggravating circumstances that the State must prove to you beyond a reasonable doubt. Did he kill two people? There's a number -- not every murder qualifies for the death penalty in our state. There's aggravating circumstances that must exist. I think they want that light back on. Aggravating circumstances that must exist that qualify a particular murder for the death penalty. If you kill more than one person. If you kill a person and kill another person at any time, whether it was 20 years or in the same crime, that qualifies you to be considered for the death penalty. If you commit a murder while you commit a rape, if you commit a murder while you commit a robbery, if you commit a murder of someone under the age of twelve, if you're on parole at the time you commit a murder. Any one of those -- not all five of them -- any one of

those qualifies this defendant to be considered for the death penalty. The State is only obligated to prove one of those aggravating circumstances exists and all five of them exist.

There are five aggravating circumstances that qualify Fredrick Michael Baer to be executed. Five. They're all there. We have to prove to you beyond a reasonable doubt. Well, you've already determined he committed both murders, and you found him guilty in the guilt phase, so that clearly exists. You found him guilty of robbery. That clearly exists. Jenna Clark was four years old. That clearly exists. He was on parole. You heard from the parole officer at the time. That clearly exists. All five of those factors, ladies and gentlemen, have been proven to you beyond a reasonable doubt, and we only need to prove one. But all five of them exist. There are five reasons why this man is eligible to be executed in this state.

You have to find that. When you look at the questionnaire, and you'll see it back there, you have to make a check; you have to make that determination. Are they proved to you beyond a reasonable doubt? That should not take you a matter of minutes. They're all there. You've got to make a check list, and you've got to sign the form and have to sign off on it. You can't forget to do that. But the evidence is overwhelming and the State has proven its burden beyond any reasonable doubt that those aggravating circumstances exist. Those are the only aggravators that the State is permitted to talk about. Under our law we can't say anything else to you. We prove that and then we sit down. That's all we're allowed to do in this portion of the trial. We can't do anything else. And we did that. The evidence took a few minutes. We were done, and that was it.

And then the mitigating circumstances. The defense is permitted to say anything they want. That's why we're here for seven or eight hours yesterday listening to Dr. Clark (sic) because anything, anything, anything, anything, can be presented to you, and you can consider it. Whatever you think is important, whatever you think is relevant to you as an individual that mitigates that, that somehow justifies, explains, diminishes culpability. You heard what Dr. Clark (sic) said, My job is to define and explain morale culpability; reasons why you should think he's not responsible to the extent that he should be found to be responsible to the extent that he should receive the death penalty.

Did you hear anything that justifies the behavior that occurred on February 24, 2005? I mean it's like throwing a feather on a scale with a brick.

The abuse excuse. And that's really what it is. He had a tough childhood. Well, is this the first guy that ever had a tough childhood? Let me see. Drugs, huffing, meth; he did drugs. Did it to himself. He did drugs and that caused him problems. Faulty wiring, fetal alcohol, toxic parenting, bad report cards, inattentive, impulsive. His mother had chemotherapy. His sister got killed. Somebody was a stripper in a bar. I mean it's one issue after another. Did you hear anything, anything, anything, that diminishes the culpability for this kind of crime? Anything?

You know if you were paying attention and really listening to what Dr. Cunningham was saying, all of his studies were about kids. All of his studies were about childhood problems and how they impact kids. This is not the first person that's ever had a tough childhood. There's millions and millions and millions of kids that are in horrific environments. Lots of them in this community. And they don't commit this kind of crime. How many people in his family -- did you see those charts with all the people in this family? Hear anybody else cutting four-year-old's throats? Did you hear anything about that? Kids.

I think it would be more understandable if he were fifteen or sixteen or if he were eighteen or if he were twenty-two when this happened. I mean I think you'd really have to think about that. If this was a teenager or a young adult, you know, he hadn't had much time to get out of that parental environment. He hadn't had much time to break away from those horrible things that happened in his childhood. And if he were much younger than he is, maybe you give more weight to this. Because this -- you know, all the information you heard yesterday is about childhood problems, about how the choices are more difficult to make. Where in the world does that end? He was thirty-two when he committed these horrible crimes. Thirty-two. He wasn't sixteen or eighteen or twenty. He was thirty-two years old. And he's still using his mother as an excuse and -- I mean it's one excuse after another. He's thirty-two years old. When is that gonna end?

One of the things that you didn't hear from

Dr. Cunningham -- he omitted everything, everything, that demonstrated that this defendant could conform his behavior to what society requires or demands. He can conform it when he wants to. He can conform when he chooses to.

He got a GED. 1995 he got a GED. He was a tutor at a Learning Resource Center. Successfully completed anger management, 1994. Successfully completed anger management in '98, I believe. Yeah, February '98. Successfully completed the prison fellowship. Another prison fellowship. Substance abuse program in '95. Bible Correspondence Study Course. Pre-Release Program in July of 2003. He can conform his behavior when it's in his own best interest. He can do it when he wants to. He can do it when there is some benefit in it for him.

This was a letter that he wrote to a judge in the case. I believe it was in 2002. "Your Honor, I realize that I have been a burden on society, but I am not the same person. I know talk is cheap, but I can say honestly that I have been walking the walk." He knows just what to say, he knows just what to do when it's in his interest. He is capable of conforming his behavior to the demands of society when he chooses to. You know another thing about Dr. Cunningham, every single thing that he told you about yesterday occurred at least seventeen years ago, and some of them were over twenty years ago. Except for the substance abuse and being in prison, there hasn't been any problems in his life at all. None that were commented on in the record in this case. And not a single act of violent behavior, not a single act of violent behavior, not a single act of violent behavior. Now he committed some crimes, but he didn't hurt anybody. He did not hurt a single person until he was thirty-two years old.

This is called the abuse excuse. I had a tough childhood, so don't sentence me to death. It's the same thing that's been running through this case since it started. How do I get myself out of the problem that I'm in? How do I make my penalty the least it can possibly be? He's thirty-two years old when this crime was committed. Isn't it time for him to take some responsibility for his own behavior. When does personal responsibility and choices, when -- when do we become responsible for that? When do we stop crying about what a tough childhood we have and suck it up and deal with

the situation that we're in?

Choices. A really important part of what Dr. Cunningham said yesterday; choices, choices. The defendant absolutely had choices. It's not the same choice as someone who had a good childhood.

You know what, that's tough. You know, I've got a -year-old daughter who watches MTV, and she wonders why she can't have her own jet and why she doesn't have a house like the rappers on MTV. Life's tough. You know what, deal with the situation that you're in. And because he had a tough background, it was harder for him to make choices. He still had a choice. He wasn't compelled to do anything. It was a harder choice to make. So what. A harder choice to make. It was a harder choice to make not to cut the throat of a woman and her four-year-old child. Is that a hard choice? That's not breaking into a house and stealing something. Nothing explains that. Nothing explains that. Nothing explains that. Not that. Not that.

Increased risk of violence - not inevitable. That means he had a choice. And now he doesn't want to be held accountable for the choice he makes. He wants you to say, I had a tough childhood, don't sentence me to die. And that's what it comes down to. That's what this case is all about. He is responding to his surroundings. You know, I had trouble seeing that one, because the way this case started, remember, he worked as a flagger. Somebody just didn't cross his path. He went out looking for someone to assault. He walked off his job and was seeking someone to attack. That's not responding to your surroundings. He had a choice to make. He made it. He wanted to rape somebody and he did. For whatever reason that only he knows, it didn't go the way he wanted, and he cut that woman's throat.

And a little girl was there seeing it happen and running for her life, and he chases her down, and he cuts that little girl's throat. And he had a choice.

Even the person they hire and bring in here said to you he had a choice. He could have chosen not to do that. It was harder. So what. It was harder. He had a choice, and he's looking for one of you to bail him out of the bad choice he made because he does not want to be executed for the crime he committed, and he's hoping that one of you are going to believe this abuse excuse and cut him some slack and vote

for life without parole or the term of years. This is something not taking responsibility for the choices he made. Nothing you heard, ladies and gentlemen, mitigates that. Nothing. And the burden is on them to prove to you that there is more mitigation than aggravation. We don't have to prove anything.

These lawyers have to prove to you that the mitigation is here and the aggravation is here. Did you hear anything, anything, yesterday in that seven or eight hours that causes you to think that there is enough justification in this background that happened seventeen, twenty years ago that outweighs all of those horrible crimes that he committed on February 25, 2004. They have to prove to you that there is. And if they don't -- and if they don't, the aggravators outweigh the mitigators.

Tough childhood and the five aggravators. Are they even close? Are they even close?

Fredrick Michael Baer has earned the right to be sentenced to death. Every one of you said you were capable of imposing that sentence after hearing all the evidence. Every one of you. Every single one of you said you could do that. Every one of you said you can look at that man, and you can tell him he does not have the right to live, if that's what you believe. Every one of you said that. I'm certain I asked every single one of you that question. You all said you could do it. And if you're not persuaded that those -- tough childhood outweighs those aggravators and that heinous behavior on February 24, 2005, then you need to do what you said you would do. This man has earned the death penalty, and you should vote to impose it. Thank you.

**CLOSING ARGUMENT (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF THE DEFENDANT.**

MR. WILLIAMS: Thank you, Judge. You know, when I listened yesterday, I think I had a different view than Mr. Cummings. Some part of me felt a little sense of responsibility, some sense of shame, some sense of embarrassment. I'm not going to talk in terms of us versus them, the way Mr. Cummings did. This is us. Welcome to America. This is our government. It's not the government versus us or the government versus them. We elect the government of the people, by the people, for the people. This is us.

When I was looking at Michael Baer's family

tree yesterday, I felt a sense of responsibility. It's not my fault that he killed on February 25th. It's no one in this room's fault except Michael Baer's. What the hell happened? What went wrong?

I'm not so arrogant and ignorant to stand before you and say that my childhood didn't affect me standing here. I'm guessing if my name was in that family tree somewhere, I wouldn't be standing here as an attorney. I'd be willing to bet on that. Would I be sitting where Michael Baer is? I sure hope not. Hopefully, my wiring is a little bit better than that. But I sure know I wouldn't be standing here. That's the responsibility I feel. We didn't create Michael Baer. The sense that I got yesterday, the sense that I got as we watched slide after slide in the family tree, and I looked at Michael sitting over here, and I listened to his mom crying, the sense that I got was for the first time in Michael Baer's life, somebody was paying attention.

Finally. Finally the government is interested in him, our government. Finally we're interested in him. We're interested in his family tree. We're interested in him being in the hospital. We're interested. Where were we when he was thirteen? I know where I was. I was a junior in high school getting ready to go to college. Where were we when he was seventeen? It wasn't helping him. You know why. You've got a good life. I have a great life. I'm not so arrogant to stand before you and say I did this on my own. Mr. Cummings stands before you and says Michael Baer did this on his own. Grow up. He's thirty-two. Grow up. Guess what, I'm thirty-eight, and I'm not so arrogant to stand here and say, "I'm an attorney and have done well on my own."

If I stood here and did that, if I said, "I did this on my own," my mom who is sitting out there would slap my face when we were done. She did some pretty good work. I'm not so arrogant to ignore that. Mr. Cummings said, Your childhood doesn't affect anything. So what. Never has the arrogance of our government been so clear as Mr. Cummings mustering everything he has to stand before you and look at you and say, "So what." That's us. That's our government. It's not Mr. Cummings' fault. It's not your fault, it's not your fault, it's not your fault. Would Michael Baer be sitting here if he had been raised by one of you in your homes? Maybe. It's pretty unlikely. Mr. Cummings' response to that is, "So what." So what that he

had the misfortune to be born into that family. So what that they didn't have the resources to get him the help he needed. So what. Let's kill him. Oh, my gosh.

Do you remember in jury selection Mr. Cummings said the only reason you're looking at the -- Mr. Baer is looking at the death penalty, the only reason you'll only be considering it is because I signed my name. I did that. I'm the elected prosecutor. I made that choice. When I signed my name saying this is the worst of the worst, I made that choice. Today he lays Michael Baer at your feet, each of you, and says, Kill him. Kill him.

It was a long night last night, a long day yesterday. The only person not here was Mr. Cummings. There must have been something more important last night on a Thursday evening than hearing evidence about the person he wants to kill. The person he lays at your feet and says, Please kill him. You, please kill him. Please kill him. But I have something more important to do. He said we were here for seven or eight hours. Some of us were. That is the arrogance of government. The government that we created. The government that instilled arrogance in us. Do we all have some arrogance about us? Sure we do.

Because I can stand over here with you and say, There is not one chance on this earth that that would ever be me. That's the arrogance I have about me. That's the arrogance that our government has because we elect our government. It's the arrogance that our government instills in us. There's a subculture out there. And until that subculture affects our lives, we'll ignore it. That's what happened yesterday. Finally someone paid attention to Michael Baer. It's a little too late. The first time we hear his entire history, we, and I say we as a society. I don't mean we in this courtroom. The first time we as a society hear anything about Michael Baer, his long history, that family tree, suicide attempts, we don't know Michael Baer. The first time that becomes important is when we want to kill him. Worst murders, the worst of the worst. Mr. Cummings said he's been around for 125 murders, I think he said. And this one is the worst of the worst. I don't know why. It's horrible. It's tragic. I wish I could do something for the Clark family. I can't. What happened to that family has changed them forever.

A few years ago in this county, a man stood

outside his girlfriend's window and fired an AK-47 14 times executing his ex-girlfriend and her boyfriend in her home. In the next bedroom were her children, sleeping. Of course, the gunshots woke them up. "Mom, Mom." They found her body the next morning when they got up to go to school. I can't do anything for them. He didn't face the death penalty in this county, though he could have. Somehow he's better than Mr. Baer. Mr. Baer is worse than that.

More recently, a guy stood outside of an apartment and fired a shot, two shots in fact, because he was angry at the guy inside. That shot hit that man's wife who at the time was holding their baby. And killed her while she was holding their baby, while he was standing next to her, and then their four-year-old ran into the room. Please don't misunderstand that I'm trying to justify anything that Michael Baer did, but for Mr. Cummings to stand before you and say this is worse than that, I don't know how. It's all tragic.

There's a case pending in this court right now where a man is accused of setting his own house on fire, killing his wife and his son. Killing his own family by means of fire. He doesn't face the death penalty. But this is the worst of the worst. You've seen the pictures. We tried to describe them. You can't. It's horrific. I can't imagine the horror. I can't imagine the grief. I'm not capable. But don't be misled to believe that this murder is somehow more tragic than any other murder. I hate killing for any reason. There are soldiers killing each other. We have police shooting people. We have people shooting people. That's okay. It's justified. I hate killing.

I guess as a society what we try to do is get better. We try to make ourselves better. We try to make our kids better. We try to make our families better. We try to make people around us better. If killing Michael Baer makes our society better or makes any of you better, then do it. Then do it.

I would suggest as a society we learn something from yesterday. We take something from yesterday. What good can come of this? I'll tell you what good can come to me. When I saw that family tree and listened to what Michael Baer grew up in, I'll tell you what good is coming of me. When this is done, I'm going to go back and hug my mom and tell her thanks. That's what good can come of this. Look around you. Look around your family. Look around your parents. Take a look at the people who you

were raised by, the people you're raising and thank them, after what we saw yesterday. Thank God I was born into a decent family. Thank God my mom had the good sense to knock me around when I got out of line. Thank God she guided me the right direction. Please do not have the arrogance that our government has in this particular case and say, "So what." Because it's exactly the same thing. I can look at my mom back there and say, "So what that you raised me well." Do you know how arrogant and ridiculous that sounds. But Mr. Cummings asked you to do exactly that. So Michael Baer had a tough childhood. So what. It doesn't affect him as an adult. Get over it. Grow out of it. Suck it up. That's arrogance.

If you believe that killing Michael Baer will make us all better or make the Clarks better, make us better as a society, as a state, as a county, that's your choice. What Mr. Cummings apparently doesn't know because he wasn't here last night is those certificates that he put up in front of you and act like, well, he could conform himself -- what Mr. Cummings doesn't know because he wasn't here to hear the testimony was where did everyone of those happen? Every single one happened while Mr. Baer was locked up. He can conform when he has to.

Mr. Cummings probably didn't realize what we all learned last night that between age sixteen and thirty-two, Michael Baer was either in treatment or locked up eighty-five percent of the time. Of course, our government says, So what. Let's kill him. If we can't use the death penalty now, when can we use it? If this case isn't good enough for the death penalty, what is? That is a disgusting question. Let me rephrase that question. We have a death chamber, and we're ready to use it. Can we? Because if we can't use our death chamber now, when can we? Come on.

As a person who helps choose who our government is, I felt better about the Department of Justice survey -- the study, I'm sorry, the study, I feel better about my government saying what is causing all of these violent offenders. That's the kind of question we should be asking. Not when do we get to kill somebody. Come on. We're anxious to kill somebody.

How about a drunk driver, a drunk driver who kills a family. That's less tragic? Is that less tragic? Are there less victims? Do victims take

it better then? Drunk drivers aren't even considered murderers in Indiana. Why? Why? Because we choose our government to represent us, and our government says that's not murder. Why? Because that could be one of us. That's why. That could be somebody we know. That could be somebody we like. That could be somebody in our family who has a few too many drinks and kills a family. It's not even murder. So, of course, it's not eligible for the death penalty. Why? Because that could be one of us. This is your choice. Michael Baer today is laid in front of you. And it takes all twelve of you. It takes you and you and you and you and you, you, you, you, you, you, and you to say, let's kill him. There's no division of responsibility. If you, considering your life versus Michael Baer's life, think we need to kill him, that's your choice. We didn't do much for him growing up, but we're ready to kill him. That's your choice.

And don't be misled if you simply find aggravators outweigh mitigators, that he's getting the death penalty. You can find no mitigation and all the aggravation and still vote against the death penalty. That's your choice. You don't ever have to recommend the death penalty. But it will be your choice. And if you with your backgrounds being what they are, your childhood, your history, your professions, if you believe after a lot of thought, a lot of premeditation, that you're ready to kill Michael Baer, then do it.

I suggest to you Michael Baer is going to die in prison regardless of what your answer is. You saw the numbers. He's facing 233 years. Life without parole or the death penalty. He's going to die in prison. But if you believe in your hearts, we need to kill him sooner to make our society better, to make ourselves feel better, to make the Clarks feel better, that's your choice. I suggest to you that our society is better served if while Michael Baer spends the rest of his life in solitude, in silence, caged up, I suggest to you that while he's dying that way in a long, caged death that the way with the society and we're all better served as individuals, as neighborhoods, as communities, if we all learn something from this case. We all know families who have problems. What are we doing to help? That's what we take from this case. We hope for the Clark family, we think about them, and we figure out what we can do to help to make sure this kind of tragedy stops happening. And if you think that killing Michael Baer will change

our society and make it better, then do it. Thank you. I think Mr. Lockwood has a few words.

**CLOSING ARGUMENT (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF THE DEFENDANT.**

MR. LOCKWOOD: Thank you, Your Honor. I was just sitting there listening to these gentlemen argue, jotting down a few notes because that's the first time I put pencil to paper about my final argument in this case. You and I have something in common I think. None of us are likely to be involved in another death penalty case. I'm sixty years old this year, and I'm not dead, but I can tell that I'm closer to the end than I am to the beginning. I don't want any more of this litigation. So let me just speak to you from my heart for a minute.

Because it has been my business, I have made a study of the history of crime and punishment in England and the United States. If you get some time after you're finished with this trial, it would be well spent to go to the library and just read a little bit about it. It's fascinating. Read Colin Wilson. It's fascinating.

There was a time when executions were always carried out in a high place on a hill. Because then the good and the godly, you see, would pass by and be scared into realizing why they were good and godly. Centuries, through all manner and sorts of torture and devices, we taught to scare people into being good. The problem was that the good and the godly people that passed by the execution site weren't committing the crimes. At one time in England, there were 158 crimes punishable by death. The minimum age of execution at that time was ten, and so England was hanging ten- and eleven-year-old boys for stealing gentleman's pocket handkerchiefs, street urchins. And do you know what stopped the nonsensical practice of hanging orphans? Juries. Not lawyers. Not even judges. Certainly not prosecutors. The people who were on the juries in England -- thank God for the jury system -- realized that there was absolutely nothing to be gained by killing small children.

Now don't get me wrong, it was the lawyers and the judges and the legislators who were quick to take credit for no longer killing little children, but it's never the lawyers who are in the forefront of mercy. I don't know why that is, but it's never true. There was a time when, in this country, you know, we hanged old women

as witches if they didn't drown first. If they could hold their breath long enough to survive the dunkings that were being imposed upon them, that proved they were a witch, and we hanged them. I guarantee you, you can read about this, there wasn't a lawyer or a judge or anyone in authority in Massachusetts who did not believe that the life of the Commonwealth depended upon hanging old women for a crime that never existed.

I have represented hundreds of criminals, and I can tell you that not one of them thought about the punishment before they committed the crime. They think of it after. But they never think of it before. And you know this. I tell you only what you already know. Because has the death penalty in this country really been a deterrent to violent crime? It didn't prevent this crime. It has never prevented crime. And I submit to you that if you take just a few hours of your time, you will realize that no one who has ever taken the time to study the subject will say that it is a deterrent.

At one time most of the police chiefs in the United States believed that it was necessary to protect the lives of their officers, and, even now, through their organizations they are coming to realize that that simply is not the case. And the reason is obvious to all of us. How much news do you think Michael watched either growing up or when he was an adult? How much thought do you think he gave? How many family discussions do you think there were in his family about the brutality of murder and how wrong it is and how, my goodness, you can be punished by death if you commit it? I mean, yeah, there's a vague knowledge, obviously, of everyone who commits these crimes and other crimes, that there's punishment out there, but I tell you that we used to -- now we have lethal injection. We used to have the electric chair. And even something as lurid as being fried alive in the electric chair did not cause people to stop committing murder.

So all I'm saying to you is that there are reasons, and legitimate ones I think, to impose the death penalty. Deterrents, I submit to you, is not one of them. We have thought, many people think, that it is cheaper to execute than to imprison for life without parole. The fact is that the latest study in Indiana shows that it costs almost four times as much to keep a person in prison for his life than it does to execute them. And not all that extra cost is defense cost. The

cost of prosecuting death penalty cases is 67 percent higher than defense costs in the same cases. Don't take my word for this. Go look it up. Okay. So I submit to you that there's room for a legitimate thought that a little extra money is worth it in order to rid ourselves of people whom we despise.

Let me tell you what I believe is justice -- justifies the death penalty and its revenge. Because that's what it is. You know, the legislature can get together in Indianapolis and pass statutes and debate mitigating circumstances and aggravating circumstances. I'm not going to talk to you about those today. I wish they would meet and say, We have the death penalty in Indiana because it makes us feel better. It makes us feel safe. Even if it doesn't make us safer, it makes us feel like we're okay. But basically what it does is it scratches that primordial, primitive part of us who wants to kill out of self-defense and out of what that emotion that we call revenge. And the reason I think that that's a legitimate purpose for the death penalty is because it's an honest emotion. It's almost dishonest to do it because we think it's a deterrent. It's almost dishonest to do it because we think that it saves money. But it is not dishonest to vote to take a person's life because of what that person has done.

Another legitimate reason to take Michael's life is that you may think that it will heal John Clark and his family, and I guarantee you that if this was my family, I would want you to impose the death penalty. I don't know that. I probably know more about it than I should. So I might not. There are a couple of reasons I might not, and I'll speak to you about those in just a second. But, for a while, I think Mr. Clark would feel better, but it will not heal him, and you all know that instinctively. It will not heal any of us to add a killing to these killings.

I think, and I'm the only one I think that shares this opinion that the death penalty is counter-productive and counterintuitive. Because the few criminals that I've ever met who were hardened, thoroughly dangerous criminals that did not act in a moment's passion, but planned out their torture and their activity, their attitude was always it's you folks out there against me. I know what's going to happen to me. You're going to kill me if you catch me, and, therefore, I'm going to be as brutal as I perceive that society has been to me. It's amazing to me that some of the attitudes that criminals have.

For example, I have a watch here, and there -- I know many times people have -- will look at this -- whatever I have. And the attitude is, you know, you -- that's my watch. You have that watch because you and those like you have conspired against me all my life to keep me down. But that's really my watch. I deserve it more than you do. And if I have to kill you to take that watch, then that's no problem. That's one of the reasons that the death penalty is not a deterrent.

I don't know that there's any healing to be done in this case. I'm sure there is not. But I'm equally sure that what will not heal is a killing by the State. Because of all kinds of killing, whatever they are and whatever the justification or excuse, killing by the State is the most ceremonious. It's ceremonious. We make it into a ceremony. There will be endless appeals, there will be endless news articles, there will be endless news stories, there will be endless arguments, there will be endless PCR's, there will be endless federal habeas corpus. And then when we really get down to it, we have the show. And that's what it is, the circus of those who oppose the death penalty and those who are in favor of it -- none of whom, of course, know any of the parties -- getting together with their signs and their flashlights, standing outside Michigan City waiting for 12:01 on the day of the execution.

I don't know. Maybe that doesn't bother you, but I find that to be an abhorrent kind of conduct to engage in as an organized society. So I confess to you today for those reasons I am against the death penalty. You all have -- you certainly qualified to impose the death penalty. If you were not, you would not be on this jury. Nobody who said that they could not or would not impose the death penalty is in this panel. They cannot be by law. So I just want to leave you with one more thought. I know what responsibility you have, and I know how heavy it is on your shoulders. I would not be in your situation, but I can tell you someone who deserves the death penalty more than Michael in this courtroom if they had committed the same crime. I do. I say that with all sincerity to you. Because I had parents, I had coaches, I had aunts, I had uncles, I had mentors, I had friends, I had sports, I had school. I had -- was not rich, ever. I had every opportunity to make choices, same kinds of choices that Michael made. If I decided to do something like this or

even if I decided to use my good fortune in ways that were contrary to the good of society, then I submit to you I am the worst of the worst, and that Michael is way down on that list, given what we know now about how he got from the birth canal to today.

Please ponder those things seriously. It's easy for the prosecution to stand before you and say kill, kill. Kill is the answer. Because, you know what, you don't have to think about it. If you are to take the responsibility individually of saying on behalf of society, kill Michael, please be sure that you understand exactly why you want to do that. If the answer is because you want to make the Clark family feel better, fine. If the answer is that you believe there's a place in American justice for vindictiveness or for revenge, that's fine too.

You will probably -- it's a -- it's strange for me to stand up here in cases like this, and, especially this case, and argue for Michael's life when you will not be doing him any favor. If you want vengeance, make him go to the sleep in the same place as 1,500 other men every night for the rest of his life. Make him stay in a five-by-eight cell with a toilet with no seat, twenty-four hours -- twenty-three hours in, one hour out, or twenty-two hours in and two hours out. Make sure that he lives in an environment where before he is middle-aged, his ankles and his knees and his hips will begin to deteriorate because he never walks on anything but concrete. Make sure that he never draws an easy breath because he's a baby killer. And because somebody is going to fashion a shive out of a chair leg, and he's not going to see it coming.

I should be asking you to vote to put him to sleep like a puppy. But I can't. Because it's wrong. In this case, it's wrong. I don't know about other cases, but, in this case, I submit to you, it's not the thing to do. You have renewed my faith, once again, in the willingness of the Americans to get together and do hard labor on juries. If it wasn't for that, we would have no chance of carrying on this system. Thank you very much for making the long trips and paying so much attention to what's been going on in this trial. God bless you in your decision.

**CLOSING REBUTTAL (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF STATE OF
INDIANA.**

MR. CUMMINGS: You just heard what lawyers call a smoke screen. You didn't hear a lot of conversation about the facts in this case. You know I have trouble understanding Mr. Lockwood. Do my client a favor and give him life because some inmate in Michigan City is going to stab him when he's not looking.

Do you really believe that's what they want? I said this to a few of you when we spoke before, so I heard some jurors say, Well, you know, I think maybe life without parole is a tougher punishment. You know who doesn't think that? Him and the other 52 -- whatever the number is -- people on Death Row because every single one of them wants to live, and they fight every day to stay alive. They would prefer to be in Michigan City with life without parole. Every one of them are fighting to stay alive. So that is a ridiculous argument to make.

You know, taking about orphans and England. Was there any orphan -- we didn't have any orphans in this case. It's called a smoke screen to try to distract your attention. Now, the only person killing orphans, the only person that's killed any children around here is sitting right across the courtroom over there.

Now, Mr. Williams and Mr. Lockwood both said a lot about their family and what a great upbringing they had. I didn't know Mr. Williams' mother was in the courtroom. I love her. And I'm sure before I leave today, I will go over and hug her. I usually do when I see her. She's a wonderful woman.

My mother is not here. She was a prostitute who died of a drug overdose. I got convicted of a felony when I was eighteen and spent time in jail, and I had a worse childhood than this man did. Maybe that's why I say, "Suck it up." If you lived in this community, you would know that because the people back there all already know it.

I had a tougher childhood than he did, and I somehow managed to become a lawyer and got elected prosecutor in this community three times now. And me and other people who overcome tough circumstances like that get sick to our stomach when people like that sit around and cry about how tough they had it and don't suck it up, and don't say, maybe there's a time when I have to stop crying about how life dealt me a tough blow, and I've got to start doing something for myself. And that's why I told you, if he were sixteen or eighteen or twenty or twenty-two, maybe that's something you should

give serious consideration to. I got convicted, I spent time in that jail right over there that you probably go over. Had a much tougher time than this guy did. And it would be understandable if he were a teenager. You should probably give some consideration to that. But when, when, when, do you stop using a tough childhood as an excuse? When do you stop using it as an excuse, a crutch, to explain and get over and get by, and in this case try to save your life? I had a tough childhood, so don't execute me. He's thirty-two years old when he committed this crime. Way, way, past the time he should start sucking it up and start figuring it out and start working. He had a job that he walked right off of to commit this crime. Yeah, I do say, "Suck it up." And for him to use this as an excuse is an insult to me and all of the other people that come from tough backgrounds and make their way and succeed.

Now Mr. Williams talked about a few other crimes. You know, we -- I suspect you know we have a lot more crime in this community than you have up in Huntington, and it's a little difficult for us to talk about. But I'm telling you, there's at least 125 murders that I've been around for. The crimes Mr. Williams is talking about are crimes he prosecuted when he was my chief deputy.

He didn't file the death penalty. He didn't come to me and say, "Rodney, we've got to file the death penalty on this case." We filed the death penalty. We've been around here eleven years, and we've done that. We've had -- this is not the first time we've had to face this problem in this community since I've been the prosecutor and when he was on this staff.

And I am telling you that firing an AK-47 into a house where you're in a domestic relationship. You know, some guy thinks his girlfriend is sleeping with some other guy. Setting a house on fire, you know, we have lots of -- a guy walks into K Mart and shoots his estranged girlfriend in the head in front of a lot of people. We've had teenagers that break into a house and rape and murder girls. We have a lot of serious crime in this community. None of those cases are as bad as this. None of those cases even come close. None of those cases are in the same league. Walking into a home where people have a right to feel safe. Sexually assaulted, cut a woman's throat and chase her four-year-old down in the house and cut her throat. There is no way any of

those cases come close to that.

We are not anxious to file the death penalty. We are not anxious to do it. The cost is unbelievable. Who knows what it's going to cost our community. Probably a half a million dollars. We've got people getting laid off. It's not something you do haphazardly. It's something you do to seek justice in a community.

Talked about the Clark family. We would not be here if that's not what the Clarks wanted. Mr. Lockwood talked about the Clark family. How will they feel? Will they feel like justice is served? The death penalty is in our laws, and we've reserved it for the worst of the worst. We're not killing orphans and witches. We're talking about a man who walked into a home, sexually assaulted a woman, cut her throat with a knife and chased her four-year-old daughter down and cut her throat. Those are the kind of cases that we reserve the death penalty for. Nobody is anxious to do that. Nobody is anxious to do that. I can't imagine any one of you are anxious to do it.

But I bet every single one of you say, if we have the death penalty, this is the case where we impose it. This is the worst of the worst. And when you do something like that to a woman and her young child, we as a society have to say that's wrong as loudly as we possibly can, and we're not going to have that. And justice -- if we're going to have the death penalty in our society, it is reserved for this kind of case.

I would challenge you -- you heard -- Mr. Williams said other cases. I would challenge you to test your memory of any case you've ever heard of that's worse than this. Any case you've ever heard it.

That doesn't mean we reserve the death penalty for the one person who's the worst of the worst. It's a category of cases. Beyond that, we reserve it for people who have earned that sentence with choices they make and behavior they engage in. This man chose to commit these acts, even out of his way to commit these acts. He walked right off his job searching for someone to rape. Walked into a house and committed this. There is no explanation for how this could happen. None.

And every single one of you, every single one of you said you could vote for the death penalty if you believe it was appropriate. And what you heard from Mr. Lockwood through that whole argument is why the death penalty is not the right thing to do. Well, that's irrelevant in this

discussion. That's a smoke screen. Because you're all already past that. And people who don't believe the death penalty is an appropriate sentence should not be on this jury. Should not be here.

You all said you could impose it. In fact, we went beyond that, and I looked at every single one of you, and I said, Can you look at that man and tell him he should not live? He should die for the crime he committed. Every single one of you said you could do that, every one of you.

His mother is back there, his sister is back there, and you said you could look at them -- if that's what you thought was the right thing to do, you could do it. And this argument about why, well, we shouldn't -- it's money, it's -- the death penalty is not right. It's called a smoke screen.

Fredrick Michael Baer has earned the sentence of death. We reserve it for the worst of the worst, and he is the worst of the worst. No other person except the worst of the worst could walk into a stranger's home, assault them with a knife, cut the panties off, cut her throat, chase her four-year-old down as she's running through her life -- running for her life through that house and cut her throat.

Ladies and gentlemen, that is the worst of the worst. And you're here to do justice. You said you could do justice, and you said you could impose the death penalty. Before I ask you to do that, I want to make something really clear. It's kind of important. I might have misstated -- I said there's a burden of proof, and I'm not really sure the law requires them to prove anything. I want to be sure that's true. We're required to prove to you beyond a reasonable doubt that those five aggravators exist, and you have to do a balancing. I think I might have said there's a burden over there. I'm not clear that's the law. There's a burden of proof.

There's a weighing that goes on. There's a weighing that goes on. You just have to weigh the aggravators over the mitigators. They don't have the burden of proving anything. I just want to be clear. The Judge will read the instruction to you.

But a lot of this is about -- I mean really what this comes down to, I mean if you look at it, and those aggravators are overwhelming, the facts in this case are horrific and horrifying. Really when you come down to it, it's just what's the right thing to do? What is the right thing to do?

What is justice in this case? Is this the worst of the worst? I can't imagine that there is one of you sitting right here that doesn't believe this man is among the worst of the worst because no one has committed such a horrible crime. You took an oath. You said you could look at him. We prepared you for this crowd that was going to be here. You said you had the courage and the strength to do that. Every single one of you. You've heard the evidence. I told you when we got to the end of this, I would be asking every one of you to vote to execute Fredrick Michael Baer, and I am doing that right now.

Do it because it's just. Do it because it's the right thing to do. Do it because he made bad choices. He chose to commit horrific acts, and he has earned the death penalty. You should not be ashamed of what you do. You should not be ashamed of what you do. Serve our community and serve justice and vote to execute Fredrick Michael Baer. Thank you.

[The jury unanimously recommended a death sentence for Baer, who was sentenced to death by Judge Fredrick Spencer on June 9, 2005. Direct Appeal is pending]

CLOSING ARGUMENTS

State v. Ward Spencer Circuit Court 2002

CASE SUMMARY: 15-year old Stacy Payne and her 14-year old sister, Melissa, were home alone in their rural Dale, Indiana home when Ward entered and attacked Stacy with a knife. Melissa had taken a nap upstairs and was awakened by Stacy's screams. From the top of the stairs Melissa saw Ward on top of Stacy. She called 9-1-1 and heard Stacy pleading, "Stop!," while Ward said, "You better be quiet." Ward was still at the scene, covered with blood and pocket knife in hand, when police arrived. Stacy Payne's torso was nearly sliced in two, her throat was cut to her windpipe and her wrist was slashed to the bone. She was nevertheless alive after transport to the hospital. Vaginal bruising and Stacy's DNA on Ward's genitals supported the Rape and Criminal Deviate Conduct charges. Ward was on probation for a Burglary in Missouri at the time of the crime and had a dozen prior convictions for Public Indecency/Indecent Exposure.

Spencer County Circuit Court Judge Wayne Roell presided at the trial. Prosecuting Attorney Jon A. Dartt and Deputy Prosecutor Jack Robinson represented the State. Attorneys Barbara Williams and Scott Blazey represented the Defendant.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF STATE OF INDIANA.

MR. ROBINSON: Your Honor, Defense Counsel, ladies and gentlemen, we've had a long journey and we're getting close to being done. I'm doing the first part of the final argument, the shorter part, and Mr. Dartt is doing the other part; and I'm going to commence. Thank you.

This is Phase II, the penalty phase, the closing and final argument. There's three areas that I'm going to cover with you. First, they say that he is responsible, but they blame. You'll recall that Mrs. Williams came before you and said: We accept your verdict; we understand; we expected it. We're not offering excuses. And I want you to recall as I go over that portion

of the argument. The evidence shows four aggravating circumstances and I will go over that; then the third part is the State's request.

They say he's not responsible, but then they blame. Remember there was a breach birth, but no doctor ever said it caused any damage to Mr. Ward. I wondered where they were going with that; nothing ever happened to it. They blamed his lack of education, but he completed his GED in prison, completed a literacy course and his IQ test, administered by Dr. Engum, came out at 91, which you have people going to college with an IQ of 91. Ward's hyperactivity as a child, they blame that. I'm sure everyone here knows or has had a child who is hyperactive. I don't know how that leads to violent behavior, but that somehow seemed to be an excuse. Trooper LaRoche for not arresting Mr. Ward at a rest area simply because Mr. Ward was behaving suspiciously and all of the witnesses had left the scene. Well, you have to do something before you can be arrested.

Detective Belcher, because he didn't turn in the investigative report to the Perry County prosecutor for a few days or faster on a misdemeanor charge. They said that the Perry County Probation Department was to blame for not filing a motion to revoke the probation even though there was no proper grounds to do so and it would be up to the probation department of Cooper County, Missouri, to actually revoke his probation. They blamed the Harrison County Probation Department for not somehow forcing Ward into a treatment program he was not too keen on participating in, according to the young lady that testified about that, and for not starting his jail sentence soon enough.

They blamed the multiple treatment centers he attended for not fixing him even though Dr. Engum testified that 30 percent of all offenders have no response to treatment. Dr. Davis indicated there is typically no response to treatment. And the other thing to remember on that is, you know, you have to want to be fixed or cured. They blamed exhibitionism caused by stress. Ironically, he never exposed himself at home or to his parents, and over two weeks into this trial, he hasn't exposed himself once. He

can control it when it's in his own self interest to do so. They also ignored numerous other non-sex criminal offenses such as burglary, theft, forgery, check deception. The name for that a lot of times is a career criminal.

The family lacked resources to get him help. Again, he was treated in several centers, but treatment doesn't work in 30 percent of all cases according their own expert. It's common sense that many centers do not cost money as they are Court ordered or have fees on a sliding scale based on income such as our Southern Hills Mental Health Center.

They blame Stacy indirectly by appearing to argue that he went to the Payne house to burglarize it and something set him off. We know better because he left the burglary tools in the car and took a knife and a string with him into the house and removed Stacy's clothing. And then they started blaming Stacy directly -- and this was in the penalty phase, if you recall -- making an outrageous accusation through Dr. Davis against Stacy.

And in that connection, I just want you to remember --and I don't have this on the board, but just remember the testimony of -- in that case. Melissa woke up to screams, went to the top of the stairs, saw a man on top of Stacy; both parties had on their clothes; thought Ward had on long pants, probably because he was kneeling; statement given by Melissa at the scene; screams continued until shortly before Matt Keller arrived, which means her throat wasn't cut immediately as the account that was given to Dr. Davis said. But just keep that in mind in evaluating his testimony.

And then they blamed his lack of education; however, he completed his GED, his driver's license, a certificate of literacy, performed well with Dr. Engum's tests. He's not mentally retarded; he can take engines apart and put them back together. They blamed his lack of employment; however, he worked at several jobs, including a sod farm for three or four years, a veneer factory with race cars. He had a job in Florida building bridges that he lost due to stealing. He was also performing community service by painting a fence for a church in Perry County at the time of the murder.

They blamed his dependency on his parents; however, they testified he had been married for a couple of years and at times lived on his own such as when they were living in

Florida. And I don't blame his parents in this case at all. That man is responsible for himself. Mental illness, they blame that; however, Dr. Engum, their witness, testified he's not insane; he's not incompetent, not psychotic, not schizophrenic, not retarded, has no organic brain damage. One of the tests that he gave was a test designed to test for organic brain damage. He doesn't hear voices; he's not hallucinating. And I'm going into the second part of the argument, what the evidence shows.

Aggravator number one: Ward tortured Stacy Payne while she was still alive. Remember he tied her up, an arm and a leg. The ligature marks, I'm sure you recall that. He hit Stacy Payne with his fist and a barbell, sexually assaulted her, cut her open with a knife while she was still alive. He cut Stacy almost completely in two while she was still alive, including reaching --and this is a sickening part here --reaching through the front of her abdomen and cutting on her backbone.

Stacy was subjected --and this is continuing the torture part. Stacy was subjected to this by Ward for approximately ten minutes and then continued to show reaction to pain for the next 44 minutes as a result of Ward's action until she was given a sedative at the Deaconess St. Joseph's Hospital in Huntingburg at approximately 1:16 p.m., according to the medical records there that are in evidence, according to Dr. Rod Edwards. Stacy's defensive wound included a cut to her left hand. Stacy was conscious reacting to stimuli and answered questions with hand squeezes, head nods and had a gag reflex, as you recall, where they put the tube down her throat. Continuing the torture part, I want you to recall the testimony and observations of Dr. Donna Hunsaker, Dr. Rod Edwards, forensic nurse, Carol Smith-Rupe, EMT Murray Stout and Officer Matt Keller.

Now, also, a part of aggravator number one, Ward mutilated Stacy Payne while she is still alive. I shouldn't have to go over this with you, but I'm going to. Stacy's neck, hand, abdomen and back areas were cut open to the point that she was cut almost completely in two while she was still alive and conscious. She was left with her intestines lying on the floor. Stacy had internal injuries, including a severed trachea, vocal cords, a jugular vein vena cava, ureter. Mutilation is not defined by law. Use your common sense on that and remember the

brutality of her injuries and how they looked. Remember that under the mutilation part, Dr. Edwards called this a carving.

And that wasn't something that I suggested to him that he testify; that was something that he testified to. Dr. Hunsaker called this cutting her almost completely in two. Dr. Hunsaker found a four-point-two-inch incised wound to the anterior, which is the front part of the central neck, a 24.5-inch horizontal incised wound spanning her central abdomen and extending to the central back region consistent with a subtotal corporal hemisection and a two-point-one-inch gaping incised wound to Stacy's left hand. That's aggravator number one.

I want you to remember that torture is an appreciable period of pain intentionally inflicted and designed to either coerce the victim or for the torturer's sadistic indulgence. Put another way, torture is a gratuitous infliction of substantial pain in excess of that associated with the commission of a crime. Remember that mutilation has not been defined by law and you should use your common sense on that.

Aggravator number two is: Ward intentionally murdered Stacy while committing rape. You found him guilty of murder and rape. The same evidence satisfies this aggravator that the murder was purely intentional.

Aggravator number three: Ward intentionally murdered Stacy while committing criminal deviate conduct. You found him guilty of murder and criminal deviate conduct. The same evidence satisfies this aggravator that the murder was clearly intentional.

Aggravator number four --and this pales in --I mean, this seems like a minor thing in comparison with what had gone on before, but it is one of the aggravating circumstances. Ward was on probation after receiving a sentence for the commission of burglary in Missouri at the time the murder was committed. Perry County probation officer, Jim Rice, testified Roy Lee Ward was being supervised by Rice on probation for the crime of burglary in Missouri. Roy Lee Ward was out of prison on probation for that crime and probation was transferred to Perry County where Ward lived when he murdered Stacy Payne. And in regard to that, remember, also, the testimony that he spent seven years of his life in prison. He's 30 years old; 29 at the time this happened.

The State is seeking the death penalty and proven the existence of the four aggravating

circumstances as follows: Roy Lee Ward tortured Stacy Payne while she was still alive and he mutilated Stacy Payne while she was still alive; Roy Lee Ward committed the murder by intentionally killing Stacy Payne while committing or attempting to commit criminal deviate conduct; Roy Lee Ward committed the murder by intentionally killing Stacy Payne while committing or attempting to commit rape. This is my first time using Power Point. Roy Lee Ward was on probation after receiving a sentence for the commission of a felony at the time the murder was committed.

You're also to consider the follow mitigating circumstances if you find them to exist: The Defendant was under the influence of extreme mental or emotional disturbance when the murder was committed. When asked if Ward was under the influence, Dr. Engum did not seem to be convinced and was only able to say "Essentially, yes." You're also to consider the following mitigating circumstances if you find them to exist: The Defendant's capacity to appreciate the criminality of his conduct and to conform that conduct to the requirements of the law was substantially impaired as a result of mental disease or defect. Once again, Dr. Engum does not appear to be convinced, saying that it only appeared to be the case. Virginia Ward and all of the experts testified that Roy Lee Ward knew the difference between right and wrong.

And another mitigating factor is: Any other circumstances appropriate for consideration, including but not limited to such mitigating factors as the Defendant may show during this procedure. There has been a lot of suggestion and insinuation but no hard evidence that it's the fault of the police officers, probation officers and it's the result of a number of unfortunate circumstances or it's the result of some vague and undefined mental defect. There is little supporting evidence and these excuses rank very low.

The law requires that all jurors agree to the existence of one or more of the charge of aggravating circumstances before any recommendation on death or life imprisonment without parole may be made to the Court. As we have shown you, the evidence clearly shows the existence of four aggravating circumstances beyond a reasonable doubt.

With respect to mitigating circumstances, your findings need not be unanimous, as we've

also shown you. Dr. Engum said that one mitigating factor appeared to be the case and a second one essentially exists. These two factors and the other excuses put forth pale in comparison to the overwhelming weight of the aggravator proved to you beyond a reasonable doubt. There is no equilibrium here on when you start balancing these two. The State has proven beyond a reasonable doubt the existence of four aggravating circumstances and, further, that the aggravating circumstances outweigh the mitigating circumstances; therefore, one of three possible sentencing recommendations is available to you.

You may recommend that the Defendant be sentenced to the death penalty. The State of Indiana believes that this is the appropriate punishment for Roy Lee Ward and is requesting that you recommend the death penalty to the Court. Or you may recommend that the Defendant not be sentenced to life --be sentenced to death and receive instead a sentence of life imprisonment without parole. The State believes that the seriousness of these crimes and the life of Stacy Payne would be significantly diminished by the imposition of life imprisonment without parole and that Roy Lee Ward deserves no less than a sentence of death. You may recommend that the Defendant not be sentenced to either the death penalty or life imprisonment without parole and that the Defendant be sentenced instead to imprisonment and be eligible eventually for parole. Even the Defense concedes that Roy Lee Ward should never be allowed to be eligible for parole.

The State's request: Find the existence of at least one of the four aggravating circumstances - I believe that you will find the existence of all four-find that the aggravating circumstances outweigh any mitigating circumstance and recommend that the Defendant, Roy Lee Ward, be sentenced to death. It looks like we misspelled a sentence. I want you to keep in mind the young lady that was caught up in this. Remember --just remember. Thank you very much.

**CLOSING ARGUMENT (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF THE DEFENDANT.**

MS. WILLIAMS: Judge Roell, members of the prosecution team, Mr. Blazey and ladies and gentlemen of the jury, I'm going to talk with you

for a few minutes. As I said from the very beginning, this is a momentous and powerful, very powerful place. As I said when we opened this part of the --of the trial, I knew you realized after last week how powerful this place is, and after the last few days, what a powerful important undertaking you all have.

As I told you when we went through jury selection, I've been doing this kind of work for -- well, I've been a lawyer for 23 years and I've been doing criminal defense work for most of that part of the time. And it's never easy for any of us to take a case, any kind of criminal case, from the beginning to the end. It's always very difficult, but it is a magnificent and powerful process that only works in this country because we have you, the Judge's role, the Defense role, the law enforcement role and the prosecutor's role. This process doesn't work if one of those is missing.

I would share Judge Roell's comments with you that he made this morning. I have always admired jurors who have taken the time to serve in a case, and I thank you for your service and I admire you for your service; and I know that each of you now completely understands what I meant when I said during voir dire that this powerful process places us and now you, very soon, in a position where your decision is going to determine whether or not Roy Ward lives or dies. You have the little bird in your hand and only you can decide what's going to happen.

This part of the trial --I told you at the beginning, we accept your verdict. We expected to get to this point, and I told you at the beginning of the penalty phase that I --we expect that your decision will revolve around whether or not to recommend a penalty of life without parole or the death penalty; and as you've been instructed and as you will be instructed, I think it's important for us to talk about that process. We talked about it during voir dire; we talked about it at the beginning of this phase, and the Judge is going to instruct you about it.

We wouldn't be here today if you hadn't already decided that Roy Ward knowingly killed Stacy Payne. That isn't the issue today. The issue is what should the punishment be, and as Mr. Robinson pointed out to you, you've got some choices to make. You won't get to the point where you decide between life without parole versus the death penalty until you've decided that the aggravating circumstances

outweigh the mitigating circumstances. I told you at the opening of this section that we expected that you would come to that point.

This has been a very difficult case for all of us, and I want to say, before I start to talk about the process of representing Mr. Ward and the work that Mr. Blazey and I have done, that nothing, and I want to repeat, nothing that I said, none of the evidence that we are presenting is in any way, shape or form presented as an excuse or is it in any way, shape or form presented with any intent to blame anyone. I said at the beginning of this case, the beginning of our opening, Roy Ward is to blame for the brutal senseless murder of Stacy Payne.

We've said that since the very beginning. I'm going to talk about a little bit the process of representing Mr. Ward and what we've done, and it's been a difficult process, but I also want to say that we are, and have been from day one, aware that this process is most difficult for the Payne family. The decision that you are about to make will be a decision that each of you must live with all the days of your life. We know that you are residents of Spencer County and you will meet and continue to being part of it. You'll meet the people of Spencer County. We respect that; we understand you're part of this community. We're all part of this community.

And one of the things I want to say, also, about that is, that the only volunteers in this courtroom are you folks. I know you're getting your room and board and I know you're getting a little bit of a --of a daily stipend, but all the rest of us who here are being paid for the work that is being done. But I also want to say that we have tried to be cognizant of the difficulty and pain that the Payne family has suffered through this senseless loss of this child, this murder of this girl.

And in representing Mr. Ward, I'm going to talk a little bit about this case. The photographs that have been shown in this case --I even talked about this during the voir dire. We talked about this, ladies and gentlemen --they are the most gruesome photographs I have ever seen, and I have known since sometime in December of 2001 what those photographs are and how showing photographs like that affect people. I know that perhaps you think that Mr. Dartt and Mr. Robinson and Mr. Blazey and I didn't react to those photographs; it may have been difficult for us to be looking at those photographs and not have the same visceral reaction that each

you had every time those photographs were shown. I would ask you, ladies and gentlemen, to understand that part of our job, part of my responsibility requires that I'm able to put a little bit of distance between some of that stuff so that I can walk into this courtroom and make an effort to be here with some dignity and some poise that professionals are supposed to have; but please don't misunderstand that my reaction and Scott's reaction to those photographs is every bit as visceral and sickening as yours is. And I think I told you that when I -- we talked about jury selection. These photographs make me sick. And I'm also a parent, ladies and gentlemen, like most of you are, and when I saw these photographs and when I read about this case, if this was my child, I'd want to kill him. There's no doubt in my mind I'd want to kill him (indicating), but that's not what our system is all about, ladies and gentlemen.

And then I talked about first impressions when we did some jury selection, and I don't know if all of you were here because we talked at different times, but I talked about the story about the Vietnam veteran who, when he went to Vietnam as a young soldier, probably ten-foot tall and bulletproof like most of were in our younger days, heard about another soldier who had his legs blown off. The first thought that went into his mind was, I'd rather be dead than not have my legs. Just a few days later, when he's leading his men into battle, the very first day that he was going into battle as a young man, little did he know that a few minutes later he wouldn't have his legs. And as I told you, this is a true story of an individual who has used that experience to be become a motivational speaker and he talks about how that changed his life. And he talked about the instant that he was hit, he knew that his legs were gone and the thought never occurred to him from that day on that he would rather be dead than have his legs. And ladies and gentlemen, that's how sometimes a first impression --our first visceral reaction may not be the same after we know a little bit more about whatever it is that we reacted to.

Since day one, ladies and gentlemen, this case, as far as Mr. Blazey and I have been concerned, has been about the guilt -- the penalty phase of this case; it's never been about the guilt phase. We've never said or tried to present any testimony or evidence that Mr. Ward didn't know that he killed Stacy Payne.

Now, we could talk about Dr. Davis, and if you question why Dr. Davis didn't come in during the first part of the case and tell Roy's story during that first part of the case, if you question that, blame me or blame Mr. Blazey. That was my decision; it was our decision. We didn't have Dr. Davis come during the first phase because we knew the evidence of guilt was so strong that there would be a finding of guilty.

Mr. Blazey said he's guilty in his opening statement. He's responsible. We believe that the physical evidence with respect to Count II and III was weak enough, so weak that there was a possibility that there would be a finding of not guilty on those two counts. You found him guilty of those two counts. It doesn't change my decision with respect to calling Dr. Davis in the second phase. As I told you in the opening phase, opening part of this phase, we accept your verdict. We know that you did your jobs and you considered the evidence. You came to a unanimous verdict and we respect that and we accept your verdict.

Thirdly, in deciding to call Dr. Davis in the third --in the second phase, Scott and I believed, we decided strategically that that testimony and that evidence related more to mitigation than to guilt, and that's the strategic reason that we presented that testimony in the penalty phase.

We talked about the different factors that have come together, that have converged together and, as a result, this horrendous crime occurred. Not in any way, ladies and gentlemen, do I suggest that any police officer or, for heaven sakes, that Stacy has any responsibility or blame in this matter, but the law will tell you, the instructions will tell you that in order to --in order to come back with a decision recommending death, you have --you're obligated to look at all the circumstances. And the Court will tell that you're obligated to look at the circumstances of Roy's --surrounding Roy's life and surrounding Roy's background. And some of the evidence that was presented --and I'm going to talk for a minute about the evidence with respect to the police officers.

Do you know what it's like, ladies and gentlemen, to meet someone like Mr. Ward and find out that he has over 50 criminal convictions? How do you even --how do you even deal with that? How do you --how do you --how do you even classify that. He's been

arrested and convicted more than 25 times for public indecency. He has many other criminal convictions for other crimes, as you know, burglary, forgery, on probation for burglary, check deception. He has some possession-of-controlled substance convictions. I've been doing this for a long time and I can usually take somebody's record and within a few days or weeks of being that person's lawyer, I can have in my mind a classification of they had three felonies in that year and they had this in that year so that you can start to sort of put it all together. I've yet to be able to do that with Mr. Ward. He has a terrible criminal record. Now, why do we talk to the police officers about the days and events leading up to July 11 or July 10 --July 11? Ladies and gentlemen, every --not everybody. I'm not going to say everybody, but Roy Ward was, in some parts of Southern Indiana, a well-known public nuisance, and in Perry County and Harrison County, he was becoming a well-known public nuisance.

The police officers knew that he was an exposé. The reason we presented that testimony, ladies and gentlemen, is not to blame Sergeant Belcher --or Detective Belcher. It's not to blame any of the police officers, but to show you how these events come together. And what we know, ladies and gentlemen, was that Roy Ward gets out of prison in Missouri in early February of 2001 and he gets the people in Missouri to agree to let him serve his probation back here in Perry County where he can live with his mom and dad. That doesn't happen in every case. That only happens if a probation officer like Jim Rice agrees, because that creates additional work for Jim Rice. He's got --he's got plenty of other people on probation who commit crimes right here --well, right there in Perry County, but they agreed to let him come back. And he was doing okay, everybody said.

He was doing his community service at a church with a day care. Nobody thought he was a homicidal rapist ready to rape, commit this horrible crime. No one was worried about that. After he gets back here from Missouri, Missouri probably didn't even know this, and one of the reasons that Missouri probably didn't even know that he had these cases in Harrison County is because they were for misdemeanors, probably. I mean, it's possible that if Missouri knew that he had these holds on him from Harrison County, they might not have even permitted him to have an early release, much less have his

probation transferred back here to Indiana. But in any event, Harrison County has these other cases and they are 1999 charges, old charges of public indecency and harassment and one check deception, I think, where he didn't show up when he was supposed to be in court back in 1999 because he was in jail in Missouri.

But, eventually, they locate him here and they find those warrants and he goes over --on June the 21st, he goes over and pleads guilty in Harrison County to these two charges of harassment and public indecency, and on that day, he finds out -- he's been doing community service with -- under Mr. Rice's Perry County supervision since some time in April. He finds out in June that he's going to have to serve more time in jail that's different than what he thought --or June 21 he finds out he's going to have to serve time in jail and he's going to be on probation and he's going to have to go to a sex offender class. And so what does he do the very next day on June 22? He exposes himself three different times, once in Kentucky and twice in Indiana.

Just a few days after that, there's another report, and Detective Belcher is concerned enough by June 29 or June 30 that he calls and asks Roy to come in. And one of the things that I think was unrefuted and pretty consistent was, every time Roy does this, he does it in a position where he knows he's going to be caught. He's either driving around so his license plate can be seen or he comes back or he's standing by the car. There's no doubt about who it is, and Det. Belcher knew that. Roy Ward didn't have to come in and talk to Det. Belcher on July 2, but he came in.

The next day on July 5, what was Roy doing over at that rest area? He was trying to find people he could expose himself to. July 6 Diane talks to --Diane Harrison talks to Jim Rice and they decide that he needs to get into these sex offender classes, and so Ms. Harrison calls Roy in and he comes on July 9. And on July the 9th, ladies and gentlemen, he finds out that the jail sentence he thought he was going to get on June 21 was going to be different than what he was going to get July -- when he talked to -- when he was placed on probation on June 21.

The reason we told you all that, ladies and gentlemen, is not to excuse what he did, but to say that --the doctors who have testified about what this condition say that it is increasingly debilitating and it doesn't go away and that it's

triggered by stress. And Roy is under a lot of stress right here. Now, I'm not saying that Detective Belcher or any of these police officers made a mistake, but we've been able to see and to know with documentation the pattern of increasing stress in his life. And all of this was known to the prosecutor when they filed this charge. This information about what the police officers did came straight from the records in the evidence that we received from Mr. Dartt.

And, you know, what does Dr. -- Detective Belcher say about public indecency? He says, yeah, it could be anything from urinating on a parking lot to exposing himself. And this is why I talked about the differences between crimes against persons and the differences against -- the crimes against public health, order and decency. Public indecency is over here in the list of crimes as pollution, gambling, racketeering, loan sharking, consumer product tampering, criminal gang control, stalking, abusive coerce, code graphing devices, unauthorized use of telecommunication, unlawful solicitation and money laundering.

Now, ladies and gentlemen, please don't misunderstand. I'm not saying it's okay to commit these kind of crimes; I'm just trying to illustrate that these kinds of crimes aren't in a category of violent crimes. They're crimes against the public order and crimes against decency. Roy Ward was a public nuisance. No one thought before this happened that he was a sexual predator or homicidal maniac. If they thought that, they could have --there are --they could have found a way to get him off the street. You heard Detective Belcher. He wasn't worried about it. He talks to him on the 2nd, does his report on the 5th, and on the 10th, he calls the prosecutor. I'm not blaming Detective Belcher; I'm just trying to show that at this point there were no indicators that Roy Ward was a homicidal rapist and murderer waiting to happen.

Why is this important, ladies and gentlemen? It's important because it helps to explain. It helps to explain how Roy got to this place. Now, what I've --what I've said and what I've tried to say, ladies and gentlemen, is, up until this time, Roy had never done anything violent before. I guess I need to say that on July 11, 2001, he did --he did the most unspeakably violent thing that any human being could do, is he brutally murdered an innocent 15-year-old

child, and we've never, never said that he didn't commit that brutal senseless murder.

The mitigation that we presented and the focus that we've had has been to look at Roy's background, as we are obligated to do, and see if there is any circumstance in his prior --in his life that will justify not killing anyone. And that's why we presented, ladies and gentlemen, the witnesses that we presented. And the witnesses that the State presented, Dr. Hunsaker and Ms. Carol --the nurse, Ms. Smith-Rupe, Ms. Susan Laine, in attempting to determine how to cross-examine them, Mr. Blazey and I decided to split it up, and I took the pathologist and the nurse and Mr. Blazey took the --how to understand the DNA. And I consulted with a friend of mine who is a doctor to try to get some help to understand what this pathologist report meant, and I reviewed Ms. Rupe's report, Dr. Hunsaker's report, and all --everything I could find out about the way they conducted this autopsy and that sort of thing, and then I tried to show some inconsistencies in the some of the results that were reported.

And if you think back to Mr. Blazey's questions of Ms. Laine and Dr. Krane, Dr. Krane and Ms. Laine's results were exactly the same. The only thing that Dr. Krane testified about was about the phenylethylene stock substance. There was cross-examination of that one area, but the bottom line results were the same.

And let's take a look at what the prosecutor did with respect to the witnesses that we presented. Now, cross-examination of witnesses, that's how trials progress. I mean, you know, they present a witness and we have to --we have to ask some questions; we present a witness and they have to ask some questions. And the effort is always directed toward trying to undermine the substance of what the testimony is but in this particular case, Jon Dartt and Mr. Robinson's cross-examination of all of our experts was an attack and it was an ambush. And what was it an attack and ambush of? It was an attack of their credentials. Now, how is that helpful or relevant in any way to the issues presented and how does that help you when you have to do the job that you have to do in just a few minutes? You know, I would suggest that the proper way to attack or undermine expert testimony is to demonstrate that the data or the information that's presented is wrong, the substance of that, and the best way to do that is to put up your own data that shows that the data

we presented is wrong or different; and if you --if you can't present data that's contradictory or different, then at least there should be an effort made to contradict the data or substantively question the data that's presented, and if you can't substantively question the data or the information that has been presented --then what did prosecutor do? Then they ridicule the data; they made fun of it. But it is not enough to ridicule the data; then they go on to ridiculing the credentials of the messenger.

In every single one of our witnesses, what did Mr. Dartt and Mr. Robinson talk about? They went after the money; attacked our witnesses because they're being paid, because one of our witnesses has filed bankruptcy. That's why I say, ladies and gentlemen, everybody in this room is being paid; we're all being compensated for being here. And you are the volunteers here and, ladies and gentlemen, in a very real sense it is the citizens of Spencer County who are going to bear the financial cost of this process and the citizens of this county are also going to bear the emotional and the moral and the psychological cost of killing Roy Lee Ward.

Now, it's obvious that what our expert testimony was about is not a secret to Mr. Dartt. He was obviously familiar with many witnesses' testimony. He asked them specifically about testimony they gave in prior cases, but if he knew that, why not focus his cross-examination on the substance of the data, but he didn't do that, not in a single instance. He savagely attacked and ridiculed the credentials of each expert and he went after the money. And, ladies and gentlemen it is an extraordinarily unequal contest. The witness doesn't have a chance to answer. He's firing questions without taking a breath, cuts off questions, asks compound questions, asks questions that are impossible to answer, demands that the witness answer a question either "yes" or "no" and asks the question in such a way that even makes the Judge appear angry at the witness.

You know, the question he --the question he asked to Dr. Cunningham: So, Doctor, when did you declare bankruptcy and was that the year you began jetting around the country testifying in death-penalty cases? And when he tried to clarify his answer, the Judge said: It calls for a year. Doctor, answer the question. The problem with that compound question, ladies and gentlemen, is, that's not correct. He filed

bankruptcy in 1973 and didn't start testifying in cases --

MR. DARTT: I'm going to object. That is not in the record. Now, Judge, I've been very patient. I never said anything about jetting. In 1973? The bankruptcy was in the 1990s, as he testified to.
MS. WILLIAMS: I misspoke myself with that.
MR. DARTT: 1992. That is improper.
MS. WILLIAMS: Sorry, Your Honor.
THE COURT: Continue.

If I said 1973, I meant 1993. The question that Mr. Dartt asked to Dr. Cunningham is, did he file bankruptcy in 1993. I apologize if I said 1973; I do that a lot. And he didn't start testifying in death-penalty cases until 1997 or 1998. Beating up and attacking someone's witnesses in that manner is outside the common boundaries of decency. It can only suggest to me, ladies and gentlemen, that there is a desperation about the death worthiness of this case, because that's been the prosecutor's tactic with every single mitigation evidence and witness that we presented. Character assassination; shoot the messenger; ignoring all of the data. Ladies and gentlemen, he wants to believe that you can be distracted by attacking the messenger. He wants to believe that by ignoring the evidence that we presented and misleading you, that he doesn't think that you're smart enough to understand the data that was presented.

Nothing, none of the evidence that we presented with respect to mitigation was refuted, disputed or substantively questioned. He didn't present a single witness to contradict a single bit of the mitigation that we presented. Now, ladies and gentlemen, if this crime, this offense, is so hideous and so deserving of the death penalty, then you're going to go ahead and vote for the death penalty, but, ladies and gentlemen, the mitigation evidence is here and you are supposed to consider it. It was unrefuted, ladies and gentlemen, that Roy Ward did not choose at age ten or 11 to become an exposer or an exhibitionist. It's unrefuted, ladies and gentlemen, that this paraphilia or this exhibitionism condition has been persistently, persistently debilitating him since puberty. It is unrefuted, ladies and gentlemen, that this paraphilia has significantly and in a continuously increasingly worsening way impaired his impulse controls. This condition, ladies and

gentlemen, has significantly interfered with his development, with the development of his interpersonal and his social relationships. It is unrefuted, ladies and gentlemen, that this horrible, horrible, violent crime is way outside, completely outside anything, anything that Mr. Ward has ever done before.

Now, let's talk about that for a minute. Mr. Robinson and Mr. Dartt would like you to believe that he has a prior violent history, but what is the evidence of that, ladies and gentlemen? In 1990 --in 1989 and 1990 he has a misdemeanor conviction for a battery offense with a girlfriend. Ladies and gentlemen, I'm not --when I talk about his criminal behavior and say that doesn't mean that he's a violent criminal, it doesn't mean, ladies and gentlemen, that I think it's okay that in 1990 he had a fight with a girlfriend and dragged her across the parking lot. But you heard the doctors, ladies and gentlemen, and the doctors said that this doesn't change the diagnosis that he had; because the consistent function or feature of this diagnosis is that it takes place in situations where there's no contact. Now, the fact that he had a short-term relationship with a girlfriend and he had a fight with her, quite frankly, I'm not -- I'm not surprised by that, because that, 's just to me an indication of how difficult it was for him to have any kind of a relationship that didn't result in some kind of a problem. But the fact that in 1990, which was 12 years ago, there was a misdemeanor battery conviction, ladies and gentlemen, that's not evidence that he has a violent past.

Now, Mr. Robinson talked about this criminal recklessness where he rammed somebody with his car. Now, ladies and gentlemen, that is a 1997 case from Floyd County where he exposed himself, got in his car and he did probably touch the bumper of his car; and when they stopped him, he also had possession of a controlled substance, some kind of a prescription drug that he wasn't supposed to have. And when that case went to trial --or went to court, ladies and gentlemen, he pled guilty to the controlled substance charge, and in Floyd County, the prosecutor dismissed him from the recklessness charge and dismissed the public --or --I'm not sure they had him for public indecency, but I think that was even dismissed. There was a deal worked out. Now, I'm not saying he didn't bump her car, ladies and gentlemen, but he doesn't have a

prior criminal conviction for that offense. Now, the other stuff that Mr. Robinson was talking about, he was reading from police reports of nonconvictions. And he does --he was burglarizing some places over in Missouri, and there was probably more than one and they made a deal and he got a sentence for one burglary, but, ladies and gentlemen, that does not refute the mitigation evidence that we presented, that this horrible murder that he committed on July 11, 2001, was anything that --it was completely outside and inconsistent with the norm of his behavior. And the evidence of the --of the way the police were dealing with him, that's supports that. That supports that piece of how we got to this point with Roy Ward.

It's not an excuse, ladies and gentlemen; it's who Roy Ward is. Roy is Roy. Roy is an exposer; he's always been an exposer for the last 20 years. He hates it; he hates it. His family hates it; they don't know what to do about it. Now, you know, Mr. Robinson says that we're just not taking responsibility for things, that he's got a GED. He got his GED in prison. He got his GED at Branchville, and if you read Dr. Engum's report, he reads at the second grade level, second or third grade level. They say, well, he worked at a sod farm for three years. That's when he was 16 years old, when he dropped out of school. He had seasonal work for a couple of years, three years. That's why, ladies and gentlemen, it's important for the substance of what our witnesses said to be considered from that point of view. It wasn't refuted. All three of the witnesses who talked about his exhibitionism paraphilia were consistent about what it is. The approach that the prosecutor took, attacking our witnesses because of their credentials, falls below the level of dignity that, in consideration of someone's life, you should have.

When someone's life is on the line, doesn't it call for genuine engagement of trying to substantively attack the data rather than attacking the witnesses because they get paid and because somebody filed bankruptcy? Now, let me talk about --well, all the attacks in this case, going after the money and the bias --you know, bias is a --is one of the most important reasons that cross-examining any witness is permitted. If there's a witness here who is biased in any way, any way, we are permitted on cross-examination to try to --to find that out. And any witness can potentially be biased. Expert

witnesses. But, you know, in some cases --and I'm not talking about this case right now, but cases where you think that one of the witnesses have a motive for testifying the way they are because, if it's a co-defendant, they're going to get a deal out of it, or if it's a family member or something else. And if we can discover or we know that there's a reason that a witness is biased, we're supposed to, we're obligated to try to point that out so that the Court can instruct you that a biased witnesses' testimony shouldn't be given the same weight as testimony that you believe is truthful and unbiased. But what bias, what bias did the attack on our witnesses bring out? You know, this approach may work in civil cases, but when someone's line is --someone's life is on the line, it's just not appropriate.

Now, why did we present Dr. Cunningham's testimony? As you know, that report has told and will tell you it's our position that there are three mitigating circumstances that should be considered in this case. One is that Mr. Ward was under the influence of extreme mental or emotional disturbance when the murder was committed, and the second one is that his capacity to appreciate the criminality of the Defendant's --of his conduct or to conform that conduct was substantially impaired as a result of the mental disease or the defect. Now, ladies and gentlemen, both those mitigation factors talk about his mental condition, and the second one talks about the ability that he had to conform his conduct to knowing --the ability that he had to conform his conduct to the requirements of the law was substantially impaired.

Now, one of the things that the prosecutor was talking about is, Roy wasn't insane; he didn't have an organic problem; and he's not pleading insanity. Ladies and gentlemen, that's an attempt to mislead you again. If it was --if we were pleading insanity, ladies and gentlemen, insanity relates to whether or not he's guilty. If he was insane and didn't know the difference between right and wrong, we would have had an insanity defense in the first phase and we would have asked you to find that he shouldn't be held responsible or punished for this crime because he didn't know what he was doing. And in our country, ladies and gentlemen, if you're insane, you can't be found guilty of an offense. Of course Dr. Engum didn't conclude that. We didn't ever say that.

Now, I'm going to talk about whether or not

this exhibitionism that he has fits in this category where he was under the influence of extreme mental or emotional disturbance. The reason we showed you all this information about the last 30 days before this crime was committed was not to blame the detectives or the police officers, but to show you that this kind of stress in his life is very debilitating and it reduces his impulse control; and that's part, that part and partial of his condition. And what we're trying to show you, ladies and gentlemen, is that on July 11, his impulse control was so nonexistent that when he went to this home and his first thought was to burglarize it, he got in there and he didn't burglarize it; he exposed himself, and what happened after that was a horrible, horrible, horrible criminal act.

And, ladies and gentlemen, under no circumstance do we think that Stacy was in any way responsible for what happened. We have said that she was courageous. There can't be any doubt in my mind, ladies and gentlemen, that the reason that she was talking loud and screaming was because Melissa was there. That's why they could hear it on the --on the 911 tape. And, ladies and gentlemen, she was fighting for her life, fiercely, fiercely. There was --all the witnesses said it was a fierce struggle and it happened very quickly, very quickly. Do you think that we would make up, make up this exhibitionism paraphilia? We take Mr. Ward as he is and we believe that up until this day, this kind of crime was completely outside of what he's done in the past. He committed this crime and now, ladies and gentlemen, he deserves and needs to be punished.

And we have told you from the beginning that we don't --by telling you what we've told you --we've already told you that we don't believe the mitigation that we presented on his behalf should outweigh the horrificness of this crime, but we believe that his life should be spared and that the penalty of life without parole will be sufficient to punish him. The penalty of never, ever getting out of prison will be sufficient to punish him. Some of you may think even that that punishment is worse than the death penalty. The reason we called Dr. Cunningham and Ms. Patterson is because there are a lot of cases in the United States, constitutional cases about the death penalty and these cases talk about what kind of information can be presented as mitigation; and one of the things that we

know is that jurors worry about, well, what if he gets out? Or what if it's too easy? Or what if he --what if he is such a violent person that he kills somebody else in prison? What if he kills a prison guard? What if he kills again? We presented that testimony as evidence of the eighth mitigator; any and all other circumstances appropriate for consideration. Dr. Cunningham, not because he on his own wants to go out and conduct these studies, but because departments of corrections in many different states who want to know how these people are doing have asked people like him to do some studies on risk assessment. That's what he was here to testify about. And everything that he said, all the studies that he's done --they put these people in categories, and his conclusion was, based on all the stuff that we know about Roy Ward, life without parole would mean life without parole and that he's someone who would do okay in a setting like that and would be punished severely. Now, we asked him about what people in prison get to do. They get to --they get to watch TV; they get to do these kind -- they get to have --go to school. And he talked about the motivations that people have and, when people are serving a life without parole sentence, why they should even --why they should even care what happens to them. And those are some of the other factors. Mr. Ward has a lot of reasons why he cares, and Dr. Cunningham was trying to explain some of those things to you.

Now, ladies and gentlemen, the prosecutor wants you to believe that Roy Lee Ward is a -- was a homicidal sexual predator on that day, and he wants you to believe that, because if you believe that, then you will, he hopes, believe that because of that and because of what happened, that he should be killed. He wants to kill Roy Ward more than he wants to present this case the way it actually happened.

The prosecutor knew; they knew that he was a public nuisance; they knew that he wasn't in that house for two hours. So what does he do? He calls Dennis Brown to testify that Roy Ward was in that house for two hours. The prosecutor knew he wasn't in there for two hours. The prosecutor didn't call the three witnesses from Ft. Branch who left --who all testified that Roy Ward left Ft. Branch, Indiana, at 11:20 a.m. on that day. The prosecutor also knew that Roy Ward committed a burglary in Ft. Branch, in Gibson County, the morning of July

10 -- July 11.

MR. DARTT: Judge, I'm going to object. Now, you know that's not proper. You know there's evidentiary rules about why we cannot bring that evidence in. If she's going to try to run me down in front of the jury, she needs to speak accurately about what the law is and what each phase of the trial is. Now, I've had enough of that.

MS. WILLIAMS: It's just argument, Your Honor.

THE COURT: Overruled. You may continue.

They knew that, ladies and gentlemen. Even if he didn't bring it in, he knew better than put on Dennis Brown to testify that he was in there for two hours. Then throughout the whole case, they kept saying, "Why was he there? Well, he had to be there to rape her." They knew that wasn't true. They knew that wasn't true. "Roy Ward has a violent past." He doesn't have a violent past. He has a horrific criminal past. He's a nuisance to the community, and all of us hope that we never run into him sometime when he's got the urge to expose himself.

The 911 tape where the dispatcher testified that there still was screaming, that's evidence, ladies and gentlemen, of how quickly this happened, how very, very quickly this happened. The prosecutor knows. In fact, in their closing argument, they said that this was ten minutes of horror and ten minutes of hell, and surely, surely it was; most certainly it was, but he wasn't a sexual predator or a homicidal rapist. He is a troubled, very troubled person who went there to burglarize that home and he ended up killing an innocent child, and he deserves to be and he needs to be punished for that.

And I want to talk just very briefly about some of the mitigation evidence that's been presented, and then I have one other area, ladies and gentlemen, that I need -- that I'd like to talk with you about. Torture, mutilation. Recently a case in Indiana addressed the issue of what torture means in this context; and as Mr. Robinson told you, mutilation hasn't been defined, but mutilation and torture are in the same aggravating sentence, same aggravating number. And this case, *Nicholson v. State*, says: The statute does not define torture. Webster's dictionary defines it as the infliction of intense pain as from burning, crushing, wounding; to punish or coerce someone; torment or agony induce --to torment or agony induce; to penalize religious or political descent

or non-conformity; to extort a confession or money contribution or to give sadistic pleasure to the torturer. That's from the dictionary. But the case goes on --the Court goes on and says: The State argues that the torturer or aggravator is satisfied by proof of infliction of severe physical and mental pain. This alone surely cannot be sufficient. If such were the case, any stabbing or shooting victim would also be tortured.

The other aggravators listed further suggests that the legislature intended something more than simply the infliction of severe physical or mental pain to satisfy the torturer/aggravator. This Court says: We conclude --this is the Supreme Court of Indiana --we conclude that the torturer/aggravator requires something more; an appreciable period of pain or punishment intentionally inflicted and designed either to coerce the victim or for the torturer's sadistic indulgence. That's what the Indiana Supreme Court says you have to find in order to conclude that torture is a mitigating --an aggravating factor. We conclude that the torture/aggravator requires something more; an appreciable period of pain or punishment intentionally inflicted and designed either to coerce the victim or for the torturer's sadistic indulgence.

Put another way, the Court goes on, torture is the gratuitous infliction of substantial pain or suffering in excess of that associated with the commission of the charged crime. Although the victim here undoubtedly experienced suffering, the evidence does not show that the events fit the definition of torture. Ladies and gentlemen, I would suggest to you that torture is not an appropriate mitigating --or aggravating factor in this case. Doesn't torture, just by what I've read to you, suggest that it is the infliction of sublethal wounds to punish or coerce or to make the agony prolonged? The supreme court says: To give sadistic pleasure to the torturer. Ladies and gentlemen, this is a horrible, horrible, horrible, horrible crime, but it happened so fast that there -- and the wounds were not sublethal; they were --they were in and of themselves so horrific that after they occurred, it was a certainty that Stacy wouldn't survive. They were violently and lethally and very quickly inflicted, perhaps, in less than a few minutes. Stacy lived as long as she did because of the strength of her young, strong body and her will to live, but probably mostly, ladies and gentlemen, because of the very,

very, very quick and excellent medical intervention that she received, and that, ladies and gentlemen, is not torture.

Now with respect to the mutilation, I would suggest to you, ladies and gentlemen, that the supreme court would have a very similar position with respect to the definition of mutilation as it's something more, something more than the --than what actually --what happened. But as we know in this case, it happened so quickly that it wasn't a mutilation. Mutilation would be to cut a finger off. But it's not the infliction of this --of this horrible wound. And there's been a lot of talk about the intention of this, and that's been brought out over and over and over and again, because it's so horrific that the more you see those pictures and the more you hear about that, the more you want to think that he was torturing her or carving her up, and that's not what happened, ladies and gentlemen. That knife, as everyone says, was so sharp that it happened the first time --the second time it went around --and the struggle, as we know, was fierce, and they were both struggling.

Now, I don't get to respond to what Mr. Dartt is going to say. He can respond to anything I've said and that's his right under the law, but when I talk about this, I don't, under any circumstance, mean to suggest that he didn't know he was --what he was doing and that Stacy is at fault. That's not what happened here, ladies and gentlemen.

You know, the other thing about this case that's been difficult is the very, very nature of it. The randomness of it is so frightening it hits everybody's buttons. My children are approximately the same ages as the Payne children, but the randomness of this, that feature has been exacerbated by the view taken by the prosecutor that Mr. Ward is some homicidal rapist wandering around. Now, he's a public nuisance wandering around, and he --and I tell my kids all the time, don't --please don't think that I think it's okay for him to be a burglar and an exposer. In our family, the constitution doesn't exist as far as their parameters of behavior; we have a total dictatorship, and I would not, under any circumstance, suggest that it's okay that he's been a burglar and that he's committed all these crimes of public indecency. And as I said, I've got children and I'm hoping and trying to find a way, as all of you have, to impart some values, some guidance so

that doesn't happen, so it doesn't happen to your kids, because you want your kids not to be like him and because you don't want it to happen to anybody else's kids.

But the randomness of this, ladies and gentlemen, I think when you look at what actually happened and take a look at it in a context of the way we tried to present it; not as an excuse and not to blame a police officer or to blame Stacy, but to just see how all of these factors came together and converged on this day and, perhaps, ladies and gentlemen, we would ask you to find that Roy Ward isn't the worst, of the worst, of the worst, of the worst, of the worst human beings you've ever seen. What he did is the worst, of the worst, of the worst, of the worst, but --I hate what he did. I hate what he did, but I think, ladies and gentlemen, there should be a place in our state where he can be confined and never ever, ever leave and that it isn't necessary to order him killed. There is a randomness, ladies and gentlemen, and there is the consequences of all of the events in life that we constantly try to understand. We want our lives to make sense, to have order, and yet we are surrounded with randomness and what we think of as randomness on a daily basis. When a child is stricken with leukemia, we ask why; when a father is hit and killed by a drunk driver, we ask why; when we see third world nations with starving people, we ask why. We try to make order and we try to understand why. We can look at the child with leukemia and the doctors will tell us there might be a genetic predisposition, but we're still left asking why.

Your being chosen as jurors in this case seems to have come from a random selection process. We are told in times of seemingly random events that are so hard to understand that God has a plan and that we don't always understand; and don't we all -- don't we all try to look to where our faith is, what our faith is about to try to understand? Stacy Payne was created by God, and, ladies and gentlemen, showing those pictures over and over, and over, and over, and over again is not going to bring her back. So help me God, if I thought it could, if I thought it would, we would show them endlessly. Killing Roy Ward isn't going to bring Stacy back; it's not. But Roy Ward was also created by God; he's one of us, ladies and gentlemen. He's a human being; he's not an animal. We have never said he didn't knowingly kill Stacy Payne. We are not here to blame

anyone; we're here to offer, as best we can with the circumstances of his life, an explanation of how Roy Ward got from Clark County in 1972 to Spencer County on July 11, 2001.

We ask you, ladies and gentlemen, if there's a doubt, wouldn't it be better to error on the side of life than to kill him, just to kill him? We all --we all -- Mr. Blazey wanted me to tell you this, and I believe it, too: We all have such a finite time on earth, and Roy will have to meet his maker just as we do; and all of us, all of us have to live with our decisions, all of our decisions. We understand, ladies and gentlemen, that you have a difficult decision to make. I said at the very beginning that we would be exchanging roles, and we've tried, Scott and I, to provide an adequate defense. It's been an honor, but we've tried. His life is now in your hands. Thank you very much.

**CLOSING REBUTTAL (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF STATE OF
INDIANA.**

MR. DARTT: Your Honor, Counsel, ladies and gentlemen of the jury, unfortunately this is a sad day, but I do have to talk to you about some of the things that were just said by opposing counsel. I'm not going to respond to personal attacks. I can tell you I've never been attacked like that in my career, and that's fine if that's the way she wants to do that; but I will respond substantively to what she said.

There was a reason, ladies and gentlemen of the jury, that we couldn't bring in the Edward Jones situation to you in the guilt phase and that's because it was a prior bad act. There was a reason we couldn't bring you the burglary in the guilt phase and that was because it was a prior conviction. Now, they brought it up and they have a right to do that, and when they did, as you saw, we didn't cross-examine. We had no problem with that evidence and we didn't claim that Roy Ward was at the house for two hours. Dennis Brown stated that Roy told him that, and Dennis Brown said he didn't believe everything Roy told him. We have always stated, from the beginning of this case, that Roy was there approximately ten to 15 minutes because we know that Melissa saw him on top of Stacy and called 911 and we know that ten minutes later an officer arrived. So don't be distracted by that. Remember what the evidence is; ignore the personal attacks. My

parents taught me a little bit better than that.

As to expert witnesses, I think that you have been privileged as a jury to see some amazing expert witnesses in this case. Dr. Hunsaker is, without a doubt, an expert in her field and a very well-renowned and respected lady. Unfortunately, in these kind of cases, in the State's opinion, you also see what we sometimes refer to as hired guns. They testify in these kind of cases all the time. I was not trying to run down Dr. Cunningham personally and I was not trying to run down Dr. Krane personally, but I have access to how they've testified in the past, and if they think that they're going to come in this courtroom and tell you something different than what they've testified in the past and I'm going to allow it, they're wrong; and Barbara Williams is wrong, because she's not the only one fighting for somebody's life. We are too. Stacy Payne's life is important here, and I guarantee you that we're going to fight and we have fought all the way through this trial and we will fight to the end because it's important.

Now, if you want to really see how biased we were, that we were trying to savage their witnesses, think about Dr. Engum. We didn't savage him. He did testing; he did a report; he testified, in my opinion, pretty well. Now, he didn't help them out as much as they would have liked. Did you notice that I had to put his report into evidence? Their expert and I had to move to put his report into evidence. They didn't want you to have his report. Think about that. We didn't savage the cross-examining because he's credible. He didn't come into court like Dr. Cunningham and testify different than he's testified previously. He didn't come into court and try to change the dates on whenever he filed bankruptcy and change the dates on whenever he started doing this criminal work all across the country. I had that information from his prior testimony; and, again, if he thinks he's going to come in this courtroom whenever the justice of Stacy Payne is at stake and tell you something wrong, it's not going to happen as long as I'm Prosecutor, and I won't apologize for it.

Now, that was done for a reason, ladies and gentlemen of the jury; they want to get you distracted on side issues. We call it the blame game. It amazes me; he's responsible but then we get all the blame. And, you know, it doesn't make any difference if they get up here and say we know he's responsible, but then blame,

blame, blame, blame. It's the same thing. It's the blame game, and they're trying to distract you. Well, I want to talk to you about the case. This case has been one of the saddest things I've ever had to do and it's also, though, been one of the proudest things I've ever done. I mean, I am so proud to be here fighting for justice for Stacy, her family and the State of Indiana, and you should be just as proud. Once again, I thank you for everything that you've done in this case, for your service and your attention. And as you know, your job is only half done. It has been a long journey. We talked about the fact that there was going to be a guilt phase and we're through that. You found the conviction of the murder, the rape and the criminal deviate conduct as you should have done. And now we're to the part of the phase where we decide on what we're going to do. This is the penalty phase. Whatever you decide, be proud of your decision and the service that you've performed.

As we talked about, I will never tell you what you have to do, but I will tell you what I want you to do and what I think is proper in this particular case. And, as you know, the State of Indiana is seeking the death penalty in this case. In jury selection, each one of you -- I talked to everyone of you personally -- told me that in the appropriate case, under Indiana law, you could recommend the death penalty. Ladies and gentlemen of the jury, unfortunately, through no fault of mine, through no fault of yours, through no fault of Mr. Ward's parents, and especially through no fault of Stacy and her family, this is the appropriate case, and I want to talk to you about that.

For a long time I've wondered, if I have this chance to talk to you, what am I going to tell you. What would I -- how would I be able to tell you why we're requesting the death penalty. So that's what I'm going to talk to you about. First, the death penalty is only appropriate in cases where the Defendant is sane and competent and not mentally retarded; so even though there might be a few distractions coming from the other side of the courtroom, those issues are very important. We would never ask that the death penalty be given to somebody that was incompetent, retarded or insane; that would not be proper. We know from the living words of the experts that's not the case with him. He meets the requirements; he knows right from wrong; and he's able to stand trial for the charges as

he's done. So once these requirements are met, as your prosecutor, I believe in personal responsibility, and by that I mean, people are accountable for the choices they make and for the actions that they take. And in that regard, sometimes that accountability requires punishment. Mr. Ward is responsible for what he did on July 11, 2001, and now he must be held accountable for what he did.

The other thing I look at in a death-penalty case is, I believe it's only appropriate where there is very, very strong evidence of guilt. Ladies and gentlemen of the jury, you know we have that here. I can't think of another case where the offender was arrested inside the house with a bloody knife in his hand, one room away from the victim, who's laying in a pool of blood. The sister of the victim saw the offender on top of her sister; the DNA evidence comes back 12 billion to one; he's got a piece of bloody string in his pocket that matches string that's in the living room by the -- close to where the victim was located. It's irrefutable evidence, and the interesting thing is, even the Defense usually admits that he's responsible for Stacy's death.

And then the last thing I look at as prosecutor would be the concept of making the punishment fit the crime. People should not be punished too leniently and people should not be punished too severely; instead, the punishment should match the particular crime and should match it as close as possible. I believe that is an important part of justice. In this case, ask yourself what punishment fits the crime. What punishment fits this crime? Think about that. In reaching that decision, I want you to consider a few things. First, this is not just a murder; it's an intentional murder of a 15-year-old girl named Stacy Payne. And of all places, she was brutally murdered in place where she should have been the safest; her own home in the middle of the day on July 11, 2001. And it gets worse. Roy Lee Ward murdered her while he's on probation for a felony burglary conviction, for which he had only recently been released from prison. Obviously jail time did nothing to conform him. And it gets worse. Roy Lee Ward murdered Stacy while committing rape and criminal deviate conduct. You found that in the prior case, which you should have. Unspeakable degrading things that Stacy went through on July 11, 2001, on her living room floor. You saw the injuries to her vaginal area; you saw the DNA evidence. Her body was on his penis 12

billion to one. And it gets worse. So far what punishment fits that crime? Think about that as we're going through this. What punishment fits that crime?

As part of the murder, Roy Lee Ward mutilated and tortured Stacy Payne while she was still alive. Now, once again, there's some distractions. They want to tell you what torture means. The Judge is going to instruct you on what torture means. We just ask you to follow the law. Appreciable period of time? You tell me. One minute, two minutes, three minutes of what she went through? We know she went through that ten minutes and we know she suffered another 44 minutes before they could give her a sedative at the Huntingburg Hospital. You tell me if that's torture.

The big thing here, ladies and gentlemen of the jury, he didn't just kill her; she was still alive. That is just something that has just been so difficult for me to even comprehend in this particular case. He mutilated and tortured her while she was still alive. You saw the evidence. He tied her up, hit her with his fist, bashed her in the head with a barbell, sexually assaulted her, stabbed her, cut her hands to the bone, slashed her throat and then carved her almost completely in two while she was still alive, still alive.

And I'm not going to tell you what to believe, but you heard Dr. Davis up here (indicating), and if you think that somehow this occurred as part of a struggle, then you don't believe Dr. Hunsaker. And I'm sorry ladies and gentlemen of the jury, but you saw both of those people testify and you know who the pathologist is. You make the call. What punishment fits that crime, ladies and gentlemen of the jury? What does somebody have to endure? And it gets worse. Blood-soaked carpet in the living room; ten square feet of blood in the dining room floor, blood splattered on the wall; 18 blunt-forced injuries found; five sharp-forced injuries found; cut the jugular veins; cut her vocal cords. And then --I can't even imagine this --cuts deep inside the front of her abdomen on her backbone while she's still alive. Now, what punishment fits that crime? He cut her vena cava, cut her ureter, cut her front all the way around her sides and back and left about four inches. She was cut almost completely in two while she was still alive. What punishment fits that crime?

And it gets worse. She didn't just die. She endured this brutality for ten minutes in her own home, not only alive and conscious when Officer Keller and EMT Stout arrived, but she tried to fight the EMT because she thought that it was Roy Lee Ward. You heard EMT Stout. He had to tell her "I'm here to help you, so don't fight," and she did. And that girl responded to questions that he gave her in the ambulance on the way to the hospital with head nods, without sedation. It was 44 minutes after the ten minutes of hell before she even got sedation. She died from her injuries about four hours after the attack. Whenever EMT Stout and Officer Keller arrived at the scene, she's alive; not only alive, but she's conscious and her intestines are laying on the floor in the dining room along with the rest of her abdominal contents from her abdominal cavity. Now, you tell me what punishment fits that crime.

You do have a weighing process to do here. Think about the strength of the aggravators that we presented to you. Contrary to what she says, we're not desperate. We put the evidence on; we told you in the jury selection we would bring the evidence to you, and we have done it. We didn't bring some witnesses in to rebut their experts because we didn't need to. Think about the weight of the aggravator in relation to the mitigators. No comparison. The aggravating circumstances are like huge blocks of stone, and their mitigators, which even to this point I'm still not clear on what they are, are like grains of sand. There is not even a close call on the aggravators and the mitigators. The aggravators' weight far exceeds the mitigators. What punishment fits that crime?

Now, I understand why they would tell you this, but the Defense would have you believe that life without parole is a better option and it's somehow equal to the death penalty. Well, in this case, not every case, but in this case, I strongly, strongly disagree. Although, the procedures for getting to the penalties are the same, the penalties are not the same, especially in this case.

Why should Ward --you heard the lady from the department of corrections. Why should Ward get life without parole and get to play Putt-Putt golf and do gardening whenever he took those things away from Stacy on July 11, 2001. And not only did he take them; he savagely took them. With if he escapes? It happens. What if he takes a hostage? It happens. What if the life-

without-parole laws are changed as our laws do sometimes change? That could be by the courts or the legislature. It happens. Don't let that happen.

And it amazes me; why is it that Ward thinks he's entitled to mercy now when he showed Stacy none, absolutely none? Why is it that murderers like Roy Lee Ward get to inflict the death penalty on their victims but then don't want it used against them when they come into the courtroom? How can Stacy's life be somehow less valuable than his?

And then of all things from Dr. Davis yesterday, to somehow - I don't care how they want to characterize it --to somehow blame Stacy for this, that is unforgivable. You know better than that version of events that we heard from the stand yesterday and you know better because we heard from Melissa. She looked down the stairs and she saw Mr. Ward on top of her sister. Her sister was screaming and they all had their clothes on. Stacy Payne did not drop her pants for Mr. Ward. It's an insult to even consider that. You saw the evidence. She fought. She fought so hard. She tried not to let him do what he did to her.

And then the twine thing. The twine, as I understood it, was meant to take a TV and tie the trunk down or put the TV on the trunk and tie the TV to the trunk. Well, think about it. Why was the twine bloody if it was meant to be used for a TV? Why was Stacy's blood and hair on the twine? Why did Stacy have ligature marks on her arm and her leg if it was for a TV? And if this was such a burglary, then how come the burglary tools, which I suppose, from their testimony, was a screwdriver and a pair of gloves, were in the car when Mr. Ward was in the house? And we know what Mr. Ward had with him, a knife and string. Those aren't burglary tools. We've talked about this before. You know what he was there for. You've already found what he was there for. What punishment fits the crime? What punishment fits the crime when a coldblooded killer blames the little girl that he killed for what he did to her?

Now, they put on some mitigators, I suppose. I tried to take notes. The two I found were Dr. Engum, who, I do feel like, was somewhat a creditable witness, stated that he did believe that there were two mitigators, but he answered them with "Essentially, yes," and "Appears to be the case." Well, I'm not going to tell you whether or not to find that those

mitigators exists, but I am going to tell you that they sure aren't strong. They don't outweigh anything.

Mr. Ward does have a problem and they don't want you to believe it. He was getting violent, more violent. There were violent episodes; they're right; right on the money. I do believe he's a murderer who is a career criminal and I do believe he's a sexual predator.

You heard the evidence from the stand just like I did. What's your conclusions? What do we do with someone like that? What kind of punishment fits that crime? They put in some pictures of Roy's baby pictures. I don't have a problem with that. I don't blame Roy's parents; I don't blame Roy's family. Those pictures of Roy when he was a little boy, that boy didn't kill Stacy Payne, a little boy. This grown man right here killed Stacy Payne (indicating). He's the one that's putting his family through hell; he's the one that's putting the Payne family through hell; and he is the one to blame. In deciding what I wanted to talk to you about, I just want you to remember, this is not just Roy Lee Ward's day in court; it's also Stacy Payne's day in court. It's the only day that Stacy Payne and her family will get any kind of justice. And I thought about what to show you, and I cannot and could not show you those hideous injury pictures again. If you're like me, they've burned a place in your mind and you can't ever forget those. I'm not going to show them to you again. You know what he did. I don't want you to remember Stacy that way; I want you to remember Stacy this way (indicating).

Shortly after July 11, 2001, Jack and I were at the prosecutor's office. The Payne family came in; first time we've ever met them. I'll never forget that night. Julie, the mom, came in with this picture of Stacy, the same one you see right there (indicating), and she said: This is Stacy. Don't you ever forget her. And I guarantee you, we have not forgotten her, and I guarantee you that the prosecutor's office and the law enforcement have worked hard fighting for Stacy just like she fought that day against Roy Lee Ward.

It's time to finish the fight, ladies and gentlemen of the jury. It is your call. Help Stacy finish this fight. Make the punishment fit the crime. Make the punishment fit this crime. Ladies and gentlemen of the jury, if there ever, ever was a case for the death penalty, this is it. Thank you.

[The jury unanimously recommended a death sentence for Ward, who was sentenced to death by Judge Wayne Roell on December 18, 2002. The conviction was reversed on Direct Appeal by the Indiana Supreme Court at Ward v. State, 810 N.E.2d 1042 (Ind. June 30, 2004) on grounds that a change of venue should have been granted. On remand, Ward pled guilty and a Clay County Jury recommended a death sentence. On June 8, 2007, Ward was again sentenced to death, in accordance with the jury verdict, by Special Judge Robert J. Pigman.]

CLOSING ARGUMENTS

State v. Kubsch St. Joseph Superior Court 2000

CASE SUMMARY: September 18, 1998 was the 31st birthday of the defendant's wife Elizabeth Kubsch. It was also the day she was found dead by her 13 year old son in the basement of the home she shared with the defendant. She had been stabbed numerous times and was hogtied with duct tape. Also discovered in the basement were the bodies of Elizabeth's former husband, Rick Milewski, and their 10 year old son from that marriage, Aaron Milewski. Aaron had been stabbed 21 times and shot once in the mouth. Rick was stabbed in the heart and shot twice in the head.

Kubsch claimed to have worked all day, then went straight to pick up his other son in Michigan. However, cell phone records put him in the vicinity of the murder at the time of the murders. Duct tape from Elizabeth was matched to a wrapper in his vehicle. He was over \$400,000 in debt and 2 months before the murders had taken out a life insurance policy on the life of Elizabeth for \$575,000.

St. Joseph County Superior Court Judge Jerome Freeze presided at the trial. Deputy Prosecutors Scott Duerring and Joel Williams represented the State. Attorneys James Korpala and Neil Weisman represented the Defendant.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF STATE OF INDIANA.

MR. DUERRING: Thank you, your Honor. Ladies and gentlemen, shortly you will be retiring, and you are going to hear some instructions before you do. What this phase is going to basically involve is you are going to be asked to do some balancing, some weighing, some comparing.

First of all, the first step is you are going to determine whether or not the State has proved either one or both of the aggravating factors that we allege. Now, we wouldn't be here if you didn't feel we proved at least one of them. You found yesterday the defendant guilty of murdering three human beings, the one aggravating factor we alleged exists in this case is that he murdered Aaron - he murdered Rick Milewski, and he murdered Beth Kubsch. You found that yesterday. You found beyond a reasonable doubt that that

occurred.

We also alleged that he also murdered a child under the age of twelve. And if you can recall the testimony in this case, Dr. Tomec was the pathologist who testified that Aaron Milewski at the time of his death was age ten, his date of birth being August 21st, 1988. He turned ten the month before his death. There can be no reasonable doubt in your mind that both of the aggravating circumstances have been proven in this case.

The second step or second stage of your analysis in this case is to determine whether or not those aggravating circumstances are outweighed by the mitigating circumstances you've heard in this courtroom today, and that's where the weighing process comes in. Out of the Webster's Dictionary is defined mitigation, or mitigate is defined as to cause to become less harsh or hostile, to make less severe or painful. And I guess fundamentally you are going to have to make a determination as to if what you heard today makes the murders of three human beings including a child less severe or less painful. And I submit to you that it doesn't.

This is not the first time in my career I've stood in front of a jury and talked about and requested the death penalty, which is the ultimate penalty our society has. Our laws provide for individuals to have the right to protect themselves by using deadly force. We call it self-defense. If somebody attacks you or your family, you are justified in replying with that violence with sufficient force which may be deadly in order to protect yourself. And if you kill someone in that process, you do not commit a crime, and it's called justifiable homicide.

Our death penalty statute is the same thing but it's used for our society. It's a self-defense mechanism for our society, and it says in certain circumstances that juries of our society can protect our society from people that would attack it, and that's what I'm asking you to do in this case today.

We heard a lot about the defendant today. Fundamentally we are here, we are in this courtroom. You have been here for weeks for one reason, and that reason is the defendant without thinking about his family, without thinking about

the people that came in here and testified who are also devastated by this heinous act, chose to do what he did to three human beings, Beth Kubsch, Rick Milewski, and Aaron Milewski, three human beings. And I want you to think about what it is to be a human being, that they are no longer capable of "being." I read somewhere where murder is the ultimate act of depersonalization. It turns a human being who has hopes and dreams and fears and laughter into a corpse. It eliminates them. And he not only eliminated one human being, he eliminated three of them. And if you think about it, and you heard the testimony of the social worker talking about his family, he eliminated an entire family. He eliminated a mother and a father and their son.

Beth Kubsch will never laugh or talk to her son Aaron again. She will never be able to call him up on the phone and hear him tell her about his schooling. He'll never be able to watch T.V. He'll never be able to take a walk in the park. He'll never see another sunset. Aaron will never go to high school. Aaron will never have a family. Rick is gone. He'll never have a son. He'll never have any of those things that make him a human being. And multiply that by three times.

If there is any case that exists that requires you as a jury of our society to engage our self-defense mechanism of the death penalty, it is this case here today.

I ask you to think also of the last few seconds of the lives of Rick and Aaron, a father and a son dying next to each other, one perhaps trying to help the other but unsuccessful. Think of the sheer terror. As Dr. Tomec testified, it took them several minutes to die. The sheer terror of their last minutes as they died an arm's length away, and weigh that against the mitigating circumstances you've heard today, and there is no comparison. None.

The defendant chose to do what he did. The defendant took of all of these things away from these three people. The defendant inflicted pain not only on the people he murdered but also on members of his own family. The defendant was not thinking about anyone but himself when he did what he did. And now I guess he wants you to feel sorry for him. His family is devastated as well. They are victims as well. They are surviving victims. But it all goes back to what the defendant chose to do.

You heard some testimony today about the defendant's childhood and how I guess disturbing or how bad it was. But you also heard testimony

from other people coming in saying he seemed to be a nice guy. Now, I don't know how to reconcile that, because it doesn't seem to make much sense.

On one hand they're saying he came up in a bad childhood, an abusive childhood, but on the other hand it's saying that he's a nice guy. It doesn't seem to make much sense. But if you go with the theory that he had a hard life, a hard childhood and that may have made him violent, well, that fact doesn't make him any less violent today. It doesn't make his victims any less dead than they are today. It's sad, but it really doesn't make any difference as to what kind of person he is today and what kind of person that he was when he murdered three human beings.

You may be asked to consider, and you are asked to consider, whether or not you should sentence him to life in prison without parole. That's an option you have, and that's an option under the law you must consider. But think about this, ladies and gentlemen, he will be able to do all of those things even in prison that he denied three human beings the right to do on September 18th, 1998. He can visit with his family. He can talk to his son. He can watch T.V. He can read books. He can play games. Everything he can still do, and all those things Beth and Rick and Aaron cannot.

We are here, ladies and gentlemen, because of what he chose to do, and those choices included murder. This is why we're here, ladies and gentlemen. Do not forget. This is Aaron Milewski after his encounter with the defendant. This is him and his father after their encounter with the defendant. And this is his wife, a person who apparently trusted him, and it cost her her life.

Do what you have done so far, follow the law. In this case, ladies and gentlemen, justice requires a recommendation to the Court that the defendant be put to death. Thank you.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF THE DEFENDANT

MR. WEISMAN: Thank your your Honor. Ladies and gentlemen of the jury, it is been a long couple several weeks. We've kind of come full circle. This is when, where we first started talking to you about your feelings about this phase if we were to come to it and we're here now.

I want you to recall as we talked early on that even if you find that the aggravators are present,

death is not the only answer. You have other choices. You have life without parole, or you can make no recommendation, and the Judge can give a term of years. And he will instruct you on that.

We told you at the beginning of this case that it was a circumstantial case. You deliberated. You rendered your verdict. You found him guilty beyond a reasonable doubt. We respect your opinion. However if you have any lingering, any residual doubt in your mind that maybe it wasn't enough to have found Wayne not guilty, we're asking you to err on the side of caution, err on the side of life. Death is final.

There is obviously a lot of controversy about the death penalty, and we have talked about that before. And I'm not going to go into a dialogue on the pros and cons of the death penalty. But some of the problems and controversy over the death penalty comes out of circumstantial cases.

You have heard about Wayne, heard about who he is. You've heard from the family members. The purpose of putting them on is not to excuse anything. It's just to show you who Wayne is. Some of the people got up here and talked about who he is today. Some of the people talked about what happened early on. Some of the people had to come up here and put out some pretty difficult stuff about what happened early on. And they're doing it just to save Wayne's life. You heard some mitigators, and you will have to go back and look at those mitigators. And this is serious business, because you have to weigh those mitigators against the aggravators. Anyone mitigator can outweigh an aggravator. And you need to think seriously about this business. I know from talking to you early on that each of you take this responsibility very seriously. That's why you were chosen as jurors. That's why you're sitting here. Remember we talked about the perfect juror. Well, you're here in the position of being the perfect juror.

You heard that Wayne has no significant criminal history. You heard that he had been neglected by his parents. You heard that he had physical abuse. There's absent parents, didn't know where he was from day to day, multiple parent figures, parental violence, disorganized, chaotic family. You also heard that Wayne through all that attempted to rise above it. He was a hard worker. He was taking care of family. He would take care of people. He would help them out. He had good qualities and good character qualities. He has demonstrated that.

Life without parole even in prison is a choice. He has a mother, father, brother, sisters, grandparent, and two children who would be traumatized by his death. And I don't mean to diminish the tragedy that occurred in this case. There were three people that lost their lives. There were three deaths. What we're asking right now is don't compound that tragedy with another death. Life without parole is a choice. Life without parole means that the sentence is not served until the person dies in jail. There's no good time credit. Clemency by the governor is unheard of. Life is a long time. It is a serious and severe penalty.

Just one thing before I sit down, ladies and gentlemen. Since the death penalty in the State of Indiana was reenacted, there has been no St. Joseph County jury that has given the death penalty. We implore you, too, to choose life. Thank you.

**CLOSING REBUTTAL (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF STATE OF INDIANA.**

MR. DUERRING: Ladies and gentlemen, you have a right to be proud of your verdict. I'm proud of the role I played in presenting this case to you on behalf of the victims and obtaining justice for them. Don't second-guess yourself. You have every right to be proud of what you've done, hold your head up high.

In the jury selection process, we went through a special process, and all of you indicated in that process that the death penalty is a law that you not only would uphold, but it's a law that you believe in. You think it's appropriate, not just life without parole but also the death penalty.

And as you consider the facts in this case, I ask you to think to yourself if this isn't a case where the death penalty is appropriate, if the slaughter of three human beings on an afternoon in September of 1998 is not appropriate, and one of those human beings includes a son, a child, a family that was slaughtered, I don't know what other kind of case would be appropriate for the death penalty.

Ladies and gentlemen, it's no easy task that you embark on, and I recognize that. We all do. But it's a task that you all took an oath that you could do, and you've done thus far. The defendant by doing what he did deserves the ultimate punishment our society can give out, and that's why I am asking you to do that. Please, ladies and gentlemen, do justice for Beth, Rick, and Aaron and recommend that the defendant be sentenced to death. Thank you.

[The jury unanimously recommended a death sentence for Kubsch, who was sentenced to death by Judge Frese on August 28, 2000. The conviction and sentence was reversed on direct appeal by the Indiana Supreme Court at Kubsch v. State, 784 N.E.2d 905 (Ind. March 14, 2003). On remand, Kubsch was again convicted and on April 18, 2005 was again sentenced to death, in accordance with the jury verdict, by St. Joseph County Superior Court Judge William H. Albright.]

CLOSING ARGUMENTS

State v. Overstreet Johnson Superior Court 2000

CASE SUMMARY: Kelly Eckart was an 18 year old freshman attending Franklin College, working her way through school with a part-time job at Walmart. On September 27, 1997 she left work, met briefly with her boyfriend and drove towards her home in Shelby County. That was the last time she was seen alive. The next morning, her car was found abandoned in a rural area, with its lights on and keys in the ignition. Four days later, the partially nude body of Kelly Eckart was found in a ravine in Brown County. She had been strangled with her own shoe string and a strap cut from the suspenders of her overalls. She had also been shot once in the forehead. Semen was discovered on the victim. The defendant's brother first contacted the police and admitted that after the defendant called him on the 27th, he had met him at a hotel, drove his van, and transported him and a girl to a remote wooded area where he dropped them off. Fibers found on the victim's body matched those from the defendant's van. An eyewitness identified the defendant near the dump site on the day the body was recovered. DNA testing confirmed that the semen recovered from the victim was contributed by the defendant.

Johnson County Superior Court Judge Cynthia S. Emkes presided at the trial. Johnson County Prosecutor Lance Hamner and Deputy Prosecutors Brad Cooper and Tina Mann represented the State. Attorneys Jeffrey Baldwin and Peter Nugent represented the Defendant.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF STATE OF INDIANA.

MR. COOPER: Ladies and gentlemen, over the last two or three days, mostly two, part of one, you've heard evidence about the Defendant's problems. And this is fine with the State because this is the part of the trial when the Defendant is afforded an opportunity to come here and explain to you the problems he may or may not have, and the issues he may or may not have that would, cause you to possibly want to spare his life. So we've heard those problems.

But ladies and gentlemen, I would like to get back, if I may, to the real issue at hand. And the real issue at hand in this case is that this man seated over here, Michael Dean Overstreet,

abducted, raped, and strangled to death an innocent 18-year-old girl named Kelly Eckart. That is the real issue. And the real issue is, should he die for what he did? And ladies and gentlemen, he should.

I'd like to talk to you a little bit about the law that gets us to the point of that decision that you made. You'll receive instructions on this from the Court as you have in all the other phases. Before the Defendant may be sentenced to death, the Jury must find two things. The first thing is that the State must prove beyond a reasonable doubt that at least one of the aggravating circumstances exist. And two, after you have found this, that any mitigating circumstances presented and proved by the defense, any of these are outweighed by the aggravating circumstances.

I'd like to talk to you about the aggravating circumstances in this case. You may recall these from down in Clark County when we were talking about this in voir dire jury selection. These are the three aggravating circumstances that the State has alleged in this case. The first one, that the Defendant committed murder by intentionally killing Kelly Eckart while committing or attempting to commit rape. Ladies and gentlemen, during the penalty phase, the phase that we're in right now, the Judge indicated and instructed that you may consider all the evidence from the trial. And it was the trial where the State has previously and already proven these. And that is indicated simply by your verdict forms.

The first part of this: The Defendant committed murder by intentionally killing Kelly Eckart. He's already been found guilty of murder. And we talked about in closing arguments, and you've heard in the evidence, how that murder was an intentional murder. We talked about the intent that it takes to take the shoe lace out of Kelly's shoe, and take that shoelace and deliberately remove it and tie it around her neck. We talked about the intent that it takes to cut off the straps of her overalls, and after cutting those off, to tie them around her neck. We talked about how taking those and tying them is a deliberate and intentional act. We've been through this, and I don't mean to belabor the point, but it's important because this is what we have to prove. We talked about how those were tied around her

neck, and the intent that it takes to exert the force that causes that kind of damage to a person. I don't show you these for sympathy, I show you these for intent. This goes to intent. The pathologist told you that she was alive when this was taking place and that that intent and that those actions are what killed her. He's already been proven guilty of intentionally killing Kelly Eckart. That was the first count of murder. I told you a long time ago the second count was very important, and it is. And this is one of the reasons why. And that was that he did so while committing or attempting to commit rape. And the Court instructed you that while committing or attempting to commit rape indicates a pattern, a chain of events, an unbroken chain of events. And you received that instruction and you will see that instruction again. And based upon that instruction and based upon that evidence, he's already been found guilty beyond a reasonable doubt, as you all know, for doing this while committing rape.

So the first two counts of murder and the evidence you've seen at the trial prove that this aggravating circumstance has been proven beyond a reasonable doubt. It's the same standard here. This has been proven.

The second one, Kelly Eckart was the victim of rape for which the Defendant Was convicted. Same thing, ladies and gentlemen. This individual sits before you convicted of raping Kelly Eckart. That's an aggravating circumstance. He's been found that way by yourselves, beyond reasonable doubt. It's been proven at trial, the trial has been incorporated here, this has been proven. The second aggravating circumstance been proven.

And the same thing goes for the third one, ladies and gentlemen, confinement. He has been convicted beyond a reasonable doubt of confining Kelly Eckart, the victim, he has been convicted.

These three aggravators, all of them were proven at trial. The same standard exists. We're now in the sentencing phase. They can all be considered because they have all been proven. The second part, ladies and gentlemen, is that any mitigating circumstance, the evidence you've heard over the last couple of days, does that or is that outweighed by these aggravators? Is what you heard, the excuses you've heard, over the last couple of days, do those outweigh the fact that he's abducted, raped, and killed an 18-year-old female named Kelly Eckart, young girl? Do those outweigh this? It's a balancing test. There's no reasonable doubt, there's no standard of proof, it just depends upon which one you feel weighs

more heavily upon you. The murder, the abduction, the conviction, or the evidence they presented over the past couple of days.

I'd like to talk a little bit about mitigating circumstances. You'll receive instructions on this as you received instructions, preliminary instructions, at the beginning of the penalty phase. And this tracks what you were given at the penalty phase, or at the beginning of this penalty phase. And these are the mitigating circumstances at the time you were instructed about that are applicable to this case. And the first one is that the Defendant had no significant history of prior criminal conduct. We heard from the witnesses that he was convicted of taking a gun to school back in the '80s,

MR. BALDWIN: Objection, Judge, that was not the evidence. He was expelled from school. There was no conviction entered.

MR. COOPER: Your Honor, if I may read from this record over here that was referred to? I'm sorry?

JUDGE EMKES: You may.

MR. BALDWIN: Well, I can just tell you, you've heard the evidence. There's indications in the evidence that was testified to by Dr. Engham in a report that was put in that he was arrested for it and he was placed on probation for it.

MR. COOPER: It doesn't make any difference.

JUDGE EMKES: I'll sustain the objection. I'll allow you to refer to it that way though to the Jury as to what happened.

MR. COOPER: Okay. So you know what happened. He took a handgun to school, was arrested for it, and he was placed on probation for it. There's a couple of operating while intoxicated problems. He was convicted of one. The evidence is also that he was arrested for another one and subsequently, before that ever went to trial, before that was ever dealt with, he was arrested for this murder.

So it's up to you, and it's a weighing process. The defense has the burden of showing this beyond, or by a preponderance of the evidence. Do these exist? It's their burden to show that he had no significant history. Is that significant? No.

It's up to you. I've seen worse, I've seen better. Does it excuse his conduct, though, for raping, abducting, and killing a young female? When you weigh those but, does it even come close? It does not. This does not mitigate the murder. This does not mitigate the fact that he should die for what he did.

The Defendant was under the influence of extreme mental or emotional disturbance when the murder was committed. The evidence that goes to this came from the stand, and that was Dr. Engham. He's a psychologist. Dr. Engham and I didn't exactly see eye to eye on a lot of things, as you may recall from our conversation we had in here. And there are some things about Dr. Engham I think that are important, and before we talk about these, that I think that you should understand. And the first one is, is just this, irregardless of his credentials, irregardless of what he considered, he was asked this specific question by Peter Nugent on the stand. He stood right here and he read right from the statute: Was the defendant under the influence of extreme mental or emotional disturbance when the murder was committed?" And he said no. If you recall that, he said no. It's a leading question. The defense counsel put it out there, and he refuted it. He said no, that's not the way it was. Extreme is not the issue in this case. He said it was less than that. He was categorizing it in other terms. He said it was more like severe. But the point of the matter is that he said that it was not extreme. It did not rise to this level. It did not rise to extreme. Severe, I think he said six out of ten on the severity scale of one to ten, six or seven, not extreme. That was their evidence, that was their prudence. It's their burden to show extreme. Their witness did not do that. Their witness said no to this. Therefore, this does not exist. This is not something that has been proven. It's not even to be considered. It's not been proven by the statute.

The second one, the defendant's capacity to appreciate the criminality or his conduct or to conform his conduct to the law was substantially impaired as a result of a mental disease. Here's where I'd like to talk a little bit about some of the problems that Dr. Engham has. I think it should bother you that the Defense had to go to Tennessee to find a psychologist to testify. I think it should bother you that he was paid \$6,000 for his testimony. I think it should bother you, and I wrote some of this stuff down as he was testifying, but I think it should bother you that Dr.

Engham never saw Michael Dean Overstreet, he never saw the Defendant until two and a half years after the murder. Why wasn't this done a week or a month after?

MR. BALDWIN: Judge, I'm going to object to that. We don't have to do anything. He can't comment on when we do something or how it's done by defense counsel. We don't have to prove anything.

JUDGE EMKES: Yeah, I'm going to rule on the objection, but I do want to talk to you briefly if you would approach the bench, please.
(Bench discussion off the record.)

MR. COOPER: Again, two and a half years after he was arrested, two and a half years later, they talked to the Defendant for the first time. Further, by that time the Defendant is claiming amnesia. So, as the doctor said, he really was not any help to him for when the murder was committed because he said he didn't recall those events, a fact the doctor said the Defendant could be lying about.

Another problem you should have with Dr. Engham is that he used selected portions of this record. He took out the parts that supported the Defendant's problem and he ignored the rest of it. And that was brought out on cross-examination. It was brought out how, you know, in this one thing, this one report - I remember specifically this one report he was saying how that predicted the murder. But when you go back and you read it, nowhere in there did it say any such thing. In fact, what it said in there is that he was coming out of his problems, that he was involved in a relationship, and things were getting better for him, and that he was not a violent risk. And I read that to him. Is that in there? Yes, that was in there. That's not what he talked about on direct. He wanted to talk about the parts that helped support the defense, not the complete record.

Dr. Engham also used something called the DSM4 test, and he relied upon that. You heard when you take the DSM4 and you read it, that there's a disclaimer at the beginning of it. And the disclaimer says you're not supposed to be using this for forensic purposes. So he used the test, but the test itself says he shouldn't be using it. Those are the reasons why you shouldn't like Dr. Engham. Those are the reasons he should not be given a lot of credibility. However, the most amazing thing about Dr. Engham is that if you

take him for what he says at his face, he helps the State. I'm surprised after hearing him testify that he actually was called by the defense, because of the legal standards involved. And remember, we're talking about a legal standard.

Dr. Engham testified the Defendant had above average intelligence, he was not insane, he was not schizophrenic, no multiple personalities going on here, he was not psychotic, said he might have had psychotic episodes when he was talking about east of St. Michael's or something like that, but Dr. Engham said that could have all been faking. He was characterized by Dr. Engham as having a schizotypal personality disorder. When asked what that means in layman's terms, he said well, 40 or 50 years ago, they would have called this guy a hermit. A hermit. He indicated, as we talked about before, not extreme, less than extreme, six to seven on a scale of one to ten. Less than extreme.

He indicated the Defendant conveniently had amnesia for those events. And then he talked about, more specifically, this mitigating circumstance. And he said that due to the Defendant's claimed amnesia, he could not say that the Defendant did or did not have the capacity to appreciate the criminality of his conduct or to conform his conduct to the law. He said he couldn't make that determination.

They have a burden, if this is going to be a mitigator, they have a burden to prove it by a preponderance of the evidence. Their witness said he couldn't do that, he could not make this assessment. Therefore, this is not proven. This doesn't count. This is not to be considered.

The last thing, and the most amazing thing about bringing somebody up from Tennessee and paying him \$6,000 to say on behalf of the Defendant is this: I asked him, does all of his conduct, his problems, does that excuse him for what he did? And he said, "I am not" - this is Engham speaking, "I am not excusing him of this crime based on his mental condition." So when you hear all the testimony and all the arguments about his mental condition, remember, the source of that. Dr. Engham, told you, I'm not excusing him for this based on his mental condition. That's their hired psychologist, okay? So the mental claims, mental issues, those aren't issues in this case. They do not rise to the level of the legal standard that they must rise to for you to consider them. So there's no weighing process for those. They just don't get weighed because they weren't proven, okay?

The last mitigating circumstance you've heard is kind of the catchall phrase. And the catchall phrase is any other circumstance appropriate for consideration. It's very hard for me to comment on that at this point in time because it could be anything. And it's hard to anticipate what those things are going to be. However, based upon the instructions that you're going to receive, there's some indication of what is going to be argued. And I'd like to address a few issues under this category, some things you most likely will hear and be asked to consider in mitigation or in sparing the Defendant's life.

And the first one is that the Defendant has proven that he made a favorable adjustment to incarceration and has not been a disciplinary problem. The State does not see how that should excuse him for murder, especially when you consider the testimony of the jail people who talked about what you get if you behave in jail. You get half off your time if you get a term of years, you get a visitation from 7:30 a.m. to 2:00 p.m. every day, you spend no more than six to eight hours in your cell, you get weights, you get basketball, you get handball, softball, you get to plant flowers, you get to have a job, you get to do all these sorts of things in prison that encourage you to behave. So why wouldn't you behave? And how does behaving under those circumstances mitigate or reduce or excuse him for what he did to Kelly Eckart? It does not. It does not even come close.

If you find the Defendant has proven the Defendant's mental illness is treatable during incarceration, that may be a mitigating factor. Again, Dr. Engham said there's no cure for a personality disorder. There's no cure for schizotypal personality disorder. All you can do is voluntarily medicate it. And that treatment, that band-aid over the top, is all dependent upon the Defendant taking his medicine. There's indications in the record from his testimony that he was on and off medication, took it, didn't take it. What's to believe that he's going to take his medication and not have this psychotypal (sic) personality disorder treated? Nothing. There's nothing. How does that mitigate murder? It does not.

If you find the Defendant has proven that he grew up in a household with an abusive father. Ladies and gentlemen, life is tough. It's tough on all of us. We all have our problems. When are we going to stop using the abuse excuse to legitimize rape, murder, and confinement of an 18-year-old

girl? People all over the world have problems. They don't go out and commit murder. They don't abduct young girls. They don't rape them. They don't strangle them to death. That should not excuse his conduct. It should not allow him to have his life spared.

The Defendant grew up in a dysfunctional and broken family. How many people does that apply to? How many people have divorced parents, how many people have widowed parents, how many people have all these sorts of problems that don't commit murder? It doesn't legitimize it. If it did, every child of a divorced or widowed parent, you'd kill him. He's not exposed to the death penalty because his parents were divorced. We all have problems, we all have to deal with them, we all have to live, we all have to obey the law. We don't all have to kill, rape, strangle, confine innocent children, 18-year-old girls on their way home from work, nothing more than driving home from work. And that is how the Defendant treats her.

If you find that the Defendant has proven the Defendant's mother failed to get mental health treatment for the Defendant when he was a minor, this may be considered as a mitigating factor. I guess we're blaming the mother now? I mean, come on. You heard the evidence from Dr. Engham, you saw the report when he was 20 years old, when he was an adult, he didn't want the treatment either. He's put in there because he went out and attacked his brother with a knife, and they take him down, put him in Valle Vista or one of the treatment facilities. He's 20 years old, he decides he wants out, he's an adult, he can get out. There's no record of any mental health assessments or treatments from 1986 to 1997 while he was an adult, while it was his decision, not his mother's. We're not talking about this young boy. You know, this young boy is cute in that picture, but this young boy did not kill Kelly Eckart. This grown man, this grown adult who makes his own decisions, killed Kelly Eckart. Don't let the cuteness of childhood shadow that fact. He did it as an adult, a decision-making adult. His decision, he should pay for that decision.

If you find the Defendant has proven that he maintained a period of gainful employment, that may be considered as a mitigating factor. I don't know why this one was in here. In fact, it was placed in here, I don't know what evidence was put on to support it. Because the evidence that we received from two of his employers --well, first,

the records indicate back in the '80's, he couldn't hold a job. Then they put on an individual who said when he was at work, and I can't remember the name of the company, but he was basically moving kegs of beer and shipping them out and organizing them, so for about a three-year period of time he had that job. Then he left that job, and then he started working at a place called ETS. Fired from that job. So, you know, on again, off again, I don't see how that mitigates murder. I don't see how that has anything to do to reduce or excuse what he did to Kelly Eckart.

If you find the Defendant has proven that the Defendant volunteered to serve his country by joining the Navy. You heard and you saw the record of when he joined the Navy, and you saw in that record that he lied on his application form. He didn't disclose all the information that was needed. So he wanted to get in. However, the very last sentence as Dr. Engham testified on cross-examination was that the Defendant wanted out. And when he wanted out within a couple of months - of being in, a couple of weeks of being in, when he decided he wanted out, he's playing the mental card again. He's got it back out. You know, I didn't disclose this because my recruitist said, so I have these problems, I shouldn't be here. Does the Navy want those kind of people? They ship them out. So they did, the record indicates. Did they recommend any treatment for him? No. Does it say that he needed to be housed somewhere or looked at? No, it just says good-bye, you're out. You want out, you're out. Served his country? Not even close, ladies and gentlemen. You cannot compare him to the people that have served their country over the years and the people that have done what they have done for this country that have provided so that people like myself and yourselves can sit here in freedom in this country and make these decisions. He didn't come close to providing that kind of service. And what kind of service he did do does not come close to mitigating murder. This is when he was 19 years old. This was eleven years ago. Eleven years ago he spends a few weeks in the Navy and they're going to tell you, and they're going to give you an instruction that says that can mitigate what he did to Kelly Eckart. That's not even close.

These are just some of the things, these are the sorts of things that you're going to hear from the Defense. These are the sorts of things that you're going to get in the instructions that they are claiming that should allow you to spare or make

you want to spare the Defendant's life.

And ladies and gentlemen, I'm going to sit down and stop. But before I do, I just want you to think of one of the first things that I told you a long time ago in the opening statement. I told you that Kelly Eckart was a young girl who had a cat, I mean, all the things she had, a cat, a car, she lived at home with her parents, she had a part-time job at Wal-Mart, she was going to school, she had a boyfriend. All those things. All of those things that she had, none of it compared to the most important thing she had, and that is the life in front of her at age 18.

More than anything else, that is the most important thing that Kelly Eckart had. This man took it away from her. This man abducted her, raped her, and strangled her to death. And when they get up here and talk to you about all of his problems and how that should excuse him, how you should have mercy on him, I want you to think about should an individual convicted of murder, should an individual convicted of rape, should an individual convicted of confining a young innocent girl, be treated any less, be given any less of a fate that that man gave to Kelly Eckart in September of 1997?

MR. BALDWIN: Judge, I'm going to object. That is improper argument. Any comment in that regard,

JUDGE EMKES: I'll sustain the objection.

MR. BALDWIN: And I'd ask to just instruct the Jury to disregard those comments.

JUDGE EMKES: Correct. Ladies and gentlemen, it is difficult. These cases are very emotional, and the last statement of Mr. Cooper was improper for closing argument. So I'll strike the last statement in the comparison.

MR. COOPER: Ladies and gentlemen, just think about what he did. Think about the aggravating circumstance. Think about the rape, think about the confinement, think about Kelly being strangled. That's what aggravates this. That's what tells us that all the other nonsense, all the other excuses, don't amount to a hill of beans. He should die for what he did to Kelly Eckart. Thank you.

**CLOSING ARGUMENT (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF THE DEFENDANT**

MR. BALDWIN: Thank you, Judge. Just start in one spot. First of all, ladies and gentlemen, neither Mr. Cooper nor myself nor Mr. Hamner, who has an opportunity to address you after I'm finished, give you the Court's instructions. The Court gives you the law. The Court gives you instructions upon how you are to judge this case.

And first of all, I hope that none of you, after being here for three or four weeks now, think that I am standing up here telling you that Kelly Eckart's death was not a tragedy, that Kelly Eckart's being the victim of this crime is something less than an absolute tragedy. I have one very serious problem with Mr. Cooper's argument, however. The Court is going to instruct you, the word mitigating circumstance does not mean an excuse or justification for the offense for which the Defendant has already been convicted. We have not presented to you any excuse. Nor am I here to argue that there is an excuse for what happened to Kelly Eckart. There's no excuse, there's no justification, there's nothing about anything that we presented to you since you've rendered your verdict in the first phase that would in any way - and I hope you do not take anything that we have done to - as our attempt to excuse or justify. None. It isn't.

However, if you take Mr. Cooper's argument, because we had a first phase and you found the Defendant guilty, you take Mr. Cooper's argument, then I don't know why we even have a second phase. Well, ladies and gentlemen, the law is that way. The law is that there is a sentencing phase to this trial. The law that you took an oath to uphold requires that we have this phase and that you be instructed by the Judge on what mitigating circumstances are, and that mitigating circumstances are not excuses or justifications. And I hope that you do not take it that we are trying to do that in any manner. There is no excuse or justification.

But you are being asked to pass a sentence on a man, not on a crime. A man that, no, is not a cute little boy as Mr. Cooper referred to him, but he started out as a cute little boy. And he said - one thing that Mr. Cooper said in his closing argument was, and I do not aim to make light of, was "playing the mental health card". Ladies and gentlemen, this is not O.J.'s trial, this is not playing some card, this is deciding whether Michael Dean Overstreet is going to die for the crime that he committed. We're not playing any cards.

During the first phase of this trial the State made some comments regarding closing arguments. Specifically said, we're not asking you to buy a used car from Scott Overstreet, wasn't asking you to buy a car from Scott Overstreet. What I was asking you to do was consider his credibility. The Court is going to instruct you that the instructions and standards that you were given in the first phase apply to the second phase. And you still have to judge the credibility of the witnesses and determine what your finding is.

One thing I want to point out to you, as Mr. Cooper attempts to disregard Dr. Engham's testimony, one thing if you notice he left completely out, never mentioned as regard to Dr. Engham, was that the State stipulated that there was another doctor that also examined Michael Dean Overstreet and he came to the exact same diagnosis. Kind of left Dr. Smith out of it, didn't he? And what he also didn't tell you was that yes, Dr. Engham said the DSM4, he used it. Well, if you remember back to the disclaimer that Mr. Hamner wrote to you with regard to forensics, it said it was not to be used exclusively, that you weren't supposed to simply use it and come to a forensic diagnosis. No, that's why you do all the tests. That's why you sit and talk to the individual and then you use the DSM4 in aiding in your diagnosis. The State has the ability to call witnesses to refute Dr. Engham's diagnosis. They didn't do it, because this isn't playing a mental health card. Ladies and gentlemen, if in fact we had come to you and said, after 33 years Mr. Overstreet is finally being diagnosed as having a mental disease or defect, that would be something you'd have to consider. Was it missed all those years? It's not that he was arrested and then we say he had a mental disease or defect. It goes all the way back to his childhood. Before this case ever became an issue, there are reports and diagnoses and mental health professionals, not just Dr. Engham, who said Michael Dean Overstreet needed treatment.

Are we blaming Mary Overstreet for killing Kelly Eckart? No, absolutely not. But you're here to sentence a man, not a crime. And to sentence a man, you have to know that man. And part of what goes into knowing Michael Dean Overstreet is knowing that instead of getting mental health treatment as a child, his mother decided to pray. You saw her testify. Did she feel horrible about that? Absolutely. Is she responsible for Kelly Eckart's death? Not in the slightest. Is she responsible for the type of man Michael Dean

Overstreet is now? Partially. Aren't our parents always partially responsible for how we turn out? Teachers see it every day. Students of parents who push them turn out to be one way, those who ignore them turn out to be another. I'm not going to tell you that Mary Overstreet could have prevented this crime. I have no way of knowing that. What early intervention would have done for the mental problems that Michael Dean Overstreet suffered from, there's no way a professional or anyone else could tell you that. However, if the State wants to contend that Mr. Michael Dean Overstreet does not have a mental disease or defect, they could have presented evidence to you on that behalf. And I wanted you to think about what Mr. Cooper said, that he didn't get along with Dr. Engham. He didn't get along with Dr. Engham because Dr. Engham had a diagnosis that he didn't particularly like. And did he call somebody, another professional to say that no, that was wrong? No. Did the State in fact stipulate that Dr. Engham and any other doctor came to the same diagnosis? Yes, they did. And the particular portion - and ladies and gentlemen, before I forget, because it's been a long trial and this is a very emotional time for everyone, thank you very much for your service. And I am going to leave it with that because I believe you were paying attention.

And when Mr. Cooper points out that Dr. Engham described it as severe rather than extreme, I trust that you also remember the follow-up question. Severe is a medical diagnosis term, extreme is a legal term. And Dr. Engham, who also has a law degree, said yes, schizotypal personality disorder fits the legal definition of extreme. Semantics by Mr. Cooper doesn't change the fact, ladies and gentlemen. Two different doctors came to the same diagnosis and it fits the statutory mitigator.

Does that excuse or justify murder, rape? No, it doesn't, and we're not telling you it does. And as the Court is going to tell you, that's not what mitigation is. Mitigation is something that you are to consider and weigh against the aggravators in determining whether to end a man's life or not. Mr. Cooper also --it's kind of funny, because we call people from the Department of Corrections to tell you that Mr. Overstreet has been incarcerated in this type of cell, six by eight, and that life without parole is life without parole. And the prosecutor's office works for the State of Indiana, and the Department of Corrections employees work for the State of Indiana, but they don't get

along when it comes to that portion. And the point of that is, ladies and gentlemen, you have to make a very difficult decision. And I called your job the hardest job in the room at the first phase, and it was. And it's just only gotten harder. Because the Judge is going to tell you, the imposition of the death penalty is never mandatory or required under any set of circumstances. The Courts have called the death penalty the ultimate decision, the ultimate penalty.

The Court is also going to instruct you that if you vote for the death penalty, you should believe that it will be followed and carried out. You've heard the statistics on how many murderers are in our Indiana Department of Corrections, how many are on death row and what that percentage is. Ladies and gentlemen, I present to you, suggest to you, that is because the ultimate penalty is for the worst of the worst.

The State has ridiculed the mitigator of no significant criminal history. Well, ladies and gentlemen, if Mr. Overstreet had other convictions and more serious offenses than drunk driving, had had a history of sexual abuse convictions, a criminal history, they could have presented it to you. They have the burden in this portion of the trial as well. They have to come forth with evidence to prove to you that death is the appropriate penalty. And in this second phase, they took phase one and a page out of the DSM4 and said kill Michael Dean Overstreet. Dean Overstreet is going to be punished for his crime. It's now a determination of what that appropriate penalty is. Death is death. Death can never be returned. Death can never be revoked. You also have the option of life without parole. And although we went through whether you can get an associate's degree and get time off your sentence, or if you get a GED you can get six months off your sentence, life without parole is life without parole. You go into the six-by-eight cell and come out when you're dead. Yeah, you work during the time. Mr. Cooper wanted to know why they planted flowers. Well, 33 acres is your whole world inside those walls. Michael Dean Overstreet will be punished for the crime. Is there any excuse or justification for it? Absolutely not. If by presenting evidence of Mr. Overstreet's life, his upbringing, his family, and his mental disorders, has in any way offended you because you think I'm trying, or Mr. Nugent is trying, to excuse or justify his actions, we apologize. That wasn't the intent. That's why the Court will tell you, mitigating circumstance is not an excuse or justification.

It's hard knowing that when I sit down, the State has another opportunity to speak to you. And they can snap their fingers, and they can point out that Kelly Eckart was raped and

strangled, and that all I have to present to you is the life of a man who I'm asking you to spare. I'm not asking you to impose a sentence less than death because Dr. Engham was paid \$6,000, or that he comes from Tennessee, or that the DSM4 has its limits in forensic pathology. I'm not asking you to spare Mr. Overstreet's life because at one point he volunteered for the Navy or that one at point in time he held a job. I think it's important to know that we didn't come up with this mental disorder after the arrest. There's a long and well-documented history. Does that excuse his actions? No. Does that mean he has to be punished? Absolutely. Does it mean he has to die? No.

And the State has an opportunity to address you again, and they will take, I believe, an attempt to say Kelly Eckart didn't have to die. That's absolutely right, she didn't have to die, and somebody has to be punished for it. And they will take what will attempt to be a righteous position that because of this heinous crime Michael Dean Overstreet has to die. The Court is going to tell you never does the death penalty have to be imposed. So that's not entirely correct. And I guess one thing I want you to consider when the State has the opportunity to address you again, they are asking you to impose a sentence of death on Dean Overstreet. They want to point at him and say he's a murderer. Ladies and gentlemen, you said he's a murderer, not the State. You said he has to be punished, and now it's time for you to determine what that punishment is. Mr. Hamner in his closing in the first phase said something about justice. Justice is someone being punished for their crime, someone being held accountable. There has to be a proportionality to justice. We don't punish people convicted of minor crimes the same as we punish people convicted of major crimes. There's supposed to be a proportionality with regard to punishment involved with that crime. When the State has an opportunity to address you, remember that Scott Overstreet stood there and walked out that door, and that was their decision. Does that make Michael Dean Overstreet less guilty? Absolutely not. Does it make him any more deserving of death? That is for you to decide. I'm not going to, and I am not attempting to, anyhow, in any manner, lessen the crime that Dean Overstreet committed and has to be punished for. But ladies and gentlemen, two wrongs don't make a right. Thank you.

**CLOSING REBUTTAL (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF STATE OF INDIANA.**

MR. HAMNER: Thank you, Your Honor. Good afternoon - or it's still morning, isn't it? Ladies and

gentlemen, there's a little technique in argument, it's called "inoculation". Somebody will say this guy is going to do this or this guy is going to do that, and try to make you not give it your full attention or not give the argument the attention it deserves. Mr. Baldwin, in his closing statement, said something about "the State will snap its fingers" and do this, and all this stuff, implying that you shouldn't pay attention to that. But if you recall why, in closing, during the guilt phase, I talked about finger snapping, it's because it's a technique to divert your attention from the real issue. And when you don't have a case, that's the only thing you've got. Divert the attention, and you don't see the real issue.

The last statement Mr. Baldwin said was Scott Overstreet walked out of here and it was their decision. No, it wasn't, it was the Grand Jury's. You heard that. That was misleading. Kelly Eckart, as we've talked about on and off, was abducted, she was raped, she was murdered, intentionally. One of the things that Mr. Brad Cooper talked about that we have to prove beyond a reasonable doubt, is that she was intentionally murdered in the process or during the course of - the course of events of the rape. I don't like to touch on these things and I know you wouldn't either, but when you put these ligatures back together the way they were originally tied around her neck, intent is no longer an issue. Whoever tied these intended to cause death. And if there's any question in your mind about that, I want you to picture that thing tied around the girl's neck. Sure, a young girl has a slender neck, but like that? You saw the furrows it made in her neck. Intent to kill.

Beyond a reasonable doubt? Far beyond a reasonable doubt. That's how it was proven. I don't want to get too far afield, but I want to tell you something that happened in the 1700's. In the 1700's, life was tough. In the 1700's the criminal justice system was pretty - for want of a better term, draconian. It was really, really harsh. People were executed for stealing, people were executed for hunting on the king's land, people were executed for things that were just clearly unjustified. And there was a reformer in the 1705, his name was Cesare Beccaria. And Beccaria became famous for this quote, he said "let the punishment fit the crime". You don't execute people for stealing and for hunting on the king's land. You execute them for things that they deserve, like killing other people, viciously, intentionally and while hurting them.

I don't have to remind you that Michael Dean Overstreet is a vicious killer. We know that. We've already found him guilty of that crime. And no amount of skillful advocacy or no amount of putting on psychologists to talk about not extreme

mental illness, but a personality disorder, can change the fact that the aggravators in this case are extremely weighty. They're extremely heavy. We've talked about and you've heard from both sides, that you have to weigh these things out. And that's your job. The judge will so instruct you. One of the things you're going to hear the Judge instruct, "even though the law requires that you consider any mitigating circumstance", and in voir dire jury selection you all committed that you could consider these things, "requires that you consider any mitigating circumstance that the Defendant proves by a preponderance of the evidence, the law allows you to give such mitigating circumstances the weight you deem appropriate." Remember, we're back to weighing these things out. We've proved these things beyond a reasonable doubt. We've proved the aggravators. Now you weigh them against the mitigators.

How do you weigh something that has no weight or has such insubstantial weight that it's almost ridiculous, almost embarrassing to talk about it? I want you to picture - anybody who has ever read about how the pyramids of Egypt were built, two and a half tons of blocks, two and a half ton blocks of some kind of stone. That's what these aggravators are. And they want you to weigh that against a teaspoon full of sand.

He committed murder by intentionally killing Kelly Eckart while committing or attempting to commit rape. Beyond a little bit sick. Not extremely mentally ill, but I have a severe disorder. Kelly Eckart was the victim of rape. You have to weigh this. How much does this weigh? How bad is it when somebody takes a young girl and defiles and degrades her body while she's in terror because she's been abducted, because that's one down here, and then finishes her off this way?

Huge blocks of stone compared to ounces of sand, mitigators. I don't blame Defense counsel for standing in front of you and saying, you know, this doesn't excuse this, this doesn't justify this, but you have to weigh it all out. And you know, I give you this man, and you've got to have mercy and all that stuff, because that's all he's got. Because these aggravators so outweigh these mitigators that it's self-evident. It jumps right out at you. It's one of those kinds of things that it's just obvious. Remember, in my last closing statement we talked about obviousness, that sometimes something is so obvious that people can't see. They think well, there must be something here. They list mitigator after mitigator after mitigator after mitigator, hoping that teaspoonful after teaspoonful of sand is going to outweigh these huge blocks of stone. It still goes like this, the mitigators simply don't rise to the

level of justifying that we go outside what Beccaria says, that the punishment has got to fit the crime.

They go through these mitigators. These are the statutory mitigators. The Defendant has no significant history of prior criminal conduct. We got castigated by defense counsel because we didn't put on a bunch of evidence that he's got a big, long criminal history. Of course we didn't, because he doesn't have a big, long criminal history. You've heard what he's got. The question is, is it insignificant? Well, it's not that significant, but because a guy doesn't have a real - I mean, is that a lot of weight? Is that any more than teaspoonful of sand? It's not even a few grains. Because he doesn't have a big, long criminal history, we don't execute him, we don't make the punishment fit the crime.

(Counsel snapping fingers) Distract you. They want to distract you from what's really important, and that is that these aggravators are so heavy, are so compelling, that these tiny little mitigators that they keep throwing out to try to confuse you and distract you will actually do that. That's the intent. And it was done well. But the difference between these aggravators and these mitigators is the difference between lightning and a lightning bug. It's absolutely ridiculous.

Here's what the statute lists: The Defendant was under the influence of extreme mental or emotional distress. Their own doctor wouldn't even do that. Brought him from two states out and paid him a ton of money and he wouldn't even come up with that. The victim was a participant, Kelly was a participant or consented to. No. That's what the legislature has listed as -

MR. BALDWIN: Judge, I'm going to object. I don't believe I've seen this.

MR. HAMNER: It's the statute, Judge.

MR. BALDWIN: Oh.

JUDGE EMKES: Counsel, if you could approach the bench. (Bench conference off the record.)

MR. BALDWIN: Judge, I would ask that the Jury be instructed on the last comment of the prosecutor.

JUDGE EMKES: To the extent that it wasn't fully referred to, I'm sorry, I don't recall exactly where we cut off, but in closing argument in regard to a particular case, there will probably be reference to the mitigators that are based on the evidence, or allegedly based on the evidence, based on the Defense position of mitigators. And there was a statutory mitigator referred to by Mr. Hamner that was not alleged to be applicable in this case, so

therefore, it's not able to be referred to. And they're all listed together, and there was initially a reference to that, and so you are to disregard that initial reference to a mitigator that has not been alleged by the Defense to be applicable in this case.

MR. HAMNER: Thank you, Judge. The big, long list of mitigators, the little teaspoonfuls of sand that they've been giving us, essentially amount to this: He's been a good criminal in prison. Brad Cooper told you about that. Why should he not be? Brad didn't mention that why would a guy that's got arms about this big 'round cause a lot of trouble in a prison where you've got a bunch of big, hulking guys? It's just not likely,

MR. BALDWIN: Judge, I'm going to object. There's no evidence in the record upon which Mr. Hamner can comment about the size of people in prison. And Mr. Cooper didn't testify to anything because Mr. Cooper is one of the attorneys. He can't testify.

MR. HAMNER: I'll stand on the Court's ruling, Judge.

JUDGE EMKES: I'll sustain the objection, but I'll allow you to continue in regard to mitigator one and comment on the evidence.

MR. BALDWIN: That's fine.

MR. HAMNER: He hasn't caused trouble in prison, that's it. And based on that teaspoonful of sand, you're supposed to think that that somehow outweighs the big blocks of granite that are the aggravators. He had an abusive father. We talked about that, too. Feel sorry for me because I had an abusive father. How many people have had abusive fathers that don't, as Brad Cooper said, didn't go out and murder and rape and kill, abduct, and do all these things intentionally?

Criminal history includes a DUI and a charged DUI, and carrying a gun to school as a juvenile. Because this is not fraught with felonies, I guess this is supposed to say well then, based on that, we take these really horrible things that he did and walk it all the way to the other side. If that was the case, then I guess we could only bring death penalty cases against people who have huge criminal histories, no matter how bad their crime is.

Mr. Baldwin talked about we reserve this for the worst of the worst. Well, I agree, we do. And how much worst of the worst do you get than that? It can't be only the worst guy, because if that's the case, the only person we could execute would be Hitler, or whoever you want to decide is your worst idea of a criminal. But there's a

category of the worst of the worst, and that's what those aggravators define. This is what this guy is. And that's why the punishment fits the crime.

He worked for awhile and got fired. He has a marginally treatable nonextreme personality disorder for which his mother didn't get him treatment. He joined the Navy and got out early. When you look at all those things all together all at once, you can see how insubstantial they are. It just doesn't rise to the level of outweighing the aggravators. It does not rise to the level of you taking the step of saying we're not going to make the punishment fit the crime.

Why do we read into the record the warning in the DSM4? Because it points out why they had to go across state lines to find somebody who would testify to such, who would stretch so far to try to make findings. When the DSM - here's what it says, "when the DSM4 categories, criteria, and textual descriptions are employed for forensic purposes, there are significant risks that diagnostic information will be misused or misunderstood. These dangers arise because of the imperfect fit between the questions of ultimate concern for the law and the information contained in a clinical diagnosis. In most situations the clinical diagnosis of a DSM4 mental disorder is not sufficient to establish the existence for legal purposes of a mental disorder, mental disability, mental disease, or mental defect. In determining whether an individual meets a specified legal standard, for example, for competence, criminal responsibility or disability, additional information is usually required beyond that contained in the DSM4 diagnosis. This might include information about the individual's functional impairments and how these impairments affected particular abilities in question". But you know what, they couldn't get that because all of a sudden he can't remember what happened that night. Now, two nights later he can remember when he's frenetically and very worriedly cleaning out the back of that van. He can remember then because he knew he had to clean it up. But when a diagnosis is about to be made, well, we suddenly can't remember, selective amnesia, the shifting sands of the guilty mind.

"This might include information about the individual's functional impairments and how these impairments affect the particular abilities in question. It is precisely because impairments, abilities, and disabilities vary widely within Each diagnostic category, that assignment of a particular diagnosis does not apply to a specific level of impairment of an individual. Moreover, the fact that an individual's presentation", that means his symptoms, "meets the criteria for a DSM4 diagnosis, does not carry any necessary implication regarding the individual's degree of

control over behaviors that may be associated with the disorder. Even when diminished control over one's behavior is a feature of the disorder, having the diagnosis in itself does not demonstrate that a particular individual is or was able to control his or her behavior at a particular time. Their own witness is impeached by his own book.

So let's assume that he has some kind of a not extreme mental disorder, not extreme mental illness. But you heard their own doctor, and Brad Cooper didn't even talk about this, say on cross-examination, wait a minute, isn't anybody who rapes got a severe disorder? Yeah. And murders? Yeah, pretty much. Oh, except for contract killers. So here's the circular reasoning of this expert that they had to bring across state lines and pay all this money to, anybody who does this is impaired severely. And since that's a mitigator, that outweighs the aggravators, and therefore, we don't execute anybody who does these things. And if he doesn't do these things, he's not impaired. We could execute them, but of course who wants to execute innocent people?

The bottom line is the guys who do these really bad things are so impaired that we can't do anything to them. We can't make the punishment fit the crime. Why don't we call somebody to rebut that? Because it rebuts itself, it's called self-impeaching. It's ridiculous. And we can point that out. According to Dr. Engham when a kid has an average IQ but skips classes and flunks, he's not lazy or irresponsible. He's a budding murderer.

We talked about selective amnesia and the shifting sands of a guilty mind. We heard testimony that Michael Dean Overstreet had a gun permit. Didn't have any severe mental illness when he was applying for his gun permit, so he goes shooting and hunting and everything else. But when I want to get out of the Navy or when I want to get out of a murder, I've got these severe mental illnesses.

The fundamental principles that we as Americans recognize is that people should be held responsible for their actions. People should be held responsible for their actions to the level of what their actions are. We've got an extremely aggravated murder, rape, abduction. I'm trying to figure out what punishment fits that crime, and whether these little teaspoonfuls of mitigators are going to outweigh that. I just think common sense has to come in some place. It just has to.

You saw pictures of the Defendant. You're supposed to feel sorry for him, I guess. Was he a cute little kid? To me, all little kids are cute, they really are. But like Brad said, it's not the little kids that are doing the killing. If you saw Jurassic Park, it wasn't the Velociraptor in the egg that got out and attacked people. They were kind of cute

when they were in there squeaking and everything else. But when he grew up, he turned into a very violent and a very mean person.

Ladies and gentlemen, you've been very attentive. Thank you very much for your service to our county, thank you very much for your service to the State of Indiana, and all the people involved. This decision boils down to whether you want to make the punishment fit the crime. It can never bring Kelly back, of course it can't. But it can come at least as close as possible to bringing adequate justice for what was done. I think you all know that. I'm afraid you think I'm insulting your intelligence by pointing that out. But I think inherently you know that in your hearts and in your minds. I want to conclude with this: Once again I ask you for justice. I ask you for justice for Kelly. I ask you to make the punishment fit the crime. Thank you very much.

[The jury unanimously recommended a death sentence for Overstreet, who was sentenced to death by Judge Emkes on July 31, 2000. The conviction and sentence was affirmed on direct appeal by the Indiana Supreme Court at Overstreet v. State, 783 N.E.2d 1140 (Ind. February 24, 2003).]

CLOSING ARGUMENTS

State v. Stephenson Warrick Superior Court 1997

CASE SUMMARY: Jay and Kathy Tyler picked up Brandy Southard from her work in Evansville and were chased by Stephenson to an intersection in rural Warrick County, where he emptied a 30 round SKS Assault Rifle into the pickup truck and their bodies. Each were then stabbed repeatedly. Stephenson was also convicted of an earlier Burglary and Theft from Southard's residence. (Believed to be the longest and most expensive trial in Indiana history. Jury selection began on September 24, 1996; Opening Statements began on December 30; Found Guilty on May 8; Jury recommended death on May 20; 140 total trial days. The defense was allowed 2 attorneys, 2 investigators, a paralegal, a professional photographer, a civil engineer, a forensic scientist, a jury consultant, a neuropsychologist, and a mitigation expert. Sister Helen Prejean was flown in to testify at the sentencing hearing. Claims paid for 2 attorneys fees were \$334,156, paralegal fees were \$57,788, expert fees were \$79,193, investigator fees were \$74,493, miscellaneous expenses were over \$10,000)

Warrick County Superior Court Judge Edward A. Campbell presided at the trial. Prosecutor Todd Corne represented the State. Attorneys Anthony Long and Dennis Vowels represented the Defendant.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF STATE OF INDIANA.

MR. CORNE: Thank you, Judge. Ladies and gentlemen, the Court is going to instruct you in your deliberations of this phase of the trial. And basically I think that you will learn from the Court's instructions about the deliberation process, that you must decide from this stage if there have been one or more of the three charged aggravating circumstances proven to exist from the evidence and the testimony that you heard in the first phase of this trial.

You must decide that one or more of those circumstances exist beyond a reasonable doubt unanimously. If you do not decide in that fashion, that at least one exists, your job in this case, your job as a member of the Jury is completed. On the other hand, if you would decide, from the evidence and the testimony, that there is at least one (1), if not more, of the three (3) charged aggravating circumstances have been proven to exist beyond a reasonable doubt, then you move to the second question. That being, are there any mitigating circumstances, and if there are, do the

aggravating circumstances or the one aggravating circumstance, if you might just find that one exists -- are the mitigating circumstances outweighed by the aggravating circumstances? If you all decide that they are, you move to the last question.

If you all can't agree that the aggravating circumstance or circumstances outweighs the mitigating circumstances that you may find to exist, then again, your job is completed, and you must stop. If you reach this point here, it would be time for you to decide, to weigh and determine what sentencing recommendation that you would choose to make to the Court for the Court to impose. You must all agree on what that is. If you can't, then you're not going -- then you cannot make any recommendation. The three (3) options that you will have will be -- first, capital punishment, that Mr. Stephenson receive the death penalty. You could recommend that Mr. Stephenson receive life imprisonment without parole, or you could choose to recommend to the Court neither one.

Looking first at whether one (1) or more of the aggravating circumstances that have been charged in this case have been proven to exist. I think at this point there is no question, but that the first charged aggravating circumstance clearly exists -- that John Stephenson has, in this case, killed more than one (1) person. The existence of just one (1) aggravating circumstance puts the second question before you.

Before we discuss that next process, you must consider the evidence concerning the other two (2) charged aggravating circumstances -- lying in wait and shooting from a car. With respect to lying in wait, the Court will instruct you, I believe, that the elements of that include watching, waiting and concealment from the person or persons killed, with the intent to kill or inflict bodily injury upon those person or persons. You heard from Brian Mossberger that whenever Jay Tyler's pick-up went by, John Stephenson left the house to go with it or go after it and took Dale Funk with him. You heard from Dale Funk that after he and John Stephenson left Brian Mossberger's house. they headed towards ALCOA highway, where they came up behind a pick-up truck. You heard from Alan Sprinkle that at approximately ten (10) minutes till 1 0:00 on that night that he heard one (1) loud vehicle go by. And that right shortly after that, he heard another loud vehicle go by that sounded like it might be racing after the first. You heard from Denise Killion, from Kathy McKennon, two (2)

ladies that lived on Yankeetown Road, their recollection as to hearing gunfire from the direction of the rifle range that night. Dale testified that at some point, either before or after Jay's pick-up truck turned off in a drive-way on Eble Road, John Stephenson turned the headlights of his car off. Dale also told you that John Stephenson turned around and followed after that pick-up truck with his headlights off, and that they made the loop and they made the route around the block. Each time the pick-up truck turned, John Stephenson turned, pursuing after, to the point that where they eventually caught up with the pick-up truck and when the pick-up truck stopped at Eble-Youngblood Road, John Stephenson stopped right behind it.

Upon stopping right behind it, John Stephenson got out of the car and shot into the back of the pick-up truck. All of these things constitute the elements of lying in wait. Watching, waiting, waiting to catch up with the pick-up as he drove after it, waiting for it to stop, and concealment by turning the headlights off. Now, what was the Defendant's intent when he was driving behind Jay Tyler's pick-up truck with his headlights turned off? I believe you can determine his intent from what he did when Jay stopped. He got out; he grabbed his SKS from behind the seat; he fired into the pick-up truck. And according to the testimony of the Indiana State Police Technician James Neymeier, he hit that pick-up truck at least eighteen (18) times. The Defendant's intent was to kill. Shooting from a car.

DEFENDANT: I didn't shoot nobody, man.

MR. LONG: John.

MR. CORNE: As I said in opening statement, this is an aggravating circumstance that I would ask you to consider the existence of, based on the testimony of Dale Funk. That whenever Mr. Stephenson stopped behind Jay's pick-up truck, Mr. Stephenson got out of the car, stood along side the car, stood along side the door, and had his SKS resting against the car as he fired into the pick-up truck. I think this testimony is corroborated by the findings from the crime scene set forth in State's Exhibit #478 1. Those would include the peel-out or the take-off marks of the Tyler's pick-up truck heading south on Youngblood Road, the skid marks of the car that was right behind it, where Dale Funk testified Mr. Stephenson stopped. If you look at the location of these skid marks and look at the location of the spent casings that were found around them, you can see plainly the type of outline of the front of Mr. Stephenson's car. Moving on to the issue of

whether the aggravating circumstances or circumstance - depending on how many, if any, you may find to exist -- outweigh any mitigating circumstance that you might find to exist, the first thing that I would have to say is what mitigating circumstance? In Preliminary Instructions, you heard that mitigating circumstances which may be considered by you, if they exist, are such things as the Defendant being under the influence of extreme mental or emotional disturbance when the murders happened. I don't recall any evidence in this case that the Defendant, John Stephenson, was anything other than calm, cool and collected on that night, or anything other than his usual self.

DEFENDANT: And at home.

MR. CORNE: I do recall that Dale Funk said that John Stephenson appeared serious whenever he told Dale Funk that he would kill him if Dale told anyone about what he had done. You also heard, in Preliminary Instructions, that if the murders were committed by another person, and Defendant's participation was relatively minor, that you could consider this as an aggravating (sic) circumstance. You will recall that the defense presented several different ideas or theories as to Jay, Kathy, and Brandy being killed by someone other than John Stephenson, including Dale Funk, Brian Mossberger, and Jimmy Knight, as well as the possibility that Herschel Seifert ordered the killings. But recall what the evidence showed you as to who committed the murders. John Stephenson. This is not minor participation, and this mitigating circumstance does not exist in this case.

I believe you'll also hear from the Court that if there is anything established by the evidence and believed by you to be mitigating, including such things as the Defendant's age, his character, his education, his life, background, or circumstances, that you can consider this as mitigation also. Where was there any evidence in this case that the Defendant's age, character, education, life, background, or other circumstances are somehow mitigating? Even if, from the evidence, you might decide or you might find that there is a mitigating circumstance that exists, how could it possibly, whatever it might be, outweigh the fact that there were three (3) people killed by the Defendant? Also, if you find that one (1) or both of the other charged aggravating circumstances exist in this case, what mitigating circumstance could there possibly be to outweigh the fact that not only did John Stephenson kill three (3) people, but that he did it by driving up behind them on a dark country road, with his headlights off, to shoot at their back side from his car when they stopped, and continued to shoot as they tried to drive off

Nothing you've heard from the defense in the way of a mitigating circumstance, and, nothing at all that you heard in this case which could somehow be seen as a mitigating circumstance outweighs what John Stephenson did to Jay and Kathy and Brandy. The real question before you is -- what penalty, what punishment should John Stephenson receive for what he has done in this case? What should you, as the Jury, recommend that this Court impose when it sentences John Stephenson? Ladies and gentlemen, I would ask that you recommend to the Court that John Stephenson receive the death penalty. Thank you very much.

**CLOSING ARGUMENT (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF THE DEFENDANT.**

MR. VOWELS: You appreciate why you're here, and I believe that in the Judge's Instructions that there is a point that needs to be maintained by the twelve of you. And that is that you may not assume your recommendation will not be carried out. So with that, the weight that I ask that you attach to your deliberation is this. You must assume that if you recommend the death sentence, that Mr. Stephenson will be taken from this Courtroom and shot dead. That's a fair assumption for you to use in your discussion, that his life will be ended.

You must also understand that if you look at the Judge's Instructions -- and you'll get them -- the word "unanimous" comes up over and over and over again. The duty of a Jury is to deliberate and confer with one another, and to try and reach a consensus. But you're not required to. You're not required to. If you have an individual judgment; if you have an idea that is contrary to your fellow jurors, it is not your duty, under any law, anywhere in this country, that you must sacrifice your individual mind just to achieve a decision. There's a thing called an Allen charge. It scares judges to death. And the case is styled -- I don't even know which state it was in, but if you get into the research books and law books, you'll find that Allen charges cannot be given. And Allen charges say -- the judge says to the jury: "You will go back into the room, and you will deliberate until you reach a verdict." You can't get an Allen charge. You're not required to make a decision. I don't care what Mr. Come tells you, that's the law. That's the law. You're not required to make a decision. Mr. Come misconstrues our death penalty statute in this state in that part of the statute that allows the twelve (12) of you to consider evidence says that you may consider anything you choose as mitigation -- anything you choose as mitigation. And

Indiana is only one (1) of two (2) states in the

United States that has an unusual provision in its Constitution. And Massachusetts and Indiana alone say juries decide not only the facts, but what the law is. And so if you decide that, you can -- you can include anything you choose to argue against a recommendation of a death sentence. You have that prerogative. Indiana's Constitution grants you that authority.

It is an operative and acceptable assumption that Mr. Stephenson will die if you recommend it. It is a final decision, and you should accept it as one. And I suggest to you to make no decision. However, if you make a decision, bear in mind this -- your decision is final. If you think that is a manipulative or contrived or salesman's statement, let me tell you what the law is. And Mr. Come will not get up here and tell you I'm wrong. He won't. He won't. He can't, because it is an even statement of the law, and it is not stilted to one side or the other. You are the sole and exclusive detenniners of the facts. The appellate court will not reweigh the evidence nor judge the credibility of any witness. Appellate courts look only to the facts most favorable to the jury's verdict; they never look at the facts the Defendant presents when the Defendant loses a trial. So what I'm trying to tell you is there's a mandatory appeal that happens. But when the Courts of Appeal and in this case it will be the Indiana Supreme Court gets this case, they will not listen to an argument based on, "Look at all the evidence the defense presented." That's not the standard of review. This attorney will tell you that's right, if he says anything about it, but he surely won't get up here and say it's wrong. The Indiana Supreme Court will only look to the facts favorable to your verdict. They will not look at the facts against it. Our courts in this state go so far as to say the testimony of one uncorroborated witness is sufficient for conviction. I can memorize the phrase. "We will neither reweigh the facts nor assess the credibility of witnesses. as that is the sole and exclusive province for the jury." You have no idea how many thousands of times I've had to read that. What I'm trying to tell you -- this is it. If you make a decision, understand it's final.

In Indiana, there is a fixed sentencing scheme. It's kind of unusual, because in most cases, you don't get to tell the Jury what sentences are. And I'm writing these numbers down so you have them available. (Mr. Vowels is writing on display board.) Our highest level felony in our state is murder, obviously, and it has a minimum sentence of forty-five (45) years. So that's the minimum. And it has a maximum sentence of sixty-five (65) years. That's the max. Now, you have that in front of you; you have three (3) jury verdicts, convictions for murder. The Judge entered a conviction as soon as you left.

So Mr. Stephenson is convicted of three (3) counts of murder. That's a given. "A Felonies." You do not have "A Felonies" in this case, but they go from 40 to 50. You do have a "B Felony" in this case, the Burglary you convicted Mr. Stephenson on. The minimum sentence in Burglary is 6 years, and the maximum sentence is 20 years. And Mr. Stephenson was convicted of a "D Felony" Theft, and that has a minimum sentence - Well, there's a "C," and I might as well put that in there. That range is 2 to 8. And then when you get down to "D Felonies." And "D Felonies" start at a minimum of 6 months. Mr. Stephenson was convicted of a Theft by you, so it's a "D Felony" 6 months and a maximum of 3 years. Indiana has a scheme called "good time credit." What that means is, for every day you do in prison, you get a day off your sentence. So, if you get a 50 year sentence and you get full good time credit, you get out in 25 years. So, whatever number, you know, if you want to do some math and play around with those, whatever total number you get, you divide it in half, and if Mr. Stephenson gets a term of years sentence -- in other words, a fixed sentence in number of years -- Judge Campbell says, "I sentence Mr. Stephenson to one hundred ninety-five (195) years, then you divide that number in half. I should have picked an even number so I could divide it fast. That is how sentences run in Indiana. There is also things called consecutive and concurrent sentencings. It's just what you think it is. Concurrent sentences means that everything runs together.

Now, if Judge Campbell chose to, under the statutes in Indiana, he could give Mr. Stephenson no more than forty-five (45) years in prison total for all of these offences that you've found Mr. Stephenson guilty on. So he could give a minimum of sentence of forty-five (45) years, meaning that John would be out of prison in twenty-two and one-half (22 1/2) years. Okay. That's possible. That's what concurrency means. You run everything to-ether at the same time. You run the minimum sentence on murder, all three (3) counts, forty-five (45) years at the same time; you run the minimum sentence on burglary -- it doesn't matter, six (6) years; minimum sentence on theft, all run together, maximum sentence -- I'm sorry, minimum sentence is forty-five (45) years in prison. That's a concurrent term. A consecutive term is just the opposite. Judge has absolute statutory authority -- Judge has absolute statutory authority to run these sentences consecutive, and it will not be reversed on appeal. So, if Judge wanted to give Mr. Stephenson the maximum sentence in this case, he could take sixty-five (65) years times three (3), which is one hundred ninety-five (195), he could add another

twenty (20) to that for the burglary, which is what -- two fifteen (215), and add three (3) more for the theft, which is two eighteen (218). And there's a minor argument about whether the theft and the burglary merge, but that's the least of the considerations, I think, for this sentence. So, the Judge can give anywhere from forty-five (45) years, up to two hundred eighteen (218) years if you choose not to make a recommendation to His Honor, bearing in mind Mr. Stephenson gets fifty percent (50%) of the time off. So, whatever sentence Judge Campbell gives Mr. Stephenson, cut it in half. So, if you're up deliberating and you say, "Well, if the Judge only gives him ninety (90) years, he's thirty-three (33) years old -- John's thirty-three (33) years old, ninety (90) years is forty-five (45), so, you know, what does that make John? Seventy-eight (78)? So, John would be out at the age of seventy-eight (78).

I have attended over eight hundred (800) felony sentencings in my career. It is my job, when people hire me, to tell them what I think a judge will do. I would bet you that -- well, that's not a good way to put it. What do you think about a forty-five (45) year prison term for Mr. Stephenson? I'm certain that doesn't set well. What about a hundred (100) years? That doesn't seem enough. What about one hundred ninety-five (195) years? Is that enough? Maybe not. What about life with out parole? Is that enough? Maybe not. What about death penalty?

Certainly, there's nothing more than that. So, if that can't satisfy.... What I suggest to you is this. Whatever recommendation you make or choose not to make, it is the Judge who decides the sentence. But you may not divorce yourself from the Judge's procedure. Because in a month, we'll come back, and Mr. Stephenson will be sentenced by His Honor. But let me assure you, after eight hundred (800) felony sentencings, Mr. Stephenson is not going to receive a sentence where he will ever have a day of freedom again in his life, ever, never. It's not going to happen. Since 1976, there have been four hundred -- I'm sorry, four thousand, eight hundred (4,800) death sentences given in the United States. Of those four thousand, eight hundred (4,800) death sentences, thirty-five (35) have been granted clemency. That is what? Seventy-five one hundredths of one percent (.75%).

So -- and by the way, none of those are in the State of Indiana -- not one. Not one. I mean you all know we live in a conservative state. Our Governor is not going to grant someone that you've convicted of three (3) murders clemency; he's not going to give him his freedom; he's not going to do that. There's some practical considerations that I would ask you to think about when you get into the sentencing aspects of this

case, because surely you must know that those things are "pie in the sky" kind of things given to the Jury solely to give them some effort at fright and horror and "Oh, my God, if he gets out, what will happen." And let me assure you, Mr. Stephenson will never see another day of freedom for as long as he draws a breath. It's not going to happen.

I brought in Ms. Pattison from the Department of Corrections just to show you a very simple point. There are one hundred eighty-five (185) men in Indiana prisons not on death row who have been convicted and sentenced for multiple murder. One hundred eighty-five (185). Mr. Come will stand up here and tell you there are twenty (20) plus on death row who are. And he will suggest to you that it wasn't a brutal and hollow and vexatious and horrible slaying such as this one. And that gets into valuations of human lives. And I suggest to you that that's already been done. I suggest to you that no matter what you decide, what has occurred cannot be undone. I invite this Prosecutor to get up here in front of you and tell you that there is a good probability that Judge Campbell will give Mr. Stephenson a forty-five (45) year sentence unless you come back with a death recommendation. I invite him to stand up here and look you in the eye and say, Judge Campbell most likely -- or it's possible or it's probable or it's conceivable that Judge Campbell will give Mr. Stephenson a forty-five (45) year prison term. I invite Mr. Come to get up here and say that. I invite Mr. Come to get up here and tell you that you should consider the fact that clemency is available to Mr. Stephenson. Clemency is available to everyone; not just Mr. Stephenson. But I invite him to -- invite him to get up here and plausibly argue to you that clemency is a possibility.

I invite Mr. Come to get up here and tell you that he does not trust Judge Campbell's instincts to sentence Mr. Stephenson without your recommendation. Yours is a recommendation that will be given severe weight, severe weight. And it will be final. It is my job, it is my vocation, my privilege to represent people in criminal courts. You know, this is something that I do every year and have for twelve (12) or thirteen (13) years now. I'm here by choice, unlike most of you. But I can tell you that the Judges in southwest Indiana that I practice in front of are serious minded people who do not take lightly their responsibilities. And Mr. Come will tell you that it is your serious responsibility to -- and he will urge you to return a sentence of death. One of the interesting aspects of death penalties is that there is a held belief by people who don't think it through, that death penalties deter crime. Well, the Judge will give you a specific instruction that

you can't even consider that. But I just wanted to mention it to you, because . . .

MR. CORNE: I'm going to object. I don't think that states accurately what the Instruction 16 says.

MR. DENNIS VOWELS: I'll allow you to read it now, if you choose.

MR. CORNE: "The Court instructs you that you have no right to recommend imposition of the death penalty or life imprisonment without parole solely for the purpose of deterring others from committing crimes."

MR. DENNIS VOWELS: I stand corrected. Let's talk about deterrence. Michigan is the border state to our north Michigan does not have a death penalty. The Michigan criminal homicide rate is as low or lower than Indiana's. Now, do you want to talk about Lake County, Indiana? Well, let's talk about Detroit, Michigan- Do you want to talk about violent communities? Let's talk about them. The criminal homicide rate in Michigan is as low or lower than Indiana's, and Michigan has no death penalty.

You may consider anything in this case you choose as mitigation. One of the unusual features of a case such as this is that you can have transcriptions when you need them, and this woman has worked hours that you can't contemplate. And this is a transcription of Mr. Come's last statement to you in the first part of this case. And he said, and I quote Mr. Come, "There may be, as the defense suggested, people that need to atone for the killings of Jay and Kathy and Brandy." Well, if you are certain, based upon the information in front of you, and that's - you know, you spent all of this unbelievable amount of time sitting in the Jury Room, and there's a real simple proposition behind it. Juries are only allowed to consider evidence in the record. So we try real hard -- that's why you have newspapers that were all cut out; that's why you weren't allowed to watch TV news. You're only allowed to consider what's placed in front of you, so that you have a very even-handed approach to the information in front of you.

Can you say with certainty -- because that is surely the measure by which you'll want to make your decision -- can you say with certainty that you believe everything of all of the witnesses that were presented to you in support of the conviction? It seems to me logically -- you know, I've had a week to think it through -- more than a week to think it through -- that you convicted Mr. Stephenson on a number of basic points, but primarily -- not primarily, but chiefly his statement.

His statement. Well, let's accept that. Let's just take it and accept it. I'm not going to argue about that, because that's your job, and I certainly am not going to stand here and try to insult you on that. But can you say with certainty that Brian Mossberger was not an active participant in this event? Can you?

You know, in this Courtroom, in front of you, on February 26, 1997, Brian Mossberger said they saw the Tylers's truck. He said he saw it when it pulled in -- you know, went by his house, he said he saw it. And then in cross-examination, when placed -- with his March 31 st, '96 statement in front of him, where he said he didn't see the truck, he said, "Oh, guess I was a little bit wrong." Brian Mossberger -- Brandi Martin -- I don't you know if you remember her. You had a hundred and eighty (180) some people brought in front of you. But Brandi Martin, Jeff Martin's wife, said to you, in Court, under oath, in front of you -- and I'm arguing only things that are in front of you on this record -- said to you, "Brian told me he took Dale home." Well, you know for a certainty that Mr. Mossberger buried the gun. Why? He was going to figure out what to do with it. He was going to get all of his evidence tied up and turn that over to the Government. He was going to get all of his evidence together and present John *fait accompli*. Brian Mossberger buried a murder weapon.

That doesn't discount your verdict; doesn't disregard your conclusion; it is a fact that I point out to you that you should consider as a measure of certainty in determining whether or not you ought to recommend the death penalty for Mr. Stephenson. You know, he didn't even tell the police about the cassette case full of bullets. He didn't tell them. They had to find them. He didn't tell them. One of the things that I -- there were a lot of things that happened during this trial that just absolutely amazed me. But one that I just -- it just stuck in my head, and I thought -- whoa! And you have to understand the back drop for this.

I am the survivor of over fifty (50) depositions taken by Mr. Long. I have been in a number of hearings in this case. But I have watched and listened to Brian Mossberger be deposed twice, at length. I have read every statement he gave to the police. Mr. Mossberger has given informal interviews to all of us, to all of us. We have all spoken with him when it wasn't transcribed; when it wasn't on a tape recorder; when no one made a police supplement or any note about it. We have all talked to him Sergeant Heilman, Mr. Meier, Mr. Come, Mr. Long and myself And the very first time I ever heard him say that when Mr. Stephenson entered his house, he had blood on his face, was when he sat there and said it. Why?

You know, you don't have to engage in strangled reasoning for that. Why? Why would he say that? Because it's one (1) more nail in Mr. Stephenson's coffin. Mr. Stephenson looks guiltier with blood on his face than he does without it. But he was asked; he was grilled; he was pressured; he was cajoled; he was sweet-talked for every damning piece of information he could come up with. Do you not believe that this Prosecutor and his Chief Deputy and this Detective Sergeant wouldn't have pointed that fact out to us? That Mr. Stephenson had blood across his face as he entered Mr. Mossberger's home after killing these three people? Why would Mr. Mossberger tell you that? Because it makes Mr. Stephenson look guiltier. But he never told any of us that before.

Mr. Mossberger admitted that he was still wearing his bullet-proof vest on April the 6th, 1996. Now, Mr. Stephenson is already locked up; the media has announced it. What is that about? I mean is he worried about being shot? By whom? That's a question I have never resolved. I've never, ever gotten past that point. If Brian Mossberger is afraid of someone after Mr. Stephenson is locked up -- for we all remember he said he didn't call the police from a phone booth because he was afraid of being shot in public. If he's still wearing a bullet-proof vest on April the 6th, after Mr. Stephenson is locked up, who is he afraid of Retribution from someone for the killings? I'm not suggesting that you get into some strangled manipulative reasoning. What I'm trying to tell you very simply is these are facts which are consistent with your verdict that merit your attention so that you can be certain that you should recommend death for Mr. Stephenson. Mr. Mossberger did not tell Chief Deputy Sheriff Weisheit when he came by Friday night to Mr. Mossberger's home -- and the way that shakes out is they go see Mr. Napier in the Gibson County Jail; Mr. Napier says, you know, it's near Brian's house; they go talk to, you know, they went by Brian's. And Chief Deputy Weisheit goes to Mr. Mossberger's house on Friday night. Now, he does not deliver the murder weapon at that point. It's buried; it's buried; it's buried. Why would he bury a murder weapon? You know, either he's a simpleton, or he's a person playing a simpleton's game for the purpose of taking the heat off of himself.

I'm not asking you to convict Brian Mossberger. I am asking you to consider these facts within the backdrop of certainty. You know, I go to seminars, and they say juries don't want to hear from criminal defense lawyers, to keep it succinct. But I need to tell you -- when I tell you your decision's final, it's final. It's not coming back at you. It's not going to get reversed. "We will neither reweigh the evidence nor assess the

credibility of the witness, as that is a sole jury function within our state." And, "The testimony of one witness is sufficient for conviction." Those are the appellate standards in our state. This attorney won't get up here and tell you that is wrong. The reason I reiterate that to you is because your decision is it. That's it. No appellate court is going to turn this around. And if you assume otherwise, I think that, you know, I give you some descriptive adjectives to impress upon you the severity of your decision, because you just assume that John is going to be taken out of this room and shot. I mean that's the way you ought to proceed on this. That's the certainty with which you should feel your decision is going to be followed. Mr. Mossberger sat in front of you and said these words, "I wiped the SKS off because it was a little wet." Well, if the simpleton is that simple, I guess that's right. That he wiped the SKS off because it was a little wet.

What's he doing -- preserving it so no rust will get on it? He's going to use it at another time? I mean what -- what's . . . Mr. Long asked him once, and I wrote it down, because I was just amazed, you know, because I think it's fair to say that Mr. Long's examining style with Mr. Mossberger, it just wasn't fruitful. But, you know, one time he asked him point blank, "Do you have a forty-five (.45) caliber hand gun?" Response, "I reckon." "Do you reckon or do you know? Do you have a forty-five (.45) caliber hand gun?" "I might." "Well, you might. But do you or don't you have a forty-five (.45) caliber hand gun?" "Maybe." "Do you or don't you have a forty-five (.45) caliber hand gun?" "I don't know." I tell you that because that's evasion; that's evasiveness. He's trying to build his own character so that you will not think he's a person who possesses a forty-five (.45) caliber hand gun. Why would he want to do that? So you don't think he's an armed individual. Why would he want to do that? So you don't think that he has any propensities to shoot. He can't answer a straight question. You already knew he had a forty-five (.45) caliber hand gun. It was taken out of his house. They told you what was there. They told you what they took out of his house. But he can't answer that. He can't say straight up, "Yes." You already -- you know, you subsequently learn -- I get things so messed around, when things were proven to you and when they weren't. I can't get them in exact chronological order. But I know at some point in this case, some point in the record it is in front of you, and you know what weapons they took out of his home.

On March the 30th, 1996, which was a Saturday, Mr. Mossberger did not call the police from the Chandler Auto Parts store. On that same morning, being a Saturday, Mr. Mossberger did

not call the police from the auto parts store in Evansville. What Mr. Mossberger did do, and the evidence before you was, he changed the brakes on his International truck. You know that, that happened on Saturday. But you also know on Friday morning he's over looking at mules on a highway, driving the same vehicle which is in sorely need of brakes. Well, I -- quite frankly.... You might remember Sergeant Jeff Franklin -- is he a Sergeant? (Last remark directed to Detective Sergeant Marvin Heilman, who nods indicating an affirmative response.) Sergeant Jeff Franklin came into this Courtroom, and he's a technician. He told you he could not measure tire widths at the scene. They weren't there, not able to measure them. He's a technician from the Indiana State Police. That's in the record in front of you.

You cannot conclude -- you know, I had a real go-around with my co-counsel about those tire tracks. They meant nothing to me after I got through hearing all of that. And I was paying close attention, and I know you were, too. And it meant nothing. I couldn't make heads or tails out of the tire tracks. Mr. Come wants you to use that as a reliable indicia of some firm proof that you should see that Mr. Stephenson is lying in wait and shooting from a vehicle. When a technician, Sergeant Jeff Franklin, of the Indiana State Police tells you, and he's out there -- and you all saw it, but I mean he's out there right after it happens, when the tracks are there, and he tells you, "I can't see them; they weren't definitive enough to measure," you cannot conclude what vehicle was used at that intersection; you cannot conclude that. You know, it is laughable at best to think that -- it is. You know, I guess that's an insulting phrase and I mean it -- no, I truly don't, but it is laughable at best to conclude that the Buick was used. If you accept the possibility -- no, that's wrong. It's laughable at best to accept the fact the Buick was used if you accept the possibility or probability that the crime scene was bloody, because there is no residual evidence within the vehicle. And the vehicle according to -- and I don't remember this technician -- had been thoroughly cleaned. And yet we presented to you evidence of debris, dirt, hair within that car. I don't think you have a measure of certainty in front of you to know that that was the right vehicle that was used.

But even if that's not something that you want to consider, you know, Mr. Mossberger did testify to you in this Courtroom that he knew there was a key kept outside the Seiler Road trailer. WeU, that's also where -- you'll remember when he and Tony Chase and -- they went to get his bullet proof vest on Sunday? That's where he went to get it. It was hidden there. Now, you might want to know, the crime scene techs had already been all

over that Seiler Road trailer. They had already been there. They didn't find the vest. But Mr. Mossberger tells you there was a key to the trailer, and the vest was hidden in it. You may conclude that he is familiar with that trailer. Now, that's a stupid thing to say, but the reason I point it out to you in that context is this.

There's no physical evidence, except the statement of Dale Funk, that puts Mr. Stephenson at that trailer. Well, he didn't put Mr. Mossberger there; he didn't put Mr. Mossberger anywhere except in Mr. Mossberger's home. Mr. Funk admitted perjury in front of you; he admitted that he lied under oath before. And I suggest to you that if you cannot believe the messenger, how can you believe his message? I am not asking you to ignore your decisions; I am not asking you to ignore the evidence that you concluded Mr. Stephenson committed these murders. What I am asking you is to evaluate, within the framework of what you know, whether or not you can say, with a certainty, that it is more likely that he did this alone than not. Brandi Martin, Jeff Martin's wife, said, "Brian told me he took Dale home." Now, there's a jury instruction that goes something like this -- you're entitled to believe who you want to, and you're entitled to disbelieve who you want to. But you can't disbelieve someone without a reason. Alright? I mean that's the law. And it's a little more wordy than that. But that's the upshot of it. You can believe anybody you want to, and you can disbelieve anybody you want to. But you can't disbelieve someone unless you have a good reason.

Well, try this one on. Emily Girtman. Emily Girtman. There was Carolyn Harmon; there was Julie Girtman; sisters who were John Stephenson's alibi witnesses. Disbelieve them if you want, based upon their relationship with John. Don't believe them; don't believe them. Throw the alibi out on the basis of those two (2) people. But why would you disbelieve Emily Girtman? Mr. Come may suggest to you because she didn't remember someone coming back from another state at a different time on a date certain on a Sunday night. I'm not arguing that. I'm arguing Thursday night, March 28, 1996. Emily Girtman says she sees John Stephenson in front of her home while the news is on. Brandi Martin said Brian Mossberger told her he took Dale Funk home. It's consistent with your verdict. If Mr. Stephenson did not deliver Mr. Funk to his home in Hatfield, he had the time to get home to be seen by Emily Girtman. Why should you disbelieve her? No relationship with Mr. Stephenson; no basis outside of this record; no basis in the record for you to disbelieve her. And you must have good reason to disbelieve her in order to. I mean it's necessary; it's your duty to.

If Brian Mossberger took Dale Funk home -- and you already know that when Troy Napier got out of the Gibson County Jail that he and Mr. Mossberger were over looking for Mr. Funk, and you know that Mr. Funk went to hide out in Louisville -- but if he took Mr. Funk home, can you say with certainty that these are not some measure of accomplices in this event? And I'm pointing that out to you for a real simple reason. If you have questions -- and I certainly hope you do, because I have questions. You know, I've studied this case *ad nauseam* for months and months and months. I've got questions. But if you have questions about the totality of the circumstances -- and Mr. Come will tell you that that is not why you're here, and I'm suggesting to you the other point -- you may consider that in your determination of whether to recommend death or not. And I'm telling you, you know, it's a final decision, and I would hope that you attach some measure of certainty to the assumptions that you engage in to make the conclusion that Mr. Stephenson is deserving of a death sentence.

Where is -- well, I'm going to put it to you this way. Do you know who Tony Chase is? I mean I'll tell you point blank. Because it's in the record, and it's in front of you, and I had to read the deposition and play Tony Chase sitting over behind me. But do you know who Tony Chase is? Tony Chase is a guy that lives in Newburgh who took Brandi Martin (sic) to work on Thursday afternoon, the 28th of March. He drove her to work, with the understanding that he was going to pick her up. Going to pick her up from work. He didn't. I read the deposition. You know, his explanation -- "Had stuff to do." What did he do? He went home. And then he's not available to come in front of you and testify. Now this is someone who saw Jay Tyler the very afternoon of the day that he died. And he hit the streets and took off. And you may consider why. You may ask yourself why. Well, there are a number of conclusions you could raise, and Mr. Come is going to say, you know, that I'm engaging in speculation and what ifs and maybes and he's probably writing it down right now.

But I'm telling you, you've got to have some measure of certainty if you want to make this recommendation. It ought to be darned tough. If the County Prosecutor, in a transcribed statement in front of you said, "There may be -- there may be, as the defense suggests, people that need to atone for the killings of Jay and Kathy and Brandy," can you conclusively say if he accepts that plausibility. that you have the measure of certainty that you need to answer all the questions concerning these events?

There are fundamentally -- and you can strip any other reason out, and it comes down to any

one (1) of these three (3) categories. There are three (3) categories by which Mr. Come wants you to impose -- I've used the wrong word -- recommend a death sentence. Just three (3). To punish is one (1). Because of the horror of the event is two (2). And he can't use these words or to get even. If he uses the "to send a message to the community" argument, I will tell you that deterrence is not a factor in murder. But to punish. If his first argument is to impose the death sentence, is to punish people for this kind of crime, then I suggest to you that the punishment is nothing more than a matter of degree. Mr. Stephenson will never have a day of freedom, ever. And you can disbelieve me if you want to, but I have sat through eight hundred (800) felony sentencings, and I have been next to a lot of people who have taken an awful lot of time -- needed wheelbarrows to take it -- the amount of time they got back to the jail with them. This is the kind of offense for which you never see your freedom again, period. And that's common sense. It's common sense. So, if your motive suggested is to punish, it is a question of degree, and you have alternatives to a death sentence. If the motive is the horrific character of the crime, and it is brutal, and it is atrocious, you must consider that any killing is horrific; any killing is a horror; and that too is a question of degree. And if it is in the nature of a decision process where someone is to consider a death penalty, where you're supposed to bring in the idea of horror, I just tell you all killings are horrible, whether it is a three (3) year old child that has been drowned, or if it is someone that has had a nine (9) millimeter handgun stuck in their mouth and shot their head off. They're all horrible. They're all horrible. Getting even.

He's too much of a gentleman. I've been around him a lot of hours, as you probably know. He's too much of a gentleman to use those terms. It's assumed within some of the argument -- get even with Mr. Stephenson for his terrible behavior. Well, get even with him. Do it. Do it. But you have lesser remedies. And why you would want to drag yourselves into this is beyond me. Your verdict, your decision, your recommendation, whatever you want to call it, has got to be unanimous. It has to be unanimous. The Court's Instructions are lengthy. And I invite you to read them thoroughly amongst yourselves. I don't know how many copies the Judge gives you -- probably one (1) because that's probably all you're supposed to get. It's going to take you a while to read through twenty-two (22) instructions, some of which are a couple of pages long. The word "unanimous" comes up over and over again. You're not required; you're not required; you're not required to reach a consensus. You

have a duty to, but you're not required to. The Judge cannot give you an Allen charge. He cannot tell you, "Stay in that room until you've reached a verdict." He can't do it. It's against the law.

You may consider anything under the state statutes for death penalties as a Jury, anything you want to by way of not recommending the death sentence. But you do not have the same freedom with regard to the imposition or the recommendation of a death sentence. So it is not an even handed arrangement.

The burden of proof is even different. The unanimity is different. If you want to recommend a death sentence, you all twelve (12) have to agree; you all have to be satisfied that mitigation does not outweigh aggravation. But you can only consider the three (3) aggravators charged in this case: multiple murder, lying in wait, the shooting from a vehicle. You may consider all of the evidence in this case to off-set a determination that a death recommendation should be made -- anything you want to.

I'm about finished, and I thank you for your attention. It's always tough to talk when you have a cold and people just get back from lunch, and it's tough to keep going. But I'm just going to take a few more minutes. Mr. Come made a motion; he incorporated all of his evidence from the first part of this trial into the second. So, what's in front of you? All of it's in front of you; the whole case is in front of you. You were picked for a number of reasons, but one particular -- not the chief, but one particular reason was because you all have a deliberative part to your personalities. Each of you seems to pick things apart. In your discussions and your answers, you were given -- what do you call it -- a series of questions, just like an MMPI. You know, where certain ranges of responses would come out. And from that, we determined that you all are very deliberative in your thought processes.

Well, I'm going to ask you to deliberate on the evidence of lying in wait and shooting from a vehicle, because the evidence is unclear as to where Mr. Stephenson was standing when he shot the SKS. If evidence is susceptible of two constructions or interpretations, each of which appears to you to be reasonable, you're required to adopt that construction or interpretation which points to Mr. Stephenson not having committed the conduct of shooting from a vehicle, and you're required to reject the conclusion that he did. Now, the evidence is equivocal. This Prosecutor will tell you it is not. You know the evidence as well as I do. It's not there, beyond a reasonable doubt. You can't say if he's in it; you can't say if he's out -- you can say if he's in it. He's not in the car. He's not in the car. Mr. Come will ask you to accept a

proposition that he's coming from the car. So if I come from the car and I walk a hundred paces and I open fire, it is shooting from a vehicle under that definition.

So deliberate, please; consider the facts that are in front of you. It's not there. Lying in wait. Lying in wait to me means that I'm going to lay in the ditch at Eble-Youngblood and wait for the truck to come by and unload. That's what lying in wait means to me. Mr. Come has got some case law on it, and he'll tell you what it means. But that case won't -- the facts of that case, they don't square up with the facts of this case. And there's an Instruction in here where the Judge will read you some elements of what that means. And, ah, lying in wait -- chasing a car is waiting. I guess there's an interval of time that goes by, so if you're a participant in the interval of time, you've waited? Skulking and waiting to shoot. Those facts are not in front of you. It would be a foolhardy interpretation to assume that you give it an analysis, where things are susceptible of two (2) constructions or interpretations, that you have to accept the one that points in Mr. Stephenson's favor.

I'm finished, except to say that you must consider anything that's in front of you against a recommendation of death. And it is not the State of Indiana who asks you to execute Mr. Stephenson. His name is Todd Alan Come, and he's sitting right over there. And he signed a piece of paper, and that's what happened. And that's what happened. He's a nice man; he's a smart man. But he's a man, and he's asking you to kill somebody. A government sanctioned killing. That's what he's asking you to do. And I guess if you have a mind-set, you can. And you have no reason to believe me, because I'm just a criminal defense attorney standing in front of you.

But I spend my business life, my vocation in criminal courtrooms. And I'm going to tell you point blank -- you don't want to be drawn into this. Make sure you understand your decision is final. If you adopt the framework that I told you, you'll understand what I'm telling you. Don't drag yourselves into this. Get some finality out of this. Don't recommend the death sentence. Give yourselves; give everybody the psychological closure that's necessary, because let's be point blank.

Criminal Rule 24 in this state gives anybody with a death sentence just a bunch of ammunition to fight like crazy. But when you don't have a death sentence, you don't get all of those tools; you don't get all of those resources. And that may not play well with any of you. But let's get practical. It goes on. It goes on. If you don't recommend the death sentence, you're talking about one round of appeals. That's it. You've got

people to consider, including yourself, in that decision. And Mr. Come will tell you that the people you should consider are the three dead people. And he's absolutely right. He's absolutely right. But they're not the only parties to these murders. Mr. Come will tell you Mr. Stephenson is solely responsible, but that is not his own words in his argument to you. There may be others, as the defense suggests.

So, if you have that measure of certainty that allows you to recommend a death sentence, then I urge to do it. But you're under no obligation to agree as a group. If you don't want to, do not yield your individual judgment; don't do it. You don't have to. No one can make you. Thank you for your attention. Thank you, Judge.

CLOSING REBUTTAL (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF STATE OF INDIANA.

MR. CORNE: Thank you, Judge. Mr. Vowels is quite correct. I am the man sitting right over there, and I have asked you to consider putting John Stephenson to death. I'm asking you that, because he's the man, sitting right over there, who's killed Jay, Kathy, and Brandy.

Mr. Vowels quoted to you a portion of what I said to you in closing statements during the first phase. Something to the effect that there may be people that need to atone for the killings of Jay and Kathy and Brandy. And that's true. I did say that. What he didn't tell you, what I think the transcript would also show, is that I also told you that you have one of those persons here in this Courtroom before you. And his name again is John Stephenson. He's sitting right over there.

Mr. Vowels has invited some further response from me on a multitude of different questions. I'm going to be quite candid with you. I don't think I can say anything more than what I've already said, what the evidence has already said, and what the statement of John Stephenson of March 30th of 1996 has already told to you. Thank you very much.

[The jury unanimously recommended a death sentence for Stephenson, who was sentenced to death by Judge Campbell on June 17, 1997. The conviction and death sentence was affirmed by the Indiana Supreme Court at Stephenson v. State, 742 N.E.2d 463 (Ind. January 25, 2001).]

CLOSING ARGUMENTS

State v. Stevens Tippecanoe Superior Court 1995

CASE SUMMARY: Stevens was convicted of Child Molesting in Marion County in February 1993 and received a 4 year sentence with 3 years suspended and probated. His probation was transferred to Cloverdale, where he returned to live with his father. Apparently, none of his new neighbors were aware of his criminal past. Zachary Snider, age 10, lived in the same subdivision and was often seen in the company of the 20 year old Stevens. Stevens attended and videotaped one of Zachary's little league baseball games. Zachary's father eventually warned Stevens to stay away from his son when he learned that Stevens had taken the boy fishing.

A month later, Zachary turned up missing one afternoon. He was last seen at a young friend's home, who was told by Zachary that he was going to Stevens' home. In the midst of a massive local search for Zachary, Stevens' brother reported to police that Stevens had confessed to him that he murdered Zachary. He then directed police to a remote location near a bridge, where Zachary's body and bicycle were recovered.

Stevens was arrested and gave a complete confession. He claimed that he had been having sex with Zachary for 2 or 3 months. When Zachary came over to his house, they performed oral sex in Stevens' room. Zachary threatened to tell his parents about having sex and Stevens decided he did not want to go through what he went through in Marion County. Stevens smothered Zachary with a pillow, then strangled him with an electrical cord around his neck. When Zachary continued to gasp, Stevens got a plastic garbage bag and wrapped it over his head. He then put Zachary and his bicycle in the car, drove to a bridge in a remote area, and threw them both over. Stevens later admitted to psychologists that he had molested 25-30 children, and had ejaculated on Zachary when he killed him. The psychologists concluded that he was a benign pedophile and was a serious danger to society. (This case later resulted in Zachary's Law, IC 5-2-12, establishing Sex Offender Registry)

Stevens was convicted of Murder after a change of venue from Putnam County to the Tippecanoe Superior Court, Judge George J. Heid presiding. Prosecutors Robert Lowe, Anne Flannelly and Delbert Brewer represented the State. Attorneys Jeffrey Baldwin and Robert V. Clutter represented the Defendant.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF STATE OF INDIANA.

MS. FLANNELLY: May it please the Court, ladies and gentlemen of the jury, once again, I must thank you for your close attention and patience throughout this second phase of these proceedings. You, obviously, have assumed your responsibilities as jurors in a most attentive and professional manner. You have assumed your responsibilities as jurors. Now it is time for the defendant to assume his responsibilities.

This second phase in which you make your recommendation regarding the defendant's sentence deals with the defendant being held responsible for his hideous murder of Zachary. Once again, I ask you to use your reason, wisdom, life's experiences, and common sense in evaluating all of the evidence in achieving a just recommendation in this case, and the justice we are seeking right now is your recommendation that the death penalty be imposed upon the defendant.

In this sentencing hearing, the State was obligated to prove beyond a reasonable doubt the existence of at least one of the aggravating circumstances alleged. To remind you of what "beyond a reasonable doubt" means, we need only look to this Court's instructions. A reasonable doubt is a fair, actual, and logical doubt that arises in your mind after an impartial consideration of all the evidence and circumstances in the case. It should be a doubt based upon reason and common sense, and not a doubt based upon imagination or speculation.

To prove an aggravating factor beyond a reasonable doubt, the evidence must be such that it would convince you of the truth of it to such a degree of certainty that you would feel safe to act upon such conviction without hesitation in a matter of the highest concern and importance to you.

The State has alleged not just one, but three aggravating factors exist in this case. First, that the defendant committed the murder by intentionally killing the victim, Zachary Snider, while committing child molesting; second, at the time of Zachary's murder, the defendant was on probation after receiving a sentence for the commission of a felony; and third, the victim of the murder, Zachary Snider, was less than 12 years of age.

Let's review each one of these aggravating factors in detail. What I have here is the Notice of State's Intention to Seek the Death Penalty, and let's take a look at the first aggravating factor. "On or about July 15th, 1993 in Putnam County, State of Indiana, the defendant, Christopher M. Stevens, in committing the murder as alleged in the Information filed in this cause, did so by intentionally killing the victim, Zachary Snider, while committing child molesting; to wit, deviant sexual conduct, an act involving the sex organ of one person and the mouth of another person."

This aggravator requires the State to prove that the defendant intentionally killed Zachary while committing child molesting. You will hear the Court instruct you that you may consider all the evidence introduced at the trial stage of the proceedings as it relates to these three aggravators and any mitigators, together with new evidence presented at the sentencing hearing.

During the second phase, we heard the defendant's entire videotaped confession, and we understood from that confession a little more clearly the defendant and his motives. We learned that on July 15th, 1993, the day the defendant murdered Zachary, Zachary rode his bicycle to the defendant's house, and during Zachary's first trip to the defendant's house, Zachary, according to the defendant, wasn't there that long the first time. "He had just stopped by to tell me that he'd be back." Detective Rice asked the defendant, "Why was he coming back? Had you guys planned something?" The defendant stated, "I mean it wasn't really planned. I mean it's just kind of like, uh, you know, an unsaid thing" Detective Rice asked him, "Was it a sexual thing, Chris? What were you two guys doing?" The defendant went on to explain, "Oral sex. Yeah, oral sex." Detective Rice asked him, "Was you doing it to him, or was he doing it to you?" The defendant stated, "Both." Detective Rice said, "Both? Now, how long would this been kind of going on with you and Zach? The defendant stated, "About two or three months."

Zachary left the defendant's house to collect money from Tony Butcher, and then he took that money to his dad, and he rode his bicycle back to the defendant's house that second and last time on July 15th, 1993. The defendant described, "All right. He walked in, and he sat down. I was flipping through the TV stations, and we just sat there and talked for a while. And then afterwards, we went back to my bedroom and stuff, and that's when, you know, all the stuff really started. And then we did stuff for a while, and then -- then we stopped, and then he

was like -- and that's when he started threatening to tell his mom and stuff." The defendant explained clearly that Zachary was threatening to tell his mom and dad about "me and him having sex."

And now during this phase of the proceedings, we hear the defendant say, "I just went through a bunch of shit in Indy. I just can't go through all that shit again. I remember thinking no, I'm not going. I'm not going to go through this again." He then said, "And we messed around some more." Detective Rice asked him, "Messed around some more and then what?"

The defendant said, "Having sex." The defendant went on to describe, "And then after we was done, I just led him into my brother's room." He described leading him around by his hand. "And I tried to -- tried to suffocate him I guess with a pillow. It was on my brother's bed, and after that wasn't doing nothing and I was just like glancing around."

Detective Rice asked him, "Was he resisting, or was he trying to fight?" The defendant said, "He wasn't fighting, but he was -- I . . ." Detective Rice said, "What was he doing, Chris?" The defendant said, "He just kept saying I love you, Chris. I love you, Chris." The defendant went on to explain, "I was looking around. I got the cable from the SEGA controller." He said, "I put it around his neck." He stated, "I mean it choked him." Detective Mishler asked him, "Did you pull on it, Chris?" The defendant said, "Yeah." Detective Mishler asked him, "How many times did you wrap it around his neck?" The defendant said, "I don't know. At first just once, and then I'd wrap it again like two or three times. I don't know." Detective Mishler asked him, "Did you pull hard on it, Chris?" The defendant said, "Yeah." Detective Mishler asked him, "Real hard?" The defendant said, "Yeah."

The defendant explained, "I was trying to strangle him with a cord." He stated, "And he was just laying there for a while. So I took the cord off and was walking back and forth from my bedroom to my brother's bedroom, kept looking down at him and stuff. I was kind of thinking what to do, and he was -- then he started going 'whoo, whoo' like that. So I went in my kitchen and got a trash bag and put it around his head." The defendant explained, "And wrapped it around his head. He was unconscious. So I knew he wouldn't be ripping it off of his face."

He also explained, "When I done that, I took him out of my brother's bedroom and laid him down on my bed, and I took him outside, took everything out of the garage to get my car in,

pulled my car in, shut the door, threw the bike in there, then went inside and got him; threw him on in there."

Now, when you are considering this aggravator, please keep in mind the testimony of Tracey Easton who put himself at risk as an inmate in DOC when he testified in this case.

Tracey Easton met the defendant in the Marion County Jail where they were both serving time for their convictions for child molesting. The defendant was there for molesting a ten-year-old boy in Indianapolis. The night before the defendant leaves the Marion County Jail in May, 1993, Tracey Easton tells the defendant that he predicts the defendant will be back in jail within two months. And what did the defendant say to him? The defendant said, "No, I won't. The next time I'll kill him."

The defendant didn't say he wasn't going to molest again. He said I won't go back to jail. The next time I'll kill him. Unfortunately for Zachary Snider, he was the defendant's next victim, and the very day that Zachary said he was going to tell his mom and dad about the defendant molesting him, the defendant knew exactly what he was going to do. Every time the defendant molested Zachary, he took power and control over Zachary's body. Once he felt he could no longer control Zachary, he killed Zachary. When the defendant murdered Zachary, he exercised his final and ultimate control of Zachary. The defendant knew he was going to kill Zachary on July 15th, 1993 as soon as Zachary said he was going to tell his parents, but then he molested Zachary one final time before he led him by his hand to his murder. The State has clearly proved this aggravator beyond reasonable doubt.

The second aggravator reads as follows: "On or about July 15th, 1993, in Putnam County, State of Indiana, the defendant, Christopher M. Stevens, was on probation after receiving a sentence for the commission of a felony at the time the murder as alleged in the Information filed in this cause was committed; to wit, Christopher M. Stevens was sentenced on February 17th, 1993 on a conviction of child molesting, a Class C felony in the Marion Superior Court, Criminal Division to four years, one year of which was executed, with three years suspended and on probation. The defendant served the executed portion of said sentence and was "released to probation on May 25th, 1993."

Tracey Easton testified he last saw the defendant in May 1993 when the defendant was released from the Marion County Jail. The defendant himself admitted in his confession

that he met Tracey Easton in the same cell block in the Marion County Jail, and the defendant said, "Well, I had a -- I got to Stardust in November when I got bonded out and was there until February, and then I went back to jail and finished out my sentence. Then I got out in May, and I've been there since."

Marion County adult probation officer Ann Dubin testified that she interviewed the defendant in February 1993 to prepare her presentence report to the Court; that the defendant told her he had been convicted of child molesting, a Class C felony, and that she told the defendant the sentencing date of February 17th, 1993.

The Court admitted into evidence for your consideration three certified documents from Marion County. Looking at State's Exhibit No. 36, State's Exhibit No. 36 is a case chronology, a certified copy of this record from Marion County, which states that in Cause No. 49GO2-9203-CF-35365, regarding Christopher M. Stevens, that a judgment of conviction was entered on Count I February 17th, 1993. We also saw State's Exhibit No. 35. State's Exhibit No. 35 is an Abstract of Judgment with the same cause number as the last exhibit I just showed you, 49GO2-9203-CF-353651 regarding Christopher M. Stevens. Date of sentencing, February 17th, 1993.

We see here the defendant was found guilty of: Count I, child molesting, felony, Class C. We see here that as a result of this conviction, the Court has sentenced defendant to the Marion County Jail as follows: Four years. 365 days executed, three years suspended. He was placed on probation for three years and refers to an order of probation with conditions signed and filed.

And then finally, State's Exhibit No. 37, an order of Probation, and we see in this certified record an order of Probation signed by the Judge and Christopher M. Stevens involving Cause No. 49-G29203-CF35365. Convicted of: Count I, Child Molesting. Length of sentence four years, one year executed, three years suspended. Length of probation three years, date on probation: May 25th, 1993. The defendant murdered Zachary 51 days after being released from the Marion County jail to begin probation for a C Felony Child Molesting conviction involving another child.

We also heard the testimony of adult probation officer Christine McAfee. On July 15th, 1993, she was the adult probation officer in Putnam County, Indiana. And on the morning of the same day the defendant murdered Zachary, the defendant met Mrs. McAfee, his

probation officer in Putnam County, where the supervision of probation was being transferred from Marion County. He met Mrs. McAfee at 11 a.m. on Thursday, July 15th, 1993 for an introductory appointment to introduce herself to the defendant as his new supervising probation officer. So that there is no doubt, let's take a look at her testimony. Direct Examination of Christine McAfee:

Q: When did you meet Christopher Stevens?

A: On Thursday, July 15th, 1993.

Q: And where did you meet Christopher Stevens at?

A: Mr. Stevens had an appointment in my office, and he showed for that appointment.

Q: When was that appointment scheduled for?

A: It was to have been at 9:00 in the morning.

Q: And when did he arrive for that appointment?

A: Approximately 11:00 that morning.

Q: And did you meet with him on Thursday, July 15th, 1993?

A: Yes, I did.

Q: And do you recall when you met with him?

A: Approximately 11:00 that morning.

Q: And how long did you talk to him?

A: Approximately 10 to 15 minutes.

Q: And where is your office located?

A: On the third floor of the courthouse in Putnam County.

Q: And what town is that in?

A: Greencastle, Indiana."

Q: And how far is the courthouse in Greencastle from Stardust Hills in Cloverdale?

A: Approximately a 20-minute drive.

Q: Now, are you sure that your appointment with him was done before noon?

A: Yes, I am.

Q: Was this the first time you had met with him?

A: Yes, it was.

Q: And were you accepting a transfer of probation from Marion Co.?

A: Yes, I was.

Q: And is it safe to say that this was an introductory appointment to introduce you as his new supervising probation officer?

A: That's correct.

Q: And he met -- and during the -- he met with you in your office?

A: That's correct.

Q: And was he on probation at that point with you?

A: Yes, he was.

Q: And that was on July 15th, 1993?

A: That's correct."

Prior to Zachary first going over to the defendant's house on July 15th, around 1:30 p.m., the defendant had already, at 11 a.m. that

morning, been to the courthouse to meet Mrs. McAfee. The State has clearly proved this aggravator beyond a reasonable doubt.

The third aggravator reads as follows: "On or about July 15th, 1993, in Putnam County, State of Indiana, when the defendant, Christopher M. Stevens, committed the murder as alleged in the information filed in this cause, the victim, Zachary Snider, whose date of birth was March 2nd, 1983, was less than 12 years of age; to wit, ten years of age."

Zachary's birth certificate which the Court admitted into evidence at the trial of this cause and Todd Snider's testimony at trial clearly prove this aggravator beyond reasonable doubt.

The next decision you must make is whether or not there has been evidence presented to you of any mitigating circumstances appropriate for consideration. Recall the statute that defines the mitigating circumstances in this situation, and let's take a look at each one of them.

First, "The defendant has no significant history of prior criminal conduct." I submit to you that that is not a mitigating circumstance in this situation. A felony child molesting conviction is a significant prior criminal record. You also heard testimony and read in various reports regarding other charges and other criminal conduct by the defendant.

The second one, "The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed." There has been no evidence of any mental disturbances and certainly no evidence of any extreme emotional disturbances that have been presented. When you view the defendant in his videotaped confession, you see a man without remorse and who is emotionally detached. He calmly and coolly molested Zachary after he decided he was going to kill him and then led Zachary into his brother's bedroom. Zachary was not fighting with him prior to this murder.

The third mitigating circumstance that may be considered, "The victim was a participant in or consented to the defendant's conduct." No, it would be absurd to think that Zachary consented to being murdered. This is not a case of euthanasia. This is a cold-blooded, premeditated, intentional murder of an innocent child whom I submit to you was pleading for his life with the defendant when he said, "I love you, Chris. I love you."

The fourth mitigating circumstance, "The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

"MR. BALDWIN: Judge, I'm going to object at

this point in time. May we approach?

THE COURT: All right. (The following proceedings were had at the bench, out of the hearing of the jury.)

MR. BALDWIN: I might let it go on the first three because she could hardly wait and say that we had presented some type of evidence on those, and she can make her argument on her evidence, but we've not presented any evidence, any evidence that anybody's going to bring before the jury mitigators that would not present any evidence.

Now, she can comment on the evidence, but as to go through the statute and mark them out and saying that there isn't any, that's not proper. That issue is not before this jury. It's never even been raised by us, and they can't anticipate mine. If they want to do it in rebuttal if I say somebody else did it, then that's fine, but at this point in time, it's improper argument.

MR. LOWE: The evidence is -- the evidence is there. It's not a matter of Mr. Baldwin now presenting that the evidence is there, and we're allowed to argue that it should not be presented as mitigation.

MR. BALDWIN: But it's not even an issue before this Court or this jury.

THE COURT: As I recall, during the consultation on instructions, I asked if you wanted to take out any of these statutory mitigators.

MR. BALDWIN: If there's evidence to present.

MS. FLANNELLY: They're in the instructions.

THE COURT: And so they're in the instructions, and I think she ought to be able to review that there is no evidence, and you can argue that there is or is not as you see fit.

MR. BALDWIN: All right. Well, I made my record. It's improper argument.

THE COURT: All right.

MS. FLANNELLY: "The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor." No, the defendant acted alone, and he is completely and wholly responsible for Zachary's murder.

Five, "The defendant acted under the substantial domination of another person." No, the defendant acted alone, and he is completely and wholly responsible for Zachary's murder.

No. 6, "The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication." There has been no evidence that the defendant suffered from a mental disease or defect or of intoxication. As a matter of fact, Detective Mishler asked the defendant in his

videotaped confession, "On Thursday, were you drinking anything?" The defendant responded, "No. Don't drink." Detective Mishler then asked him, "Were you smoking anything other than cigarettes?" The defendant said, "Nope, don't do drugs."

All of the various records submitted by the defense revealed no evidence of any hallucinations or delusions. The defendant's thought processes were always fluid, and the content of what he said was coherent, relevant, and nontangential. There is no reason to believe he was out of touch with reality.

MR. BALDWIN: Judge, again, I'm going to object. That's an improper statement of the law.

MS. FLANNELLY: That's exactly what Dr. Lennon testified to.

THE COURT: Okay.

MR. BALDWIN: That's correct, but as to whether that is a mitigator rising to the level of emotional or mental distress, the fact that he is coherent is not --

MS. FLANNELLY: I'm allowed to make my argument.

THE COURT: Yeah, she can make her argument. Of course, you'll have your chance to make your argument. Objection overruled.

MS. FLANNELLY: And the last mitigating circumstance other than the catch-all phrase, "The defendant was less than 18 years of age at the time the murder was committed."

The defendant's date of birth is September 2nd, 1972. The defendant was 20 years old at the time he murdered Zachary. As a matter of fact, he was only 18 days away from his 21st birthday when he murdered Zachary.

That leaves us with the last section, "Any other circumstances appropriate for consideration. Keep in mind that the Court will instruct you that neither sympathy nor prejudice for or against either the victim or the defendant in this cause should be allowed to influence you in whatever recommendation you may find. You will decide what, if any, evidence presented is appropriate for consideration as a mitigating circumstance."

In reviewing the defendant's evidence, we heard the following: Phil Needham, who worked with adult felons on probation, recommended that the defendant get immediate and intensive treatment, which the defendant did not do. Steve Criss, the defendant's paternal uncle, said he got angry with the defendant on one occasion when the defendant was 14 or 15 years old, and the defendant ignored him and walked away when Mr. Criss was talking to him. Mr. Criss said he hit the defendant once and

told him he wasn't through talking with him. The defendant did not require medical treatment and did not say he was injured. Mr. Criss did say, "The defendant is responsible for himself."

Billy Byrns told us that the defendant knew right from wrong. We looked at welfare reports, and we heard during Kris Ackerman's testimony that on October 30th, 1988, when the defendant was 16 years old and out trick-or-treating, that he stopped at a friend's house at about 9:30 p.m. when he was supposed to be home by 9 p.m.; that his father came by the friend's house, yelled at him, struck him, and threw him against a car. There were no marks left from that incident.

Marcia Stevens told the Welfare Department that they had problems with disciplining the defendant at home, that she had caught him drinking after curfew on a previous occasion, and because of the drinking incident, they were insisting that the defendant be home by a certain time. Marcia stated that the defendant was rebellious and refusing to behave in the family. Miss Ackerman did not substantiate abuse in this incident. Instead, she only noted there was indication of abuse with no service case opened by the Welfare Department. We heard during Marcia Stevens' testimony that after this incident, she took the defendant to counseling at Four County. She stated she recalled taking him to two or three appointments.

We've heard various accounts from the members of the defendant's family. On occasions, I wondered if they came from the same family since their versions and perceptions were so different. We have heard testimony that the defendant and his siblings moved to various residences during their childhood, their parents divorced when they were young, the mother's incarceration for the sale of drugs, the termination of her parental rights, the children moving back and forth from the mother to the father, the children being placed temporarily in a foster home, and their even taking care of themselves for some periods of time. And the stepsister, Michelle, being molested by the defendant's father and his incarceration.

Keep in mind, that in spite of this childhood, Angela who testified she was a victim of molest by her father, became the valedictorian of her high school class. Does exposure to this type of childhood constitute a mitigating circumstance to lessen the defendant's culpability for Zachary's murder? We're not talking about the defendant murdering his younger brother for hitting him or murdering his father for hitting him. We're talking about the defendant

murdering an innocent ten-year-old neighbor boy, Zachary. Was there any evidence presented to show any indication or connection as to how the defendant's childhood was relevant to his level of culpability for Zachary's murder?

I don't think that I've ever met anyone who claims to have had a perfect childhood. Sadly, many children grow up in dysfunctional families. Either we ourselves have experienced it, or we know someone who has. There are many victims of sexual abuse. There are many victims of child molestation. Is there anything worse to endure in your childhood than being the victim of sexual abuse? And I in no way mean to minimize the pain of real physical abuse and neglect suffered by children also. But your life's experiences, your wisdom, your common sense tell you that there are many victims of child abuse who having suffered that pain and knowing what it's like to be a victim choose to never molest or harm a child and choose to never inflict that pain on a child because they know what it's like.

A lot of people are victims, but they don't hurt others. Many of these victims of child abuse choose to devote their lives to prevent other children from being abused or to help other children who have been victims because they understand these children, and they know what they're going through. They are mothers, fathers, teachers, counselors, coaches, welfare workers. They choose law-abiding lives. They don't use their victimization as an excuse or even a mitigating circumstance to murder a child.

If Zachary had been the first child the defendant ever molested, perhaps the defendant's background would constitute a mitigating factor, but the defendant was already on probation for child molesting. His first known incident of child molesting took place when he lived with his mother in Indianapolis. He had been referred to counseling services several times whether it was by a Welfare Department or a counseling center like Katharine Hamilton.

Did you notice that the defendant entered the Katharine Hamilton Counseling Center on January 30th, 1992 after he had already molested a ten-year-old boy in Indianapolis and he never mentioned this fact to the professionals? He had an opportunity to get help for his problem, but he chose to hide it.

Did you also notice that his records at Katharine Hamilton also reveal that as an adult, the defendant went to his grandmother's house, walked into the room and said, "I will waste all of you," in reference to his family? Did you notice that his counseling was terminated after one

session because he did not follow up with outpatient services as recommended?

Does this mean that the defendant can choose to molest and murder Zachary and then point to his childhood as a mitigating circumstance to attempt to lessen his culpability for murder?

You know, the defense has referred to the defendant as a boy, but don't believe it. The defendant was 20 years old when he intentionally murdered Zachary on July 15th, 1993, just 18 days short of his 21st birthday. He sits before us as a 22-year-old, and we're to think he's still a boy? No, the only boy in this case was Zachary, the ten-year-old child he murdered.

If you think that there are any mitigating circumstances that are appropriate for your consideration, then your next decision is whether or not any mitigating circumstances that you decide exist are outweighed by the aggravating circumstance or circumstances by a preponderance of the evidence, ever so slightly. You then conduct the balancing test.

I submit to you that not only do all three aggravating circumstances outweigh any mitigating circumstances, but each aggravating circumstance standing alone outweighs any mitigating circumstances.

Remember the three aggravators: The defendant committed the murder by intentionally killing the victim, Zachary Snider, while committing child molesting. At the time of Zachary's murder, the defendant was on probation after receiving a sentence for the commission of a felony. The victim of the murder, Zachary Snider, was less than 12 years age.

Finally, after you've decided that the State has proved beyond reasonable doubt that at least one of the aggravating circumstances exist and that any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances, you may recommend to the Court the death penalty or life imprisonment without parole or neither. And as I mentioned to you at the beginning of my remarks, the justice that we're seeking right now is your recommendation that the death penalty be imposed.

I know that that is a sobering and serious decision. During voir dire, we asked each of you if the evidence and the facts warranted it in this case, would you have the courage to recommend the death penalty, and each of you said yes.

The defendant showed no remorse in his confession. You have no doubt but that he and he alone committed this intentional hideous,

brutal murder of Zachary for purely selfish reasons. I now ask you to send a message to that man that he is responsible for having been convicted in February of 1993 for molesting a ten-year-old boy. I ask you to send a message to that man that he is responsible for having been on probation for child molesting at the time he murdered Zachary. Send a message to that man that he will be held responsible for murdering Zachary.

Ladies and gentlemen of the jury, after you review all of the evidence and facts presented to you, you can, with confidence, decide that this case cries out for your recommendation of the death penalty.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF THE DEFENDANT.

MR. BALDWIN: Ladies and gentlemen, on behalf of Mr. Clutter, myself, and most of all Chris Stevens, we'd like to thank you for your attention, your patience, and your consideration in this matter. It's not often that someone is called upon to serve as a juror, and even less often that they are called to serve on a jury on a death penalty case. I assure you that we all recognize your sacrifices that you've already made, the ones that you're about to make in your deliberative processes.

One thing, I guess sometimes I become somewhat jaded from doing trial after trial is I sometimes get up here and thank jurors without really thinking more beyond that's the way to start a closing argument.

And I don't want you to think that in this case. I understand that you've all been separated from your families for three weeks. You've had a number of time where you're stuck in a jury room or hotel rooms or whatever else. I want you to know we truly appreciate the consideration and your time in this matter because when the State of Indiana wants to put a citizen of Indiana to death and citizens like you that are required to make those sacrifices, one thing I want you to remember: The State has brought out their little toys here, and all of the transparencies and all the transcripts don't mean anything as far as evidence. You've already heard the evidence. It's at this point that we simply try to characterize it and explain what that evidence may be.

Putting something up on a screen and marking through it does not make it evidence. In fact, the judge is going to tell you that all the evidence you've heard is to be considered by you as mitigating, and you're to give it the weight that you decide.

Now, Miss Flannelly mentioned she doesn't

know anybody that's had a perfect childhood. I don't either, and I doubt that anybody on here, on the jury panel believes that they had a perfect childhood. Nobody's trying to set this up as a case that because it was less than a perfect childhood, Chris doesn't deserve to die for what he did.

But I submit to you, ladies and gentlemen, to call Chris's childhood less than perfect is like calling an elephant somewhat larger than a mouse. You're talking beyond apples and oranges. We're talking apples and watermelons here. Less than perfect doesn't even go near describing what Chris Stevens suffered as a small child. Going to a foster home and being told you're going on vacation and not seeing your mother for six to nine years after that is not less than a perfect childhood.

And one thing that I cannot get over in this case, and it was said near the end of Miss Flannelly's argument, is lessen the culpability for murdering Zachary. Ladies and gentlemen, you aren't going to hear anything from the judge about lessening the culpability for murdering Zachary.

You have already reached a verdict on Count I of the information. That was done in the guilt phase. You have found Chris guilty of murder, and if you remember back, when I did my closing argument as well all the way back to the start of this trial when Mr. Clutter did opening statement, did you hear either one of us ever claim that Chris Stevens did not kill Zachary Snider?

That isn't what this case is about. We're not trying to lessen the culpability for murder. There is nothing in the Court's instructions that say that. There is nothing in anything that we've ever argued about that. You were given a choice as to whether he was guilty or not guilty of murder.

Did I stand up here in closing and say it was somebody else, it wasn't Chris, his statement is totally false? No, you had a question, and I did argue that maybe there was an element of sudden heat, but did I ever say that Chris wasn't the person who killed Zachary Snider?

No, and the reason is that's not what this case was about from day one. The procedure to get to Phase 2, as the State explained to you in their little transparency during voir dire, is you go through Phase 1, and if you have a guilty of murder verdict here, we go into Phase Two.

And ladies and gentlemen, that's what this case is really about. This case is about Phase 2, and that's where we are now. You've heard all the evidence, not just the State's evidence as to whether Chris did it or not. I mean I'm not a big enough fool to stand up here in closing and tell you Chris didn't do anything wrong. I mean if the

State thinks that, then I've got something over on them because I've obviously confused them of quite a bit there.

Now, we're talking about whether the appropriate penalty for that murder, something we've never claimed that Chris didn't do. But now, you're being asked, and it's a unique position in Indiana law. You are the only sentencing jury that there is. In any other kind of criminal case in Indiana, there is no sentencing phase. There is no sentencing jury.

But because the State of Indiana wants you to put somebody to death, to end their life, we interpose 12 citizens, the conscience of the community. Conscience of the community, ladies and gentlemen, is what's inside you. It's your collective thought process. It's not the fact that we've got more TV cameras here than probably any case in this courthouse has seen in God knows how long.

This isn't about publicity or whether -- whatever else you want to throw into it. You all knew coming in, we talked about it on voir dire, that you had all heard something in one form or another about this case.

But now, ladies and gentlemen, you're the ones who have heard the evidence. It's down to this point where you're going to have to review that evidence, hold the State to their burden on the aggravators which I'll get to in a second, and then weigh that and decide whether an individual, not some abstract notion about child molesters or murderers or whatever else, but that a single individual that you are being asked to make -- pass a sentence on, that one, Chris Stevens, deserves to die.

The aggravators that they have alleged, they put their little transparency up there and underlined parts of it. Did you notice when it came to aggravator 1, the part they didn't underline? "While committing." Did Chris kill somebody while committing a felony or after committing a felony or before committing another felony? You remember his statement, ladies and gentlemen. What I would tell you or read to you out of a transcript is not evidence. You have to remember his statement and determine whether they've proven beyond a reasonable doubt that, in fact, that was during while committing the felony.

And one other point is beyond Chris's statement, did they produce any evidence to you of that felony? If you'll remember, I'm not going to read it to you. Remember back to your own notes. Detective Rice is going through, well, was it anal sex? No. Was it oral sex? No. And then Chris backs up as well, yeah.

You have to decide whether the evidence that they've presented to you is proof beyond a

reasonable doubt. Did, in fact, Chris know what Detective Rice was asking him, first of all, and did it the way -- is that the way it happened, or was he just agreeing with Detective Rice?

Ladies and gentlemen, when you are asked to make a decision as to whether it's proof beyond a reasonable doubt to put someone to death, I'd say the State needs to present some more evidence, okay, because if there isn't, then they're asking you to take a statement made by the defendant, Chris Stevens, and put him to death on his own statement because there is no other evidence of that aggravator.

And yes, the State will say, well, Detective Rice did wonderful police work, but you will also hear from the judge that one of the mitigating factors that you may consider are the fact that -- is the fact that the defendant did confess.

So he has accepted responsibility from July 21st when he was first confronted and admitted to it. If it weren't for his own statement, we wouldn't even be to Phase 2. The law in the United States that goes back to constitutional times is that a person cannot be convicted on their own statement. I submit to you, ladies and gentlemen, that's exactly what the State of Indiana is asking you to do. They're not only asking you to convict him on his own statement. You've already done that. Now they're asking you to put him to death on his own statement.

There is no other evidence, and ladies and gentlemen, you've heard the statement. You've seen it twice now. It has been read to you again, or portions of it anyway, the portions the State wanted you to remember. You think back in your own mind. Was Chris's statement enough to convince you, if you had just been talking to him, of proof beyond a reasonable doubt that it happened that way enough to put -- to sentence him to death?

Aggravator 2, if I remember correctly, there were a couple little underlines on the transparency that you've seen before, and if you remember, it's quite a long paragraph. Ann Dubin testified, Chris McAfee testified, and there were certain documents introduced.

I'd ask you all to remember from when you were examining the Judgment of Conviction that listed -- the last one that said Class C felony or had actually what appeared to be Count I and the different shorthands and explained to you by Miss Flannelly. Did that have a judge's signature on it? No. There was no judge's signature on the Abstract of Judgment.

There is no signature on it, and so is there a valid conviction? And if there is even a valid conviction, did you hear anyone testify that it was this cause number, the one she kept underlining and saying that matched up and that

matched up? Sure, those documents matched up, but did you hear any testimony from any witness that that was, in fact, the cause number that this Chris Stevens was convicted under, or was that the cause number that Chris McAfee -- we had her whole testimony up here. Was there anything in her testimony that said, yes, I accepted transfer under cause number such and such from Marion County? No.

And in fact, review of her testimony says yes, I met with Chris Stevens. Did she say what he was on probation for when she met with him? She said it was a transfer out of Marion County. Is it the same one that the State alleged? Was it a felony? Did she ever say yes, he was on probation with a felony?

Now, I'm sure the State will stand up in rebuttal because, once again, they get another shot at all this. And say, well, ladies and gentlemen, use your common sense, da, da, da, da, da, da, da.

You can tie it all together. Ladies and gentlemen, if it's a decision you have to make because you have to make one and you look at it and go, well, I think that, yeah, those probably all went together, I guarantee you, none of you are going to stand on top of a building and say I'm going to bet my next step that there's another piece of ledge there on whether those all tie together or not.

We're not talking about some insignificant decision here. We're talking about whether they've proven aggravators sufficient to put Chris to death. And I submit to you that if you follow your oath and follow the Court's instructions and hold them to their burden, you're going to say wait a minute. If you want me to sentence somebody to death, then you don't go about it that sloppily. You bring in somebody who's going to tie that cause number to Chris Stevens that's sitting in front of me. You bring in the probation officer to say, yeah, I accepted transfer on that cause number. That's what the conviction was.

In fact, the only evidence they have in that he was on probation for a felony is that he may have said he was on probation for a felony, but that was when he met with Ann Dubin. At that point in time, he hadn't even been sentenced. So how could he even be on probation? Ladies and gentlemen, if they want you to put somebody to death, I submit they'd better do a damn better job of it.

Now, we get down to aggravator 3. I'll concede aggravator 3. Zachary Snider was ten years of age. I'm not going to stand up here and make an argument to you, ladies and gentlemen, that he was anything older or wasn't a human being or any cock and bull story like

that that I could give you. That's not the purpose here.

The evidence is Zachary Snider's birth certificate shows that he was born March 2nd, 1983, and my math is a hell of a lot better than the State's because I can figure out that that makes him ten years old on July 15th, 1993. But then we get to exactly the point that is characteristic of the State's entire case in the penalty phase. And ladies and gentlemen, I'll ask you to use your common sense. July 15th, 1993 to September 2nd of 1993 is not 18 days unless somebody took out the whole damn month of August that year and I missed it.

That's the type of leap of faith that they are wanting you to do in order to say we can take away Chris's entire life. We can take away the beatings with two by fours. We'll take away the kicks with steal-toed military boots. We'll take away the fact that he was abandoned by his mother, that he never knew where he was going to be the next time he turned around. Take all that away. We're going to wipe all that clean, and take away August, too.

The simple fact is you can't take all of that away. And no, I don't agree with the way she marked out things on mitigating factors because that's for your determination. I'll tell you what I think the evidence is and how you can relate it and what it may have been and what it means, but I'm not going to mark it out in front of you because that's your determination. I'll tell you what, as much as a lot of people wouldn't like my job, I'd rather have my job right now than I would yours because you are the people that are going to have to make the decision. And jumping through the month of August as if it didn't even appear is not how to make the decision that you're charged with.

Yes, Mr. Needham testified and so did Steve Criss. Marcia Stevens said she took him to counseling. However, you saw the records that she never did because the welfare workers did, and Joe doesn't remember it.

Ladies and gentlemen, I am not going to tell you that anything that happened in Chris Stevens' life explains or excuses the events of July 15th, 1993. It doesn't, and he will have to suffer the punishment for that. There's no question about that. You have found him guilty of murder.

And the Court will tell you that even if you come back with no recommendation as to death or life imprisonment without parole, Chris, at age 22 now, emotionally age 12, will spend the next 30 to 60 years in prison, more time than he has even been alive. That is if you go the entire other end from the death penalty to no recommendation as to either one.

And I'm sure this is not why the State put Tracey Easton on, but if you think that justice equates to anything more than punishing someone for their wrong, then I have another definition of justice. Justice is that Chris would be punished for what he did wrong, and Tracey told you what it was -- told you what a risk he was taking being here to testify.

Ladies and gentlemen, I'll submit to you he plans on getting something out of this. If you think he's just doing it out of the goodness of his heart, then you don't know Tracey Easton. But Chris will have to suffer more than that. Chris will be imprisoned for 30 to 60 years, even if you come back with no recommendation at all. Just think about whether that's justice. Is that punishment? Yes, that's punishment.

You have all figured out from our questioning during this time that Chris has been in jail since July 21st, 1993. And if you come back at the far end from the death penalty, he's still going to spend the next 30 to 60 years in prison. It's longer than he's been alive. It's almost 30 times longer than since what we were doing July 15th, 1993. Can you remember what you were doing July 15th, 1993? July 21st, July 21st, 1993, Chris's last day of freedom, thirty times the amount of time that's passed since then. That is punishment.

Now, you're going to hear a number of instructions on the mitigating factors. Some things I'd like to remind you of that we'll present in mitigation. I don't want you to ever, ever think that anyone is trying to excuse Chris's action. I don't want you to think that. That's not why we presented that evidence to you.

You're going to be asked and already have been asked by the State of Indiana to put Chris Stevens to death, and I think it's only fair if you're asked to pass sentence, you know something about him. It doesn't mean you have to say that excuses July 15th or that makes it okay that he killed Zachary Snider. I'm not saying that. If that was, that would be a defense to Phase 1, not Phase 2. That's why we have this separated out.

You think about how his own parents have described his life, and believe me, ladies and gentlemen, Miss Flannelly said today even belong in the same family, they were inconsistent. Ladies and gentlemen, I submit to you, use your own common sense. That's got to be difficult for those people to come in and admit to you the mistakes that they made and how that's not only had an effect on their own children's lives, but also on Chris's and now on Zach's.

It's not an excuse. It only explains how we get from point A to point B. And when you think

about Chris's life, I don't know how you can say it doesn't have something to do with the way he turned out. I just -- I'm beyond how the State can make that argument.

You're being asked to end a life, and if it came down to it that there was some way that ending Chris's life would change the events of July 15th, 1993, then it might make more sense. When you think of it now, what they're asking you to do, is that going to take away the events of July 15th, 1993? No, because that was the issue in Phase 1, and now we're in Phase 2, and we're on a whole different issue here.

The State started out their closing argument calling it -- asking you that you hold the defendant responsible for a hideous murder. You've seen the State's aggravators. I didn't see hideous in there because the facts that make it hideous aren't what you're to consider. It's not a point in this phase.

The point is do the facts they've alleged, the aggravators that our judicial system and our courts and our legislatures established as to you're to consider whether this makes this an appropriate case for the death penalty are -- hideous is not one of them.

The three aggravators are, and we've gone through those. Now, you're going to have to weigh those and all the mitigation and whatever you want to consider is mitigating and whatever weight you want to give it. The bottom line is if you find those three aggravators and then say but they outweigh all the mitigating, I have the last question for you, and the last question is even if that is correct, you have to then go to the next analysis, and that is, is death the appropriate penalty? Is life without parole, life without -- life imprisonment without parole the appropriate penalty, or is a term of years the appropriate penalty?

Ladies and gentlemen, as you look back through your notes and your recollection and deliberate with each other regarding the mitigation evidence, don't look at it as an excuse. Don't look at it as a reason to explain July 15th, 1993, but look at it as what it is, and that is Chris Stevens, the person you're asked to be sentenced to death.

Ladies and gentlemen, the bottom line is if you kill Chris, is Zach going to walk in the door when you do it? No. That's why there's a difference between Phase 1 and Phase 2 because there is nothing that you do that's going to change the fact that Zach is dead.

And that's where we come to Phase 2, because killing him isn't going to change the facts. You have to understand, though, that when you look to kill somebody, and that's what they want you to do, you have to look at the

person.

The old eye for an eye has been long gone since biblical times. The bottom line is, is sentencing somebody to die, and in particular sentencing Chris Stevens, emotionally a 12-year-old, to die doesn't change July 15th. It just changes the future. Chris will be punished for what he did without putting him to death.

I'd ask you to consider that. That's a decision I wouldn't want to have to make, but you're going to have to realize that whatever decision you make isn't going to bring Zach back, and I hope you realize that killing Chris isn't going to make anything right. Thank you.

**CLOSING REBUTTAL (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF STATE OF
INDIANA.**

MR. BREWER: Okay. On the aggravators, ladies and gentlemen of the jury, I think Anne went through those thoroughly, and I think the only thing that you have to ask yourself is do you find beyond a reasonable doubt that the defendant did kill, intentionally kill Zachary Snider while committing child molesting? Do you have any doubt of that? They've stipulated he's ten years old. There's no doubt of that. There's no way for them to argue.

Is there any doubt in your mind unless it's speculative doubt, and we're talking reasonable doubt, that he was on parole at the time this killing took place? Ladies and gentlemen, from the evidence, I don't see how there could be. All three aggravators have been proven. All three aggravators have been proven beyond a reasonable doubt. And then the question is, is the weighing process, the mitigators, what are the mitigators that you want to look at and give some weight?

We talk about or heard this statement about an emotionally 12-year-old, and -emotionally 12-year-old. This letter to Tracey, and I'm not asking you for -- you've seen it before, but I want you to look at the content, the sentencing structure, the ability to communicate the idea. Is that a 12-year-old communicating? The handwriting, is that a 12-year-old's? Is that a person who has a 12-year-old emotional point that -- just read it, not -- look how it just fits together. It's a person totally able to communicate. That is a man's writing and a man's ability to communicate.

The letter to Marcia, good sentencing structure, ability to communicate. Is that a 12-year-old? That's a man writing that letter, not a 12-year-old.

What was it Dr. Lennon said about one of the things he advocated, the Man/Boy

Association, love association? He's describing himself as a man. He's not the boy in that thing that he's trying to promote. He's the man, not a 12-year-old.

You know,, if you really want to look at what this case is about, you've got to look and focus on what happened on July 15th, what type of person there was, the intentional killing of Zachary Snider. Put a pillow over his face, wrapped a cord around his neck, wrapped it around again. And Zachary's talking back, pleading, begging, and here is a man. It's not like just pulling the trigger on a gun, boom. Man, it's over, you know?

But here's a person who had time to think about what he was doing, and he never stopped. How long did it take? we have no idea. A minute, two minutes, three minutes? Time to think. Did you ever think and really sit down and test and see what time's really like?

Let's try just a little experiment for two minutes. I'm going to ask you to shut your eyes a second. When this thing goes off, it's going to be two minutes. Just shut your eyes, and let's see how long it takes. Shut your eyes.

MR. BALDWIN: Judge, I'm going to object. There's no evidence for this to be related to one of the aggravators. How he came up with two minutes, I have no idea.

MR. BREWER: Your Honor, I can -this goes to argument on intention. That's part of the things we have to prove at this phase is intentional killing.

THE COURT: All right. objection overruled.

MR. BREWER: Let's do that again. Start. (Two-minute pause in the proceedings) Two minutes. Seemed like eternity for Zachary Snider. It was. Two minutes for a human being who had a little child in his hand under his control to stop, say whoa, this is wrong. But did he?

Here is a man who, yes, maybe had some - he did have problems from a family. There's no doubt. You know, we're not arguing that point, but does that justify what he did? No. And when you look at the mitigating, and what you're doing at this point is weighing, a scale of justice, weighing, I submit to you that all those mitigators that they've put before you, if you are a scale, it's like putting a half a pound of butter on one side. Yes, it tilts, but then when you put the aggravators in, it's like dropping a brick on the other side, it slams to the floor. The aggravators far outweigh the mitigators in this case.

Ladies and gentlemen, really what you're down to is this. Let me say one thing before I get to the point you're down to. When you look at a

person and their youth, you know, those are things that come to their advantage perhaps when they're dealing with children that is their prey.

If he looked a lot different, would that make any difference? Would it be fair to say a wolf in sheep's clothing to children? Think about it. And what you're looking at, ladies and gentlemen, is when you have a crime where a person who has been sent to prison for child molesting, he doesn't get the word, that child that he molested, that child that he killed, that was not his child. That was somebody else's child. That was somebody else's playmate. And somehow, some way, he's got to understand those children are not for his to play with just like any toy.

Ladies and gentlemen, when you look at crimes, we talked about that scale. Number one, there is no way that I can see that this jury from the evidence could come back and make a recommendation against life without parole or the death penalty. When you go back to your jury deliberation room, ask yourself this: Is this the kind of crime that crosses the line? Is this the kind of crime that crosses the line and begs for the most serious punishment that the law will provide?

And when you weigh all the circumstances and the evidence and the aggravators, ladies and gentlemen, I don't see how from the evidence that you've heard in here that you could not say that that has crossed the line and deserves the most serious punishment that our law will provide.

And then the next step is the question: What is the most serious punishment? And I think you know what that is. That's the question. What recommendation are you going to make to this judge? What kind of recommendation are you making as the conscience of this community? You don't kill children, period.

[The jury unanimously recommended a death sentence for Stevens, who was sentenced to death by Judge Heid on March 14, 1995. The conviction and death sentence was affirmed on direct appeal by the Indiana Supreme Court at Stevens v. State, 691 N.E.2d 412 (Ind. December 31, 1997).]

CLOSING ARGUMENTS

State v. Timberlake Marion Superior Court 1995

CASE SUMMARY: An ISP Dispatcher was requested via radio by Trooper Greene to run a records check on Tommy L. McElroy and Norman Timberlake. She responded that Timberlake was not wanted, but there was an outstanding warrant for McElroy. Trooper Greene advised that he would be outside the car securing the subject. Two minutes later a female voice came over the radio stating, "Help. An officer's been hurt." A number of passersby along I-65 gave various eyewitness accounts. Most had seen the officer attempting to put handcuffs on a heavyset man while a skinny man with stringy hair watched nearby. Two witnesses observed the skinny man lunge toward the officer, sticking his right hand up, and the officer fell. McElroy is a heavyset man, Timberlake is very thin. Officer Greene was found to have died from a single gunshot wound to the chest. A muzzle burn was noted on his chest. Later the same afternoon, an Ameritech operator received a call from a Norman Timberlake requesting to make a collect call from a pay phone. The operator was aware of the shooting, and aware that police were looking for Timberlake. She called the police, who responded to the scene of the pay phone. The man in the booth was asked his name. He responded that he had no name, and reached with his right arm. The officers grabbed him and recovered a .25 automatic handgun from his right pocket. This gun was tested and confirmed to be the murder weapon. The man was Timberlake. McElroy testified at trial that Timberlake shot the trooper while he was being taken into custody, then both of them jumped in the car and Timberlake said, "drive." Another man, who was with Timberlake and McElroy for a few days earlier, testified that the gun was his and Timberlake had taken the gun from him.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF THE STATE OF INDIANA.

MR. NEWMAN: May it please the Court, Ms. O'Connor, Mr. Baratz, members of the jury, you have heard all the evidence you are going to hear in this case. We have completed the guilt phase of this case and you have found Norman Timberlake guilty beyond a reasonable doubt of the murder of Michael Greene. We have completed the penalty phase of this trial and these were the phases that I described during jury selection.

The penalty phase of the trial, as you recall, the burden is again on the State beyond a

reasonable doubt to prove to all of you the existence of an aggravating factor in this murder, and in this case there is one aggravating factor, and it has in fact been proven beyond a reasonable doubt, and that is that Mike Greene was a police officer acting in the course of his duties and that the defendant, Norman Timberlake, when he murdered Mike Greene knew that.

It's further demonstrated by what we see here he knew it all along from the time that he told Tommy McElroy the police were coming over crossing the median and heading their way to the time he dealt with Mike Greene and right up until the time that he shot Mike Greene.

So the State has to prove that to you beyond a reasonable doubt that that aggravating factor exists, and then what happens is that you are to engage in a weighing process, and the Court will instruct you on this balancing, weighing that factor against any mitigation that may be presented by the defense, and we told you at the beginning that we couldn't speculate on what choices the defense might make in that regard and the defense has made their choices and no mitigation has been presented.

So when it comes to weighing that aggravating factor which has been proven beyond a reasonable doubt against any mitigation, there is no mitigation to weigh there, and that weighing in essence has been done and is conclusive and so the only question that remains to you in this penalty phase is will you follow the law and will you then decide to impose the death penalty in this case. And that's the issue that we face.

And we also know that there is no evidence that the murder of Mike Greene happened in any other way but by the way the State presented the evidence to you and the defense presented the evidence to you and that it happened any other way but the way that was described. We know this.

We're now at the phase that we talked about in jury selection where I asked you if it was proven beyond a reasonable doubt the defendant was guilty of the intentional murder of a police officer, knowing him to be a police officer, and that that aggravation outweighed the mitigating factors, which there are none now, could you, would you impose the death penalty, and every single person, every man and woman of you sitting in that box said that you could.

It's an awesome responsibility. I don't minimize that. I'm -- I know that Miss O'Connor will get up and tell you how awesome that responsibility is

and tell you that you'll have to live with that decision for the rest of your life. That's almost an insult, insult to you.

As I look at all of you, you are not the type of people that impose a decision like this based on whim. This isn't a garden party. I see the stress that this case has on every single person in this courtroom. I don't minimize that. It's an awesome responsibility and an it is one that I share. I share it with you because I am -- I'm the Prosecutor of this county and I have to make the decision which cases are appropriate to seek the death penalty, and I am seeking the death penalty and I am standing before you. I'm not passing the buck. I'm not asking my deputy to do it. I am coming before you. I am assuming that responsibility and I'm sharing it with every single one of you in asking for this decision because it's the right thing to do. It's the right thing to do, and for no other reason than it is the right thing to do, it's the just result, so I'm here with you and I'm taking responsibility.

Let me talk for a minute about what this process is not. This is not a debate about the pros and cons of the death penalty. Why not? Because the legislature and the people of the State of Indiana have already decided that the death penalty is an appropriate penalty for aggravated murders and particularly for murders of this kind, the murder of a police officer in broad daylight knowing him to be a police officer in the course of his duty. That decision's been made so this isn't what it isn't, and you go back.

There is a debate about the pros and cons of the death penalty. It's appropriate. The people of Indiana have said so and through the laws they have asked you, you folks sitting right there, to shoulder that responsibility with them and to carry out those desires expressed through their laws.

They are not just a bunch of laws on the books. Laws like this one are expressions of the highest ideals and values of our society in Indiana. They are expressions of the value we place on human life, not a shirt and tie on a rack. We know there was a man in this shirt and tie, a real human being, and the law that has been given to us that puts us in this position and in the roles that we place now is an expression of the value we placed on Mike Greene's life and an expression that no, as a society we are not helpless in the face of the most horrible crimes. We are not helpless.

Some of you I'm sure, probably all of you will think to yourself as you deliberate this well, isn't killing wrong, isn't killing wrong? In our law killing is not always wrong. Murder is wrong, but in our law as you know there is a concept, for example, of self-defense. Many of you mentioned it during jury selection, self-defense. A killing is justified by a person when done in self-defense. You can't be charged with a crime if you do it in self-defense.

The death penalty is society's way of defending itself. It is Indiana's way of self-defense in the face of an act of war of aggression against itself, and what greater act of war is there against our society and everything we believe in and everything decent people believe in but slaughtering a police officer in broad daylight by the side of a road. That is an act of war and we as a society have a right to defend ourselves and this is how we do it and the laws are given us to do exactly that. And for better or worse I'm standing here with the role that I have, asking you to assume that responsibility with me and make the decision to follow the law.

You talk about war. You know, we live in a society where we send some of our finest young men and women, the finest flower of our youth as a nation abroad to fight unseen foes and enemies all over the world in the interest of national security, surely some of them to lose their lives, to pay the ultimate price on behalf of this country, some of the best young men and women you would ever want to meet.

That's what we do as a society in the interest of national security, and what this law says is that also as a society we are willing to send the most reprehensible people who are themselves guilty of assault on our security right here at home, not in Iraq, right here, right among us to their deaths. And that's just and that's right and I make no apologies for it and neither should you.

Because, you see, Norman Timberlake condemned himself on February 5, 1993. Not by anything he did today but because on February 5, 1993 he murdered a police officer. He sent himself to death. You didn't do that to Norman Timberlake and you won't be doing that by your decision. It was Norman's decision. That's what brought us here.

Now, the Judge will instruct you about the sentencing alternatives available in this case, and you are going to learn about those and you are going to learn that murder in this case is punishable by either death or imprisonment of anywhere from 30 to 60 years.

Those are the alternatives and it's for the Judge to pass those sentences ultimately after your recommendation, and you'll also learn that there is good time credit where the person can earn a day off for every day they serve good time, so they might potentially serve half that sentence, and the Judge will also tell you that he's not going to go into describing clemency and parole and sentencing modifications and other forms of early release. The Court will instruct you about that. But use what you know from your experience.

Here's what you know. What you know is that murderers get out of prison. Sometimes murderers get out of prison. We know that in our common

experience. Murderers can get out of prison but they never get out of a grave and neither will Michael Greene, neither will Michael Greene ever again.

I see that Ms. O'Connor - excuse me, if I may borrow this -- has brought Kleenex. And I know that she has a job to do and she has invested in this case I'm sure hundreds of hours, and I understand that and I acknowledge her right to cry.

But if you want to cry about something, cry about a guy who was doing his job who was shot in the chest, who was doing his job protecting us, taking care of us, upholding the law who was shot in the chest who lay on the ground whose head was against the cold pavement. You want to cry about something, cry about hot lead ripping through his chest, tearing holes in his aorta. You want to cry about something, cry about the raised eyebrow and the smile that his friends and family will never see again. You want to cry about something, Ms. O'Connor, bring enough for everybody. Bring enough. We all need it.

Remember what John Chester said from the stand, that this case affected his life. He said he could never drive down the street without seeing a police officer and wishing him well. You know, even as we stand here, there are -- in Indiana State Police alone, there are over a thousand men and women on the roads and the streets and highways of this state, and they are pulling people over and they are walking into situations alone, not knowing what they are walking into. Think they make a lot of money? Do you think they do it because they are rich?

They do it out of service. They do it every day. They walk into situations of peril where they don't know what they are facing every single day. Right now there are people by the side of our highways and there are officers approaching cars not knowing whether that may not be the last day of their life, every single day those men and women, and they need to have the peace of mind of knowing that their lives are valued, if nothing else, of knowing that if they're going to be willing to make that sacrifice every day of their lives when they get up and put this stuff on, that we at least will value their lives sufficiently to punish someone who deserves it according to those laws that I described to you.

Give those people that peace of mind. Give Mike Greene peace. Give everybody who ever knew Mike Greene peace. Give his friends and family peace. Give us justice. Thank you.

**CLOSING ARGUMENT (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF THE DEFENDANT.**

MS. O'CONNOR: Good afternoon. You know, I thought for a long time about what I could come up

and say, and I can't come up and scream and appeal to fear and community and law enforcement and things like the State can. I can't. And I thought real long and hard and the only thing I can say is don't kill him. Don't kill him. I'm not very articulate like Mr. Newman and it's not easy for me to talk as well as he does and apply metaphores, and there really isn't a lot to say.

I suppose you are wondering and obviously the State was wondering and they told you how could I come here, how could I stand up here and ask you to spare the life of a man that you hardly know? How could I do it? And I'm sure that's something everyone must wonder, how?

Because it's easy to see the value that Trooper Michael Greene had, and I can't stand up before you today and say that Norman Timberlake was a better person than him, I can't do it. I can't stand up to you and say that his life was worth more than Mr. Greene's to either himself or to his family. I can't.

We all know that he was -that he was a nice man and a good officer, and nobody can take that away from him, not even in death. Not even Norman can take that away from him. And so that's -that's a given. But what I can ask you about is the value of all life because that is something that people do value and I hope you all do, too. That it is real easy to judge and say some people's lives are worth more than others and some people are better people than others. I'm sure you all know people that you like better than others. I'm sure you know people that you think are better than others.

And for some people it's very easy, it's very easy to like someone, to feel that they're good, to feel proud about them, to feel all those things. It's not hard to treat them well or to honor their memory, but no matter what we do, it doesn't change things. It just doesn't. No matter what we do to Norman Timberlake, we can never bring Mr. Greene back. I mean we can all cry for him. I have. But we can't bring him back. Killing Norman Timberlake or anyone else won't do that, nor will -- we all value law enforcement. I mean that's why we're -- you're all law enforcement people, you're all members of the community, that's why (inaudible), because you value the law and you said you would follow it.

And we know that there is police officers all -- everywhere throughout, throughout this -- throughout this county, throughout the state, throughout the world. I have a sister that's a police officer. We all know them and we all know the risks that they take and we feel sorry for them and we hope and pray for them, but the things that they do and situations they go into won't be affected by what happens to Norman today because this is just a decision about one man and one case. We

all wish them well but killing him won't save all them. If that were the case, then they would have all been saved. Mr. Greene would be alive because of the last person who was killed for burying a police officer.

But the death penalty has been around since the beginning of time. It's been around in Indiana. Again, we used to have it, the Supreme Court said it was unconstitutional because we decided to kill everybody across the board. It was random, it was arbitrary and it's supposed to be. There are times, as Mr. Newman is right, they say there are times that it can be appropriate but it's never ever supposed to be mandatory, not in this case, not in just the killing of a police officer, not ever. Times that you all might think it's appropriate but it's never supposed to be mandatory. And, in fact, even when it was, it didn't stop anybody from being killed. And so it's ironic that there was a time Supreme Court said it had to be -- it could never be -- our Supreme Court and the United States Supreme Court said that it just couldn't be arbitrary and it couldn't be mandatory and so states did away with it.

One of those states was New York State. It's interesting that just this year that was the big thing in the election in New York State, they had to -- the whole election basically was run about the death penalty. That's -- the two candidates of -- the Governor, Mario Cuomo, been Governor for years, had never approved of it and his competition, Mr. Pataki, thought that that's what people should have and it was because of people's fear of crime, which is legitimate, it's because people were concerned of crime.

One of the main reasons that they wanted the death penalty was because of the fear of crime in New York City. That's the reason they would want it in New York State was because of what was happening in New York City, but it was ironic that the year it was started, that was the fifth year in a row that the murder rate of New York City had increased, the fifth year.

MR. NEWMAN: Your Honor, I'm going to object to comments not of evidence in this case.

THE COURT: Objection sustained.

MS. O'CONNOR: Your Honor, Mr. Newman brought up the public safety factor. I'm just telling them that there is other ways and there are. There is punishment.

You have held Mr. Timberlake accountable, Norman. You have convicted him of a crime, and as Mr. Newman told you, he will be punished. You have heard the sentencing range. He explained them to you. You see that he can go to jail. You know he'll be sentenced by this Judge and you

have seen his age.

Norman Timberlake is going to die in jail. It's just a question of when, and that's the thing now is this isn't -- this isn't some abstract thing. I mean when we asked you before on your questionnaires about what the death you thought about the death penalty, a lot of you said that you hadn't really thought a lot about it. Some people were against it. Those are obviously none that are on the jury today. And some people thought they might be for it, some thought they were totally for it.

But it was just something that you thought about in the abstract. You didn't have to think about it, and then even when we talked about it in voir dire when the State asked you questions and we asked you questions, some people said well, you know, I kind of had to think about it to fill out the questionnaire, and now that we are talking, I thought about it some more. And a lot of people were surprised when they examined their opinions and thought about it and some people did say that they thought -- well, some people thought that they approved of it a lot and some people thought maybe they didn't approve of it as much as they did and some people just thought they would have to think about it and consider it and that it was an awesome responsibility.

It is and it should be. It should be. It shouldn't ever be mandatory. In fact, neither our Constitution nor the United States allows it to be, and the statute is very easy, you heard him say that. We know the aggravator is proven. We know it wouldn't be very hard for you to do any weighing, but what you can do is not do it and that's why, as I said, I wish I could think of some scripture to read to you or some movie to tell you about or some quote or some passage, and I can't. I tried to think of some good analogy to you that would really, really send this message home and make you feel -- make you feel that you shouldn't do it in this case, but it's an individual decision and maybe there is individual things about each of you that you could think about before you would do it that you would think about it in some way, and you would, because no matter what, the statute says you may.

It doesn't say you should. It doesn't say you shall. It says you may and that's all I can do is just beg to you in this case not to do it. Just beg, just plead, just because Norman Timberlake is a human being, just because all life has value. Just because you take away one life doesn't mean that you are -- that you can bring that person back.

Certainly that should be true. Mr. Newman's right. If somebody is convicted of murder, they should be punished, and there is a lot of people in prison punished for murder and he could be one of them.

We can't take -- the dignity of Mr. Greene will

never be taken away and Norman Timberlake should be punished, there is no question there. We are not relieving him of responsibility. There is no excuses. But we all think in religions and other personal thing. Some people are religious, some are not, and everyone is in their own way and so what they think about, but religion isn't just about punishing people.

It's also about compassion and empathy and caring about the people that society or individuals care the least about. And he is one of those people. It's real easy not to like someone like him. It's real easy not to care about someone like him, but that's why you should. That's why you should ask about -- care about him, because it's more difficult.

And we heard about wars, acts of war. This is an act of war and this is our self-defense. But we are all living in the society, and the best way for us to get along is to figure out a better way to do it. To kill somebody and show that killing is wrong doesn't change it, and that's what we have always been doing and it hasn't helped us, it hasn't stopped.

Talked about his acts of war and he mentioned Iraq, and there is a place you can think of and think about how people are being -- fighting and killing there all the time or almost anywhere in the Middle East or in northern Ireland or in Bosnia, for example. I remember once there was a place that I thought was called Yugoslavia. We studied about it as part of the Cold War. Suddenly that was gone and now there is people that fight each other and kill each other.

They've all called themselves those names and made all those republics we never heard about, and to them it's acts of war is to kill each other, and they do. One kills, another kills, another kills, another kills, and that doesn't solve their problem any more than it solves ours.

There must be some answer, and I'm certainly not smart enough to tell you what it is, and it's all I can do is hope and ask you to think about your oath and think about the things that we talked about, and just this once just really think about it individually as you are required to do, not jointly, not as a society and not because Mr. Newman as the Prosecutor has asked you to or not because you are worried that somebody else is going to be mad about what you thought; but in your own heart and conscious think about it, somebody as an individual that has life, somebody -- and that all life should have some meaning, all life.

Because we talked about this in voir dire and some people said it would be a very difficult decision. Some people said they couldn't do it. Some said it would be awesome that -- they would think. One of the jurors said that it should be automatic and, in fact, it was a burden to ask the

jury to do it, said it would be easier if the Judge could do it because then it could be done as it should be done but it was a burden for the jury. But that's why you are here and it is a burden. It is something hard and I don't mean to insult you. I would never come here and insult you and act -- say what the State said I would say, that you weren't taking your job seriously. I would never mean to do that. I understand that all cases making a decision ever as being in judgment is not an easy thing to do and you've all been very serious in taking this responsibility very hard, and I hope you will continue to do it.

So I don't -- and to ask you to do your job shouldn't be an insult because we are-all proud to do that, we're proud to be in this society, we all agreed, and Mr. Newman even said before it was the best society, the best way, our criminal justice system was the best way, and so that's what we what we have to do.

This is the best way. it should be a burden. It shouldn't be easy to kill somebody. it shouldn't be automatic, and you have punished, you have convicted Mr. Timberlake for killing Mr. Greene because murder is wrong, but here we are not talking about -- the decision now is whether you'll kill Norman Timberlake. And I have got to ask you, I have got to beg you because that's all I have left and that's why I'm just asking you as simply as I can, and I suppose I could cry if Mr. Newman wants me to, bring lots of tears and all those things that would help, but it's too late to cry.

It's all I can do is appeal to each and every one of you individually, just to do what the law allows, just to do, just to think about it, not automatic, not that you found someone guilty and that's the next thing, that the rest of society will be on your shoulders, the whole fate of our world and our country will be because you decided to spare a man's life, because all life has some value. That's all I can do to spare one all life has do is just ask you just this one time just to think about it, to consider it, each and every one of you as individually as you can, and really make that decision and understand that it is a personal one and that all life has value and we are not -- we are not saying that Norman deserves to live more than Mr. Greene, and we are not saying his life has more value. We are not saying that.

I was hoping that there might be some better way for all of decide, to think and -- as but perhaps you could find a way for us make society better, a way for us to get along that we wouldn't have to, that people wouldn't kill.

If we can do all the things we can do in the world, make wonder drugs, go to the moon, there is all kinds of analogies, I thought I could tell you about how great our society is and if we can do all these things, why, why do we have to kill each

other, but I can't make it work for you. I can't tell you the right words that would matter to you or that would sound right or wouldn't sound like fake or trick or anything, so I'm just saying as a human being, this is a man you know very little about and all life has value, and please don't make it automatic. Please don't decide that that's all you have to do is go back there and say yes, there is aggravation, there is no mitigation, this is what we should do. Please don't do that.

Because when we are talking about the law and what the Courts have said and what the statutes have said, and there is a statute here that was created by the legislature about the death penalty but it was created years later, years after our Constitution was written, and in Indiana the people that wrote our Constitution carved out a whole section, Article 1, Section 18, about the prison system, about the penal code and in there they said it was based on rehabilitation, it should be. All our laws, all our decisions should be based upon that.

That's what when our state was founded people thought was important and should be considered, and it's still our Constitution. It's just the law as much as everything else and that's why we have this ability. That's why it can't be mandatory for you to think, for you just not to make it automatically and actually consider the value of life.

Because as he pointed out, we could point out, we could be here for weeks and years talking about the goodness of Mr. Greene and no one can take that away from him, and murder is wrong and people should be punished. That's all there. But it is, it is the way societies can be judged, it's the way individuals can be judged it's sometimes not by the way that they treat the best of society or the nicest or the greatest because that's easy, it's easy. But how we can as human beings, as individuals, as people, how we can treat the worst. If we can treat the worst people with dignity and respect and value anything at all of them that there is to value, then we are getting somewhere and we are getting better.

And I'm sorry, right now I can't cry. I can't cry. I can't get on my knees and use all those Kleenex and I just can't do it because it's just too late for that. It's all I can ask is simply and as eloquently as I can is don't kill him. Please, please don't kill Norman Timberlake.

**CLOSING REBUTTAL (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF THE STATE OF
INDIANA.**

MR. NEWMAN: Ms. O'Connor says that she can't cite words of famous men or the Bible or authority or movies or plays or anything to support her

message to you that she just delivered, and I suggest to you that that's because there is no message. There is no message there. She's just asking you to not follow - to not impose the death penalty. That's the message. There is no message.

She talks about New York City. This isn't New York City. In New York maybe they haven't had the death penalty, in New York City they haven't had the death penalty. If we wanted to live in New York City with the level of fear that exists there, that's probably where we'd be, but we live here.

She talks about Bosnia. Why is Bosnia and Iraq and places like that, as dangerous as they are, why is human life so depreciated in these societies? Because there is no law. There is no system of justice like we have here. There aren't all of the rights accorded to the people that have been accorded to Norman Timberlake in this case, the kinds of rights that Mike Greene never had.

Because we live in a society where you folks are a barrier against injustice. I mean I can't sign a piece of paper and go to the Judge and ask him to impose the death penalty. I have to come to you and I have to ask you to share that responsibility. You are the barrier against lawlessness and injustice and I have to ask you.

And it may seem unfair to you. May say why me, why couldn't it be someone else, and in any given time in our life we make those sacrifices, but there you are. You are the barrier against injustice, you're what separates us from being in Bosnia, and that's important, and indeed you even separate us from-being in New York City for that matter.

The law makes me responsible and it makes you responsible., and I'm asking you to follow that law which says that this is an appropriate case for the death penalty. Not mandatory, certainly, that's not the point.

You know, I only got to talk to you two ways one time during jury selection. We had some conversations and we haven't been able to talk since. It's strange, I have to speak to you and you don't get to speak to me and we don't get to talk, but I do feel during the course of the last two weeks that I have kind of come to know you somehow just by being in this room with you and watching you. Of course, I do watch you. You wouldn't be sitting in those chairs if everybody in this room didn't feel that you were strong enough people, strong people, strong enough to come back and follow the law and do what the law says and impose just punishment in this case.

We can't bring Mike Greene back. Miss O'Connor is right, we can't bring him back, but we can make sure that his death is not in vain, and that's what we're about. And you may think that I'm a hard man to come on behalf of the people of

Indiana and ask you to do this, but I am not a hard man. This is hard on all of us. I have compassion. I have compassion for Norman Timberlake, and I have compassion for everybody, I care. But you know what, I'm not ashamed to beg. Ms. O'Connor isn't the only person in this courtroom that can beg.

I am standing here now and I'm begging you for justice. I am begging you on behalf of Mike Greene and everybody that ever knew him and the people of the State of Indiana, I am begging you to do justice. Please do that.

[The jury unanimously recommended a death sentence for Timberlake, who was sentenced to death by Judge Moellering on August 11, 1995. The conviction and sentence was affirmed on direct appeal by the Indiana Supreme Court at Timberlake v. State, 690 N.E.2d 243 (Ind. December 30, 1997).]

CLOSING ARGUMENTS

State v. Wrinkles Vanderburgh Circuit Court 1995

CASE SUMMARY After continuous marital problems with her husband Matthew Wrinkles, Debbie moved out of the house with their two children, going to live with Debbie's brother, Tony, and his wife, Natalie. After Debbie filed for divorce, Wrinkles stalked her. On July 21, 1994 Wrinkles again dressed up in camouflage and drove to the home of Tony Fulkerson, where Debbie and the kids were staying. He parked a block away, cut the telephone wires, and kicked in the back door. He was armed with a .357 handgun and a knife. When he was finished, Natalie was dead on the front porch with a gunshot wound to her face; Tony was dead in the bedroom with four gunshot wounds, to his face, hip, chest, and back; Debbie was dead in the hallway with a gunshot wound to her chest/shoulder area. One of the children, Lindsay Wrinkles saw her father shoot her mother, then open her shirt and attempt CPR. Lindsay told him she was going to call police, and he fled from the house. Wrinkles was later arrested at the home of his cousin, where the .357 murder weapon was recovered.

Wrinkles was convicted of Murder (3 counts) in the Vanderburgh Circuit Court, Judge Richard Young presiding. Prosecutors Stan Levco and Mary Margaret Lloyd represented the State. Dennis Vowels and Michael Danks represented the defendant.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF STATE OF INDIANA.

MR. LEVCO: Members of the Jury, I'll be brief in both the opening part of my argument and in my final. I'll probably be even more brief in my opening than in my final. In the opening I want to go over with you just very briefly, what some of the instructions are here, and what it is that you need to decide in order to return a verdict. You have a - - part of your task is simple. The Judge is going to give you a lot of complicated instructions about you need to find beyond a reasonable doubt that aggravating circumstances exist. Aggravating circumstances are defined as follows: more than one murder, such as that. You've already decided that. You have decided by your verdict of two or more Counts of Murder that there was more than one murder. So, you don't need to worry about whether aggravating circumstances exist. You've already determined that. He'll also tell you that you need to consider mitigating circumstances. You don't need to worry about whether mitigating circumstances exist,

because they do. You've heard testimony of what some of the statutory mitigating circumstances are.

The bottom line is this, you need to decide whether the aggravating circumstances outweigh the mitigating; and, if they do, does the case justify the death penalty. If you decide that the mitigating outweigh the aggravating, that's it. You can't recommend the death penalty or life without parole. If you decide the aggravating outweigh the mitigating and it seems like an appropriate case for the death penalty, then you can recommend the death penalty.

Now, the Judge is going to give you one verdict form this time and I want explain it to you, if I can. I'm sure you'll be able to figure it out anyway, but it took me a while to figure out what you needed to do depending on what your verdict would be. The first one you'll have is: "We, the Jury, recommend the death penalty be imposed for the Defendant." If that's what you wanna do, the foreman should sign that one and that's it. If you decide that you think life without parole is the appropriate punishment, it would actually be the third line: "We, the Jury, recommend life in prison without parole." You'd sign that one. If for some reason, and actually it doesn't make a whole lot of difference in this case - - if for some reason you decided you didn't want to recommend either the death penalty or life without parole and what would happen then is the Judge would sentence. Then, you'd actually have to sign both line 2 and line 4, which is: "We, the Jury, recommend the death penalty not be imposed" and "We recommend life in prison without parole not be imposed." And you have, as you've been told, three different sentencing things, in essence. The Death penalty, life without parole, and having the Judge sentence. But I submit to you that number 2 and 3 are essentially exactly the same. This is not like life without parole is a compromise between the death penalty and having the Judge sentence. Because, as Mr. Vowels told you in his statement yesterday, even if you had found him guilty of Manslaughter, he was confident that Judge Young would sentence him to so many years that he'd never get out of jail. And I feel, with a reasonable degree of certainty, you've heard that a sentence for Murder is up to 60 years, I feel fairly comfortable in telling you, although it's ultimately Judge Young's sentencing, that if he doesn't get sentenced to life without parole or the death penalty, he'll get sentenced to so many years that he will in fact spend the rest of his life in jail. So, you, in a sense, have two

decisions here. One of two decisions - death penalty or life without parole and the other, which are the same thing.

This particular offense qualifies for the death penalty because there's more than one murder. The death penalty statute has a number of different times where the death penalty could apply where the State could ask for it. If a person is guilty beyond a reasonable doubt of breaking into someone's home with the intent to commit a felony therein and then intentionally murders someone, he is eligible for the death penalty. So that if, in this case, if you believe the facts were that he broke into the Fulkerson home with the intent to kidnap the children, which is a felony, and intentionally murdered Tony Fulkerson, he would have been eligible for the death penalty. The reason I tell you that is those would be facts that you could consider and legitimately decide that would be enough for you to recommend the death penalty. But, in this case, you have three times as much. Because he committed what, essentially, is a death penalty offense three different times.

I don't wanna go over much of the evidence that you heard this morning. I'm sure you remember it as well as I. Just one thing kind of struck me. It seemed like one of the main reasons they're trying to tell you, and certainly an emotional reason they give you for not giving the death penalty, is his daughter, Lindsey, maybe 10 or 20 years from now will want to see her father. And, if you give him the death penalty, you know, it might be too late. Of course, on the other hand, they argue that he's gonna be - - he won't be executed for so long, so maybe, it would be that she'd be able to see him in 10 years. But, uh, that doesn't speak to the question of what about Matthew and Kim. They're gonna want to see their father 10 years from now, 20 years from also. But they're not going to be able to because he murdered their father. And I can assure you they're not going to have any interest in seeing Eric Wrinkles 20 years from now. So, if for some reason you feel that that's a mitigating fact, that Lindsey's not going to be able to see her father, and I don't wanna minimize that, that doesn't have anything to do with whether or not he should get the death penalty for murdering either of the Fulkersons. And I think you could probably decide that, if it had only been Debbie Wrinkles that were murdered, perhaps, that would be enough of a mitigator to outweigh it. Perhaps not. But, in any event, it doesn't apply in this case. Mr. Vowels is going to tell you what he thinks are the important things for you to consider and, after he does, I'll reply to what he said.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF THE DEFENDANT.

MR. VOWELS: I wish I could tell you this is a good afternoon and wish you, good afternoon, but I hope sincerely that is not for any of you. I'll put my watch in front of me so I don't talk forever because I probably could. I assure you that I believe that you are open-minded. I assure you that I believe that you recognize what you're doing. And, if I come on too strong, understand that my emotions are in this too. And I clearly don't wish to irritate you. I want to explain to you how things work.

You know, a lot of times when you're on breaks and you're sittin' in that room wonderin' what are we doing, uh, there are approximately 750 to 800 felony cases filed in this Judge's Court every year. The Judge has a Magistrate and between the Judge and his Magistrate they sentence people all the time. I do, probably, 60 or 70 of them a year myself. So does Mike. And when you're sittin' in a jury room, what's happening is he doesn't stop. He just goes from this Courtroom down the hall and he sentences people. And so I want you to understand that even though you're told repeatedly, even by this man, to just make a recommendation to him, uh, I've practiced in front of him for almost seven years. And, you know, I can't predict. I mean, you know, it's one of those things you don't do. You don't walk in a Courtroom and say this is what a Judge is gonna do. But, I assure you, if you recommend that Eric die, chances are better than not that's what this man seated to your left is going to do. Rick Young is a man of good judgment. He's educated, he's kind, he's compassionate. But he also believes, as does this attorney and this, there are 12 minds that will make this decision. And how fortunate for you that you don't have to participate, or hopefully you won't.

But Stanley Levco is a serious-minded man and he takes his job to heart. And I don't question it for a second that he believes Mr. Wrinkles deserves to die for what he did. But he is a person, a single person. And what you will be doing is validating his judgment, and it's not any more complicated than that. And whether you should validate it or not, I pray, that you do not; but it is that man's judgment that you will be validating. We go on to the next case; we fight the next fight. You may think, you know, it's a low-down, dirty lawyer trick to tell you this; but, it's true. And you can ignore it. But I tried to tell you, and probably not so directly, so I'm going to hit you right between the eyes with this statement, right now. I begged you that attorney, and that attorney, and me, and this police officers, in

juries. And he is not going to discount what you do. So, you know, I'm not going to beat this like a dead horse. What I'm trying to tell you is, if you come back with a recommendation of death, I can't see, knowing what I know of this man, that he's going to ignore you. And I'm not beggin', I'm just tellin' you. I'm here all the time, every day. This is what I do. I practice in this Courtroom almost exclusively, as does he. The State of Indiana is personified in this case by Stanley Levco. He's also a nice man. I work with him a great deal. Many of his Deputy Prosecutors, like Ms. Lloyd, and I work with them a great deal. And we fight, and argue, and haggle, negotiate, plea bargain, beg. Occasionally, you know, we come in here and fight a fight. And you've seen one this week. But what I want you to understand is yesterday, don't bring back more than one Murder conviction. That way, he doesn't have to consider a death case. Because, as I explained to you, and I'll just be real blunt, if you only found one Murder and two Manslaughters, under the law as he charged it, you couldn't have - the Judge is not allowed to consider the death penalty under State law.

So, here's my low-down, dirty statement: Don't do it to him. You know, just because Eric goes and kills three people, don't do it to him. And Mr. Levco will say, he's doing what every good defense lawyer is supposed to do. He's supposed to appeal to you anyway he can. Well, that's true. I'm here to argue for my client. But, you know, uh, I don't - I don't think that - - I can't say I don't think you recognize it. But, I don't think you have to carry this the way that he will. So, don't do it to him. Don't give him a recommendation. Take this recommendation and just don't bring it. Don't bring a recommendation of death. There is - - and I've spent a lot of time studying this. This is the third case of this character I've had. I've been to a lot of seminars. He and I have to have certain training qualifications to even walk in here and try these kinds of cases, and we go to schools for this. One of the things that I know, and it makes lots of sense and it's real simple. If you get in the jury room and you think, well, you know, deterrence is a reason for sentencing. Where, you know, if you, as a jury, say that Mr. Wrinkles should die, it will deter others from conduct of this character. In other words, the media says that Matthew Eric Wrinkles gets a death sentence; that message is spread and it's going to stop other people from like conduct. But, there is no study that shows that that's accurate. None. It's not there. And the way you can conclude that that's valid is this. Think about this, do you really think that if under - - and you were out a couple of hours, so that tells me that you were pretty strongly convicted that - boom - he did it. So, do

you think it was realistic that before he went in the back door that he said, you know, I probably ought not to do this because people who do these sort of things go to the electric chair or, you know, get a lethal injection" So, there's not that moment of reflection that occurs with people who commit crimes like this, where they stop and think, gee, others are going to the electric chair or gettin' a lethal injection, so I better not do this. And it doesn't - - you know you think it through in any way, shape or form and any kind of heinous or disgusting crime you can think of that you know a person is put to death, and you're not going to be able to even entertain the idea that, gee, that person, if they had known that others went to the electric chair for this kind of conduct, they just wouldn't have done it. So, the deterrent aspect of death penalties do not exist. They don't. And it's not hard. That's not strangled reasoning.

You 12 are in a no-win situation. And one of the things that I have learned, as a lawyer, is that when you're in a no-win situation, you know, you're damned if you do one way and you're damned if you go the other. You should error on the side of caution. Prudence dictates in any form of endeavor that, if either choice is a bad choice, if you're going to make a bad choice and it might be a mistake, then make the most cautious decision. That, too, is not hard to realize. So, when you discuss this amongst yourselves, and I hope there is some dissension amongst you as to this - whether or not you're going to want him executed - remember, structured decision-making. In any decisions where you have to pick from one evil or another evil - - and let's face it, life without parole or a death sentence, neither of them are very nice things. But, if you are going to make a mistake, make sure, please, that you make your mistake on the side that says that, he does not get killed.

The Indiana Constitution is a rather unusual Constitution in a couple of respects, but it does make you the finders of the law and of the facts. And there's only one other Constitution in the United States that does that. I don't know the State, although, I think it's Massachusetts. But the other 48 States say that juries find facts. But you find the facts and the law. Now, the Judge will tell you, you can't ignore the law. You have to apply it. But, in the first Article of the Indiana Constitution, it says that the Penal Code of this State is based on principles of reformation, which means that vindictive justice is inappropriate. So, if you determine that one of the things you think of is that, you know - - and Mr. Troy McIntire, last witness up here, he deserves, Eric deserves what he gets. That is, an eye for an eye. That is vindictive justice. And, under the first Article of our

State Constitution, that is inappropriate. Now, Mr. Levco will tell you that there are a number of cases in this State at our Supreme Court level that say that the death penalty is not unconstitutional under that section of the State Constitution. But you can apply the law as you see it. And the first Article of our Constitution has a provision that says that. The Penal Code is based on the principle of reformation. Now, reformation for what? I mean, what's he being reformed for?

There are times when I like this man intensely. There are times when I can't stand him. But, at least, he has the straightforwardness to tell you that Mr. Wrinkles will never see a day of freedom. It's not going to happen. I mean, you should have some faith in this man's judgment. You know, he's an elected official. He's not gonna put someone back on the streets whose killed three people. And I told you, and I meant it when I said it. You find the facts. There's not an Appellate Court that is going to change any of our determination of the facts. If you don't believe that, it's so simple to prove. You find facts. You're exclusive fact-finders. This Judge doesn't find any facts. The 12 of you do. So, to that end, I want you to understand, Mr. Wrinkles is never going to see a day of freedom again. Ever. He's not going to a restaurant. He's not going to know if Taco Bell has a new inside. He's not going to make love to a woman. He's not going to get anything that you and I take in normal day-to-day life. It's not going to happen. He's going to remain without freedom for the balance of his life.. As of May the 1st, 1994, there was one person in the entire Indiana Department of Corrections, in every prison in this State, there was one person over the age of 80. Now, you might say, well, that means that they got out. Let's do some simple math. Life without parole means life without parole. Even if, you know, you know, I'll play this to you straight. I don't think you're going to recommend against life without parole, and I don't think you're gonna recommend - - and hopefully, I don't want you to recommend a death sentence. So, let's just get real. Murder carries a maximum sentence of 60 years. Indiana, you get a credit time of a day for a day. You read a lot in the papers, in Federal systems, I think it's 80 percent. So, if you get a 10 year sentence, you do eight years. There are certain jurisdictions where you get a three cut. So, for every day you do, you get three days credit. Indiana is a day for a day. So, it's a 50 percent cut. So, if you get a 60 years sentence, it's a 30 year sentence. There are three dead people. You multiply 60 times three for 180 years, you divide by half for a sentence of 90, and you add that to his existing age. He is 35, as he sits there. That makes him 125 years old when he

serves his time. There are probably less than a hundred people on the face of the earth that are even near that age, if any. I watch Willard Scott on Today. I think every once in a while they'll talk about somebody closing on 120. I don't know if I've heard of anybody older than that. So, as a practical matter, not a day of freedom - ever.

There are lots of ways - - and Stanley Levco's right. You know, you make an emotional appeal to the 12 of you to stop this craziness. Uh, I practice a lot in this Court; I defend a lot of people charged with crimes. I would hope, at least, you would believe me when I tell you this. I know what the criminal code is in this State. I know it pretty well. I've been a lawyer for 10 years and most of that time has been involved doing this in this Courtroom. If you give Mr. Wrinkles life without parole, his resources for appeals - in other words, how much money is available to him for lawyers and experts - is significantly less than it is if you issue a death recommendation and Judge follows it. Now, I tell you that because there - - you know, you read in the papers that appeals go on forever. And you know, there anywhere from nine to 17 years. Indiana's a little more efficient. The cycle of executions is going to pick up pretty soon. But, if you give him life without parole, the probability of having to do this all over again is significantly less. Now, you may think that, to use Mike's word, I'm bamboozling you. But, please, believe me. I know what I'm talkin' about. Judge Young has very little discretion in terms of the resources that we can use to defend him. And you've seen us. I mean, you know, you've seen us. We can hire who we need to and, you know, we knew we had an uphill fight last August, when we got this case. But, understand something. Rather than follow this track - - here's the track of an appeal process in a death case. If Judge Young gives him a death sentence, here's the track. It goes from here directly to the Indiana Supreme court. The Appellant's brief filed by Mr. Danks, as lead attorney in this case will be do something near Christmas. The government will then have somewhere between 30 and 90 days to respond. The Appellate Court will then, around Easter of 1996, assign the case for some form of hearing either with or without oral argument. Now, we're at the Indiana Supreme Court. Sometime in the summer of 1996, over a year from now, they will render an opinion. And more likely, in the fall of 1996, because we're very good at getting extensions. We are. We're very good at getting extensions. We are. We're very good at getting extensions on filing. So, you're into the fall of '96. Assume the death sentence is upheld. First Petition for Post - - I'm sorry. First Petition for Habeas Corpus into the Federal system, you take it across the street to Judge Brooks' Court and

allege a Federal Constitutional violation. You're lookin' at maybe a year before that may be reviewed in totality. Judge Brooks rules against it or in favor of the death penalty, it goes up to the Seventh Circuit Court of Appeals in Chicago. You're in late 1997, maybe even mid '98.. Assume the Seventh Circuit Court of Appeals for the Federal system in Chicago denies it. You can then ask for transfer to the Federal Court - - United States Supreme Court. They are generally going to deny transfer, but that usually takes three or four months. So, you know, you're still - - you're in late '98. Comes back. Judge Young sets a new execution date. Post-Conviction Relief Petition number 1 gets filed. Now remember, in a death sentence, he gets a battery of lawyers, a battery of experts. And so on the first Post-Conviction Relief Petition, you know, they come after us, Mike and I. And say, you know, what did you guys do wrong. Why didn't you do this, and why didn't you do this, and why didn't you do this, and why did you leave this juror on, and why did you do this. And by the time that Petition is heard by this Judge, another five to eight months has gone by. Because remember, this Judge has got 750 to 800 felony cases to deal with in a year. So, you're at 2000 or thereabouts. Judge Young denies it, death penalty is still in place, he sets another execution date. Post-Conviction Relief Petition gets appealed to the Indiana Supreme Court. Now, that's the first round. You can do it all over again, maybe as many as two more times. And you are into 2005. The second half of that whole process is cut off, if you give him a life sentence without parole.

Finality is sooner. Now, I want you to understand that simply because there should be a point at which the legal system should be efficient enough to carry out your recommendation. You know, if you think he should die, you certainly will recommend that. But you probably, if you're going to make that recommendation, you want it done efficiently. But, Constitutional rights are individual in character and whether you like it or not, whether you like it or not, they get argued exhaustively in Appellate Courts and in trial Court, after this point. Whether you like it or not, the legislature, the Governor, the Prosecutor, they can complain until Haiti freezes over. It will not change. I have resources in Indianapolis, in Washington, D. C. and in Chicago, Illinois, who I call, who do nothing but these kinds of cases. They exist for all kinds of cases of this character. And, let's face it, if you're going to end his heart beat, we should be cautious with it whether you like it not.

You know, even if you're a conservative person, it's still not going to change. Like that or not, do not think that your decision is ever gonna

be reversed. Probability is, it is not. It is not gonna be reversed. The facts of this case are strong. You proved that to me yesterday when you were out for two hours or less. You probably found it faster than that. So, the facts are strong. Evidence is overwhelming. Those are the statements of Appellate Courts. There is no contest as to who shot who. The subsidiary facts do not have to be proved by the government. The facts most favorable to the State are these: that Mr. Wrinkles knowingly killed these three people and that will be that. So, your fact finding never changes.

Now, I tell you that litany of things because you should recognize that there will come a day - I don't know - it was about a month-and-a-half ago, two months ago, there was an article in the Evansville Courier about the new execution room up at Terre Haute, Indiana - Federal execution room. I'm not sure the Governor signed the law, but I'd be willing to bet he did. Now, Indiana used to have an electric chair. It was made out of wood from the old gallows, when they used to hang people. When they stopped hangin' people, they took the woods from the gallows and they refashioned it into the Indiana electric chair. So, you know, recycling, right? Well, very recently, lethal injection is now the method by which a person is killed in this State after a jury finds a death sentence, the Judge gives a death sentence, and the appellate procedures are exhausted. No one's been killed by lethal injection in Indiana. So, there's a symmetry that's involved here that follows all the way through these kinds of cases. For example, the State legislature says, you're a recommending body only. That this is the man who makes the decision. You are one step removed. So, you know, you've got an out. You can say to yourselves, we did not do this. But, unlike most jury selection, we got to know you a little better, and I think most of you are pretty serious-minded people. So, I don't want you to believe that you're all that removed from Judge's decision. You know, he's a nice man and he's gonna say, well, you know, I can ignore your decision if I want to, or I can follow it. The State Legislature has done that neatly. And it allows you to be one step removed from the actual execution. Well, the execution room in Terre Haute is also one step removed. I've noticed how it's designed. There is a chamber and a gurney. And you strap, you know, he gets strapped in on a gurney. And they put these heavy nylon straps around and they're velcroed and then they're tied off, so that no limb or trunk of his body, or his head can move. And they insert an I.V. into a main vein, 'cause they put a cuff on and pump up a vein and they put it in. And they lead the tube into the wall and in the wall is poison. No one is in

the room when the poison is injected. It is one step removed. Just like you're one step removed from this Judge's decision. So, there's a symmetry involved in killing someone legally in this country. There is a glass panel on the side of the wall. And by law, certain people, only certain people are allowed to witness Mr. Wrinkles' execution. Unfortunately, I'm one of those people. But you won't. But there will come a day where they will pull the curtain, and there will be a glass wall in front of me, and he will be laying on a gurney with vel- - with nylon straps tied down on every limb, and his head tied in place with an I.V. line in.

And on the floor of 4119 Tremont, and on the porch, there's three dead people. And you can't escape that fact and don't think that I don't know that. But it is my fervent hope to all of you that you recognize that this is - - you know, havin' a baby, gettin' married, buyin' a house, you know, those are all real important decisions. But, uh, can-can you imagine? I mean, this is - - I can't - I can't fathom how you can make a more important decision. And recognize, that it is my opinion, Judge Rick Young is gonna do what you recommend. There is an instruction that Judge reads - - I'm almost done. I'm almost done. There's an instruction that Judge reads you. And, as you know, there's a case from the 1970's called Furman vs. Georgia. It was a United States Supreme Court case. And the purpose of that case was to invalidate death penalty laws because they were being applied unfairly. So, the United States Supreme Court said to the States, if you enact legislation which allows men like Stanley Levco to only ask for death in cases in very narrow sets of circumstances, then we're going to allow you to ask that people be killed. So, our legislature created that. It's Indiana Code, Title 35, Chapter 50, Section 2, Subsection 9, and this is filed under subparagraph B, I think, 8. And it says under those narrow circumstances under which he can ask for a death sentence that one of the findings is two or more murders, two or more murders. There's lots of 'em, murder for hire, killing a child under a certain age, killing a person over a certain age, nasty things you can imagine. And in those instances you can ask for a death sentence. But what the Federal law said, and it mandated the State, is that you have to enact this legislation so that you can consider - and when I say you, I mean the 12 of you - so you can consider when and under what circumstances you should forgive a death sentence. Now, remember something. When I use the word forgive, if you go up to the Wabash Valley Correctional Center, which is in between Terre Haute and Vincennes. It's on the right side of the road as you're heading north. And it's got all that concertina wire around

it. Okay? They're nine by nine by nine feet cells. They're nine feet long, nine feet wide and nine feet high. And they're locked down 23 hours a day. Do you understand that I'm standin' here beggin' you to lock him in that? So, for the balance of his life - he's 35 years old, probably won't live past 65, and even if he does, he's gotta live to 125 to get out under the maximum sentence. Life without parole in Indiana, and let's face it, those of you who are from here and most of you who have been here a while, this is real conservative State. Life without parole is literally that, sir. It is life without the possibility of ever having freedom. And I can tell you just as you might - - you think the legislature's gonna change that? It's not gonna happen. It's not popular. It's not gonna happen. So, it strikes me as an irony. I'm standing here beggin' you to lock him up in a nine by nine by nine cell for 23 hours a day for the rest of his life instead of putting an end to his misery. And maybe, if Troy McIntire took a visit up to Wabash Valley correctional Center, he would want his bloodletting in a different way. And he's entitled to his opinion and I don't mean to diminish his loss; but, nine by nine by nine 23 hours a day. I thought about bringing some duct tape and taping out nine feet by nine feet. I should have. So, I'm begging you for that alternative.

Here's the law. And this is the opposite number, okay. You end up with a jury, and I recognize this. You wanna do the right thing and you don't wanna take this cavalierly (inaudible). So, please, for God's sakes, read this - read this. I'm not gonna skip a word. Read this. "Evidence has been introduced" - and this is Judge's instructions to you and I asked all of you, will you follow Judge's instructions and you said, yes. "Evidence has been introduced tending to prove the following mitigating factors or circumstances. (1) Mr. Wrinkles, the Defendant. . ." - and of course they call him a Defendant so you can take one step back and he's less of a human - "the Defendant has no significant history of prior criminal conduct. (2) The Defendant was under the influence of extreme mental or emotional distress when he committed the murders. (3) The Defendant, Eric Wrinkles' capacity to appreciate the criminality 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 by alcohol or drugs. Or, (4) Any circumstances you may find which mitigate the actions of Mr. Wrinkles." You may find that other evidence tends to prove other mitigating factors other than the one's noted just now.

Each of you, individually - so, you know, when I told you the other day you had to have a unanimous decision, listen to this. Each of you,

individually, may consider any evidence regarding the murder or the Defendant's life which you believe should be weighed against a sentence of death or life imprisonment without parole. And each of you is free to conclude that such evidence proves factors which you believe to be mitigating other than those listed above. And that's the four we talked about. Steve Brock. Steve Brock, seated back here, got up here and explained it to you, okay? So, the last paragraph. Existence of a mitigating factor does not have to be found unanimously. In other words, unlike yesterday, you all don't have to agree. You can disagree. You can disagree. So, the existence of a mitigating factor doesn't have to be found unanimously. And the existence of a mitigating factor does not have to be found beyond a reasonable doubt. Any one or more of you may find the existence of specific mitigating factor, if you find that factor has been proved by a preponderance of evidence. Proof, by preponderance of evidence, is proof which convinces you that the thing to be proved is more likely true than not true. Each of you must weigh any and all mitigating factors you individually find proven by a preponderance of the evidence against any aggravating factor or factors you all unanimously find to have been proved beyond a reasonable doubt. Now, you can shake that apart. I mean there's some of you have some pretty high-powered education that's in this box. You can shake this out. You can diagram this thing out. What it comes down to is this. You already know, in the general selection process, you prove a case beyond a reasonable doubt in criminal Court. That's the way it happens. Beyond a reasonable doubt each element of the offense -- they're back there on that blackboard. I can't see it from this angle. But you found all those beyond a reasonable doubt. That's necessary. It's a matrix of information. That's how you do it. Okay, well, I you remember I told you you have to error on the side of caution. If you wanna kill him and you're not certain, go the other way. Don't kill him. this instruction I just read you builds in you erring on the side of caution. It does not create a level playing field. In other words, we have the high ground. Mr. Levco has proved to you in his case, beyond a reasonable doubt, that Mr. Wrinkles killed three people. Okay, you found it. You found it. Then, all I have to do and all you've gotta find, is that it is more likely true than not true that, not beyond a reasonable doubt. You just have to find it's more likely true than not true. And you swore to me you'd follow Judge's instructions. You did. I ask you all. You have to find that it's more likely true than not true that he has no significant history of prior criminal conduct. (2) That he was under the influence of extreme mental or emotional

disturbance when he committed the murders. (3) His capacity to appreciate the criminality of his conduct or to conform his conduct to the requirement of the law was substantially impaired as a result of mental disease or defect, or intoxication by alcohol or drugs. Or, you have to find it more likely true than not true, (4) Any circumstance you may find which mitigates the actions of Mr. Wrinkles. Now, remember something. You don't have to all agree on this unanimously. You have to agree unanimously on aggravation and it exists. Let's face it, it exists. But you swore to me you would follow the instructions, so it's not all that cut and dried and it's not complicated. If you find that it's more likely true than not true that Dr. Engum's information - not beyond a reasonable doubt, but more likely true than not true, that what he's telling you that he's got severe personality disorders is true, you find its existence. If you find that he's a crank addict more likely true than not true and that his crank use impaired his judgment, you've found another mitigator.

If you can't appreciate his criminality - one of the things that really bothered me, and how would you like to sit here and answer Mr. Levco's questions? One of the things that really bothered me, because you know we sit here passively trying not to react so you can't see us go, Oh, God. You know, smack in the fact. I watched you react. Eric says well, I'm partly to blame. And Stanley Levco wants to say, well, what part of the blame is yours and what part is not? And what he's trying to do is to get Mr. Wrinkles to say, well, you know, somebody else is at fault. So, think about this for a minute. If he says, well, I'm partially to blame, do you think that for a minute - and you heard him testify - that he fully appreciates what he did? I mean I've been watchin' you people like hawks. I mean, do you really think that he really appreciated what he did? Do you? So, all you gotta do is find that that's more likely True than not true.

Now, Stanley Levco is gonna get up here and he's gonna tell you that, you know, I'm splittin' hairs. But darn it, you know, I gotta man's life on the line here and so do you. And don't split hairs. I'm tryin' to be common sense. I'm beggin' for this man's life. So remember, after you weigh these things through - and on our side, you know, you don't have to find them unanimously, you just have to find it's more likely true than not true, any one of you, that they exist. And then you go into a weighing process. And your weighing process is, you know, do you find that the aggravating circumstance of these three deaths outweigh these four mitigators? God, I hope not.

I pulled a low-life tactic. I had to. I knew what Lindsey Wrinkles would say to you. Thought

about it, thought about it. Aw, man, you know. So, I did it and I knew she didn't want her daddy dead. And I knew that Mary Winnecke would bring tears to everybody's eyes. I knew it. I knew what she had to say. I knew how she felt. And I knew that Carolyn Casper would tell you that she didn't want him killed. Now, those three people don't want him dead. They know him. And their reasons for not wanting him dead are different. Carolyn Casper's is that the appellate process is too long and I've told you it is, and you can't do anything about that. Mary Winnecke's is that she is a member of the Catholic church and she opposes death penalties for anyone and everyone. And I didn't have the guts to ask Lindsey. I just didn't. I couldn't do it. So. It's more likely true than not true that all those factors exist. I assure you it will happen, if you recommend it, in a heart beat.

You don't wanna be a part of this. I told you yesterday and fortunately, Mr. Levco picked up on this. You don't want to go down this path. I have been down it. I've been down it. I've spent hundreds if not thousands of hours thinking about this. I have read a great deal about it. I am studied. You do not want to be a part of this. It is not something that will leave you easily no matter how harsh you may believe this killing was. It will stick with you. Now, there is no doubt you're going to remember this occasion for the rest of your lives. But to be a part of a process that lawfully ends a heart beat is not anything you can readily ignore. It will stay with you no matter how tough you think you are. No matter how experienced or how justified you believe you are. Because there will come that day that they'll put that I.V. line in a pumped-up vein and they will put poison in his body and his heart will stop beating. It will happen. You can stop that. And remember, it is one person. He didn't have to file Count IV. He didn't have to file it. It was one person who made the decision and it takes a perverse track through your 12 brains and into his. You don't have to even consider Eric Wrinkles ever having a day of freedom. It ain't gonna happen. I'm not pointin' away from what he did. I'm not. There's three dead bodies on a video tape at 4119 Tremont on July 21st at two o'clock in the morning blown to pieces. So, I don't wanna take your focus off that. I have - I am sorry that you've embarked on this path. I wish that you had brought back two Manslaughters and a Murder. That way, nobody had to be there. Bit I've been here, standing here. I've done this before. I don't wanna do this again. But, I'm tellin' you. You know, if Stan Levco gets up here and tells you that you should not consider the impact of this man, or you shouldn't consider the impact on yourselves; that you should consider Natalie Fulkerson and Tony Fulkerson and Debbie Wrinkles, he's right. He's right. But it

doesn't change the fact that you're pulled into this, even if you think it's right that he should die, even if you feel justified in your decisions. Well, the only thing I can tell you is not very literal. Please, don't do this.

CLOSING REBUTTAL (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF STATE OF INDIANA.

MR. LEVCO: Members of the Jury, I want to reply specifically to some of the things that Mr. Vowels said and also tell you why I think the death penalty is the appropriate recommendation in this cause. Although, as I was sitting listening to Troy McIntire this morning, I almost have the feeling I'd do just as well to play a recording of what he said and just sit down. Because I don't think I'm going to be able to say it any better than that. Mr. Vowels, if you noticed, almost his entire argument was telling you why the death penalty as a concept is not an appropriate penalty. He spent very little time telling you why the death penalty shouldn't apply in this case, other than you shouldn't give the death penalty at all. And if you buy that overall argument, as Mary Winnecke does - and I wanna say with Mary, just like what Troy said. I have a tremendous amount of respect for someone who doesn't believe in the death penalty and can go through that and still hold to that belief. So, I certainly respect her opinion. And if you feel that way, then you shouldn't recommend the death penalty. But, apparently, from all the questions that we had on voir dire, you don't feel that way. You do feel that the death penalty is appropriate in some circumstances. And the question is not whether the death penalty is an appropriate penalty, but whether it's the appropriate penalty in this case.

Mr. Vowels said, if you recommend the death penalty, you'll be validating my judgment. I suppose that's technically true since I filed it. But I don't see it that way and I hope you don't see it that way. I look at this as this is an independent decision for you to make. I wouldn't expect any of you, and I would be surprised if any of you would say, you know, I don't think the death penalty oughta be applied in this case but Levco filed it, he must know what he's doin', so I'm gonna go ahead and do it. I don't want you to do that. I think, you know, on technical points of law, I think I might have more expertise that you do and I might know more about what proves a case beyond a reasonable doubt that you do, but I don't pretend to know any more than you do about whether a person deserves to die for what he did. So, I expect you all to make that as an independent evaluation.

Mr. Vowels, it seems to me, is trying to lay a guilt trip on all of you. Putting it very simply. He's

trying to make you feel responsible. That if you recommend the death penalty, it's gonna be your fault, and you're gonna be the one that caused a man to die. You didn't murder three people. You didn't break into that house that evening. This is not your fault. He says it's gonna bother you for the rest of your life. I don't believe that's true. I can tell you that I've done this over the years and I don't wanna minimize it. It's not a pleasant thing, it's not something I laugh about; but, I don't have a problem with it - I don't lose sleep at night. My feeling is I'm doin' the right thing and I'm doin' the best that I can, and somebody that I argue should die, I believe, deserves to die. And I think that's the right thing. And I think all of you - - I don't see this, as a matter of fact, I don't know how many of you are on here. I can see one or two that I remember said I know didn't want to, would prefer not to serve on the death penalty case, if they had a choice. But I know a lot of you said, if you had a choice, you'd rather serve on an important case. And I see this, and I think you should also, as an opportunity to do the right thing and to do something, and to do something you think is right. Instead of. . . I suspect you've probably sat there before and watched things and said things. You know, what's wrong with the criminal justice system? Why do people get away with things? If I ever had a chance to do something about it, I'd do it. This is your chance. This is your chance to do what you think is right. And after you've deliberated on it, if you think it's the right thing to do, I don't think you'll have a problem with it. I think you'll take pride in knowing you've done the right thing. And I know all of you, before you do it, would consider it and consider the ramifications of it.

There are actually quite a few things that I agree with Mr. Vowels on and even points that he made. So, some of them I'll tell you what some of them are. He says he believe Judge Young will do what you recommend. Uh, I believe that also. I don't know that. I would expect that. I would expect he would do it. He may not. It's not out of the realm of possibility he'll go against your recommendation. But, this is for certain. You should assume that he's gonna do what you recommend. I don't think any of you should take this lightly and say, well, he knows better than I do, he can overrule my decision if I'm wrong, so I'll just go ahead and recommend the death penalty. You should also personally decide that this is the appropriate penalty. Although I thought it was strange when he said, as one of the reasons not to recommend it is, don't do it to him. I mean, that's his job. I don't believe that I've practiced in front of him as long as Mr. Vowels has. And I don't believe he shrinks from this responsibility in any way. I don't think that, if you recommend the

death penalty, he's gonna go, "Oh, my gosh. How could the jury have done this awful thing to me." I mean, if he didn't wanna sit on this case, uh, in a sense, nobody does a voir dire process with him, but every case he has, if he doesn't wanna sit on it, he can just get another Judge to do it. So, I don't think worrying about Judge Young's concern about what to do in this case should be a concern of yours.

Mr. Vowels says that you're in a no-win situation, you're damned if you do and you're damned if you don't. Well, you aren't damned. Uh, there's only one person in this Courtroom, if anyone is going to be damned, as a result of what happened that evening. And you certainly shouldn't feel any sense of personal damnation if you decide to recommend the death penalty. You followed an oath. You all said that you could under the appropriate circumstances and you followed an oath - - and you will follow an oath to evaluate this case based on the facts.

Mr. Vowels says, he talked about the deterrent factor, and it has no deterrent effect. I think the Judge is going to give you this instruction. If not, I know it to be the law, so, I'll go ahead and tell you. You can't find, recommend for the death penalty solely for the point of deterrence. In other words, you can't say, You know, I don't know whether the death penalty is appropriate or not, but maybe it's going to deter somebody else, so, I'll give him the death penalty. However, when the Judge tells you you can't do it solely for the purpose of deterrence, that certainly can be a factor in finding for the death penalty. And Mr. Vowels says that no study says that the death penalty is a deterrent. You know, you know that's gotta be wrong because anytime there's any question you always got people doing studies on both sides of the question. So, I'm sure either of us, if we wanted to, could have brought in people from both sides telling you the death penalty is a deterrent, and the death penalty is not a deterrent. I mean, who knows? Would the death penalty had deterred Eric Wrinkles in this case? If at 2 a.m. on July 1st somebody whispered to Eric as he was going in, Eric, if you kill two people you may get the death penalty, would that have stopped him? Probably not, probably not. You know, up until this time he had a restraining order and it wasn't until the restraining order was lifted that he did this. Although, I doubt that that's why he did it. But I would be willing to accept Mr. Vowels' representation that it wouldn't have stopped Eric, but maybe it would stop somebody else. I mean, just because you're giving him the death penalty in this case wouldn't stop somebody like Eric Wrinkles, it doesn't mean it wouldn't stop somebody else. What if there's just one person out there in Vanderburgh County or

somewhere else in Indiana who hears about this case, or it somehow has some affect, and one person decides not to kill a witness or commit a murder that they would have committed because they're worried about the death penalty. Wouldn't that be a reason to recommend the death penalty? And certainly, any doubts on that question it seems to me oughta be resolved in favor of some potential innocent victim of the future, than some guilty murderer of the present.

One point that Mr. Vowels made that at least is true, whether its valid to the point that you shouldn't recommend the death penalty, I guess would be up to you; but, he talked about the time and the death penalty appeals and that it's a long time. And I think you know that anyway. You read that stuff in the paper how long people have been on death row. The Supreme Court of Indiana is trying to cut that down. I tried a case a while back, about 10 years ago, and it took literally two years for the Court Reporter to type a transcript of the trial. So, nothing happened on this death penalty case for two years. Because, strange situation, but the Judge wanted his Court Reporter to type it and nobody else could and it took two years for it to get started. Because of that, the Supreme Court passed a rule that says, and that's one of the reasons we have two Court Reporters here, that you now have to do it within 90 days. So, at least, we have now cut off, at least in that case, it would have been almost two years off that process. And generally speaking, it seems to me Courts are heading in the direction where they are trying to limit the time it's going to take, to resolve this death penalty case. But, uh, you know, that it's going to take a while whatever it is. Whether it's as long as it is today, it's still never, or in the near future it's never going to be a short period of time. But I've also seen a lot of non-death penalty cases, a lot of murder cases that go on for years and years and years for 10 years and 12 years, and appeals and post convictions, and reversals and things like that. So, just because you don't recommend for the death penalty doesn't mean there won't be appeals, and it doesn't mean that this case won't go on for a long time. Although the fact is, the probability is, it is more likely to go on longer if there's a death penalty than if there isn't a death penalty. And Mr. Vowels is also right that he'll have more resources at his disposal if it is a death penalty than if it isn't a death penalty. But is that an appropriate reason for not recommending the death penalty? If it's the right thing to do, if the facts justify it? Because it's going to take a long time, don't do it? You know, that sounds to me - it's not quite as offensive as saying to you, don't return a guilty verdict so you won't have to come to Court tomorrow. But it sounds a little like that. Don't return a death penalty recommendation not

because he doesn't deserve it, but don't return it because it's gonna take a long time. Of course, the reason it's going to take a long time is he's the one that's going to be appealing it. And is that an appropriate reason not to? Maybe, but I don't think so.

Mr. Vowels says, there will come a day that he'll be laying on a gurney - and I didn't take it down, note for note - they're gonna put a needle in him and that's not a pleasant death. And I doubt that very many deaths are pleasant. And I'm sure that one would not be a pleasant death either. But I can tell you this. It won't be as horrible as the death that Debbie suffered that evening. It won't be the death that Tony had when he had four bullets, including two into his back and one into the back of his head. And it won't be as horrible as the death that Natalie suffered when she had a .357 Magnum within a foot of her face and had the bullet go through her cheek and outside the other side of her face.

Mr. Vowels did talk about one of the mitigators is that he's a crank addict. You know, that's in the statute. To me, it's almost laughable. You have to consider it. That's true. But that doesn't, the statute doesn't tell you how much you have to consider with. It just means that you have to talk about it. And I don't know somehow it doesn't seem to me we should reward people for being drug addicts. Now maybe, if they went in a hospital and they had some kind of operation and they had to have pain killers and built up a dependency on drugs that way and became a drug addict, I suppose that would be a mitigating factor. But you have to consider that for what it's worth. And I would suggest to you that's worth nothing. He shouldn't be rewarded for it. And the interesting thing is, and I think you could see it from his being in the Courtroom during this week. He's not on drugs now. But you can tell he's still the same. Those drugs aren't what made him go in there that night. He's still a bully, he's still a liar, he's still manipulative. It's not the drugs that did it. It's Eric Wrinkles that did it.

Mr. Vowels is begging you not to kill him. And it reminded me of Lindsey begging him not to kill her mommy. And about Lindsey, Mr. Vowels mentioned Lindsey, but I thought it was real interesting. I don't deny in his own way that Eric Wrinkles or I'm not going to argue that he doesn't love his children. But I think it's real interesting that, uh, when Mary Winnecke was talking this morning, that the only mention he made of Lindsey was that she needed to have the hell knocked out of her. And the only other thing you heard about Lindsey is when he told her to shut up. Mr. Vowels talked about how, if you put him in prison, he's never gonna be able to go into a restaurant and he's never gonna be able to go

outside. And that's true. But consider this. If he stays alive in prison, he'll have the opportunity to see his children someday; but, Debbie never will. Natalie and Tony will never see their children. Matthew and Kim will never see their parents. If he isn't sentenced to death, even with a life without parole sentence, in a strange sort of way, he will have succeeded for what he tried to do that night. He will have won. Because at least he has the potential to have some relationship with his children now. But he's made certain that their mother never will. And that's exactly what he tried to do that night, assuming you believe one of his stories. He said, "I wanted to break in there, steal those kids, and disappear, and make sure that Debbie would never see the children again." And it's still a relationship, even though it isn't much. But one thing that's certain, it's more of a relationship than she's ever gonna have, or that Matthew's gonna have, or Kim is gonna have.

And if you're tempted to show sympathy for Eric Wrinkles, I think Troy McIntire said it better than I can. I think you ought to show him exactly the kind of sympathy that he showed to Natalie, and Tony, and Debbie. When you're considering this case, I would say, ask yourself this question: What right does he have to suffer a lesser penalty than what he inflicted on the three victims? Certainly, the kind of life he's lived doesn't justify it. Certainly, the facts of this case don't justify it. You also said, you all said that you believed in the death penalty in the appropriate circumstances. When you look at the facts of this case, if this case doesn't justify the death penalty, what case does?

There's one - I don't wanna use the word, good - but there's one good argument for not giving the death penalty in this case. It's 'cause you don't believe in the death penalty. If you don't believe that the death penalty is ever appropriate, then don't give it. And I don't wanna minimize that as an argument. But you all, apparently, do believe the death penalty is appropriate. If you do, it would appear to me that this case certainly justifies it. I think it goes without saying, obviously, that the worst thing about Eric Wrinkles - the worst thing he's ever done, obviously, is to kill these three people. But, besides that, there are just so many other offensive thing that he's written and said. I mean, the letter that he wrote to his mother. Telling Lindsey to shut up. Telling you that he's partly responsible for this. You know, Tom Black told you what he said about Natalie. He said, that bitch deserved to die. Natalie Fulkerson didn't deserve to die, Debbie Wrinkles didn't deserve to die Tony Fulkerson didn't deserve to die, and Eric Wrinkles doesn't deserve to live.

[The jury unanimously recommended a death sentence for Wrinkles, who was sentenced to death by Judge Young on June 14, 1995. The conviction and sentence was affirmed on direct appeal by the Indiana Supreme Court at Wrinkles v. State, 690 N.E.2d 1156 (Ind. December 31, 1997).]

CLOSING ARGUMENTS

State v. Lambert Delaware Superior Court 1991

CASE SUMMARY On December 28, 1990 Muncie Police Officers were dispatched to a traffic accident and observed an abandoned utility truck. The truck was towed and Lambert was found nearby crawling under a vehicle. Lambert had spent most of the night getting drunk and after telling officers he was trying to sleep, was arrested by Officer Kirk Mace for Public Intoxication. He was patted down and placed into the back of a police car driven by 31 year old Muncie Police Officer Gregg Winters for transport to jail. A few minutes later, the police vehicle was observed sliding off the road into a ditch. Lambert was still handcuffed in the backseat and Officer Winters had been shot 5 times in the back of the head and neck. A .25 handgun was found laying on the floorboard. It was later learned that Lambert had stolen the .25 pistol from his employer. At trial, a demonstration / re-enactment video was introduced into evidence showing the manner in which a gun could be retrieved and fired while handcuffed. A statement by the defendant was admitted despite his .18 BAC.

Lambert was convicted of Murder in the Delaware Superior Court, Judge Robert L. Barnet, Jr. presiding. Prosecutors Richard Reed, J. Cummins, and Jeffrey Arnold represented the State. Ron McShurley and Mark Maynard represented the defendant.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF STATE OF INDIANA.

MR. REED: Thank you, Judge. If it please the Court, counsel for the defense, and ladies and gentlemen of the jury, this is the opportunity that we have to address you and to argue to you and to attempt to persuade you to our point of view.

The issue is this case, as we discussed with you from the beginning of jury selection, was whether or not you were the type of person who could carry out the obligation of the oath and follow what the State of Indiana will suggest to you is your duty in this case. We appreciate the fact that you have thus far been willing to do your duty. We asked you at the close of the trial on the issue of guilt to be the defender of Gregg Winters, and you responded. We're going to ask you to do your duty one more time. And I want to talk to you just a little bit about what that means.

Duty. I have on my desk a dictionary and thesaurus. A personal sense of what one should do, a moral obligation, conscience, liability, charge,

accountability, faithfulness, pledge, burden, good faith, honesty, integrity, sense of duty, call of duty. See also responsibility. Every one of those words applies to Gregg Winters. He carried out his duty. It cost him his life. You'll notice that among these definitions, it doesn't say anything about fun or pleasant. Not something you want to do, but an obligation, a burden. The antonyms or opposites of the word duty are as follows: Dishonesty, irresponsibility, disloyalty, betrayal, faithlessness, falsehood, treachery. I cannot think of any better words to describe the Defendant in this case.

Mitigate means to make or become less severe, less painful. You're being asked to consider whether or not the State of Indiana has proved beyond a reasonable doubt the existence of an aggravating circumstance. I suggest to you that the aggravating circumstance that we have alleged has never been in doubt even in the slightest. That being that the Defendant killed Gregg Winters while he was in performance of his duties. Proven beyond a reasonable doubt. No question. Never really at issue. That is proven.

Then what is it that you must decide? According to Webster's, whether there are factors that will make this become less severe and less painful. There are four, Judge Barnet will tell you, possibilities. The Judge is not telling you that anything about these four does or does not exist. He's simply telling you that these are the things that you may consider to determine if any of them exist. And if they do, weigh them against the aggravator, the intentional killing of a policeman in the line of duty.

Number one: the Defendant has no significant history of prior criminal conduct. If it exists, it can be a mitigator. I suggest to you it does not exist. No significant history of prior criminal conduct. You heard the evidence. This Defendant was minor consuming at age 16 and rapidly moved up the ladder. Burglary, theft, forgery, crimes against his own mother, conspiracy to commit burglary, another burglary, more theft, carrying concealed weapon, carrying a pistol without a permit, crimes relating to consumption and use and possession of alcohol, lying, stealing, cheating. Doesn't care about the rules that you and I live by. I asked him. If this isn't significant, what is? And he had no answer. That's not mitigating. Not by a long shot.

Well, extreme mental or emotional disturbance when the murder was committed. Was the Defendant acting under extreme mental or emotional disturbance. That's something you have

got to get inside his head to know, but it's his trial. What did he tell you? He had some personal problems. He says that's extreme mental or emotional disturbance. He had some personal problems. Who doesn't? Does everybody who's in a divorce go out and shoot a policeman? Does everybody who doesn't have custody of their child go out and shoot policemen, commit burglaries? Where is the extreme mental or emotional disturbance? It's imaginary. It doesn't exist.

Skipping down, it says any other circumstances appropriate for consideration. I don't know what that is. I suggest you probably don't know what it is. And I know that the Defendant doesn't know what it is because I asked him. Can you think of anything else that could mitigate this crime? And he had no answer. I sure have no answer.

Now we get down to the real issue. The Defendant's capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of the law was substantially impaired as a result of mental disease or defect here. Never been alleged. No evidence to support that. So we're right back to where we started in jury selection. What about intoxication. Can it mitigate a crime? Even if you assume it exists, can it really mitigate a crime? He told you why he drinks. He likes it. It's fun. It's pleasurable. Have a good time when you're drinking apparently. Does that really mitigate what happened in this case? Can it? Even if it exists.

Let's talk about whether it exists. I want to talk to you just a minute about an unrelated case. There's a case that's reported in the law books. It's called Spranger v. State. It's a case that was decided in Wayne County Circuit Court by Judge James Puckett. I'm sure that that name doesn't mean anything to you except that he was an excellent judge, highly respected, maybe one of the top five or ten in the State. I'm not talking about this case because of any law it contains, but it may be of use to you to know how somebody who deals with this all the time can decide an issue like whether intoxication applies. Facts are somewhat similar to this, somewhat.

1983, a young man named Spranger who was 18 years of age and his buddy were out vandalizing cars. Neighbor calls in. Town marshal of the town called Avilla shows up in response. He gets in a fight with Spranger's buddy, and in the process the marshal's gun falls to the street. Spranger runs over and while his buddy is fighting with the marshal, picks up the gun and shoots the marshal one time in the back and the marshal dies.

Spranger was intoxicated at the time. Judge Puckett had to deal with that, and here's what he said: "There is evidence the Defendant had been

drinking, but he had the presence of mind to be driving from Fort Wayne to Avilla, to direct traffic at the scene, to flee after the shooting, to discuss the incident with his brother, to dispose of the flashlight and service revolver, and to later recall events surrounding the incident." What you see there is Judge Puckett looking at what the Defendant did to determine whether or not intoxication had any bearing on this crime. We talked about that at length.

In comparison, let's talk about those same kind of things in this case. The Defendant had the presence of mind to leave the truck and walk away because it had stolen property on it, to attempt to hide from Kirk Mace, to deny knowledge of the truck, to maneuver to get the gun, maneuver into firing position, to fire it six times, to attempt a seventh shot, to complain about his treatment on the snow, to create a story about being set up by the Southside Gun Shop due to his custody case, to recall most of the events, respond to questions, deny being drunk when he thought it was in his interest to deny being drunk, to walk okay, talk okay, write okay, comply with demands, ask questions to the officer and if it was a .25-caliber automatic pistol that was used, and to make up a story about how that gun was stolen to set him up.

Presence of mind? No doubt about it. So I say to you, there's not a single mitigating circumstance that exists in this case; not one. Not one. But if by imagination of something in the evidence that I don't see, you can decide that perhaps there is something mitigating here, then you must decide whether or not it outweighs the aggravating circumstance.

One of the things you may want to consider is whether anything could outweigh the aggravating circumstance. We're talking about the killing of the police officer in the course of duty. Policemen are the symbols of our ordered society. Not so many weeks ago, October the 15th of this year, the President of the United States was addressing a gathering called the dedication of the National Law Enforcement Officers Memorial in Judicial Square, Washington, D.C. I want you to listen to some of his words:

"For too long America's law men and women have been the forgotten heros. Forgotten until there is trouble. Until we're stranded on the side of the road or frantically dialing 911 at our homes. Today we remember these heroes and heroines. Visitors will come here. Some will be children. Perhaps looking for a father or mother they never really knew. Who were these people they will ask. These are people who devoted themselves to the timeless values that society shares. They valued the law. They valued peace, the peace of a civilized community that protects children at play, families at home, and storekeepers at work. They

valued human life so much they were prepared to give their lives to protect it. They gave much and asked little. They deserve our remembrance, and here, in America's capital, for as long as these walls stand, they will be remembered. They didn't ask for honor, though honor them we will. We can honor them in a more profound way, a more lasting way, by strengthening the law they swore to uphold. When society asks someone to put on a badge and place it over his or her heart, we make a sacred covenant, a covenant that says we as a society stand behind those officers who enforce the law against those who break the law. May God bless the law enforcement officers of our great country."

What about policemen? The aggravating circumstance. Can it be outweighed by anything? I want to talk to you now about another case. This one is called Roberts v. Louisiana, and it was decided by the United States Supreme Court. It happens to have occurred in 1977, and it's notable not for the law that it contains, but for the reasoning of some of the Justices of the United States Supreme Court. And what was at issue there was the Louisiana law that said in Louisiana if you kill a police officer in the course of duty, automatic death penalty. Automatic. No jury determination about whether that's right or wrong. Automatic. And the United States Supreme Court looked at that and decided in their wisdom that automatic should never apply. Always give a Defendant an opportunity to argue his case to a jury. Let the jury, the conscience of the community, as the Judge will tell you, you are the conscience of the community, let the conscience of the community decide whether or not anything can override the gravity, the horrendous implications of killing a police officer on duty.

Here's what all of the Judges said in a per curiam opinion. "There is a special interest in affording protection to these public servants who regularly must risk their lives in order to guard the safety of other persons and property." We recognize the life of a police officer is a dangerous one. Statistics show that the number of police officers killed in the line of duty has more than doubled in the last ten years. More than doubled in the last ten years. How do you get men and women to put on that badge? People who go to work wearing bulletproof vests. What kind of a job is that? Where every time you put on your work clothes, you have to think about dying. What kind of a job - what are we asking these people to do? And what is the agreement we make with them when we ask them to do that?

I digress. "The arguments weighing . . ." and Justice Rehnquist says now, Justice White agreeing with him, "the arguments weighing in favor of society's determination to impose a death

sentence for the murder of a police officer in the line of duty are far stronger than in the case of an ordinary homicide. In all murder cases and, of course this one, the State has an interest in protecting its citizens from such ultimate attacks. We do have an interest in protecting anybody. "This is surely at the core of our social contract idea. But other, and more important, state interests exist where the victim was a peace officer performing his lawful duties. Policemen on the beat are exposed in the service of society to all the risks which the constant effort to prevent crime and apprehend criminals entails. Because these people are literally the foot soldiers of society's defense of ordered liberty, the State has a special interest in their protection. With what sanctions is the State entitled to bring into play to assure that there will be a police force to see that criminal laws are enforced at all? It is no service to individual rights, or individual liberty to undermine what is surely the fundamental right and responsibility of any civilized government; the maintenance of order, so that all may enjoy liberty and security. Policemen are both symbols and outriders of our ordered society. The State, therefore, has an interest in making unmistakably clear . . ." listen to this part, "unmistakably clear, that those who are convicted of deliberately killing police officers acting in the line of duty be forewarned that punishment, in the form of death, will be inexorable."

These aren't my words. Like Mr. Justice White, I am unable to believe that a State is not entitled to determine that the premeditated murder of a peace officer is so heinous and intolerable a crime that no combination of mitigating factors can overcome the demonstration that the criminal's character is such that he deserves death. Think about it. All of these cases talk about criminal behavior, burglars and thieves of every kind and description who are willing to break any law there is, save one. When confronted with a police officer, they will yield to that authority. When finally confronted by the badge, they know the game is over. And they yield to the authority of society. Only a very select few have the audacity not to yield and reply against society's guardians with deadly force. That's the definition of heinous crime. That's the definition of heinous crime. That's the definition standard of somebody who cares not one whit about our rules or anybody else's. Whose only interest is in his own hide and whatever he can get away with. And that's the definition of Michael Lambert. Whose rules did he ever follow? Where's the mitigator? What can possibly outweigh the aggravating circumstance in this case?

Duty. Heavy burden, not pleasant, but you have demonstrated an ability to set aside whatever

personal discomfort you may find in the following of this law in doing your duty under the oath that you have taken and make the single recommendation that's appropriate in this case, the only one that makes any sense. For to come back with any verdict other than a recommendation of the death penalty would be an affront to the law and a direct insult to the memory of Gregg Winters.

And I want to leave you with just one more collection of words by somebody much more talented than I in expressing what this case is really about. And it's a poem. It's a poem that was given and read at Gregg Winters' funeral. "Somebody killed a policeman you say and a part of America died. A piece of our country he swore to protect will be buried with him at his side. The beat that he walked was a battlefield too just as if he had gone off to war. Though the nations' flags won't fly at half-mast, to his name they will add a gold star. The suspect who shot him has stood up in court with counsel to protect all of his rights. While a young widowed mother must do for her kids and spend many long lonely nights. Yes, somebody killed a policeman we say in a place that we call yours and mine. While we slept in comfort behind our locked doors, a cop put his life on the line. Now his ghost walks a beat on a dark city street, and he stands at each rookies' side. He answered the call all to himself, gave his all, and a part of America died."

**CLOSING ARGUMENT (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF THE DEFENDANT.**

MR. MC SHURLEY: Thank you, Your Honor. Ladies and gentlemen. Mr. Reed. And I also would thank you for what you have gone through and what you're going through right now. On behalf of Mike, I thank you, and also Mark, we thank you. Probably the most unpleasant circumstance that you've ever been involved in.

I agree in part with what Mr. Reed has said. I disagree in part with what he has said. And I disagree - I agree that what we have had is a terrible tragedy; one like this county has perhaps never seen before. And that tragedy continues right now. And you will decide when it stops. This is something that, this type of case, that affects not only Gregg Winters, Molly, Terry, Molly's children, the police departments, the court personnel, and, yes, the attorneys, all the attorneys involved in this. And it affects you, and it will affect you the rest of your lives, what you're doing. So I agree that there's a tragedy, and we have to decide when the tragedy is going to stop.

I had a lot of notes prepared and outlines made, things I wanted to talk about, but I really can't get up here and read to you from cards. I

can't read from an outline, three by five cards. I have to talk to you from the heart, so I just put the notes down and didn't bring them with me. I can't do it that way.

A lot of talk. You have been involved in this process now for weeks. It started when you were coming up here for the jury selection process. That's something you need to remember because during that process you received perhaps a lot of education about the law, laws you didn't know about, laws that some of you agreed with, laws that some of you disagreed with. But we're here today and part of what we're talking about is the law.

We use these words, and we talked about them before; aggravators, and one of those being the killing of a police officer in the line of duty. And we talk about the mitigators, and we talked about those in great detail. We all had different definitions for those. This is what it's coming down to right now is you're going to have to use the law, the language, your Instructions and your duty.

Now Mr. Reed would have you believe that when we talk about these mitigators that we have four. He told you there were four that you may be instructed upon. I submit there are thousands of mitigators, not four. I do want to talk about some of those mitigators briefly. The first one they talked about was no significant history of prior criminal conduct. I ask you, ladies and gentlemen, don't be misled with what is stated up here. When you deliberate, go from your own memory as far as what was said. Put things together, use your common sense, use your judgment, your intelligence.

They read off a list of criminal conduct. And they started back with a minor consuming charge that Mike was involved in. He admitted that. Talked about a burglary he committed when he was a juvenile, and he told you about that. And if you'll remember those circumstances, that's the same night, his mother testified to it also. That his father had gotten intoxicated, drunk and taken a shotgun, forced all the children out of the home, locked them out and was going to kill his mother. He's not saying that was an excuse on why he went and broke in. Coincidence? I don't know. It happened the same night though. He went with a buddy. Broke in, stole some cigarettes, a couple of \$2 bills, and he had a juvenile record as a result of that. What did he do? He went in, he admitted it, worked two or three jobs, saved up his money, paid the restitution. State talks about another incident of criminal conduct; being arrested again on a minor consuming. Remember the rest of the list that they read to you. That happened over a seven-and-a-half-day period. Don't be misled into some extensive list of criminal conduct here. Especially something that caught my attention. Mr.

Reed mentioned the other burglary. Mike admitted that. Then he told you conspiracy to commit burglary. That's the same incident. That's the way the law reads. It's not another one. Don't be misled. Carrying a concealed weapon. That's back to the burglary. He had been drinking. Carrying a gun without a permit. On and on, they try to just pile on this criminal conduct. It all arose out of the same incident, ladies and gentlemen, seven-and-a-half-day period that took place.

Another one: Was he under the influence of extreme or mental disturbance when he committed the murder. Mr. Reed - the custody of his son, the problems Mike was going through, nowhere to live, his job situation, his income situation, situation with his estranged wife at that time working as a prostitute at the Southside Gun Shop. You decide if that's stress, if that could cause some emotional stress.

Number three: Capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication. Again, we go way back on that one. During the jury selection process, and today the State still comes in and maintains, do not look at intoxication. It's not a factor for consideration. And remember on the chalkboard they kept putting down .10, that doesn't mean anything. .15, that doesn't mean anything. .18, they're telling you that doesn't mean anything. You heard the experts testify as to what that meant. Especially when the ultimate test came in, it was .22. .22 at the time of the incident. They're saying ignore that; that just pertains to the fact that he couldn't drive a car. Doesn't mean he was intoxicated. Had nothing to do with what happened that night. We would ask you to consider that instruction carefully and look at that language and think about that.

We're not - when we're talking this mitigator, this factor, we're not talking responsibility. You have determined responsibility. Mike accepts that. He holds no grudge to any of you, no ill feelings. He accepts your judgment. We're talking now degree of punishment. Not responsibility. Keep that in mind.

Mr. Reed also indicated there's a fourth mitigator you can look at: Any other circumstances appropriate for consideration. Now there are not subparagraphs below that where it says 1 through 5, or 1 through 15 or 1 through 20. It's endless. Thousands, hundreds of thousands, of things you can consider, and we would ask you to consider. Consider his age. Don't be misled again. You heard something earlier that he was not under 18. That's true. You can consider his age. You can consider, as I told you when we were selecting the jury, anything and everything you have heard from this witness stand, and that's what we're asking

you to do. And then to balance those.

When I thought about this the other night as far as what's really gone on here since December 28th of last year, I thought, well, this is - it's really like a war that we've had and that we're involved in today. Because I submit when Officer Gregg Winters was shot, the State of Indiana declared war upon Mike Lambert. And to that end the State gathered the police officers of the County and the City to act as their soldiers and go out and gather evidence to be used against the enemy, Mike Lambert, and they did that. They gathered the evidence, processed the evidence. Endless hours spent to that end. And then the battle plan changed on January the 8th when Gregg Winters died. Then the State declared we're still at war, but we don't want to just take prisoners; we're going to kill the prisoners of this war. And you have been a part of this process, and, believe it or not, during this jury selection process, I guess that was maybe an attempt to have you become some of the soldiers in this battle.

And think back to how that process went and what was trying to be done at that time. State of Indiana was recruiting some soldiers that would kill upon command. You're directed to kill. You kill, you don't ask any questions. Don't use your common sense. Especially don't use your heart. Don't use any logic. Don't question the orders. Kill upon command. And you remember some of the questions we asked you. We were looking for soldiers also. And I asked all of you if you could keep an open mind. Consider the case before you made a decision on what you would do. Look at all the factors. Use your common sense, use your logic, and at that time, perhaps see if this war could be won without the killing of another person. And that's why the tragedy goes on because right now we have had a terrible tragedy. It's going on right now. And I guess what I'm asking you is, is it necessary to take one more life to win this war? Is it necessary at this time to execute the prisoner? I think not. I think it's time that a cease-fire be declared, a truce declared, and that there be no more casualties. Let the healing process start. Let's not create another scene where David Lambert is going to his father's funeral. Thank you.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF THE DEFENDANT.

MR. MAYNARD: Ladies and gentlemen, Mr. Reed was talking to you about duty, to do your duty. We want you to do your duty, too. What your duty is, is to weigh these things, is to think about this aggravator and these mitigators. We can talk to you about those mitigators, but those mitigators are things you'll find yourselves. You'll find them. And what's a mitigator to one may not be a

mitigator to another of you, but that's okay, because what you've got is a balancing process. It's an individual balancing. Before you can decide that you want to tell the Judge to kill Mike in the electric chair, each one of you is going to have to be convinced beyond a reasonable doubt that they have proven the aggravating circumstance to you. And each one of you in your own heart is going to have to weigh mitigation against that aggravator and come to your own individualized decision as to whether or not that aggravator so outweighs the mitigators that it justifies the taking of a life. You may not, each one of you may not give the same weight to the same mitigators. It's something you have to do on your own. And that's what we're going to ask you to do.

And it's going to be a tough job. I agree with Mr. Reed. Police Officers, I have a high - very, very high regard for. They do get out there, they put their lives on the line for people like us. And we've got tragedy. We lost one, a very good one. Mike needs to be punished for it. Oh, yeah. Does he need to be killed? Is that what it takes?

You know being a criminal defense attorney, I don't get very many nice clients, believe me. They're awful hard to like. Real hard. They really are. When I first started representing Mike on this case, first met him, I had read in the newspapers what had gone on, and I thought what kind of an animal am I going to be dealing with this time, what kind of a cold animal. Expecting that's what I'd find in Mike.

I like him a lot. I hate what he did. I hate it. But I have come to like him. He's a person. Mr. Reed asked you, is there any mitigation whatsoever that could outweigh killing a police officer? I'm going to suggest something to you; humanity, humanity. As we've sat through these proceedings, you have seen Mike maybe smile just as you people have smiled from time to time. You have seen him cry just as you have cried from time to time. It's because he's a human being. He's got feelings. He's got emotions. He's a loving father of a little boy.

Folks, we're asking you to search your hearts. You don't leave your compassion at the jury room door. Mike is here. His skin is warm. I can feel his heart beat. We're asking for your compassion and your humanity.

**CLOSING REBUTTAL (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF STATE OF INDIANA.**

MR. REED: Counsel for the defense does a fine job as usual in working with what he had to work with. Where was the mitigating factor? Where was there any conversation about some reason in law or the evidence. He's asked you to display sympathy. Nothing wrong with sympathy. I

expected every one of you to come in here with a certain amount of sympathy. You're human beings. You're good people. You have hearts and souls and you care. But you have taken an oath to follow the law and the evidence. We all knew you'd have sympathy when you came here. He's so young, and he's got a baby boy. He can procreate. And he can smile. And where is the mitigator? Where is anything that makes the intentional slamming of six shots into the back of a police officer's head by ambush something less than what it is? When is it? When did they talk about that? Did I miss it completely?

There are shields in this case. We talked about war. It is a war. This war is going on every day. Sometimes you hear about it. Sometimes you don't. Most of the time you're safe at home when the war is going on. Prisoners are being taken. Lives are being ruined every day. All you have to do is look around this room, and you see a lot of the soldiers, your soldiers, who are fighting that war every day. What are they fighting against? They're fighting against any enemy, an enemy who would like to take your money, your body, your life, your freedom, your rights. What's between you and that enemy? A shield. That shield. That's the shield that's between you and that enemy, this enemy.

Yes, we're not asking any more for prisoners. We do take prisoners in this war from time to time. Maybe a lot of the time. Sometimes we run up against an enemy who won't be taken prisoner. This is an enemy who would not be taken prisoner. Oh, he held up the white flag, and he surrendered all right. But then he assassinated his captor. Violating every precept of common decency and humanity. And now he asks that of you. He wants you to not follow the law, not follow your oath, and not follow the duty to follow the law. The duty, the same duty of following the law that cost Gregg Winters his life.

What's the message? What do we say to people who are willing to kill the cop? What do we say to the people who will not yield to the authority of that badge? That's a special kind of criminal, a special kind of enemy. They want to cease-fire and a truce. Boy, that would be nice if we could have a cease-fire and a truce. Wouldn't it be nice if all of these people in blue and brown with the shield on their chest could lay down their weapons and simply go home. Wouldn't it be nice if we didn't need a prosecuting attorney and courtrooms and juries and prisons and death penalties. I'd like to have that truce. I'd like to have that kind of peace. Unfortunately for all of those, there are too many Mike Lamberts in the world for that to ever happen.

You're not our soldiers to kill. You're our soldiers to apply the law. You take an oath very

much like the oath these officers took, an oath very much like Officer Winters took to uphold the Constitution and the laws of the State of Indiana, so help me God. He followed his oath to the best of his ability. That's all we ask. Follow your oath. Make the one recommendation in this case that makes any sense under the law. It's a matter of duty, honor, dignity. There is no other choice. Thank you.

[The jury unanimously recommended a death sentence for Lambert, who was sentenced to death by Judge Barnet on January 17, 1992. The conviction and sentence was affirmed on direct appeal by the Indiana Supreme Court at Lambert v. State, 643 N.E.2d 349 (Ind. December 6, 1994).]

CLOSING ARGUMENTS

State v. Wisheart Madison Superior Court 1983

CASE SUMMARY: Anderson Police received an anonymous call to go to a certain apartment where they would find a body. Police did so and found the body of 61 year old Marjorie Johnson. Her clothing was torn and wrapped around her mid-section, her head was beaten and bloody, and there were 13 stab wounds in her chest area. Johnson was a regular visitor to the Christian Center, where Wisheart resided. Another resident testified that Wisheart had sent a letter to Johnson before the murder, talking about going to old people's houses and robbing them. Upon his arrest, Wisheart gave a confession, admitting that he had stabbed Johnson several times with several weapons, punching her with his fist, and striking her in the head with a whiskey bottle. He stated he took \$14 and admitted he was the one who tipped off police.

Wisheart was convicted of Murder, Burglary, Robbery, Theft in the Madison Superior Court, Judge Thomas Newman, Jr. Presiding. Prosecutor William Lawler represented the State. Garry W. Miracle represented the defendant.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF THE STATE OF INDIANA.

MR. LAWLER: May it please the court, counsel for the defense, ladies and gentlemen of the jury. This is the last time that the . . . at least in this procedure . . . that the . . . we will have an opportunity to talk to you about this particular situation. Obviously at this time, we are here to talk about the sentencing procedure and what is to be recommended for the . . . this particular defendant. We believe that the evidence is . . . and I will talk to you a little bit about the law, as to what takes place . . . what you have to look for, because I think sometimes the instructions pass by pretty quickly. It's pretty difficult to grasp exactly what's in the instructions.

We have . . . reference the law in this particular instance the law regarding the death penalty and if you down through the years, we have had a number of decisions, more particularly in 1972, the decision known as Furman v. Georgia. The Supreme Court set forth certain guidelines whereby they have to have these guidelines in order to give the death penalty. In 1976, the Supreme Court, in a number of cases, including a Florida case, a Texas case, a North Carolina case, the U.S. Supreme Court again further honed the situation as to giving the death penalty.

In the first instance, and I think each and every juror here would admit that since you're placed in this position, that there ought to be some guidelines, and the Supreme Court has set certain

guidelines. And through this and down through the years, our legislature has tried to accommodate those situations and comport . . . make them to comport with the guidelines of the U.S. Supreme Court in giving the death penalty. They said that, you know, you just can't arbitrarily or capriciously give the death penalty, and, therefore, with these guidelines . . . and these guidelines have been set forth . . . have indicated that . . . how the death penalty can be given. The Indiana legislature, in its last act regarding the death penalty and the guidelines . . . and we have what we call aggravating circumstances. We have mitigating circumstances, which you, as the jurors, will have to take into consideration in making your determination. The Court will read you the instructions regarding this particular law and if I may, just for the sake of maybe repetition . . . maybe helping you folks in reading this law. I've got the instruction which I might have, and this is the law of the State of Indiana regarding the guidelines to you folks as to giving the death penalty.

The law says, "The State may seek the death sentence for murder by alleging on a page separate from the rest of the charging instrument," which is the Information . . . the Count 5, which you're going hear read by Judge Newman in the final instructions . . . "the existence of at least one of the aggravating circumstances listed in Subsection B of this section. In the sentencing hearing after a person is convicted of murder, the State must prove beyond a reasonable doubt the existence of at least one of the aggravating circumstances alleged. The aggravating circumstances are as follows . . . It's set out in nine in this particular . . . what you can look to, what you have to look to. "The aggravating circumstances are as follows: The defendant committed the murder by intentionally killing the victim while committing or attempting to commit arson, burglary, child molesting, criminal deviate conduct, kidnaping, rape or robbery. Two, the defendant committed the murder by the unlawful detonation of an explosive with the intent to injure a person or endanger property. Three, the defendant committed the murder by lying in wait. Four, the defendant who committed the murder was hired to kill. Five, the defendant committed the murder by hiring another person to kill. Six, the victim in the murder was a corrections employee, fireman, judge or a law enforcement officer, and either the victim was acting in the course of duty or the murderer was motivated by an act that the victim performed while acting in the course of duty. Seven, the defendant has been convicted of another murder. Eight, the defendant has committed another murder at any time regardless

of whether he has been convicted of that other murder. Nine, the defendant was under a sentence of life imprisonment at the time of the murder. And then, those are the aggravating circumstances that you can look to that's set out by our legislature as a guideline to determine whether or not the State has proved . . . proven to you folks beyond a reasonable doubt that he has committed . . . or it comes under any one of these aggravating circumstances.

C . . . then it spells out not only do we have to have aggravating circumstances, but also we have to have mitigating, or things that take away from that aggravating circumstances. The law reads as follows: "The mitigating circumstances that may be considered under this section are as follows: One, the defendant has no significant history of prior criminal conduct. Two, the defendant was under the influence of extreme mental or emotional disturbance when he committed the murder. Three, the victim was a participant in or consented to the defendant's conduct. Four, the defendant was an accomplice in a murder committed by another person and the defendant's participation was relatively minor. Five, the defendant acted under the substantial domination of another person. Six, the defendant's capacity to appreciate the criminality 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 of intoxication. And then, Seven, any other circumstances appropriate for consideration."

If I might consider the aggravating circumstances, I think in this particular situation, rather than going through all those . . . and the Court . . . the State in filing the charge back on October 18, 1982, set the tenor as to what the aggravating circumstances were. The aggravating circumstances, and here again we have prepared for you this . . . setting forth the particular section . . . and here I've mentioned to you one through nine . . . the sections which we have for aggravating circumstances. Admittedly by the State, it cannot be anything between two and nine because we did not prove that. The section that is . . . has to do with . . . what you folks are here to determine today as an aggravating circumstance would be the first section. Again, the law provides for the penalty of death upon a conviction for the crime of murder under one or more of the following circumstances. The defendant, one, committed the murder by intentionally, by intentional killing the victim while committing or attempting to commit an arson, burglary, child molesting, criminal deviate conduct, kidnaping, rape or robbery. It says "or" and you will be instructed . . . and you folks in rendering your verdict here last Saturday evening . . . I might call to your attention the important part of this . . . intentionally. Secondly, it spelled out burglary or robbery. We have, in the first, in my opinion,, two aggravating circumstances in this

case that you can consider. I think that we've proven that beyond a reasonable doubt. I think the best evidence by the fact that you found him guilty on Saturday evening of those particular offenses. Intentionally is the key word. We know, now, from his own statement, that he said that he saw the name that he intended . . . he went there with the intent to kill. So, you see, by his own words . . . by his own actions in the horrible and terrible way he beat and the way he stabbed this woman . . . certainly, if he had not have said that he intentionally did it, it could be inferred that he intentionally did it. So, in my opinion, we have strong evidence of an inference that he intentionally did it. Not only that, we have even stronger evidence that he said he intentionally did it. That is the uncontroverted evidence in this particular case.

So, I submit to you, ladies and gentlemen of the jury, that in . . . under this particular one, we have shown that he . . . there are two aggravating circumstances under this particular section. One, that he committed the murder by intentionally killing the victim while committing the crime of robbery. Secondly . . . the second aggravating circumstance is he committed the murder by intentionally killing the victim while intentionally committing the felony of burglary. So we have two,

I think that there is no question. In my opinion, it is uncontroverted that this person has been proven guilty beyond a reasonable doubt, that he has . . . at least has two . . . under our scheme of things under Indiana law . . . that there have been proven beyond a reasonable doubt two aggravating circumstances in this particular case.

Let us look . . . because you have to consider it . . . and by law you must consider it and it's right that you should consider the mitigating circumstances. Let's look at that in a little bit more detail. Mitigating circumstances . . . the defendant has no significant history of prior criminal conduct. We simply know that that is not true. We simply know that that is not true. You have heard evidence . . . and remembering that the evidence that you received in the guilt-finding section of this particular trial is also incorporated in and is a part of this sentencing trial. That was the reason we requested it in your presence here and the Judge allowed it. So all of that evidence goes before you. And you can consider all of that evidence. Now, we see that the mitigating . . . there is none . . . we see all kinds of criminal conduct on this part of this defendant. We see all kinds of criminal conduct in that he was . . . and we went back quite a ways as to when this all started. But we've seen criminal conduct through the time that he started when he was 10 years old. We've seen the conduct progress where we hear about him breaking a girl's jaw, about the use of dope, about drugs, about the use of . . . about other things that are criminal. And ultimately we know that in the year of 1981 he was convicted of . . . pursuant to

testimony . . . he was convicted of arson and burglary for the Anderson Hotel fire and burglary. So we see that there was all kinds of evidence of a criminal background.

So, in my humble opinion, this could not be a mitigating factor. The second mitigating factor, that he was . . . the defendant was under the influence of extreme mental or emotional disturbance when he committed the murder. There is absolutely no evidence of that, absolutely none that I can recall that was put into evidence that he was under any influence of any extreme mental or emotional disturbance. None at all. There was some evidence . . . and I think the best evidence that they have for the defendant that maybe he didn't have a place to go. His grandmother . . . and you heard his grandmother testify that he couldn't go because he was on probation. And I got the impression from her testimony that he could have gone had he not been on probation. So that would be the farthest thing . . . that would be the thing that you'd have to stretch to . . . to fit Paragraph Two here . . . that he was under the influence of an extreme mental or emotional disturbance when he committed the murder. That, in my opinion, just has not been shown.

The victim . . . three, the victim was a participant in or consented to the defendant's conduct. I don't . . . there is absolutely no evidence that that took place. Four, the defendant was an accomplice in a murder committed by another and the defendant's participation was relatively minor. Absolutely no evidence that his participation was minor in this particular incident. Absolutely no evidence that there was anybody else who participated, in fact. So this could not be a mitigating factor. Five, the defendant acted under the substantial domination of another person. Absolutely nothing regarding to that. So this could not be a mitigating circumstance. Six, the defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired as a result of mental disease or defect or intoxication. This you ruled upon when you were in the guilt phase of this particular trial. You ruled upon it, and if you recall that . . . they were used in the test that we had here on the blackboard . . . mental disease and defect . . . and you ruled, apparently, from your conviction of this individual, that that did not apply, and we believe that the evidence substantiates that that certainly does not apply, and this would not be a mitigating circumstance. Under Seven, any other circumstances appropriate for consideration. There have been no other circumstances shown to you appropriate for your consideration.

Therefore, the . . . in listing those things, and you will have the opportunity to hear those things when the court gives you the instruction, you can see, in my opinion, that the jury has been shown beyond a reasonable doubt that under Paragraph

One of the aggravating circumstances, there are two aggravating circumstances to which you may consider. You only have to find one, and there are two.

And under the mitigating circumstances, in my opinion, the evidence is absolutely devoid of any mitigating circumstances. So we believe that under that, without saying more, that the jury is in a position under this and under the guidelines given to you by the legislature to recommend to Judge Newman that this man should be put to death. We see a situation, and you will be given an instruction, regarding the penalty, and this is something that you may . . . might consider. During the course of the trial, you were intentionally kept in the dark because of the law . . . because the case law in the State of Indiana . . . not . . . not knowing the penalty and I think that, if you recall, the Court said that that's not something you should be concerned about because that's something the Judge has to be concerned about . . . on sentencing. And that's the reason that you were not given it until now. But in this particular part of the procedure, you may know what the penalty may be to this man for what he has done and what you have convicted him of doing. The law setting forth the penalty for murder in Indiana is as follows: "A. A person who commits murder shall be imprisoned for a fixed term of 40 years with not more than 20 years added for aggravating circumstances, or not more than 10 years subtracted for mitigating circumstances. In addition, he may be fined not more than \$10,000." So for murder, he may get anywhere from . . . according . . . depending upon if he is not given the death penalty, he may get anything from 30 years to 60 years. The law goes on to say that "B. Notwithstanding Subsection A of this section, a person who commits a murder may be sentenced to death under Subsection 9 of this chapter," which is exactly what procedure we're in at the present time. What I read to you is Section 9, applying to death penalties.

The law goes on to say . . . you might say, well, why . . . you know, we . . . he was convicted of murder, he was convicted of robbery, he was convicted of burglary and he was convicted of theft. How does that apply? The instruction will go on to say, "The crimes of robbery and burglary are charged in the information in Count 1, murder, as the underlying offenses. Case law holds that the Court has no authority to, and, in fact, cannot impose a separate penalty for the convictions of the defendant, Mark Allen Wisheart, for robbery as set forth in Count 2, of burglary as set forth in Count Number 3, or for the theft, as set forth in Count Number 4." So, in this particular case, if the death penalty is not given to this defendant, the Judge has a range of from 30 to 60 years. There cannot be anything added because of the extra crimes of burglary and robbery because they are, by case law, underlying case . . . they're the

underlying felonies and therefore . . . what the Supreme Court says, it merges, and the Court cannot give him a consecutive term. He cannot give him a consecutive term for robbery or for burglary or for theft.

The instruction goes on to state that "It is the duty of the Court to finally determine a sentence within these guidelines. The law in Indiana in regard to parole is as follows: A person imprisoned for a felony shall be released on parole when he completes his fixed term of imprisonment less a credit time he has earned with respect to that term." Now, the credit time is determined this way . . . one hundred . . . this is all statutory law: A person assigned to Class I earns one day of credit for each day he is imprisoned for a trial or confined awaiting trial or sentencing. One day of credit for each day that he spends incarcerated. For . . . a person in Class I is a person who gets no . . . in no trouble in the institution. Now a person who gets in some trouble can go down to what we call a Class II. And under that circumstance, he earns one day of credit time for every two days he is imprisoned for a crime or confined awaiting trial or sentencing. So, if he gets in some trouble where the Department of Correction puts him in Class II, then he only gets one day for each two days served. And, three, if he gets in a lot of trouble, he can . . . and assigned to Class III, earns no credit time. But a person who goes into the institution, under our parole procedure right now . . . for example, Mark Allen Wisehart, if the Judge should see fit to give him the maximum, or if the Judge should see fit to give him the minimum of 30 years, 15 years is what he would have to serve. If the Judge would see fit to give him 60 years, then 30 years is what he would have to serve. Remember, we're assuming that he doesn't get in any trouble while he's in the institution because there could be more time added. And we think that this definitely should be a consideration in your decision in this case.

I told you about the Supreme Court. This has not been a hurried thing on the part of our U.S. Supreme Court because, if you recall, for a number of years they failed to make any decision on it and for a long, long time, many people lingered, and, I think, rather unfairly, in the institutions on Death Row. And as I said, in 1972 they came along with certain guidelines. In 1976 they refined the guidelines and said that we should do certain things. In Indiana, as well as the U.S. Supreme Court, the . . . we have . . . we have the Eighth Amendment to the U.S. Constitution, which talks about cruel and unusual treatment. This has been handled by the U.S. Supreme Court and also by the Indiana Supreme Court. It has been held by the U.S. Supreme Court in most recent decisions, and held by the Indiana Supreme Court in most recent decisions, that under the Eighth Amendment it is not cruel and unusual treatment or punishment. We have seen that in this, also, that there are questions regarding the holdings of

our Supreme Court about certain things. And this . . . what's the purpose? What do you look to as far as the death penalty is concerned? Why are we talking about it? Why are we even considering the death penalty?

Our Supreme Court, in the case of Williams v. State, which the . . . it's a fairly recent case. It's a case that was determined by our U.S. Supreme Court on January 19, 1982. There was a rehearing denied on March 26, 1982, said these things, and Justice Hunter was . . . wrote the opinion. "Defendant's final specification in this Brewer case of constitutional error is that the death penalty statute violates Article I, Section 18, of the Indiana Constitution, which requires our penal code to be founded on the principles of reformation and not of vindictive justice. However, this provision has been consistently interpreted by this Court not to prohibit capital punishment. We have found that this section is an admonition to the legislative branch of the state government and is addressed to public policy which the legislature must follow in formulating the penal code. It applies to the penal law as a system to insure that these laws are framed upon the theory of reformation, as well as the protection of society." The two things that Justice Hunter said in the 1982 opinion is reformation . . . reformation of the individual and protection of society.

Let us consider, under those two headings as outlined by Justice Hunter, what we have in this particular case. Reformation. We have seen a complete history of this defendant, as I said earlier, from the date he was, I think, 10 years old, of breaking into Automobiles, stealing things. You have information that at that age, there was also . . . he stole a gun. We have at that . . . also we have some background which was brought in by the defense in this cause under . . . by the . . . remember the lady from Cross Roads. Then we have, I think, during a period of time maybe a little bit more background in this particular case as to . . . make the determination as to whether there's been reformation than we have in most cases. Because we see that we had a history there in Cross Roads, a place where this person was sent rather than Indiana Boys School because they felt that they might be able to help him there. That he was sent there in March of 1978 . . . March 13th, 1978. That he remained there till July 14th of 1980. Now, what did we see happen during that course of time . . . reformation . . . what did we see happen? We see, during that course of time, truancy, drug abuse . . . (inaudible) these people . . . and you saw these people . . . Ken Rausch . . . you saw the Howells that were in here, I believe, that truly attempted to help this person. Some people, you can't help. And I submit to you that this defendant can't be helped. He cannot be helped.

You saw those people come in here and testify and tell you what they tried to do as far as this person was concerned. You heard the Bradshaw

lady, who came in and testified that how she worked with this person maybe 300 hours . . . 300 hours of counseling, of going through these things with him and what happened? As I say, there was a response of truancy in school, being kicked out of school, losing jobs, lying, cheating, physical abuse to other people, including the breaking of a girl's jaw, of fights . . . there were either 12 or 16 fights, all during the course of a relatively short time he was at this institution. I brought out on cross examination with Mrs. Bradshaw, if you recall, that . . . she was talking about certain reports that they . . . she prepared. And I brought her out . . . if you recall, we talked about she prepared them quarterly. These reports were prepared. And despite her 300 hours, despite what all these other good people did or tried to do for this defendant, that he still did all these things and she admitted in the quarterly reports that she prepared, which she submitted, and which she had care of at the time, that these things were shown to be consistent on all the reports. Speaking of Mark Allen Wisehart, he is physically aggressive, bossy, bragging, teasing, defiant, resistive, resentful, sneaky, cheating and overall delinquent in his behavior and thinking. Now, that was the last report submitted. This is what happened over that period of time. I think that we see progress. We get out of Cross Roads and Mark Allen Wisehart progresses a little bit more. As I told you, he was out from . . . in 1980 . . . July 14, 1980. We seen, then, that the next thing he gets to . . . and remembering that he is 20 years old at the present time, his birthday being November 21st of 1962 . . . that shortly after he reached the age of 18 years of age, that he became involved in burning or arson . . . burning . . . setting fire to the Anderson Hotel, and burglarizing. You heard about those convictions. You heard about how he was sent to the Indiana Youth Center.

Again, we have a good history . . . a good history with some candor . . . with some candor. Because we have, in considering these things and the potentiality and what this man is all about, we have the letters that you recall that you read. And I'm certain that they were quite shocking to you, as they were to me. I don't think I've ever read anything quite like them. I think that we see that . . . from the tenor of those letters . . . that we have a criminal mind, and if I might coin the phrase or at least the behavior pattern that's set out in what we talked about as DMS3, an antisocial personality . . . a person who continually gets in trouble. A person who continually gets in trouble. Let me read a little bit . . . and remember the Supreme Court has said that what we must look to in these things . . . in sentencing . . . is reformation . . . reformation and the protection of the public. That's what you folks have to look to.

And just in taking some of the items from these particular exhibits . . . and I know that you can't be a in position that . . . to remember all

these things, but I just wanted to excise some of these statements just to show you . . . just to show you just how this person thinks, how he thinks. You've seen how he committed murder, a horrible murder, but we have some guidelines under that point, you see. We go from Cross Roads to IYC to letters that he sends to his friend, Scott. These are quotes from his letters. It's State's Exhibit 75A, "I know I'm not going to be out of money no more. What we can do is buy a car with our profits . . . profit . . . profits in quotes . . . "After a year, Anderson will be too much for me to handle. Hello, trains. Man, you don't know how anxious I am. We gonna be bad. I appreciate the kind words on my half about how we will always be brothers. I feel the same way. We ain't gonna take no shit. We gonna give it. We ain't gonna sit on our ass. We gonna live it." And then, "I just made that up. I think that's pretty sharp. Yeah, I know I was scared at first, but then after we started doing more and more, we got more bolder. Oh, yeah, we was bold. Remember what we were supposed to do on the night we got busted? The bus station and B & B Jewelers. Shit, we bad. Uh-huh, we bad." And as I said in my argument in the first part, that might be fine if you say immaturity, but we see the propensity for this man to carry out those things, and I say it's not immaturity. It's the thinking of this person. It's been the thinking of him since he's 10 years of age. He goes on to say on 75A, . . . I think that you got some damn good ideas on killing people. So we're agreed. If our freedom is threatened, then we waste somebody. Cool. Thought you knew, but I already got a target on Ricky Richards'. He's dead meat. Period." State's Exhibit 75D, "I guess I'm trying to start a record here at the big . . . " in quotes, 'the big, bad IYC. Whatta you think? Well, I'm not, I'm too burned out to think of anything else to say." 75 . . . State's Exhibit 75E, "If we was to get our story straight before anything ever went down, leave no fingerprints . . . " In the same exhibit, "Did you get any of the stories on us in the paper? I heard we made headlines for days. That's what we wanted anyway, except we didn't want to get busted." 75F, "Now that it is almost over, do you still feel the same way about our crime splurges? I do." 75G, "So I went up to the desk and told him to give me the Herald. They got an article in there about all of 181 fires and I got the five sentences it said about our escapade. About that church job. First I got to know if you're serious. I'll be able to do anything except fag tricks. Roll fags, yes. Also, yes, Bill do have some guns. If you do break in there before I get out, get me one and save it for me. Be cool. I will be going back to Fort Wayne and when I leave, Ricky fucking Richards will be dead. You may not want to hang with anymore when we hit the bricks, but I will take no shit off of nobody. And I'm going to be a thievin' motherfucker and Janice Myers at YMCA, watch out. And they better hope that they ain't thrown my shit away." 75G,

"So what do you think? Are we gonna be bad or not? Roy White started talking some shit to me so I went off on his ass. I mean, man, I really hurt him. Broke his glasses in his eyes, broke his nose and knocked his front two teeth out.' The rap on how we got busted. I fucked up. If I had shut up, the only thing that they would have known about was the Pittsburgh Paints burglary. But when they took us to those little rooms at the cop shop, they took my shoes and asked my why the bottoms of them was so black. Man, I was scared. I ain't gonna lie. I was terrified. All I could see, now, in prison, was years. So, yes, I spilled my guts. I've been in jail, juvenile centers, group homes, children's homes and now prison and, Scott, it ain't shit." Going on, "In case you're wondering, if I would have got charged with everything we did, I was facing 210 years, but I took a plea bargain and got two years for the burglary and 10 years for the hotel arson, but I got the 10 years suspended." Going on, "I still say it was fun." State's Exhibit 75N, "Had six major writeups, two for fighting. If I don't cool it, I won't be leaving in August. But, man, I ain't got no place to go. I don't even have my clothes or nothing and these fucks gotta pay. And they will. Yeah, Bill Lemon does got guns. I don't plan on ever getting caught again.' 75K, "Head on my coat laying on the table and a nigger guard came in and told me he picked me to push laundry carts and I told him to kick fuckin, mud. Well, he left and about five minutes later he came back in and said, 'Are you ready to do the laundry carts?' and I said no and I didn't even lift my head off the table. I said, Joe Smith . . . he asked my name. I said Joe Smith. Now leave me the fuck alone. I think that made him a little mad. Well, the next day, the dude gave me a writeup, Major Class B, lying to an officer. Ain't that a bitch?" "Let me . . .", going on in the same letter, I . . . let me see now. The reason we was going to bust into the bus station was to get the squares out of the machines and the money and things." State's Exhibit 75L, "So tell me. What do you want to do to the Y, cause I think maybe they might have tossed our shit. It just might call for drastic measures. Good idea on the piece, man." As you recall, what a piece is under that type of lingo, is a gun. "I'm gettin' one, too. Get into some serious action. But we too smart to get caught. I know we are. You got to admit we were smooth on the bricks. If it wouldn't have been for that bitch at the Y, we still would be walking. I snitched like a baby 'cause I was scared." State's Exhibit 75O: "Oh, well, I'll guess I'll just have to wait for a gun. Also, I was thinking of another place to rob. How about if we get some reefer and some beer and just go on a rampage through Anderson. We'll show what real Anderstonians are lot alike. . . . or are alike. Just let try to stop me."

Going on in the same letter, "But Ricky Richards is just short. I'm going to make the boy sorry he was ever born. I'm telling you now, and

yes, we will find him." Then going on, "Robbin' gem of torpedoes and flares. Those were the days and they will be again." State's Exhibit 75M, 'I'm kind of like a celebrity around here cause I slammed that guard while we was watchin' New Yearls.' Going on in the same letter: "My suggestions on what you should do about the Y business is this: Wait for me to get out and if they ain't got our shit, but if they do, super cool. Pick it up." And then I think in one of the most revealing letters of all is State's Exhibit 76, which reads as follows, where he talks about going out in the country, "Check this out. We got a car, right? Okay, then we cruise out in the country where people live all by themselves. One of us knocks on the door and asks to use the phone. Then when you get inside, you make sure that there is nobody else in there, then you pull out the gun and you signal for the other one to come in. We tie up the person or persons and then commence to rob the fuck out of them. Tell me what you think." "And I plan . . . , in the this same exhibit, "And I plan on having a gun with me when I do something so if it comes down to it I will at least shoot anybody that gets in the way, cause I don't want no more time. That doesn't mean I'm going to go around putting targets on people's heads, but I will kill if I have to."

Lastly, as to reformation . . . reform . . . here's a person that you had the . . . the occasion to see and follow for a number of years from the testimony in Court. "Yeah, buddy, I remember our crime splurges. I remember we were scared as hell one day about breaking that guy's window and all of a sudden we're doing every motherfuckin' thing. We covered just about every crime except murder and rape. Remember our assault on that fat motherfucker in the park. I don't know about you, but I enjoyed the fuck out of it, and I know it was stupid, but if I had to do it over again, I would. And I will, but I won't get caught. How does that sound to you? Remember when you brought up the subject of killing people in your last letter? Well, here's my views on what you already know that I am not reformed and I plan on having a good time no matter what when I hit the bricks. Well, if we get caught again, I'm down for at least 11 years and they will waive you to adult court."

Those are just excerpts from those letters. We're not talking about a real young . . . a young person in years, yes, but a person that, in my mind, is so infected with mind . . . infected with criminal thoughts . . . criminal designs and what he's going to do that, in my opinion, there is no chance for reformation for this particular defendant. He said he wasn't reformed. After all that he had gone through. After being sent to the IYC. No reformation. The other thing, if you recall, when I read Justice Hunter's opinion in Brewer v. State, is that you must look to the protection of society . . . the people in society. That's part of your responsibility, too. That's a part of your consideration in making this determination. I told

you that at the very optimum . . . the very maximum . . . he would only spend 30 years in the prison, and I don't think that that's consistent with what the crime he's committed. You have to make that determination. But I think that under this, as I've spelled out to you, and looking at reformation . . . and I think that you have to agree with me that that's not going to take place, that he has the possibility, a potential for getting out in 30 years from the date that he's sentenced. That certainly isn't going to take care of it, either.

So, given the fact that there's not any reformation. Given the fact that our Supreme Court has said that the other part that you can look to is protection to society. I think it's your responsibility as jurors in this particular segment . . . this particular case to find that . . . and recommend to Judge Newman that he should be given the death penalty. I sincerely believe that, and that's not . . . I'm not sitting in your position. I don't mean to usurp your job in this because it's very difficult. I can understand that. But the evidence is there. The evidence is there. The law that I walked through with you at the present time, and what I read to you here. As I said, I think it . . . in fact, it's scary to me. It's positively scary that people think that way. We don't see a progression of where he's getting better. We see a progression of where he's getting worse. And 30 years, in my opinion, if that's all that he has to do, he's going to walk the streets . . . walk the streets. Protection of the people, protection of society, protection of people in this community. I think that the only recommendation that you can do in the guidelines is to recommend to Judge Newman that he be given the death penalty. That's regarding the law, what the Supreme Court says regarding applying what you find and what you have as far as the law is concerned.

Now, let's look a little bit farther, and I'm not talking about vindictive justice when I talk about this, because the Supreme Court says that's not to be considered. But I'm talking about the horrible crime itself . . . the horrible crime itself, as to what happened to Marjorie Johnson on October 9, 1982. Can you imagine in your own eyes, can you imagine in your own mind what horrible, horrible things went on with that woman? As I indicated to you in the first part, the guilt part of this case, and before you folks deliberated . . . deliberated and found this person guilty, that you have to remember that there was a victim. You have to remember that there was somebody besides the defendant. And I'm certain you are going to hear pleas about mercy, you're going to hear pleas about how he is a young man, you're going to hear pleas about why he should not be given the death penalty. That's fine. That's defense counsel's job. But I ask you to consider . . . ask you to consider what horrible things went on, what this defendant did to this woman of 61 years of age. I indicated to you that she had a right to live. He took that life. Of

his own free will and volition, he took that life. The manner that it was taken. Can you imagine any more inhuman way that he did this, by first stabbing with scissors, stabbing with knives, stabbing with . . . or beating her head, by his own admission . . . this is not me saying it, this is what he said in his statement . . . by his own admission hitting her in the head with a wine bottle. You saw that wine bottle with the spout. He saw it. He hit her. What terrible agony . . . what terrible agony she must have gone through. That has to be a consideration of yours, too. Is the penalty consistent . . . of death . . . consistent with the crime? I think so. I put up on the board in the other argument, certain . . . certain things and certain pictures. I would like to call your attention and show just what an inhuman way this person killed this woman. When you go to thinking about mercy for him, no mercy was shown for her. Stab wounds to her back . . . Stab wounds to her back. As I told you in the first part of my argument, I feel rather . . . I sometimes have problems just trying to bring home to a jury that there was, in fact, a victim . . . in fact, a victim. She died October 9, 1982. You know, she's not around . . . not around for you to think about. You've had the opportunity to view this defendant in the Courtroom. You've had an opportunity to see him, and for whatever . . . whatever feeling that would be, we do not have the chance with Marjorie Johnson. Remember there was a victim. Remember what horrible wounds were inflicted by him by scissors, by knives, by a bottle. What an inhumane and inglorious way for a person to be in her own home and to be murdered and mangled by this man. Murdered and mangled. Look at that. Look at that. The scene as the police saw it. Almost nude. Row horrible . . . mangled and battered she was as the police saw her. Did he give Marjorie Johnson the benefit of the doubt. Did he give Marjorie Johnson the benefit of having 12 people determine whether or not she should live or die? No, he didn't do that. He set upon a course on his own to take the life of Marjorie Johnson, by his own admission, and did this. A person that does that should have mercy? I would think not. I would hope that we're past that. Another picture which I put up here, which I'm going to put up here again to show you people . . . to remind you during the course of the rest of this trial that Marjorie Johnson was the victim. Marjorie Johnson was a human being who had a right to live, and I think I mentioned that she had a right to live in that cluttered apartment if that's what she wanted to do. I imagine she was rather happy doing that. I don't know. But she did have a right to live. She had a right to do the things that she wanted to do. There's no indication that she'd ever done anything wrong. I'm sure she had, but there's no evidence of that.

But this man . . . this man did do something . . . did do something. Took the life of a person in a horrible, horrible way. Would have been more

merciful if he'd have shot her. Wouldn't that have been more merciful? No, battered and mangled. I think that the punishment of death for this defendant is warranted by the crime that's been committed. I've outlined for you the law which the Court will read to you . . . the law that applies in this case, and that, I believe that from the evidence that there is shown beyond a reasonable doubt that there are two aggravating circumstances in the law which can be held against this defendant. Remember, there only has to be one, and that there can be no mitigating circumstances that have been shown in this cause.

I indicated to you in the other part of the argument that this person had bragged in his letters about how he'd done about everything except rape and murder . . . rape and murder. Now he's committed murder. I think that his past history . . . his track record would indicate that there's always going to be a life of crime. We've seen progressively he gets worse. For the protection of society, because we know from his own words he's not going to be reformed, I ask you to recommend to Judge Newman that this man be given the death penalty.

**CLOSING ARGUMENT (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF THE DEFENDANT.**

MR. MC SHURLEY: May it please the Court, ladies and gentlemen of the jury, Mr. Lawler. When I started this case 10 months ago, as I told you in final argument, I was convinced Mark Wisheart committed this crime. And as I also told you in final argument, I don't believe he did. You, on the other hand, have listened to the evidence and you decided in your own mind beyond a reasonable doubt that he committed these crimes. We accept that judgment. What we have to determine at this hearing is what is the appropriate sentence for Mark Wisheart to have. Should he live, or should he die? Should the State, in fact, kill Mark Wisheart? That's what you're deciding.

The death penalty . . . is a nice, simple way of saying should the state be in a position to kill somebody. Now, the U. S. Supreme Court and the Indiana supreme Court say that the State has a right to kill. Do they? The statute says that, but in good Christian conscience, can anyone say that they have the right to kill? Every other state, every other sovereign state in the free world, with the exception of France, has abolished the death penalty. The only major countries that still have the death penalty, besides the United States, are the Soviet Union, the communist bloc countries and the Arabs. Everyone else has recognized that the State has no more right to kill cold-bloodedly than someone accused of committing a murder. And that's what we're talking about here. Is the State proper in cold-bloodedly killing Mark Johnson? No, they're not.

The reason why they're not is not just one reason. It's several reasons. What we have to look at here is why Mark was involved in this. Now, I ask you all to listen to me because I realize this has been a very long proceeding, and I feel very sorry that you had to go through all this. It's a terrible thing that we've had to go through all of this, and remember, I've carried the burden of this man's life on my shoulders for 10 years... excuse me, 10 months. Shortly, the burden will be passed to you, and it's an individual choice. Each and every one of you people are going to have to make an individual choice of whether you can intentionally recommend someone die, and then we will be passing the burden on to Judge Newman and it will be his final choice to make the decision about whether Mark lives or dies. It's a very, very weighty decision we have here. We're talking about sitting down and thinking through whether we're going to kill someone, much the same as the State has been accusing Mark of doing.

Did Mark sit down and rationally think through what he did in this case? Consider the evidence. Mark has a long, long history of mental disturbance. There's no doubt about that. Now, the prosecutor says, well, that's not a mitigating factor. It is definitely a mitigating factor. Mark was born, raised in a family, consumed by all sorts of problems around him. He is a factor, not only of his genes, but his environment. Somewhere along the line, something short-circuited in this boy. Are we to condemn him because he is a freak of nature? Are we to condemn him because there's something missing in his character that ought to be there? That there something wrong with his brain? Maybe, just maybe, Mark can do good. Maybe he can't. We don't know.

The other thing we need to consider . . . this is also a very important consideration . . . remember the 29 things that I listed . . . the incongruities in the statement as to time and weapons and all sorts of other things? When you're considering what's appropriate, you have to consider whether there's ever any possibility that Mark did not do what he's been convicted of. Is there even the slightest inkling in your mind that maybe, just maybe, that's not what actually happened here. Lt. Moberly sat there on the stand and admitted that there was a possibility that other people had done this . . . that there were other suspects. We need to consider these facts. If you kill someone, it's irrevocable. We can't bring him back tomorrow from the grave and say, Mark, we made a mistake. We can't bring back Mrs. Johnson from the grave. That's true. She's already dead. What we have to consider is are we going to do something that's irrevocable or are we going to do something that makes sense? Can we kill intentionally? Can we do something that's irrevocable?

When I was a child growing up, one of the things I did was go to church every Sunday. This

is a Bible I got when I was 10 years old. Earned this Bible selling pictures door-to-door and it's meant a lot to me over the years. It's something that I think we need to consider because all of us wander away from this every once in a while. I know I have. Over the 10 months that I've been involved in this case, though, it's made me appreciate the teaching of the Lord that much more, because the Lord I learned about when I was in school... the Lord I learned about on Sunday... Jesus Christ that's mentioned in this New Testament... what did he teach? He taught mercy and love and understanding. He talked about redemption. He talked about vengeance being the Lord's work. Remember back during that time period, the New Testament was the book that the Jews followed. Yet there....excuse me, the Old Testament was the book the Jews followed. And in there they had what they called the Mosaic Law, and they killed people for practically everything. You could get killed for eating meat on the Sabbath. You could get killed for not obeying the Sabbath. You could get killed for adultery, for blasphemy, for all sorts of things. But remember the Sermons on the Mount? Remember what happened there? They had the adulterous woman who came up. They were getting ready to stone her to death, and Jesus Christ said that's not the proper thing to do. It's not proper to kill another person. Let those among us without sin cast the first stone. And the moral of that story is that Jesus Christ... God makes the final decision of who lives and who dies. What right do we as individuals have to determine who should live and who should die? Why should we shorten the days that God has given this boy? That's not our province at all.

As a great theologian said in 1951, "If what we are to attest in the spirit of human punishment is not a self-conceived imaginary lifeless justice, but the righteousness of a true God who has acted and revealed himself in Jesus Christ, capital punishment will surely be the last thing on our minds. If this righteousness is what we truly attest, the punishment of the criminal must take the form in which the forgiveness won for him in Jesus Christ is revealed to him and to the less wicked by being constantly reminded. This punishment should not be . . . should not shorten the allotted time which still remains to him before he has the opportunity of fulfilling it better than he has done in the past. It must restrain him from further lapses, but also stimulate him positively to take his place orderly in human society. He must not go unpunished, but he must be punished in such a way that his life is affirmed and not denied."

There is absolutely no place in the teachings of Jesus Christ, not one word in the New Testament, the book upon which we all who are Christians believe, that says it is right to take another human life. Not one. Not one. A good, true Christian can never take a life, except possibly in self-defense. Mark Wisehart should not have his

life taken intentionally. Punishing by death attacks the very thing that it tries to protect. It's a brutalizing, brutalizing thing to have in our society. How dare we call ourselves civilized and still say that it's proper to go around killing people? And that's what capital punishment says we can do. Killing Mark Wisehart will not bring back Marjorie Johnson. Killing Mark Wisehart will not deter other people from killing. We know . . . we know this for fact. Remember when we used to public hangings? Did that stop people from killing? We used to have public beheadings. Did that stop people from killing? No, none of those did. All we're talking about in capital punishment is a vengeance, and vengeance of the most brutal and the most ultimate. It is incredible. The problem is it's irrevocable. You can't go back and bring (inaudible). The only . . . the only person . . . the only being that could bring people back from the dead is God. And I'm not aware of him having done it for the last 2000 years, but we know of many instances throughout the history of criminal justice where people have been convicted of things they didn't do. In this State, just three years ago, Larry Hicks, who . . . a man who was convicted of murder and was sitting on Death Row, was released because they found he did not commit the crime he committed. In Ohio this last year, there were two people convicted of murder who were set free because they found out they didn't commit the crimes. Those people who have been found guilty and sentenced to death as they were . . . and been convicted . . . excuse me, and then executed, what would happen? What would you say to their families? I'm sorry, we made a mistake. we followed the law and this is it. He's still dead. We can't change that. Death is too final a punishment for anyone to ever impose upon one person. Would you, by your own hand, go out there and kill this man? Would any of you, by your own hand, go out here and kill this man? Or are you going to push that off on the State and say, oh, excuse me, I just voted for it. Somebody else pulled the switch. Can't do that. You can't, because if you vote for it, and Judge Newman follows it, all 13 of you are responsible. Every single last one of you. I couldn't go through life with that load on my conscience. I really couldn't because there is too much of a possibility that a mistake could be made.

I'm sure Mr. Lawler will probably come up here on rebuttal and say, well, you're taking these things out of context that really . . . it's all right to go around killing people. That it's not against the Christian faith. Every major denomination . . . I have a list right here . . . every major Protestant denomination in this country . . . the Catholic conference . . . we're talking Southern Baptists, American Baptists, Methodists, Episcopal, Church of Christ, Church of Brethren, all three Jewish faiths . . . and remember, they're the ones who believe in the Old Testament . . . the so-called eye

for an eye and a tooth for a tooth... every last one of them has said that capital punishment is not a proper punishment for good, true people and is not something that is bound up in the Scriptures as being an appropriate punishment for any true human being of Christian or Judaic beliefs to follow. Israel has even abolished capital punishment. These are things we need to consider. Can we as good Christians condemn a man to death? I say we can't. It's not right. It's not an appropriate punishment. I don't care whether the . . . when the courts talk about what's cruel and unusual, they're talking about torturing people to death. They're not talking about what's right. All they say is, well, we set these guidelines down and if you meet the guidelines then you can kill somebody. Is that right? Should . . . should the desire for vengeance overrule the desire for being a good Christian? Should the desire for vengeance reduce us back to the barbaric ways that we've been trying to get away from for centuries? What would make us any better than the barbarians that lived in the past who clubbed each other and ate raw meat? We're supposed... supposedly we've come a long way since then.

Capital punishment is an anachronism. It's been abolished in eight states in the country. It's been abolished in over 40 developed countries around the world. Even though it is supposedly proper in this State, you don't have to impose it if you don't want to. The law does not say that you have to impose capital punishment. The law says you can consider it, and if it's appropriate you can impose it. In this case, it is not appropriate. In no case involving a human being is it appropriate. Not one. Not ever. Not if you claim to be a Christian.

Mr. Lawler says there are no aggravating circumstances . . . or excuse me, no mitigating circumstances here. Remember all the evidence we had. We had witness after witness after witness for both the prosecution and the defense talk about the mental problems Mark had. Every last one of them did. Now, admittedly, you rejected it as a possible mitigating factor on his responsibility for the crime, but the law allows you to consider that as to whether the sentence is proper. And for those of you who do not feel that your Christian beliefs are strong enough to consider that, consider the other. Consider whether Mark's mental condition was such that he did not commit this crime . . . or that he should not be executed because of this crime. And I think if you . . . if you look at all those factors, there's only one conclusion you can reach, that it is not proper to impose the death penalty in this case. It will not bring Marjorie Johnson back. It will not do anything except satisfy the desire for vengeance.

Mr. Lawler says, well, he could be out in 30 years. The statute says the Judge will sentence the person up to a maximum of 60 years. How he . . . how much time he spends in jail, how much time . . . he may go to jail and get killed himself.

Who's to say that putting somebody in jail is not more cruel than killing them? Our prisons are not a pretty place. I've been involved in too many cases arising out of the Pendleton Reformatory to think that that's a nice idyllic place to go to. It's not a country club. It's a jungle. It's a place where the inmates are just as much in fear of their lives as the guards. It's a terrible place. It's not a picnic. In actual fact, it's not a place that anyone would want to go to in their right mind. Mark, as you've heard time and time again, has a desire to be institutionalized. It's been my contention all along . . . I still feel this . . . that he committed . . . that he confessed to this crime because he wanted to be put away. I still feel that way. He didn't have to tell those police officers what happened. There was no way in the world they could put him in there. Remember, they had absolutely no physical evidence to put him in that building. Not one single shred of evidence. No fingerprints. Absolutely nothing to put him in that building. But he sat there, yeah, I did it. Lock me up. Remember that? Great desire to be punished. He wants to be locked up because he's very masochistic to himself. Masochism means somebody who hurts themselves, and he's . . . Mark has hurt himself more than anyone ever could. It's very, very sad. It's a very, very frustrating experience to be standing here in front of you and trying to explain to you what Mark is really like. It's difficult to tell.

You hear those letters. They sound terrible. But those are the letters of an immature, diseased mind. A little boy who has never grown up. A little boy who has a very bad problem with inferiority . . . with being able to express himself. There's no indication he ever shot anybody. They talked about it a lot. Did they go out in the country? He can't even drive a car. Remember that? The one guy that was saying that... how he was trying to teach Mark how to drive a car. Mark didn't even know how to drive a car. It's just part of his fantasy life. It's very sad, indeed. I feel so inadequate trying to explain to you what I've... what I've experienced with Mark over the last 10 years and what you really need to know.

The only thing I can tell you is look deep in your hearts. Make sure that if you come back with a verdict recommending death that you can live with that, that there's no doubt in your mind that that's a proper sentence because, believe me, from this day forward you're going to remember this. You're going to have to live with it, and be satisfied with your verdict. If it's right for you, and each one of you individually, you vote your conscience, but don't do something that you really have a doubt about. In this case, remember Mark is a human being, a living, breathing human being with a lot of good qualities. You heard those good qualities. He can be loving at times. He gave cards and stuff at Mothers' Day. He looked after little kids, took the blame for other people for things they did wrong.

Mark is not all bad like the prosecutor wants you to think he is. Mark is a human being with both good and bad qualities, like we all are. The only problem with him is because of his mental problems sometimes they're exaggerated one way or the other. Will you kill someone like that? What good would it serve society? What good does it do us to kill people? It doesn't do any good at all. Life is the most precious commodity we have. It's the one thing that God gives and takes. Who are we to stop in the middle and say, yeah, I've decided I'm going to take this man's life. It's not right. It's not proper. It's not Christian. It's never right. It wasn't right, if Mark truly did this, for him to do it. It's not right for you to take his life if you do it.

Remember, there are other people involved in this case, as well. There's Mark's family. His mother has been in the hospital for weeks because of the tension and because of the sorrow it has caused her. What do you think is going to happen to her if Mark is put to death? What about his other family members? What about the sorrow it's caused them? Mrs. Johnson's family has already experienced a loss. Why should we compound the injury? Why should we brutalize ourselves and brutalize society any more by committing... killing ourselves? It's not right. It's not proper, and I beg you to return a verdict recommending against it. Thank you.

**CLOSING REBUTTAL (DEATH PENALTY PHASE)
PRESENTED ON BEHALF OF THE STATE OF
INDIANA.**

MR. LAWLER: May it please the Court, counsel for the defense, ladies and gentlemen of the jury. I can understand why Mr. Miracle did not want to leave that picture in front of you. I can understand from his argument . . . if you noticed, it was poignant with cries of mercy, it's not Christian, you shouldn't do this. But again, I portray to you it is part of the case . . . this victim. How cruelly, how cruelly, how inhumanly she was killed. Terrible. Horrible. Whatever words you want to use to describe that, that's what you can do. You remember this picture, and I showed you a couple besides this one a little while ago. I don't think that the penalty of confinement as proposed... and I've told you what the minimums and maximum could be . . . is adequate for this particular case.

I don't think it was . . . as spelled out in Brewer v. State as the opinion written by Justice Hunter, where it says what you look to is reformation and protection of the public. And I think that's what you have to look to. Mr. Miracle has indicated to you that no place in the Bible does it talk about, except in the Old Testament, about punishment. I believe if you would check the 13th Chapter of Romans you'll find that in that particular chapter is delegated solely to talking about how the... a person . . . a Christian should look to government and obey the laws of the government and the

responsibility of the governments to the individual. That's what the law . . . what it says. There's no place in the New Testament that talks about that the death penalty should not be given. Many of you had indicated in your beliefs, and I think it was asked of many of you, you know, whether your beliefs prohibited this. I think that you indicated that, no, they did not.

He said that this person is masochistic. He wants to serve time in an institution. Quoting again from his letters, talking about confinement, "And I plan on having a gun with me when I do something so if it comes down to it, I will shoot anybody who gets in my way because I don't want no more time." Does that sound like a person who wants time? Let's put this in proper perspective. This is what the evidence is, not what Mr. Miracle said. In his letters to his friend. Let's put it in the proper perspective.

The evidence that was submitted to you was improperly stated. He said that John Moberly said that there was a possibility that other people did this. That's not what John Moberly said at all. He didn't say that at all. That's not the evidence. You folks . . . I know it's been some time . . . but that was not . . . there's no evidence to that effect. There was a question asked as to whether or not there was possibly somebody else who was involved, but nobody . . . he was not asked was there somebody else who did it. That was not asked. And keep those in proper perspectives.

Mr. Miracle, he's done a good job. A very difficult job he had representing this defendant. At the beginning of this case each one of you were asked if, in certain circumstances, you would follow the law, if you could give the death penalty. And each and every one of you said that you could. I'm not here to prey upon your sympathies, because I don't think that that's a part of it.. As I told you in the early part of my argument, that certainly you ought to have empathy for this person. Anybody ought to have empathy. We're in terrible shape if we don't have for our fellow men.

But then it comes down to the legal part that we must look to . . . the legal part . . . for your guidance. Those are the things that have to be considered that are written by the legislature, and as I have indicated to you before that in this particular instance, you have to . . . you have to find beyond a reasonable doubt that there are two aggravating circumstances. I'm sorry, one aggravating circumstance. And as I pointed out in my argument to you earlier, that again we look to the law and in Paragraph 1 of that law, which the Court will read to you, we say a person that committed the crime by intentionally killing the victim while committing or attempting to commit a burglary. The second aggravating circumstance is committed the murder by intentionally killing the victim while committing or attempting to commit robbery. Those are two aggravating circumstances. And I say to you that under the

law, there have been absolutely, absolutely no mitigating circumstances shown. The law directs you folks to look at those things and consider them . . . to look at them and consider them. That's what you're here for.

You told me you could follow the law. At that time I believed that you would and I . . . and you have. And I believe that you will. The penalty is not commensurate . . . confinement is not commensurate with the terrible crime that's been committed. Under the law of the State of Indiana, both the case law and statutory law, the aggravating circumstances have been shown, and show that this . . . in fact, there are two aggravating circumstances and, in my opinion, no mitigating circumstances. In that situation, the statute says you may make a recommendation to the Court. We feel that under the facts of this case, they were very strong, very strong.

Search your hearts. You promised you could follow the law . . . follow the law as it is. Follow it in the evidence . . . the evidence that was submitted to you, and from that we believe that there can be no other conclusion from this jury that you recommend to Judge Newman that this defendant be given the death penalty.

[The jury unanimously recommended a death sentence for Wisehart, who was sentenced to death by Judge Newman on September 26, 1993. The conviction and sentence was affirmed on direct appeal by the Indiana Supreme Court at Wisehart v. State, 484 N.E.2d 949 (Ind. October 31, 1985).]

CLOSING ARGUMENTS

State v. Judy Morgan Superior Court 1980

CASE SUMMARY: Hunters discovered Terry Chasteen's body in White Lick Creek in Morgan County on April 28, 1979. A police search of the creek led to the discovery of the bodies of 3 small children, aged 2, 4 and 5. Terry Chasteen was found naked, with her hands and feet bound with strips of material torn from her clothing, and her head covered with her slacks. She had been gagged and strangled with other strips of cloth.

At trial, Judy presented an insanity defense and testified at length concerning his commission of the rape and murders. Judy stated that he was driving on Interstate 465 when he passed Terry Chasteen's car and motioned for her to pull over to the shoulder of the road, indicating that something was wrong with her car. The two vehicles pulled over and Judy purported to assist the victims. In the process, he removed the coil wire, thereby rendering Terry Chasteen's car inoperable. Judy then drove the victims to the location of the killings and pulled his truck off the road. He testified that he directed them on foot toward the creek, then raped Terry Chasteen and bound her hands and feet and gagged her. At that point, he strangled her and threw her body into the creek. Judy testified that he then threw each of the children as far as he could into the water. Judy returned to his truck after attempting to eradicate his footprints. He then drove away from the scene. Judy's version of the events very substantially corroborated the evidence presented by the State. At the death phase of the trial, Judy ordered his attorneys not to present any evidence of mitigating circumstances, and at one point told the jury, "it may be one of you next, or one of your family."

Judy was sentenced to death by Special Judge Jeffrey V. Boles, and was executed by electric chair on March 9, 1981.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF THE STATE OF INDIANA.

MR. GRAY: Thank you. Your Honor. Ladies and gentlemen. At this phase you are to determine several things. It will be somewhat complicated unless you can fully understand the mechanics of it.

The Judge will instruct you that you must go back and deliberate and find at least one out of a list of nine, aggravating circumstances. Two of those circumstances I believe apply to this case. That would be number one, the defendant committed the murder by intentionally killing the victim while committing or attempting to commit arson, burglary, child molesting, criminal deviate conduct, kidnapping, rape or robbery. The rape of Terry Chasteen is an aggravating circumstance. You have found that already by, beyond a reasonable doubt. You cannot now impeach your own verdict. You found it before. I feel you must

find it now.

Another aggravating circumstance that you must find, I believe, number eight, the defendant has committed another murder at any time regardless of whether he has been convicted of that other murder. He has committed three other murders. You found that beyond a reasonable doubt. Therefore, you cannot impeach your own verdict.

Another part of the instruction, once you found the existence of aggravating facts, you must compare these to the mitigating facts and there are seven there. It says compare. Then you must weigh those. That's all the language says, you must weigh. If you find mitigating circumstances you cannot find aggravating circumstances unless the aggravating circumstances outweighs, is heavier, of more weight to you than the mitigating, if there might be any. Once you do that and I feel under the evidence you have no alternative but to find aggravating circumstances do exist.

There will be a form. You must put in there each one of the sentences in the instruction that you find are, in fact, aggravating circumstances that are outweighed or weighed heavier in your decision than any mitigating circumstance. You must find it, you get to write it out in long hand. Once you find that, the statute says you may either vote for the death penalty, vote for no death penalty or make no recommendation. You have three options there. You cannot go to that option until you complete the form finding an aggravating circumstance.

Ladies and gentlemen, I ask that you recommend the death penalty. Mr. Judy's own words are my best argument. Short of the ultimate punishment, how can we prevent this from happening again? He says we cannot. I feel that taking that statement away, we still or you should still find the death penalty. It is harsh. It's the ultimate punishment, I'll grant you that. But what was the ultimate punishment for Mark, and Steve, and Misty, and Terry? It was death and they didn't do anything wrong. Did Mr. Judy not do anything wrong? Did Mr. Judy not do anything wrong? Does he not deserve the ultimate penalty? Under the evidence and with the defendant's desires and wishes, ladies and gentlemen, it should take you five minutes to write the phases down and come back here with a death penalty verdict.

CLOSING ARGUMENT (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF THE DEFENDANT.

MR. JUDY: It shouldn't take them five minutes. Let's get it over with. I'm tired.

CLOSING REBUTTAL (DEATH PENALTY PHASE) PRESENTED ON BEHALF OF THE STATE OF INDIANA.

MR. GRAY: That's all.

CAPITAL PUNISHMENT

Against

All democracies and most all civilized countries in the world have abolished the death penalty. The U.S. thirst for blood is only exceeded by South Africa, Iran, and China. The United Nations is on record as opposed to capital punishment.

Killing is morally wrong, period. Especially when it is cold-blooded and sanctioned by the State.

Mistakes are sometimes made. It is inevitable in spite of our best efforts. Death is forever and can't be undone. Mistakes can never be corrected. At least we could release from prison a man later found to be innocent. Since 1930, scores of innocent men have been executed in the name of justice.

Life is sacred.
The death penalty destroys the sanctity of life. It is illogical to assume that murdering those who murder will do anything but promote further violence. It lowers us all to that level. Is this the message we want to send our children?

For

An average of 23 executions per year (1977-98) is not exactly a great thirst for blood. What distinguishes our system of capital punishment is DUE PROCESS, very extraordinary due process. There are 20,000 murders per year in the U.S. In 1998 we executed 74 murderers. "Bloodthirsty" is not an appropriate description of that ratio.

It's not that simple. All killings are NOT wrong. A killing in war or in self-defense, for example, is NOT wrong. In practical effect, the death penalty is self-defense by our society.

The number of innocent men executed and cited by the defense were compiled by death penalty opponents and have been greatly exaggerated to support this position. In any event, the "Super" due process applied in death penalty cases over the last 15 years have reduced this number practically to zero. Almost all the "mistakes" cited by the defense are from the 30's, 40's and 50's. Things have changed. Of the very few that remain, consider how many lives were saved by the executions which were deserving. Isn't it worth the risk?

Life is sacred.
The imposition of anything but the death penalty belittles the value of the life of the murder victim. Yes, this is what we want to teach our children.

The evidence is clear that the death penalty does not deter others from committing murder. Most murders are committed with very little thought of the consequences or prospective penalty. Most every study has confirmed this fact, and there is even some solid evidence that murder rates actually rise as a result.

The evidence is not as clear as Defendant suggests. Most of the authors of the studies he cites were predisposed to find no evidence of a deterrence in the first place. Statistics do lie.

One of many contrary examples is the homicide rate in Utah following the execution of Gary Gilmore in 1977. It was the first U.S. execution in 10 years and thereafter the Utah homicide rate substantially decreased. In any event, isn't it worth it if only one criminal is deterred from committing one murder.

The Defendant's argument is circular and is akin to those who see no value in having lighthouses. Because some ships still sink, the Defendant, using the same logic would say that lighthouses have no value. They forget that we never hear about the untold number of ships who see the lighthouse beacon and are saved from the deadly reefs nearby. By the same token, we will never hear from the many who are deterred from committing murder because of the death penalty.

There is only one irrefutable fact in all these arguments pro and con regarding the death penalty ==> the only way to be sure the Defendant never takes another life is for the death penalty to be imposed. It may or may not deter others, but it most certainly will forever deter this man from murdering again.

It's just common sense. Do you think there would be more murders or less murders if the punishment were reduced to 30 days in jail? If you believe the Defendant, since murderers never think about punishment, the number of murders would stay the same. Perhaps deterrence would become apparent if executions were carried out.

"Thou shalt not kill." Exodus 20:13

Even after Cain slew Able he was not executed, but merely banished from Eden.

"He that is without sin among you, let him first cast a stone." John 8:7

"Whosoever shall smite thee on thy right cheek, turn to him the other also." Matthew 5:39

Who are we to say that any man is not capable of redemption or rehabilitation. This principle goes against the very foundation of Christianity.

All biblical references to the death penalty are confined to the Old Testament. Upon the coming of Christ, forgiveness and redemption are the central themes.

Almost every major religious organization in the world is on record strongly opposed to Capital Punishment.

Why do we kill people who kill to show that killing people is wrong?

"Blessed are the merciful, for they shall obtain mercy." Matthew 5:7

"Judge not, that ye be not judged" Matthew 7:1

"He that smites a man, so that he die, shall be surely put to death." Exodus 21:12

"He that killeth any man shall surely be put to death" Leviticus 24:17

"Whosoever sheddeth a man's blood, by man shall his blood be shed." Genesis 9:6

Taken out of context. In fact, it refers to the stoning of a woman unjustly accused of mere adultery, not murder.

Is the Defendant actually suggesting that society should merely turn its cheek in response when murder is committed.

With this in mind, I suppose that Life Imprisonment is also unchristian.

"Think not that I have come to destroy the law, or the prophets; I come not to destroy, but to fulfill." Matthew 5:17

Does defense counsel in all his self righteousness really have all the religious answers. Are all of us who believe in the death penalty really going to hell? I don't think so. There's only one person in this room that has earned a pass through the gates of hell, and that is the Defendant.

Its unfair to imply that you will somehow be less Christian than the Defense Attorney if you believe in death penalty.

"(An) eye for an eye, tooth for tooth, . . . life for a life." Exodus 21:23-24; Leviticus 24:20

In the New Testament, the Apostle Paul recognizes the relevance of Capital Punishment at Acts 25:11 "If then I am a wrongdoer and committed anything worthy of death, I do not refuse to die . . ."

Life Imprisonment can accomplish the goals the State seeks to achieve. It will isolate the Defendant from society forever. Isn't being forced to live the rest of your life in a cage, like an animal, subjected to unspeakable indignities, MORE of a punishment than death anyway.

Making the punishment "fit the crime" is just another way of saying "an eye for an eye." I hope no one accepts that literal proposition. Should we rape rapists and torture torturers?

Governments are not Gods. Only God has the right to take life. Who gives us the right to judge?

Executing the murderer can never bring back the life of the victim.

It is much more expensive to the taxpayers to execute people than to sentence them to Life Imprisonment. Estimates vary, but data collected from California, New York, and Florida clearly show that imprisonment for 40 years would cost only 1/6 as much as a single execution. (\$3.17 million- \$515,000)

In Indiana, Life Without Parole is a new sentencing option. We do not know what long-term affects this sentence will have. What we do know is that not very many inmates die of old age in prison. 10-20-30 years from now, people forget, things happen. THEY ALWAYS GET OUT.

The punishment should fit the crime, and the death penalty is the only punishment that fits this crime of murder with aggravating circumstances.

Never kill in war or self-defense either? Aren't we judging every time we have a trial? What option do we have; just let them go because society has no right to judge them?

There are at least three good things about the Death Penalty. First, the killer gets to experience the same fear and pain inflicted on his victims. Second, the recidivism rate for executed murderers is zero. Third, electricity is cheaper than room and board.

The average time served on a life sentence in the United States is six years. Murderers can usually find ways to get out of prison. So far, none have managed to get out of a grave. (Conservative Chronicle 2/15/89)

Again, these studies are tainted by the personal agendas of the authors. Costs of imprisonment are underestimated, and costs of executions are overestimated, all to make their point. Even if true, the numbers do not take into account the trial and appeal expenses of a Life sentence, only the housing costs. The endless appeals allowed are what drives up the expense.

The death penalty discriminates against blacks and other minorities. Since 1977, almost 50% of executions have been against minority defendants, doubling the percentage of minorities in American Society. This constitutes simple and overwhelming evidence that the death penalty is not color-blind.

The death penalty discriminates against blacks in that those who murder WHITE victims are much more likely to receive the death penalty than when the victim is BLACK. The system and the penalty apparently values a white life more than a black life.

In a recent study by University of Iowa Professor David Baldus of Death Sentences in Georgia from 1973 to 1979, it was found: 22% of black defendants who kill whites, 8% of white defendants who kill whites, 1% of black defendants who kill blacks, and 3% of whites who kill blacks are sentenced to death. There is only one explanation for this disparity, racism. Additionally, 9 of 11 murderers executed were black and 10 of 11 had white victims.

For whatever reason, almost 60% of all murders and manslaughters in the US are committed by minorities according to the Dept. of Justice statistics. Whether because of increased poverty, joblessness, lack of education, deteriorating family life, abuse - for whatever reason, the fact remains that whites commit and are convicted of only 40% of all murders in the U.S., yet over 50% of those who have been executed since 1977 are white, and the defense claims that this penalty is biased against minorities. The charge is easily made and easily disproved. Does the Defendant suggest that we establish quotas for the prisons as well as for capital punishment? Tell them that well, we know you're guilty, but we've reached our quota and we won't be able to punish you?

Knowing that the United States death row population is overrepresented, if anything, by white males, it has become chic to shift the statistical arguments to the race of the victims. It should be noted that the U.S. Supreme Court rejected this same study in McClesky v. Kemp (1987).

The reason for that conclusion is clear. Statistics do lie. They can be easily manipulated to support any position. There are too many variables and not a large enough sample. On the one hand they want an individualized consideration of all mitigating circumstances applicable to each Defendant, allowing the jury to use their discretion and to be merciful in deciding who should be sentenced to death. Out of the other side of their mouth, they are saying that in order to satisfy their approved racial quota for Defendants and victims, the death penalty should be automatic. A notion, by the way, which the U.S. Supreme Court expressly rejected 16 years ago at the request of death penalty opponents.

The single most influential factor in deciding who gets a death sentence is the quality of his counsel. Most are poor and are represented by overworked and underpaid public defenders, who have little or no experience in handling Death Penalty cases. Few upper class rich folks are on Death Row.

A large percentage of inmates have their Death Sentences overturned on appeal because of the ineffectiveness and incompetency of their counsel. This shows that a serious problem exists, and also shows that the extended appeals process is useful and necessary.

Very few upper class rich folks are on Death Row because very few commit capital murder. It is ridiculous to assume that counsel becomes incompetent merely because his client receives a Death Sentence. Due process has limits. Can't these same arguments be made with respect to all inmates. Where does it end?

Many have their Death Sentences overturned on appeal to the federal courts only because they finally find a judge sympathetic to their anti-death penalty rhetoric. It is then spit out in the form of ineffective counsel much like Rose Byrd in California. It does prove that there is a serious problem, but the problem is lifetime appointments to the bench and endless appeals, not ineffective counsel.

All of the vast resources expended by the anti-death penalty crusade will not disappear if they get their wish. If the Death Penalty were abolished tomorrow, all those resources would be used to tell us how cruel and inhumane Life Imprisonment is.

*** * These arguments are neither approved nor recommended for use at trial * ***

SELECTED PROSECUTION ARGUMENTS IN DEATH PENALTY SUMMATIONS

From Ray Moses, *Jury Argument in Criminal Cases: A Trial Lawyer's Guide* (2nd Ed. 1993)

- **Never Forget Victim (Child Rape Case)**

I ask you not to forget the death of Susie Smith. Never forget her death. For the rest of your lives, keep it in your mind first and foremost so that it will never, ever happen again. Surely, you must now know from the evidence what the last few minutes of her life must have been like, alone in that area of town in the darkness, afraid as she must have been, no friend to help, not being able to reach out to a mother or father, being embarrassed, disgraced, made to do things which she had never thought about in her mind in her entire life, when he put his penis in her mouth and in her rectum. That's what he did to that little 13 year old girl, when he ejaculated his sperm in her mouth, and then made her lie there while she was beaten to death. Is there anyone here who wouldn't want to reach out, to offer her help, to hold her hand, to give her some strength for those last few minutes as she died? Is there one of us here who wouldn't have wanted to do that? Don't ever forget Susie Smith. You owe it to all the other Susie Smith's who live in this community to never forget, ever.

- **Focus on victim**

Capital punishment is an unpleasant subject. But it isn't nearly so bad as the crimes which bring about the punishment. Let's consider the plight of those who have been ruthlessly murdered. Let's think about victims and not just about the rights of the criminal. Let's ask ourselves: "Do we want to live in a society where beating the law is more rewarding than upholding it; where obstructing justice brings you more publicity than applying it?"

- **Don't consider defendant's life equivalent to victim**

To compare this killer and his life with his victim and her life, or to any other responsible citizen's life. To suggest that the lives are equal is to deny the existence of human dignity in our society. What sort of justice respects equally the lives of Abraham Lincoln and John Wilkes Booth, or Martin Luther King and James Earl Ray, or Robert Kennedy and Sirhan Sirhan? To say that these men, some great, and some unspeakably vile, possess equal measures of human dignity is to demonstrate an appalling inability to distinguish between good and evil people.

- **Rights of the child victim**

I hear about the rights of the Defendant over and over. Doesn't anybody care about the rights that Jimmie Smith had that are gone forever - his right to live, his right to grow up, his right to learn how to talk, his right to play ball with his father, his right to play in the back yard, his right to do these things that you and your children have done that he will never get to do? The Defendant deserves death because Jimmie deserved to live. This Defendant decided that Jimmie should be denied little league, Easter baskets, Santa Claus, and the tooth fairy. He decided that this child shouldn't have the chance to enjoy the good things life has to offer. He traded the life of that child for fancy monogrammed shirts, fast cars, and money. Now, the Defendant, the merciless, pleads for your mercy. He is unworthy to receive the mercy of any mortal.

- **Every breath of defendant an insult**

Every breath the Defendant takes is an insult to his victim and to society.

- **Rebutting defense counsel's arguments against the death penalty**

Let's consider some of the defense lawyer's arguments against imposition of the death penalty. Excuse me, but I wish they would come up with some new ones to replace the tired old ones you've heard today.

First, he argues "Wouldn't it be better to keep murderers alive so that psychiatrists

can study them to find out what makes them tick?” Ladies and gentlemen, it takes the average psychiatrist about five years to figure out why a guy likes to stop for two drinks after work and won’t stop smoking. So how long do you think it will take him to find out why somebody like Steve Stewart would rape and murder his grandmother? Anyway, even if you buy that rather tired argument, I ask you, don’t we have enough killers in our prisons right now to keep all this country’s psychiatrists and psychologists busy studying their ink blots for the next 20 years?

Second, the defender asks you, “What gives society the right to take a life if an individual can’t?” There’s a simple answer to that. Society must sometimes take a life in self-defense. The individuals who make up society give it that right so that we can all feel more secure from killers. Society performs a lot of functions that individuals can’t. We aren’t allowed to carry guns on our hips and shoot people, but we can delegate that right to our law enforcement officers - the people who protect us from the likes of Defendant.

Third, the Defendant argues, “It’s cruel for society to kill murderers.” Try explaining that to the loved ones of the victim. Let the Defendant try telling them how cruel it is to kill someone. Try telling that to these people who have suffered such a terrible loss and who must live with such ghastly memories of Susie Smith’s death.

Finally, he argues, “The death penalty doesn’t deter crime.” Don’t believe it. As the number of executions in this country declined, the number of murders went up. If murderers don’t fear the death penalty, if it is not a deterrent, then, pray tell, why is the Defendant asking you to give him a life sentence instead of death? If the Defendant isn’t afraid of death, then why are they making such an effort to avoid it?

- **Juror duty to be firm**

If there is going to be any deterrent, it is going to have to come from firmness and resolution, from ordinary folks doing a hard duty and gritting their teeth. Bite the bullet, as hard as it may be, and do what is right for society.

- **Jury must be strong**

Capital punishment is serious business, and as jurors in this case, you have got a serious decision to make. At the beginning of this trial, you promised that you could make that decision. This is no place for a weakling. You have got to be strong and award the death penalty.

- **Jury not “giving” defendant death penalty**

The Defendant has given himself the death penalty. You aren’t giving him anything. He has earned it every step of the way. He has earned a “yes” answer to the aggravating issues. (State the issues, e.g., that his actions were deliberate, that a probability exists that he will do such acts in the future, etc.) So you’re not giving him anything. You’re weighing and totaling up the evidence and answering the questions.

- **Pledge of Jurors**

You took an oath in this case. You swore you would uphold the law. You were asked before you were sworn if you could impose the death penalty in the appropriate case. You promised you could. This is the appropriate case.

- **Be proud of verdict**

I have been proud to have served in this case and to have represented, if you would, the victim, the victim’s family, and all the other people here in town in this case. Because of the tragic facts, it’s been one of the saddest things I have ever had to do, but at the same time, one of the proudest, to come down here and to play the role I have played in trying to get justice for that family. I ask you to be just as proud. Your job is half done. You’ve returned your verdict of guilt in this case based on the evidence, and I ask you to do as you said you would during jury selection. I ask you by your verdict to recommend that a death sentence be imposed.

Be proud of your verdict in this case. You’ve got no reason to bow your head or slide out that door or feel anything else but a quiet pride. If your friends and neighbors ask you what you did for law enforcement, you tell them. You tell them what you did for this community. Base your decision on the evidence. You did it at the first phase of the trial. Do it at this phase.

- **Defendant is responsible**

No matter what you do in this case, do not feel guilty or ashamed. Don't lose one minute of sleep over what you must now do. The Defendant put himself in this courtroom today by his actions and by his conduct. Not one of you here is responsible for what has happened. You were not there to stop him from committing the crimes you have heard about. He had the freedom of choice just like we did, and he decided to do this horrible crime.

- **Jury not killers**

The defense lawyer wants you to feel guilty. That's his goal. He is trying to lay a guilt trip on you. You are not killing anybody, ladies and gentlemen. This Defendant committed conduct which, under the law of this State, is a capital offense. That law was enacted long before you were ever impaneled as jurors. You had nothing to do with it.

He violated that law. He was brought to trial. He had a jury listening to the evidence. You heard and listened to the evidence, and you made your decision. The Judge presided over that trial and made rulings based on the law. The Defendant was represented by able counsel. How in the world can you equate the calm, deliberate and reasoned verdict in this courtroom with this Defendant robbing and killing an innocent person on the street? The victim had no judge, no jury, no defense lawyer. This defense lawyer is trying to tell you that a fair and just trial is the same thing as a cold blooded, unjust murder. If it's murder to execute a cold blooded killer, then why doesn't our law make each of you, me, the judge, the police department, and the person who pulls the switch liable as murderers. There's a difference between taking a life and murder. If you kill in self-defense or if you kill an enemy soldier in war time, it's taking a life, but it's not the crime of murder. (Source: Michael Angarola, Chicago, Illinois)

- **Jurors not required to act as social workers**

Nowhere in the judge's charge does it say that you are to decide "What is the best thing we can do to reform the Defendant's life?" The law does not require you at this time to go back to the jury room and become social workers and decide what's best for the Defendant. You have held his rights as high as the law required you to throughout his trial. That is something of which you can be proud. But this is the punishment hearing. Now is the time to go back to the jury room and hold the rights of the victim on an equal plane with the wrongdoer's rights. This is the victim's day in court as well as the Defendant's.

- **Defendant's childhood**

It may be true that the Defendant's childhood was sad and tragic, and perhaps that accounts in part for her being brutal, dangerous, and violent. But that does not make her any less brutal, dangerous, or violent. Her victims are no less dead.

- **Specific deterrence**

How many times does this Defendant get to kill? How many chances is the system going to give him? With whose life and property are we willing to take a chance? Who must die next to indicate that the Defendant would probably be violent again?

- **Specific deterrence**

Ladies and gentlemen of the jury, it may be a fact that capital punishment does not deter crime, but one thing is for certain. If the Defendant on trial in this case is given the death penalty, he will be deterred from any further criminal activity. It is a deterrence to the criminal on trial. It is the only way to ensure that a person who has killed before will never kill again.

- **Deterrence - Put fear in the heart of the criminal**

You're no longer twelve individuals who come down here and sit all by yourselves. You're now a group of citizens which is going to speak about this particular crime that took place in our community. I ask you in that capacity to let the word go out. Let there be fear in those who would commit a crime like this against any other little girl who lives in our community. Let them be afraid and hesitate to do this to a young girl over and over again like this man did. Make them hesitate. Make them think twice. Make them know

what will happen when a jury is this County hears about it. Let your word be sure. Let them know. Put the fear in the heart of the would-be criminal, not in ours. When the men among us go to our cars at night or go to a bowling alley with our families or our wives go to the post office or when our daughters or loved ones come home to their apartments at night, let the fear be in the hearts of would-be criminals about what will happen to them if they violate our loved ones. (Look at the Defendant). Let the fear be in people like him.

- **Deterrence**

Your choice is not whether to save this Defendant's life, but whether to save some innocent person's life in the future. That's the reason we have the death penalty. Sure, you have the power to spare this Defendant's life today. No one wants to take any one else's life, by any method. On the other hand, you may have some innocent person's life in your hands as you sit here today, some future victim. It's a little hard to visualize because we don't know who the future victim might be and who that person's family might be. So we can't bring them in here and sit them down here at the counsel table and show them to you. But you have to consider protecting them just the same.

- **It won't bring her back, but it will deter others**

Your right. It won't bring her back to life to impose the death penalty. If I could get on my hands and knees and beg and so bring her back to life, I would. If that's all it would take, don't you know that her parents would get on their hands and knees and beg. But it will not bring her back. What a death sentence may do is help us get the type of peaceful community we deserve - a community of people who don't violate the law. It would serve a purpose if it would make this Defendant or any other man hesitate before using this gun on any other victim in this town. If knowing what awaits him from his fellow citizens would keep him from carrying a young child off to the woods to satisfy his perversion, a valuable purpose would be served by a death sentence.

- **Deterrence**

People fear nothing more than death. What could deter a criminal more than fear of death? When we get into this dialogue about whether the death penalty deters, I just have one question to ask. You solve the whole issue by your answer to this question. "Do criminals fear prison as much as they fear death?" Perhaps we should take a poll of the people on Death Row around this country to find out how many of them would prefer a life sentence to a death sentence. I'll leave it to your good sense to decide whether criminals fear death more than they fear prison.

- **Send a message to criminals**

You must send a message throughout this county so that everybody understands that this sort of thing will never again be tolerated here. Let them know that it's too horrible. We can't stand for it. We're not going to tolerate it. Tell them that anybody that does this sort of thing is going to death row. Say, "It's plain. It's simple. If you do it, your going to spend some time on death row. Count on it. Bet on it. Don't ever forget it."

- **Deterrence**

You can't help the victim - he's dead. You can't rehabilitate this man. It's been proven time after time after time. You can't help him. The only good that you can do here today is this courtroom is to issue a very stern warning to all these criminals that you will not tolerate it any further and that they are going to die when they do this.

- **Forgiveness belongs to the victim**

Now, the last right that the dead girl has is her right of forgiveness. That's the last right she has. That right to forgive this man for what he has done to her rests with her. That's Susie's last right. This jury does not have the right to forgive this man for what he did to Susie. That right rests only with her and God. Now is not the time to decide whether or not you twelve jurors are going to forgive the Defendant for what he did to Susie.

- **Maximum crime deserves maximum punishment**

When the maximum crime has been committed in a community, it calls for the maximum punishment provided under the law. (Source: Mike Hinton, Houston, Texas)

- **History of capital punishment**

Capital punishment has been a part of civilized societies since the days of the Babylonian code of Hammurabi. Of course, the list of capital crimes has varied. Two hundred years ago, stealing ten shillings could get you hanged in England. Today, the list is restricted to murder and treason. The method also varies. Today, an execution is as humane as we can make it. There is no gratuitous torture as in olden days.

- **The eye must be cast out**

There are times when life must be taken for the good order of society. There are times when the eye has to be cast out of the body lest the whole body be ruined. A murderer who takes the life of an innocent man is a blinding eye in our God-fearing, church-going society.

- **Capital murderer-gangrene analogy**

This Defendant and other murderers like him are like gangrene in our society. Unfortunately, when gangrene occurs, you have to amputate to save the patient.

- **Defendant has no remorse**

The death penalty is a matter of self-defense. There are a few people in our society who, for whatever reason, are different. These few people have no regard for human life. They would just as soon kill someone as breathe. That's how much it affects them. They don't have any feelings of remorse about taking someone's life, even though when they get caught they may have plenty of concern about what's going to happen to them - that they might be executed. They might cry about what's going to happen to them, but they don't cry about what has happened to someone else at their hand. Thank goodness that we have been able to catch one of them. You have an opportunity to stop him and to at least deter him from taking some other innocent person's life.

- **Defendant's new-found religion**

The Defendant would have you believe that he has gotten religion. Convicts call it taking the Jesus Train. The problem with taking the Jesus Train is that once you have rendered your verdict, this passenger may decide to get off at the next stop.

- **Why should defendant get to perform capital punishment?**

Why is it that criminals feel like they are the only persons who are allowed to perform capital punishment? Why is it that a criminal feels that he can execute all the people he wants without any reason, but that you shouldn't give him the death sentence because it's cruel? Why are the victims' lives worth so much less than the Defendant's life?

- **Walls of courtroom could tell story**

The walls of this Court, if they could talk, would cry out to you on why there is a need for the death penalty. If they could talk, they would tell you about crime, criminals, and punishment. (Source: Michael Angarola, Chicago, Illinois)

- **Death vs. Imprisonment**

Being in prison is just an occupational part of some people's lives - a mere hazard of the trade of being a crook. It's just a job to a lot of criminals. The death penalty is the only deterrent that is going to get their attention. It's the only protection society has in cases like this.

- **Life Imprisonment is not worse**

Don't ever forget Susie Smith. She's not a name or statistic. She's a little human being that had all the promises and hopes we have for all of our own children. "Life imprisonment," the defense attorney says, "What could be more horrible?" He will be able to breathe, eat, read books, watch television, exercise, all of the things that he so casually denied Susie Smith. He will be alive. She's dead.

- **Life Imprisonment won't work**

You might sit there and think to yourselves, "Well, let's just lock him up in prison and be done with him." But, what makes you so sure that he's not going to try to escape? You know what he's capable of doing if he escapes. What makes you think that he won't take hostages up there? There are ladies who work there in the office, teachers who volunteer, and doctors who donate their time. What about those young people that "mess up" once in their life? They steal cars or break into buildings and they have to go to prison for a while. You have a duty to these young first offenders in prison to see that this sort of man doesn't come up there and corrupt those who could be reformed. This man is never going to stop. He can't change. This man needs to die, pure and simple.

- **Defendant as threat to fellow prisoners**

The Defendant is a threat to society. Counsel says that when you lock somebody up in the penitentiary with a life sentence that they cease being a threat to society. Well, the people in the penitentiary are a part of society.

- **Jury room not place to change law providing for capital punishment**

The jury room where you will be deliberating is not the place for anyone to decide whether or not the death penalty law should be on the books. Your duty in the jury room is to decide, based on the evidence and the law in this case, whether the State has proved aggravating circumstances. You are not here to change the death penalty law. You are here to enforce the law as it exists. To change the law, one must talk to his or her legislator.

- **Defendant as judge, jury and executioner for victim**

The Defendant was the judge, jury, and executioner for Susie Smith.

- **Defendant ought to accept his just deserts**

If the Defendant thinks he's a big enough man to kill people in cold blood, then he ought to be a big enough man to accept the responsibility and the penalty that the law says he deserves for what he did - the death penalty. He deserves it. He has earned it. He has earned it based on what he has done. It's not society's fault that the Defendant is a criminal. (Look at the Defendant.) You can't blame it on me or your lawyer or this jury, Mr. Smith. You can't share your guilt with anybody but yourself, and you know it.

- **Reply to defender's statement that prosecutors want jurors to kill defendant**

In his opening statement at this hearing, the defense counsel told you that we would ask you, and I use his words, "to kill John Smith." We are not asking you to kill an innocent citizen. He killed without trial on the street. We are not asking you to kill or to issue a sentence of death with respect to a man like other men. We are asking you to follow your oaths as jurors, to follow the law as his Honor gives it to you as the legislature of this State has passed it. We are asking you to issue a sentence of death as to a convicted armed robber-murderer.

- **Time to be fair to society**

The time for worrying about whether the Defendant gets a fair trial is almost over. Society can only tolerate so many rapes and murders). Let's worry now about being fair to the rest of the members of society. It's time to be concerned about protecting ourselves and our families.

- **Society must defend itself**

Absence of the death penalty is the mark of a society so confused and timid that it will not defend itself.

- **Jurors impose death penalty on someone regardless of verdict**

Either way you answer these questions, you're imposing a death penalty. If you answer them both "yes," you impose it on the right person. You impose it on this Defendant right here who's committed this capital crime. If you don't answer the special questions "yes," I think it's just like imposing the death penalty on his next victim out there. That's what you can look for. You've seen his track record.

- **Consider what victim would say**

Consider what the victim would say if she were here. I wonder if she wouldn't say: "I know I'm gone. I know I'm not ever going to see my family again, but I don't want what happened to me to happen to some other innocent person." If the victim were here, how would she want you to answer the aggravation issues?

- **Appearances**

I suggest to you that the Defendant is not what he appears. As he sits before you, he's all innocent looking. He has cleaned up his appearance, but the evidence shows that beneath that innocent outward appearance he's a powerful and vicious killer.

- **He doesn't deserve to live**

The fact that our world contains a small number of very evil and dangerous persons who probably ought to be exterminated without mercy when the opportunity occurs, is not always palatable to our common ways of thinking and feeling.

- **Future dangerousness**

Once an individual develops the psychological mechanism necessary to allow him to choose to commit a crime such as this, what little thing would it take for him to commit other criminal acts of violence from murder on down? Once you have crossed the bridge and burned it behind you, once your mind has voluntarily decided it will do something like this, there is no limit to what that mind may choose to justify in its own twisted thinking. Once someone jumps into the water the first time, the easier it becomes next time. But think of the person who has jumped into Niagra Falls and committed the most serious crime known to mankind! Think of what that mind is capable of in the future. (Source: Mike Hinton, Houston, Texas)

- **Would you be comfortable with defendant living next door**

You need to be convinced that some innocent person won't die in the future at the hands of this Defendant. In determining this issue, consider whether or not you can sit back and say to yourself, "I could have this Defendant as a neighbor. I could have my daughter associate with this Defendant, or my son, or myself, in our neighborhood." Could you, knowing what you know about this Defendant, be comfortable with the thought of seeing him walking down the street with maybe your daughter or your son some afternoon or could you believe that he's probably not going to do some violent criminal act?

- **A policeman: To serve and protect**

Captain Smith came in and talked to you, and he talked about the oath of office that these officers swore when they became police officers. He talked to you about the words: supporting, protecting, and defending the Constitution. You saw the photograph of the front of Willie's Bar & Grill, the photographs of the squad car at the scene where these officers were killed. It shows the motto of our police department. The entire motto is on the side of that car in front of the bar. The motto is on police cars that you have seen yourself, "We serve and protect." Those words come from the law enforcement code of ethics, from the first paragraph of that code: "As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice."

As fine as Officer Jones was, even now, he would defend this killer's rights to a just trial in this Court. But justice is all that this murderer is entitled to. He has no right to argue matters that are not in evidence before this jury and cannot be proved. He has no right to inject some phoney racial issue that never existed into this trial. This was no racial incident on the street. This was two police officers doing their job, and they had the misfortune to come across this man.

The defense has no right to insult the integrity of our police department, our City, this Court and lastly, no right to insult your intelligence and your integrity with some of the comments they made. This is not tyranny. Criminals are properly the object of anger. The

perpetrator of a terrible crime like this one is properly the object of great anger. He has done more than inflict injuries on isolated individuals. He has violated the foundations of trust and friendship, the necessary elements to have a moral society in a moral community, the only kind of community worth living in. A moral community, unlike a roving pack of hyenas, is one whose members are expected to follow and obey the laws. They are trusted to obey the laws. This is not a tyranny as defense counsel would have you believe. This is the essence of freedom. This is the essence of the lives of free man. This man, (name the Defendant), has violated that trust and in so doing he has injured not just (name the deceased officer), but the entire community, the entire society. He has called into question the very possibility of the existence of the link of society where men can be trusted to obey the laws and to recognize those dear and precious rights to life and human dignity that every man is entitled to.

If we, as a community, do not become angry, if we do not become angry when it's someone else who is murdered, the implication is that there is no moral community at all. Society's anger and punishment are expressions of caring. Men who perform acts such as the Defendant's do not care for anyone other than themselves. Society needs men like Officer Jones, men who care for others, who share their pleasures and their pains, and do so for the sake of others.

Officer Jones swore to serve and to protect. Thousands of policemen have sworn that oath and have lived that oath and do so now. The men that investigated this case and brought this killer to the tribunal of justice fulfilled their duty to those oaths. You jurors also swore an oath, and by so doing, you have an obligation and a sacred duty of citizenship to serve as fair jurors and to protect the rights of this evil man to a just trial.

You have a further burden to fairly represent the people of your community, you county, your country. You do not merely speak for the people here; you are the personification of the people of the state of Indiana. Your time of service is at hand. You have the power now to speak out in the angry, but just, voice of a community who cares about life, about the dedicated policemen who put their lives on the line every day.

By your service, by your just and fair verdict in this case, you will protect us all from injustice, from violence, from this killer. You will protect us from the pain that comes when a vicious, heinous crime goes unpunished because we have lacked the courage and the common sense to deal with the hard truths that an evil man like this confronts us with. You will protect us from this criminal and from others like him. You will protect us from a man like this being allowed to walk out of the courtroom and laugh because he has been freed on grounds of pity, sympathy, or confusion created by lawyers.

Use your God-given common sense; act on what you know in your hearts and minds to be the truth of this tragedy. Serve and protect. As the life blood of Officer Jones stained that dirty snow on Maple Street, even then, he served and protected. Now, you must serve and protect. (Source: William J. Kunkle, Chicago, Illinois)

THE DEATH PENALTY ON THE INTERNET

TOP 25 CAPITAL PUNISHMENT SITES

Updated 06-01-13

1. Capital Punishment 1993-2012 (Bureau of Justice Statistics)

Yearly publication of the U.S. Department of Justice with detailed statistics and history of the death penalty in the U.S. Accurate source for any and all papers and writings, on both sides of the issue. Availability lags approximately one year behind.

<http://www.bjs.gov/index.cfm?ty=tp&tid=18#pubs>

2. Focus on the Death Penalty (Univ Alaska Anchorage).

Thorough collection of DP web resources; hundreds of links to other sites, articles, and publications, pro and con; history, statistics, organizations, and a breakdown of the DP debate, issue by issue.

<http://justice.uaa.alaska.edu/death/>

3. Pro-Death Penalty.Com

New and growing pro-DP site, from the makers of "Justice For All" website, with articles, publications, legislation, execution information, death penalty news, and links; up-to-date and comprehensive.

<http://www.prodeathpenalty.com/>

4. Death Penalty Information Center

Probably the single most comprehensive and authoritative internet resource on the death penalty, including hundreds of anti-death penalty articles, essays, and quotes on issues of deterrence, cost, execution of the innocent, racism, public opinion, women, juveniles, mentally retarded, and more; Statistics on death rows and executions state-by-state, inmate-by-inmate; Up-to-date death penalty news. (Unfortunately makes absolutely no effort to present any pro-death penalty views, and liberally spreads propaganda and rhetoric on behalf of "the cause.")

<http://www.deathpenaltyinfo.org/>

5. Famous American Trials by Law Professor Doug Linder.

Detailed recitation of the evidence, arguments, and verdicts in 48 famous historical trials, some involving death penalty issues, including: The Trial of Jesus; Salem Witchcraft Trials (1692); Sacco and Vanzetti Trial (1921); Leopold and Loeb Trial (1924); Lindbergh Trial (1935); Scottsboro Trials (1931-1937); Rosenbergs Trial (1951); Sam Sheppard (1954); Mississippi Burning Trial (1967); Chicago Seven Conspiracy Trial (1969-70); Charles Manson (1970); My Lai Courts Martial (1970); John Hinckley (1982); O.J. Simpson (1995); Timothy McVeigh (1997); Zacharias Moussaoui (2006). (University of Missouri at Kansas City)

<http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm>

6. Before the Needles - Executions in America Before Lethal Injection

A detailed State by State listing of 14,490 executions that occurred under civil authority in the United States or within territory that later became the United States. From 1608 through 1977, executions broken down chronologically, by race and gender, by juveniles, by method of execution, by (non-homicide) conviction. Outstanding work from Rob Gallagher developed from The Espy Files.

<http://users.bestweb.net/~rg/execution.htm>

7. Polling Report.Com

Up-to-date public opinion polls on capital punishment from various sources, including Harris Polls, Gallup Polls, ABC, NBC, CBS, Fox Polls. Also includes polls on Fear of Crime, Crime Victims, DNA, and Police.

<http://www.pollingreport.com/crime.htm>

8. Death Penalty News & Updates from Southern Methodist University

Up-to-date execution statistics and alerts.

<http://people.smu.edu/rhalperi/>

9. How Lethal Injection Works from HowStuffWorks

Details common lethal injection protocol in various states, including preparation, witnesses, administration of drugs, and state-by-state breakdown, with photos.

<http://www.howstuffworks.com/lethal-injection.htm>

10. The American Bar Association Death Penalty Moratorium Implementation Project.

The Death Penalty Moratorium Implementation Project, led by director Deborah Fleischaker, was launched by the American Bar Association (ABA) in September 2001 as the "next step" towards a nationwide moratorium on executions. The Project was created to encourage other bar associations to press for moratoriums in their jurisdictions and to encourage state government leaders to establish moratoriums and undertake detailed examinations of capital punishment laws and processes in their jurisdictions." With links to Resolutions and State by State Assessment Team Reports, naturally concluding that the death penalty systems in each state are "deeply flawed." Notorious for the anti-death penalty views of authors.

<http://www.abanow.org/issue/?death-penalty-moratorium-project>

11. The Constitution Project

Mandatory Justice: Eighteen Reforms to the Death Penalty. (June 27, 2001)

Mandatory Justice: The Death Penalty Revisited. (February 2006)

A distinguished panel, but with a clear anti-death penalty slant, make up The Constitution Project, Death Penalty Initiative. (Includes well-known anti-death penalty activists former New York Governor Mario Cuomo, former Florida Chief Justice Gerald Kogan, and former Baltimore Mayor Kurt Schmoke. Their report was presented to the United States Senate, Committee on the Judiciary on June 27, 2001 at hearings on "Protecting the Innocent: Ensuring Competent Counsel in Death Penalty Cases." Their recommendations include: adequate compensation, standards and training for defense counsel; the removal of certain classes of defendants and homicides from death penalty eligibility; greater flexibility for introducing evidence that casts doubt on a conviction or sentence; gathering of data on the role of race in capital punishment and involvement of all races in the decision-making process; elimination of a judge's ability to impose a death sentence despite a jury recommendation for life imprisonment; and requiring prosecutors to open their files to the defense in death penalty cases.

<http://www.constitutionproject.org/pdf/MandatoryJusticeRevisited.pdf>

12. The Innocence Project.

The Innocence Project at the Benjamin N. Cardozo School of Law at Yeshiva University, founded by Barry C. Scheck and Peter J. Neufeld in 1992, is a non-profit legal clinic and criminal justice resource center. We work to exonerate the wrongfully convicted through postconviction DNA testing; and develop and implement reforms to prevent wrongful convictions.

<http://www.innocenceproject.org/>

13. ProCon.Org.

ProCon.org is a nonprofit, unbiased, unpolitical organization whose purpose is to provide resources for critical thinking and to educate without bias. We research issues that are controversial and important, and we present them in a balanced, comprehensive, straightforward, transparent, and primarily pro-con format at no charge.

<http://www.procon.org/>

14. Criminal Justice Legal Foundation.

Website of public interest law organization "dedicated to restoring a balance between the rights of crime victims and the criminally accused." U.S. Supreme Court Amicus Brief Bank since 1982, Up-to-date Death Penalty news, summaries and links to recent Death Penalty deterrence studies.

<http://www.cjlf.org/deathpenalty/deathpenalty.htm>

15. Federal Judicial Center Resources for Managing Death Penalty Trials and Habeas Corpus Review

Resource Guide for Managing Capital Trials, 59 pg, (2004); Resource Guide for Managing Capital Habeas Review, 32 pg, (2004); Forms for General Pretrial Orders, Appointment of Counsel, Orders appointing retained counsel, Order appointing second counsel, Notice of Intent to Seek the Death Penalty, Orders setting deadline for notice of intent, Orders appointing mitigation experts, Order appointing psychologist, Order appointing investigator, Sample case budget from Death Penalty Resource Counsel, Memorandum re interim payments for experts, Memorandum re counsel fees and expenses, Order of referral of cost management to magistrate judge, Order raising hourly rate for retained counsel, Order re funds for experts and consultants, Order reducing fees for non-death penalty case, Memoranda re: budget meeting with counsel, Order granting use of jury questionnaire, Sample juror questionnaires, Order to file joint proposed juror questionnaire, Descriptions of jury selection procedures, Introduction to voir dire and selection process, Script for jury voir dire, Order on motion for anonymous jury, Jury Instructions-Guilt Phase, Preliminary penalty-phase instructions, Penalty phase charges, Special-findings forms; Habeas forms.

http://www.fjc.gov/public/home.nsf/autoframe?openform&url_l=/public/home.nsf/inavgeneral?openpage&url_r=/public/home.nsf/pages/1001

16. Wrongful Conviction and Innocence Resources on the Internet, by Ken Strutin. (2006)

Scores of links on Current Awareness; Case Profiles; Conferences and Trainers; Innocence Projects; Commission Reports; Organizations; Innocence Project Resources; Legislation; Bibliographies, from Ken Strutin (JD, MLS), an experienced law librarian, criminal defense attorney, and well-known writer and speaker.

<http://www.llrx.com/features/wrongfulconviction.htm>

17. Death Penalty and Religion Links by The Theology Library

Thorough collection of 85 mainly religious death penalty links on the web, almost entirely anti-death penalty, from the Dept. of Theology, Spring Hill College, Mobile, AL.

<http://www.shc.edu/theolibrary/death.htm>

18. Wesley Lowe's Pro-Death Penalty Homepage

Text of Pro-DP arguments on deterrence, cost, racism, DP vs LWOP, morality, Christianity, constitutionality, and risk of wrongful execution of innocents.

<http://www.wesleylowe.com/cp.html>

19. Capital Defense Network

Online assistance for the federal trial and habeas capital defense lawyer, providing an Overview of the Federal Death Penalty Process, Online Litigation Guides, Motions, Appellate Briefs and Issues, Case Summaries, Clemency Petitions, Death Penalty Seminar Materials.

<http://www.capdefnet.org/fdprc/>

20. California District Attorneys: "A Prosecutor's Perspective on the Death Penalty."

Thorough 50+ page response to the misinformation and distortion of facts revealed in the arguments by many death row opponents. (March 19, 2003)

<http://www.cdaa.org/WhitePapers/DPPaper.pdf>

21. Pope John Paul II Encyclical Letter Against Capital Punishment.

Excerpts from encyclical letter "Evangelium Vitae" (The Gospel of Life) issued by Pope John Paul II on March 25, 1995, declaring that execution is only appropriate "in cases of absolute necessity" to defend society. (Chapter III, 56)

<http://www.ewtn.com/library/ENCYC/JP2EVANG.HTM>

22. Clark County Indiana Prosecuting Attorney

Comprehensive information on the Death Penalty in Indiana, including statistics, executions since 1900, current death row (with photos), Indiana death penalty laws, history, and methods of execution, with factual and legal summaries of all death penalty cases since 1977; Up-to-date information on the Death Penalty in the United States; Listing and news/legal summaries of all executions since 1976; Over 3,000 death penalty links arranged by subject, including 150+ pro-death penalty links.

<http://www.clarkprosecutor.org/html/death/death.htm>

23. Texas Department of Criminal Justice.

Texas Death Row history, facts and oddities; Texas Executions and Current Texas Death Row, with complete offender information; Final statements of all executed murderers.

<http://www.tdcj.state.tx.us/stat/>

24. Capital Punishment USA - Capital Punishment U.K.

Detailed description of U.S. execution methods, historical summary of female executions, monthly execution updates, famous executions. Arguments for and against. Listing of all U.K. hangings since 1850. Prison histories. Capital Punishment worldwide.

<http://www.capitalpunishmentuk.org/contents.html>

25. Wikipedia, the Free Encyclopedia: Capital Punishment in the United States

Summary of the death penalty with history, statistics, and numerous links.

http://en.wikipedia.org/wiki/Capital_punishment_in_the_United_States

Indiana

Clark County Indiana Prosecuting Attorney

Comprehensive information on the Death Penalty in Indiana, including statistics, executions since 1900, current death row (with photos), Indiana death penalty laws, history, and methods of execution, with factual and legal summaries of all cases since 1977; Up-to-date information on the Death Penalty in the U.S.; Over 2000 death penalty links arranged by subject, including 100+ pro-death penalty links.
<http://www.clarkprosecutor.org/html/death/death.htm>

American Bar Association Indiana Death Penalty Assessment Report and Supplemental Materials

February 2007 ABA Report of the Death Penalty in Indiana, naturally concluding that a moratorium is necessary since Indiana does not follow all of the ABA recommendations.
<http://www.abanow.org/2007/02/study-indiana-death-penalty-is-flawed/?audio>

"The Application of Indiana's Capital Sentencing Law."

Findings of the Indiana Criminal Law Study Commission (January 10, 2002) in response to inquiries by then-Governor Frank O'Bannon regarding the application of the death penalty in Indiana.
http://www.in.gov/cji/files/law_book.pdf

"Capital Punishment in Indiana" (Indianapolis Star)

Special web report on the death penalty in Indiana, including detailed capital punishment and execution history, profiles of those executed and those remaining on X Row, with searchable database, from the Indianapolis Star Library. (Updated 2009)
<http://www.indystar.com/apps/pbcs.dll/article?AID=999980416050>

Indiana Public Defender Commission: Capital Defense.

Standards and guidelines for the reimbursement of capital defense expenditures by the State Public Defender Commission to Indiana counties; Roster of Indiana Capital Attorneys, Rule 24 Qualified.
<http://www.in.gov/judiciary/pdc/2355.htm>

WFIE - Stephanie Silvey Investigates.

WFIE Evansville news reporter Stephanie Silvey presents video news reporting on Indiana's Death Penalty and Death Row, including Matthew Wrinkles, Roy Lee Ward, and Donald Ray Wallace.
<http://www.14wfie.com/global/story.asp?S=2576917>

"The Ordeal of Larry Hicks: How an Innocent Man was Almost Executed."

The story of Larry Hicks, sentenced to Indiana death row in September 1978. Written by Niles Stanton, the attorney who successfully got Hicks' death sentence vacated, and represented him during a retrial of the murder charges in 1980, which resulted in an acquittal.
<http://ac-support.europe.umuc.edu/~nstanton/Larry.html>

The vast majority (my guess is 95%) of all internet sites relating to capital punishment and the death penalty, are dedicated to its elimination. I have not really figured out why, since the clear majority of Americans favor the death penalty. Very few of these sites talk seriously about the issues, or are interested in a true debate. Instead, most are filled with misinformation and propaganda, or they want to tell us what a warm and caring human being a certain death row multiple murderer is, and about how he was unjustly convicted in our crooked system of justice despite his repeated confessions.

You can find over 3,000 death penalty links at "1000+ Death Penalty Links" (Clark County Prosecuting Attorney), arranged in 50 different categories, including DNA, Wrongful Convictions, Deterrence, Juveniles, Mentally Ill, Mumia Abu-Jamal, Victim Families, Politics, and Humor. Also included are 150+ pro-death penalty links and 25+ Indiana-specific death penalty links:

<http://www.clarkprosecutor.org/html/links/dplinks.htm>

INDIANA DEATH ROW 2013

1 ALLEN, HOWARD A.

7 KUBSCH, WAYNE D.

2 BAER, FREDERICK MICHAEL

8 MCMANUS, PAUL M.

3 CORCORAN, JOSEPH E.

9 OVERSTREET, MICHAEL D.

4 BROWN, DEBRA DENISE

10 PRUITT, TOMMY R.

5 HOLMES, ERIC D.

11 RITCHIE, BENJAMIN DONNIE

6 ISOM, KEVIN CHARLES

12 STEPHENSON, JOHN W.

13 WARD, ROY LEE

- ◆ Since January 25, 2008 only one Indiana jury trial has resulted in a death sentence.
- ◆ Since December 11, 2009 no Indiana death row inmates have been executed.

CURRENT DEATH ROW (JUNE 1, 2013)
ALPHABETICAL

INDIANA DEATH ROW 2013

1	BROWN, DEBRA DENISE	26 yr, 342 d	7	MCMANUS, PAUL M.	10 yr, 360 d
2	ALLEN, HOWARD A.	24 yr, 273 d	8	RITCHIE, BENJAMIN	10 yr, 228 d
3	HOLMES, ERIC D.	20 yr, 066 d	9	PRUITT, TOMMY R.	09 yr, 191 d
4	STEPHENSON, JOHN M.	15 yr, 348 d	10	KUBSCH, WAYNE D.	08 yr, 043 d
5	CORCORAN, JOSEPH E.	13 yr, 278 d	11	BAER, FREDERICK MICHAEL	07 yr, 356 d
6	OVERSTREET, WAYNE D.	12 yr, 304 d	12	WARD, ROY LEE	05 yr, 357 d
			13	ISOM, KEVIN CHARLES	00 yr, 084 d

**CURRENT DEATH ROW (JUNE 1, 2013)
BY LENGTH OF TIME ON DEATH ROW AWAITING EXECUTION**

INDIANA DEATH ROW 2013

1	RITCHIE, BENJAMIN	33 yr, 001 d	7	KUBSCH, WAYNE D.	45 yr, 212 d
2	CORCORAN, JOSEPH E.	38 yr, 043 d	8	OVERSTREET, MICHAEL D.	46 yr, 194 d
3	WARD, ROY LEE	40 yr, 315 d	9	ISOM, KEVIN CHARLES	47 yr, 147 d
4	MCMANUS, PAUL M.	40 yr, 322 d	10	STEPHENSON, JOHN M.	49 yr, 304 d
5	BAER, FREDERICK MICHAEL	41 yr, 224 d	11	BROWN, DEBRA DENISE	50 yr, 201 d
6	HOLMES, ERIC D.	44 yr, 281 d	12	PRUITT, TOMMY R.	51 yr, 088 d
			13	ALLEN, HOWARD A.	64 yr, 110 d

* Average Age = 45 Years, 272 days

**CURRENT DEATH ROW (JUNE 1, 2013)
BY AGE OF INMATE**

INDIANA DEATH ROW (1977 - 2013)

1	ALLEN, HOWARD A. ¹	49	MARTINEZ-CHAVEZ, ELADIO
2	AVERHART, RUFUS	50	MATHENEY, ALAN LEHMAN ⁷
3	BAER, FREDERICK MICHAEL ¹	51	MCCOLLUM, PHILLIP
4	BAIRD, ARTHUR PAUL, II	52	MCMANUS, PAUL MICHAEL ¹
5	BARKER, CHARLES E.	53	MILLER, PERRY S.
6	BELLMORE, LARRY	54	MINNICK, WILLIAM A. ²
7	BENEFIEL, BILL ⁷	55	MOORE, RICHARD D. ^{2, 5}
8	BENIRSCHKE, WILLIAM J.	56	OVERSTREET, MICHAEL D. ¹
9	BIEGHLER, MARVIN ⁷	57	PATTON, KEITH LAMONT
10	BIVINS, GERALD W. ⁷	58	PETERSON, CHRISTOPHER D.
11	BOYD, RUSSELL ERNEST	59	PETERSON, CHRISTOPHER D.
12	BREWER, JAMES	60	POTTS, LARRY DALE
13	BROWN, DEBRA DENISE ¹	61	PROWELL, VINCENT JUAN
14	BURRIS, GARY ^{2, 7}	62	PRUITT, TOMMY R. ¹
15	CANAAN, KEITH B.	63	RESNOVER, GREGORY ⁷
16	CASTOR, MARVIN D.	64	RITCHIE, BENJAMIN ¹
17	COLEMAN, ALTON ⁷	65	ROARK, DENNIS RAY ²
18	CONNER, KEVIN ⁷	66	ROCHE, CHARLES EDWARD, JR. ³
19	COOPER, PAULA	67	RONDON, REYNALDO GORIA
20	CORCORAN, JOSEPH E.	68	ROUSTER, GREGORY
21	DANIELS, MICHAEL W.	69	SAYLOR, BENNY LEE
22	DAVIS, FRANK R.	70	SCHIRO, THOMAS N.
23	DAVIS, GREAGREE C.	71	SMITH, CHARLES
24	DILLON, RICHARD	72	SMITH, ROBERT A. ⁷
25	DYE, WALTER L.	73	SMITH, TOMMIE J. ⁷
26	EVANS, CHARLES G.	74	SPRANGER, WILLIAM J.
27	FLEENOR, D. H. ⁷	75	STEPHENSON, JOHN W. ¹
28	GAMES, JAMES	76	STEVENS, CHRISTOPHER M.
29	HARRIS, JAMES ALLEN	77	STROUD, PHILLIP A.
30	HARRISON, JAMES P.	78	THACKER, LOIS ANN
31	HICKS, LARRY ⁶	79	THOMPSON, JAY R.
32	HOLLIS, DAVID ³	80	THOMPSON, JERRY K. ^{2, 4}
33	HOLMES, ERIC D. ¹	81	TIMBERLAKE, NORMAN H. ⁵
34	HOUGH, KEVIN LEE ⁷	82	TOWNSEND, JOHNNY, JR.
35	HUFFMAN, RICHARD D., JR.	83	TRUEBLOOD, JOSEPH L. ⁷
36	INGLE, JOHN E.	84	UNDERWOOD, HERBERT A.
37	ISOM, KEVIN CHARLES ¹	85	VAN CLEAVE, GREGORY
38	JACKSON, DONALD LEE, JR.	86	VANDIVER, WILLIAM C. ⁷
39	JAMES, VINCENT	87	WALLACE, DONALD RAY, JR. ⁷
40	JOHNSON, GREGORY SCOTT ⁷	88	WARD, ROY LEE ^{1, 2}
41	JUDY, STEVEN T. ⁷	89	WILKES, DANIEL RAY
42	KENNEDY, STUART S. ²	90	WILLIAMS, DARNELL
43	KUBSCH, WAYNE D. ^{1, 2}	91	WILLIAMS, EDWARD EARL
44	LAMBERT, MICHAEL ALLEN ⁷	92	WILLIAMS, LARRY C.
45	LANDRESS, CINDY LOU	93	WISEHART, MARK ALLEN
46	LOCKHART, MICHAEL LEE ⁷	94	WOODS, DAVID LEON ⁷
47	LOWERY, JAMES ^{2, 7}	95	WRINKLES, MATTHEW E. ⁷
48	LOWERY, TERRY LEE		

¹ On Death Row as of June 1, 2013 (13) ² Resentenced to Death After Sentence Vacated on Appeal (10) ³ Committed Suicide on Death Row (2) ⁴ Killed while on Death Row (1) ⁵ Died of Natural Causes on Death Row (2) ⁶ Motion to Correct Errors Granted Before Appeal (1) ⁷ Executed (20 in Indiana / 1 in Texas / 1 in Ohio)

INDIANA DEATH ROW (1977-2013)

1	BREWER, JAMES	03-01-1978	54	JACKSON, DONALD LEE, JR.	06-07-1988
2	HICKS, LARRY	09-01-1978	55	CASTOR, MARVIN D.	07-29-1988
3	DANIELS, MICHAEL WILLIAM	09-14-1979	56	ALLEN, HOWARD A. ¹	08-30-1988
4	JUDY, STEVEN T.	02-25-1980	57	BENIRSCHKE, WILLIAM J.	08-31-1988
5	LOWERY, JAMES	07-11-1980	58	POTTS, LARRY DALE	10-06-1988
6	WILLIAMS, LARRY C.	08-25-1980	59	BENEFIEL, BILL J.	11-03-1988
7	MOORE, RICHARD D.	10-24-1980	60	CONNER, KEVIN	11-03-1988
8	BURRIS, GARY	02-20-1981	61	LANDRESS, CINDY LOU	06-26-1989
9	RESNOVER, GREGORY	07-23-1981	62	LOCKHART, MICHAEL LEE	07-19-1989
10	SMITH, TOMMIE J.	07-23-1981	63	ROARK, DENNIS RAY	10-29-1992
11	DILLON, RICHARD	08-21-1981	64	TRUEBLOOD, JOSEPH L.	04-12-1990
12	SCHIRO, THOMAS N.	10-02-1981	65	MATHENEY, ALAN LEHMAN	05-11-1990
13	MINNICK, WILLIAM A.	06-10-1982	66	ROCHE, CHARLES EDWARD JR.	11-30-1990
14	HOLLIS, DAVID	11-12-1982	67	JAMES, VINCENT	02-28-1991
15	THOMPSON, JAY R.	03-18-1982	68	MILLER, PERRY S.	05-20-1991
16	AVERHART, RUFUS LEE	05-25-1982	69	BURRIS, GARY	11-22-1991
17	WALLACE, DONALD RAY, JR.	10-21-1982	70	HARRISON, JAMES P.	12-14-1991
18	LOWERY, JAMES	01-07-1983	71	LAMBERT, MICHAEL ALLEN	01-17-1992
19	BIEGLER, MARVIN	03-25-1983	72	KENNEDY, STUART S.	04-28-1992
20	VAN CLEAVE, GREGORY	05-27-1983	73	PETERSON, CHRISTOPHER D.	05-15-1992
21	WISEHART, MARK ALLEN	09-26-1983	74	PETERSON, CHRISTOPHER D.	06-05-1992
22	BOYD, RUSSELL ERNEST	10-04-1983	75	BIVINS, GERALD W.	06-05-1992
23	SMITH, CHARLES	10-18-1983	76	ROARK, DENNIS RAY	10-17-1989
24	SPRANGER, WILLIAM J.	12-08-1983	77	WILLIAMS, EDWARD EARL	03-02-1993
25	FLEENOR, D. H.	01-04-1984	78	HOLMES, ERIC D. ¹	03-26-1993
26	VANDIVER, WILLIAM C.	01-20-1984	79	SAYLOR, BENNY LEE	02-17-1994
27	DAVIS, FRANK R.	01-25-1984	80	PROWELL, VINCENT JUAN	05-05-1994
28	HARRIS, JAMES ALLEN	02-10-1984	81	STEVENS, CHRISTOPHER M.	03-14-1995
29	GAMES, JAMES	04-05-1984	82	WRINKLES, MATTHEW E.	06-14-1995
30	PATTON, KEITH LAMONT	07-20-1984	83	TIMBERLAKE, NORMAN H.	08-11-1995
31	DAVIS, GREAGREE C.	10-26-1984	84	AVERHART, RUFUS LEE	03-18-1996
32	TOWNSEND, JOHNNY, JR.	03-18-1985	85	THOMPSON, JERRY K.	05-24-1996
33	MCCOLLUM, PHILLIP	03-18-1985	86	SMITH, ROBERT A.	07-12-1996
34	WOODS, DAVID LEON	03-28-1985	87	BARKER, CHARLES E.	12-30-1996
35	RONDON, RENALDO	05-10-1985	88	STEPHENSON, JOHN W. ¹	06-17-1997
36	MARTINEZ-CHAVEZ, ELADIO	05-10-1985	89	DYE, WALTER L.	01-20-1998
37	THACKER, LOIS ANN	06-27-1985	90	INGLE, JOHN E.	11-23-1998
38	UNDERWOOD, HERBERT A.	08-23-1985	91	CORCORAN, JOSEPH E.	08-26-1999
39	HUFFMAN, RICHARD D., JR.	08-23-1985	92	MOORE, RICHARD D.	01-13-2000
40	MINNICK, WILLIAM A.	10-16-1985	93	OVERSTREET, MICHAEL D. ¹	07-31-2000
41	LOWERY, TERRY LEE	12-19-1985	94	KUBSCH, WAYNE D	08-28-2000
42	BELLMORE, LARRY	04-14-1986	95	THOMPSON, JERRY K.	09-29-2000
43	COLEMAN, ALTON	05-07-1986	96	MCMANUS, PAUL MICHAEL ¹	06-05-2002
44	JOHNSON, GREGORY SCOTT	06-19-1986	97	STROUD, PHILLIP A.	09-04-2002
45	BROWN, DEBRA DENISE ¹	06-23-1986	98	RITCHIE, BENJAMIN ¹	10-15-2002
46	COOPER, PAULA R.	07-11-1986	99	WARD, ROY LEE	12-18-2002
47	EVANS, CHARLES G.	09-19-1986	100	PRUITT, TOMMY R. ¹	11-21-2003
48	CANAAN, KEITH B.	11-26-1986	101	KUBSCH, WAYNE D. ¹	04-18-2005
49	BAIRD, ARTHUR PAUL, II	03-13-1987	102	BAER, FREDERICK MICHAEL ¹	06-09-2005
50	ROUSTER, GREGORY	03-20-1987	103	WARD, ROY LEE ¹	06-08-2007
51	WILLIAMS, DARNELL	03-23-1987	104	WILKES, DANIEL RAY	01-25-2008
52	HOUGH, KEVIN LEE	06-11-1987	105	ISOM, KEVIN CHARLES ¹	03-08-2013
53	KENNEDY, STUART S.	03-21-1988			

¹ On Death Row as of June 1, 2013 (13)

INDIANA DEATH ROW (1977 - 2013)

1	COOPER, PAULA	15 yr, 262 d	48	ROCHE, CHARLES EDWARD, JR.	26 yr, 263 d
2	PATTON, KEITH LAMONT	17 yr, 089 d	49	THACKER, LOIS ANN	26 yr, 280 d
3	THOMPSON, JAY R.	17 yr, 131 d	50	SMITH, TOMMIE J.	26 yr, 309 d
4	MINNICK, WILLIAM A.	18 yr, 066 d	51	LOCKHART, MICHAEL LEE	27 yr, 013 d
5	DILLON, RICHARD	18 yr, 086 d	52	CANAAN, KEITH B.	27 yr, 056 d
6	MCCOLLUM, PHILLIP	18 yr, 162 d	53	HARRIS, JAMES ALLEN	28 yr, 152 d
7	ROUSTER, GREGORY	18 yr, 186 d	54	COLEMAN, ALTON	28 yr, 225 d
8	SPRANGER, WILLIAM J.	18 yr, 244 d	55	MCMANUS, PAUL MICHAEL	28 yr, 227 d
9	GAMES, JAMES	18 yr, 357 d	56	WARD, ROY LEE	28 yr, 356 d
10	WOODS, DAVID LEON	19 yr, 244 d	57	JAMES, VINCENT	29 yr, 002 d
11	DANIELS, MICHAEL W.	19 yr, 314 d	58	SMITH, CHARLES	29 yr, 061 d
12	WISEHART, MARK ALLEN	19 yr, 322 d	59	PROWELL, VINCENT JUAN	29 yr, 084 d
13	TOWNSEND, JOHNNY, JR.	19 yr, 336 d	60	RESNOVER, GREGORY	29 yr, 121 d
14	HICKS, LARRY	19 yr, 359 d	61	THOMPSON, JERRY K.	29 yr, 362 d
15	WILLIAMS, DARNELL	20 yr, 012 d	62	JACKSON, DONALD LEE, JR.	30 yr, 067 d
16	SCHIRO, THOMAS N.	20 yr, 045 d	63	LANDRESS, CINDY LOU	30 yr, 094 d
17	LAMBERT, MICHAEL ALLEN	20 yr, 068 d	64	DAVIS, FRANK R.	30 yr, 138 d
18	RITCHIE, BENJAMIN	20 yr, 122 d	65	BENEFIEL, BILL	30 yr, 249 d
19	JOHNSON, GREGORY SCOTT	20 yr, 125 d	66	OVERSTREET, MICHAEL D.	30 yr, 321 d
20	VAN CLEAVE, GREGORY	20 yr, 140 d	67	KUBSCH, WAYNE D.	30 yr, 330 d
21	STEVENS, CHRISTOPHER M.	20 yr, 316 d	68	BIVINS, GERALD W.	31 yr, 040 d
22	WILLIAMS, LARRY C.	21 yr, 015 d	69	FLEENOR, D. H.	31 yr, 044 d
23	HOLMES, ERIC D.	21 yr, 085 d	70	TRUEBLOOD, JOSEPH L.	31 yr, 233 d
24	BREWER, JAMES	21 yr, 177 d	71	DYE, WALTER L.	31 yr, 294 d
25	HOLLIS, DAVID	21 yr, 197 d	72	BAER, FREDERICK MICHAEL	32 yr, 129 d
26	BROWN, DEBRA DENISE	21 yr, 220 d	73	LOWERY, JAMES	32 yr, 198 d
27	STROUD, PHILLIP A.	21 yr, 259 d	74	STEPHENSON, JOHN W.	32 yr, 241 d
28	PETERSON, CHRISTOPHER D.	21 yr, 327 d	75	MARTINEZ-CHAVEZ, ELADIO	33 yr, 068 d
29	PETERSON, CHRISTOPHER D.	21 yr, 332 d	76	BIEGHLER, MARVIN	33 yr, 360 d
30	DAVIS, GREAGREE C.	22 yr, 087 d	77	WRINKLES, MATTHEW E.	34 yr, 199 d
31	CORCORAN, JOSEPH E.	22 yr, 099 d	78	VANDIVER, WILLIAM C.	34 yr, 206 d
32	WALLACE, DONALD RAY, JR.	22 yr, 133 d	79	BARKER, CHARLES E.	35 yr, 196 d
33	CONNER, KEVIN	22 yr, 305 d	80	RONDON, REYNALDO GORIA	35 yr, 279 d
34	JUDY, STEVEN T.	22 yr, 339 d	81	WILKES, DANIEL RAY	37 yr, 267 d
35	BURRIS, GARY	23 yr, 043 d	82	MATHENEY, ALAN LEHMAN	38 yr, 118 d
36	HUFFMAN, RICHARD D., JR.	23 yr, 157 d	83	ALLEN HOWARD A.	38 yr, 153 d
37	LOWERY, TERRY LEE	23 yr, 319 d	84	BELLMORE, LARRY	38 yr, 209 d
38	UNDERWOOD, HERBERT A.	23 yr, 330 d	85	HARRISON, JAMES P.	39 yr, 069 d
39	WILLIAMS, EDWARD EARL	24 yr, 193 d	86	PRUITT, TOMMY R.	39 yr, 102 d
40	BOYD, RUSSELL ERNEST	24 yr, 195 d	87	BAIRD, ARTHUR PAUL, II	39 yr, 212 d
41	SAYLOR, BENNY LEE	24 yr, 217 d	88	ISOM, KEVIN CHARLES	41 yr, 214 d
42	BENIRSCHKE, WILLIAM J.	25 yr, 133 d	89	MILLER, PERRY S.	43 yr, 031 d
43	KENNEDY, STUART S.	25 yr, 293 d	90	CASTOR, MARVIN D.	45 yr, 088 d
44	ROARK, DENNIS RAY	25 yr, 297 d	91	SMITH, ROBERT A.	45 yr, 119 d
45	HOUGH, KEVIN LEE	26 yr, 081 d	92	TIMBERLAKE, NORMAN H.	45 yr, 175 d
46	EVANS, CHARLES G.	26 yr, 172 d	93	INGLE, JOHN E.	46 yr, 271 d
47	AVERHART, RUFUS	26 yr, 242 d	94	MOORE, RICHARD D.	48 yr, 154 d
			95	POTTS, LARRY DALE	49 yr, 069 d

* Average age at time of Murder = 27 years, 127 days

BY AGE AT TIME OF MURDER

INDIANA DEATH ROW (1977 - 2013)

1	COOPER, PAULA	16 yr, 320 d	53	LOCKHART, MICHAEL LEE	28 yr, 292 d
2	PATTON, KEITH LAMONT	17 yr, 362 d	54	HARRIS, JAMES ALLEN	29 yr, 106 d
3	THOMPSON, JAY R.	18 yr, 141 d	55	ROARK, DENNIS RAY ¹	29 yr, 200 d
4	DILLON, RICHARD	18 yr, 252 d	56	MCMANUS, PAUL MICHAEL	29 yr, 326 d
5	MINNICK, WILLIAM A.	18 yr, 293 d	57	RESNOVER, GREGORY	29 yr, 345 d
6	ROUSTER, GREGORY	19 yr, 044 d	58	SMITH, CHARLES	30 yr, 008 d
7	SPRANGER, WILLIAM J.	19 yr, 073 d	59	PROWELL, VINCENT JUAN	30 yr, 062 d
8	GAMES, JAMES	19 yr, 258 d	60	JAMES, VINCENT	30 yr, 077 d
9	MCCOLLUM, PHILLIP	19 yr, 262 d	61	WARD, ROY LEE	30 yr, 151 d
10	HICKS, LARRY	20 yr, 200 d	62	COLEMAN, ALTON	30 yr, 182 d
11	WOODS, DAVID LEON	20 yr, 233 d	63	DAVIS, FRANK R.	30 yr, 261 d
12	WILLIAMS, DARNELL	20 yr, 236 d	64	KENNEDY, STUART S. ¹	31 yr, 099 d
13	SCHIRO, THOMAS N.	20 yr, 284 d	65	LANDRESS, CINDY LOU	31 yr, 157 d
14	WISEHART, MARK ALLEN	20 yr, 309 d	66	JACKSON, DONALD LEE, JR.	31 yr, 309 d
15	VAN CLEAVE, GREGORY	20 yr, 360 d	67	FLEENOR, D. H.	32 yr, 067 d
16	TOWNSEND, JOHNNY, JR.	21 yr, 071 d	68	BENEFIEL, BILL	32 yr, 153 d
17	LAMBERT, MICHAEL ALLEN	21 yr, 088 d	69	BIVINS, GERALD W.	32 yr, 181 d
18	JOHNSON, GREGORY SCOTT	21 yr, 121 d	70	KUBSCH, WAYNE D.	32 yr, 309 d
19	DANIELS, MICHAEL W.	21 yr, 190 d	71	TRUEBLOOD, JOSEPH L.	33 yr, 107 d
20	BREWER, JAMES	21 yr, 264 d	72	DYE, WALTER L.	33 yr, 110 d
21	MINNICK, WILLIAM A. ¹	22 yr, 056 d	73	LOWERY, JAMES	33 yr, 117 d
22	HOLLIS, DAVID	22 yr, 090 d	74	BAER, FREDERICK MICHAEL	33 yr, 233 d
23	RITCHIE, BENJAMIN	22 yr, 138 d	75	OVERSTREET, MICHAEL D.	33 yr, 263 d
24	WILLIAMS, LARRY C.	22 yr, 167 d	76	STEPHENSON, JOHN W.	33 yr, 321 d
25	STEVENS, CHRISTOPHER M.	22 yr, 193 d	77	MARTINEZ-CHAVEZ, ELADIO	34 yr, 284 d
26	DAVIS, GREAGREE C.	22 yr, 294 d	78	WARD, ROY LEE ¹	34 yr, 323 d
27	PETERSON, CHRISTOPHER D.	23 yr, 116 d	79	BURRIS, GARY ¹	34 yr, 340 d
28	PETERSON, CHRISTOPHER D.	23 yr, 137 d	80	THOMPSON, JERRY K.	35 yr, 069 d
29	CONNER, KEVIN	23 yr, 221 d	81	BIEGHLER, MARVIN	35 yr, 100 d
30	BROWN, DEBRA DENISE	23 yr, 224 d	82	VANDIVER, WILLIAM C.	35 yr, 147 d
31	STROUD, PHILLIP A.	23 yr, 248 d	83	WRINKLES, MATTHEW E.	35 yr, 162 d
32	JUDY, STEVEN T.	23 yr, 277 d	84	LOWERY, JAMES ¹	35 yr, 297 d
33	BURRIS, GARY	24 yr, 065 d	85	RONDON, REYNALDO GORIA	36 yr, 124 d
34	CORCORAN, JOSEPH E.	24 yr, 130 d	86	KUBSCH, WAYNE D. ¹	37 yr, 181 d
35	LOWERY, TERRY LEE	24 yr, 158 d	87	BARKER, CHARLES E.	38 yr, 346 d
36	HOLMES, ERIC D.	24 yr, 215 d	88	BELLMORE, LARRY	39 yr, 132 d
37	HUFFMAN, RICHARD D., JR.	24 yr, 235 d	89	WILKES, DANIEL RAY	39 yr, 179 d
38	UNDERWOOD, HERBERT A.	25 yr, 043 d	90	MATHENEY, ALAN LEHMAN	39 yr, 186 d
39	WALLACE, DONALD RAY, JR.	25 yr, 048 d	91	ALLEN HOWARD A.	39 yr, 202 d
40	WILLIAMS, EDWARD EARL	25 yr, 083 d	92	THOMPSON, JERRY K. ¹	39 yr, 205 d
41	BOYD, RUSSELL ERNEST	25 yr, 233 d	93	BAIRD, ARTHUR PAUL, II	41 yr, 035 d
42	BENIRSCHKE, WILLIAM J.	25 yr, 334 d	94	AVERHART, RUFUS LEE ¹	41 yr, 097 d
43	SAYLOR, BENNY LEE	26 yr, 095 d	95	PRUITT, TOMMY R.	41 yr, 262 d
44	ROARK, DENNIS RAY	26 yr, 188 d	96	HARRISON, JAMES P.	42 yr, 035 d
45	KENNEDY, STUART S.	27 yr, 092 d	97	MILLER, PERRY S.	43 yr, 218 d
46	ROCHE, CHARLES EDWARD, JR.	27 yr, 102 d	98	SMITH, ROBERT A.	46 yr, 131 d
47	THACKER, LOIS ANN	27 yr, 151 d	99	ISOM, KEVIN CHARLES	47 yr, 063 d
48	EVANS, CHARLES G.	27 yr, 158 d	100	CASTOR, MARVIN D.	47 yr, 171 d
49	AVERHART, RUFUS LEE	27 yr, 164 d	101	TIMBERLAKE, NORMAN H.	47 yr, 362 d
50	SMITH, TOMMIE J.	27 yr, 167 d	102	INGLE, JOHN E.	49 yr, 021 d
51	HOUGH, KEVIN LEE	27 yr, 298 d	103	MOORE, RICHARD D.	49 yr, 141 d
52	CANAAN, KEITH B.	28 yr, 024 d	104	POTTS, LARRY DALE	50 yr, 063 d
			105	MOORE, RICHARD D. ¹	69 yr, 220 d

¹ Resentenced to Death Again After Sentence Vacated

* Average Age at Sentencing = 29 years, 347 days

BY AGE AT DEATH SENTENCE

INDIANA DEATH ROW (1977-2013)

ALLEN, HOWARD A., JR. # 56

ON DEATH ROW SINCE 08-30-88
DOB: 02-10-1949 DOC#: 881978 Black Male

Marion County Superior Court
Judge John R. Barney, Jr.

Trial Cause #: CR87-194C

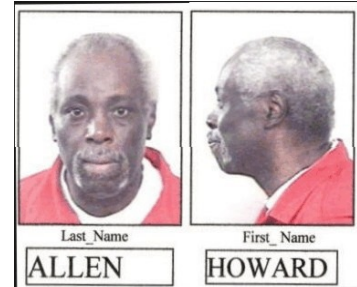
Prosecutor: Thomas W. Farlow, Robert P. Thomas, John V. Commons

Defense: Alex R. Voils, Jr., David B. Sexton

Date of Murder: July 14, 1987

Victim(s): Ernestine Griffin W / F / 73 (No relationship to Allen)

Method of Murder: stabbing with butcher knife



Summary: Ernestine Griffin was an elderly woman who lived alone near 57th and Keystone in Indianapolis. She lived next to the dental office of Dr. Seaman, who knew her quite well. One day Griffin called and advised that a man had stopped by her house inquiring about an old car Dr. Seaman had for sale. Griffin stated that she had the man write down his name and number and she passed it along to Dr. Seaman: "Howard Allen 545-4109." The next morning, Dr. Seaman walked over to her house and discovered Griffin's body lying on the floor with a butcher knife in her chest. Griffin also suffered a blunt force injury to her face. A note with the name and phone number of Allen was found in the kitchen. A handwriting expert would later testify that Allen had indeed written the note. Allen at first denied all knowledge of Griffin or Dr. Seaman. Over several hours of questioning, he finally admitted that he had been in the home asking about the car and had struck her with his fist. He stated that he did so only after Dr. Seaman had insulted him on the phone and Griffin had cussed him. Finally, he said, "I didn't stab the lady, but if I did, I need help." A co-worker at the car wash where Allen worked testified that Allen had given him a camera on the day of the murder to put in a locker. The camera was identified by serial number and the film still in the camera as belonging to Griffin.

Trial: Information/PC for Murder Filed (07-15-87); Death Sentence Request Filed (08-31-87); Jury Trial (06-08-88, 06-09-88, 06-10-88); Verdict (06-11-88); DP Trial (06-11-88, 06-12-88); DP Verdict (06-13-88); Court Sentencing (08-30-88).

Conviction: Murder, Felony-Murder, Robbery (A Felony)

Sentencing: August 30, 1988 (Death Sentence, 50 years - Murder/Felony Murder merged)

Aggravating Circumstances: b (1) Robbery

Mitigating Circumstances: dysfunctional family, education, and social environment
parents separated and divorced
mental retardation, low intelligence, mental instability

Direct Appeal: Allen v. State, 686 N.E.2d 760 (Ind. September 25, 1997) (49S00-9207-DP-566)
Conviction Affirmed 5-0 DP Affirmed 5-0
Shepard Opinion; Dickson, Sullivan, Selby, Boehm concur.
For Defendant: Brent L. Westerfeld, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (Modisett)
Allen v. Indiana, 119 S.Ct. 807 (1999) (Cert. denied)

In the Matter of Hatfield, 607 N.E.2d 384 (Ind. January 25, 1993) (49S00-9301-MS-152)
(Court Reporter found in contempt for failure to meet deadlines)

In the Matter of Sexson, 666 N.E.2d 402 (Ind. June 14, 1996) (49S00-9509-DI-1068)
(Disciplinary proceeding; by agreement, attorney Sexton suspended from practice for 6 months with automatic reinstatement - Missed appellate deadlines, filed 20-page brief, was paid \$40,743.50 and billed an additional \$13,097.00 for appellate work) Per Curiam Opinion; Shepard, Debruler, Sullivan, Selby concur; Dickson dissents believing sanction inadequate.

PCR: PCR Petition filed 12-15-98. Amended PCR Petition filed 06-07-99, 07-13-99.
State's answer filed 01-14-99. Answer to Amended PCR Petition filed 06-04-99, 07-19-99.
PCR Hearing 07-19-99, 07-20-99, 07-21-99.
Special Judge Raymond D. Kickbush.
For Defendant: Joanna Green, Kathleen Cleary, Danielle Gregory,
Deputy Public Defenders (Carpenter).
For State: Michael A. Hurst, Priscilla J. Fossum, Deputy Attorneys General (Modisett).
PCR Petition denied 10-06-99.

Allen v. State, 749 N.E.2d 1158 (Ind. June 29, 2001) (49S00-9804-PD-249)
(Appeal of PCR denial by Special Judge Raymond D. Kickbush)
Affirmed 5-0; Sullivan Opinion; Shepard, Dickson, Boehm, Rucker concur.
For Defendant: Joanna Green, Kathleen Cleary, Danielle Gregory, Deputy Public Defenders (Carpenter).
For State: Priscilla J. Fossum Deputy Attorney General (Freeman-Wilson).
Allen v. Indiana, 122 S.Ct. 1925 (2002) (Cert. denied).

Successive PCR Petition tendered, claiming retardation and citing Atkins v. Virginia.
07-15-03 Indiana Supreme Court declines to authorize Successive PCR.

Habeas: 03-18-02 Petition for Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Howard A. Allen, Jr. v. Cecil Davis, Superintendent (IP 01-1658-C-T/K)
Judge John D. Tinder.
For Defendant: Alan M. Freedman, Evanston, IL; Laurence E. Komp, Ballwin, MO.
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)
09-30-02 Petitioner's Memorandum in support of Writ of Habeas Corpus filed.
04-18-03 Response and Memorandum filed in opposition to Writ of Habeas Corpus.
09-05-03 Petitioner's Reply Memorandum in support of Writ of Habeas Corpus filed.
11-07-03 Response to Petitioner's Traverse filed.
01-27-05 Supplement filed in opposition to Writ of Habeas Corpus.
03-30-05 Supplement filed in support of Writ of Habeas Corpus.
09-19-03 Writ of Habeas Corpus denied.

Allen v. Buss, 558 F.3d 657 (7th Cir. March 11, 2009) (07-2486)
(Appeal of denial of Writ of Habeas Corpus)
Reversed and remanded 3-0; Opinion by Judge Anne Claire Williams
Judge Ilana Diamond Rovner and Judge Joel M. Flaum concur.
("for an evidentiary hearing to address whether Allen is mentally retarded under Indiana law")

For Defendant: Alan M. Freedman, Laurence E. Komp, Midwest Center for Justice, Chicago, IL
For State: Stephen R. Creason, Deputy Attorney General (G. Zoeller)

Allen v. Wilson, 2012 WL 2577492 (S.D. Ind. July 3, 2012) (1:01-cv-1658-JDT-TAB)
On remand, evidentiary hearing was held on July 19-21, 2010. Two years later, U.S. District Judge John Daniel Tinder holds that Allen is mentally retarded as defined under Indiana Law and entitled to relief under Atkins.

AVERHART, RUFUS LEE # 15 & # 84
(Zolo Agona Azania)

OFF DEATH ROW SINCE 10-17-08
DOB: 12-12-54 DOC# 4969 Black Male

Allen County Superior Court
Judge Alfred W. Moellering
Venued from Lake County

Trial Cause #: CR-81-401 (Allen County)
Prosecutor: John M. McGrath, James W. McNew
Defense: David R. Schneider

Date of Murder: August 11, 1981
Victim(s): George Yaros W / M / 57 (Gary Police Officer - No relationship to Averhart)
Victim Website: <http://home1.gte.net/joking1/yaros.htm>

Method of Murder: shooting with .44 handgun

Summary: Averhart, Hutson and North robbed the Gary National Bank and shot Gary Police Officer George Yaros, who was arriving on the scene. As they fled to their car, Averhart stopped and again shot Officer Yaros at close range. A high-speed chase/shootout resulted in the getaway car crashing into a tree. Averhart was followed from the scene, and with the aid of bystanders was discovered walking nearby. The gun used to shoot and kill Officer Yaros, a gun taken from the bank security guard, and a wig worn by Averhart during the robbery were also recovered.

Trial: Voir Dire (04-19-82, 04-20-82); Jury Trial (04-21-82, 04-22-82, 04-23-82, 04-26-82); Defendant presented no witnesses, submitted no jury instructions; Deliberations 1 hour, 15 minutes; Verdict (04-26-82); DP Trial (04-27-82); Defendant presented no witnesses, submitted no jury instructions; Deliberations 3 hours, 20 minutes; Verdict (04-27-82); Court Sentencing (05-25-82).

Conviction: Murder, Felony Murder (Tried jointly with Hutson and North; all three convicted as charged; DP sought against all three but jury recommended death for Averhart only)

Sentencing: May 25, 1982
(Death Sentence - Murder/Felony Murder merged; Hudson and North sentenced to 60 years)

Aggravating Circumstances: b(1) Robbery
b(6) Victim was law enforcement officer

Mitigating Circumstances: None



Inmate Website: <http://www.ccadp.org/zoloazania.htm>
<http://www.prairiefire.org/freezoloazania.html>
<http://www.kersplebedeb.com/mystuff/profiles/azania.html>

Direct Appeal: Averhart v. State, 470 N.E.2d 666 (Ind. October 29, 1984) (1182-S-414)
Conviction Affirmed 5-0 DP Affirmed 5-0
Pivarnik Opinion; Givan, Debruler, Hunter, Prentice concur.
For Defendant: Stephen C. Bower, Kentland, Special State Public Defender
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Averhart v. Indiana, 105 S.Ct. 2051 (1985) (Cert. denied)

PCR: PCR Petition filed 09-23-85. Amended PCR Petition filed 03-31-86, 12-07-86, 05-18-87.
State's answer filed 10-23-85.
Answer to Amended PCR Petition filed 04-28-86, 05-19-86, 01-30-87, 02-24-87, 08-03-87.
Hearing 05-19-86 to 05-23-86, 08-21-86 to 08-22-86, 05-18-87 to 05-20-87. (10 days)
Special Judge Vern E. Sheldon
For Defendant: Michael Freese, Rhonda Long-Sharp, Linda Rodriguez, Deputy Public Defenders
For State: James McNew, Michael Thill
PCR Petition denied 02-23-88.

Averhart v. State, 614 N.E.2d 924 (Ind. May 27, 1993) (02S00-8808-PC-751)
(Appeal of PCR denial by Special Judge Vern E. Sheldon)
Conviction Affirmed 5-0 DP Vacated 4-1
Per Curiam Opinion; Shepard, Debruler, Dickson, Krahulik concur; Givan dissents.
(Reversed on grounds of ineffective counsel - failure to present mitigating evidence, and based upon the State's failure to provide gunshot residue tests; remanded for new jury and judge sentencing hearing or imposition of sentence for a term of years)
For Defendant: Rhonda Long-Sharp, Valerie K. Boots, Deputy Public Defenders (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

On Remand: Trial was venued again to Allen County. Following a new jury and judge sentencing hearing, the jury recommended death and Judge Kenneth R. Scheibenberger sentenced Averhart to death on 03-18-96. On appeal, trial court directed to provide an amended sentencing order.
For State: Susan Collins, Peter Shakula
For Defendant: Kevin L. Likes, Auburn, Michelle Fennessy, Indianapolis, Isaiah Skip Gant

Direct Appeal: Azania v. State, 730 N.E.2d 646 (Ind. June 6, 2000) (02S00-8808-PC-751)
DP Affirmed 4-1
Dickson Opinion; Shepard, Sullivan, Rucker concur. Boehm dissents on grounds that Averhart did not present certain mitigating evidence of family life only because the trial court upheld the state's threat to present evidence of a prior homicide as rebuttal.
For Defendant: Kevin L. Likes, Auburn, Michelle Fennessy, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

§ 1983: Azania v. Squadrito, 114 F.2d 1191 (7th Cir. 1997) (§1983 action against Allen County Jail and Sheriff, alleging conspiracy to hinder his death penalty resentencing hearing; After dismissal by District Court, he sought a new hearing, alleging newly discovered evidence. This Rule 60(b) motion was also dismissed. - Affirmed 3-0; Judge Joel M. Flaum, Judge Daniel A. Manion, Judge Terrance T. Evans)
Azania v. Bechert, 172 F.3d 52 (7th Cir. 1999) (§ 1983 suit against former public defenders for conspiring with judge and prosecutors; discovery request denied)

PCR: Azania v. State, 738 N.E.2d 248 (Ind. November 2, 2000) (Indiana Supreme Court Order authorizing successive PCR on issue of tainted jury pool, but denying authorization on all other claims relating to conviction.

PCR denied 04-12-01.

Azania v. State, 778 N.E.2d 1253 (Ind. November 22, 2002) (02S00-0009-SD-538)

(Appeal of PCR denial by Allen Superior Court Judge Kenneth R. Scheibenberger)

Conviction Affirmed 5-0 DP Vacated 3-2

Boehm Opinion; Sullivan, Rucker concur. Shepard, Dickson dissent.

(Allen County computerized jury selection system did not substantially comply with statutes.)

For Defendant: Jesse A. Cook, Terre Haute, Michael E. Deutsch, Chicago

William Goodman, New York, Monica Foster, Indianapolis, Brief of Amici Curiae.

For State: Christopher L. Lafuse, Deputy Attorney General (S. Carter)

On Remand: Trial was venued again to Allen County.

Defendant's Motion to Return case to Lake County for trial denied.

Boone County Circuit Court Judge Steven H. David appointed Special Judge.

For Defendant: Jesse A. Cook, Terre Haute, Michael E. Deutsch, Chicago

On May 1, 2005, Judge Steven H. David granted Azania's Motion to Dismiss the Death Penalty Request, holding that the 24 year delay since the murder was mostly the fault of the State and has deprived him of fundamental due process.

State v. Azania, 865 N.E.2d 994 (Ind. May 10, 2007) (02S03-0508-PD-364)

(State's Interlocutory Appeal of Special Judge Steve David dismissal of pending death penalty request on retrial due to passage of time)

Reversed 3-2; (Sullivan Opinion; Shepard and Dickson concur;

Boehm and Rucker dissent on grounds that 25 years on death row is cruel and unusual and that the passage of time has caused his mitigation evidence to disappear)

For Defendant: Jesse A. Cook, Terre Haute, Michael E. Deutsch, Chicago, Deputy Public Defenders, John L. Stainthorp, Erica Thompson, Chicago, IL

For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

Amici Curiae: Indiana Black Caucus, Center for Constitutional Rights, Center for Justice in Capital Cases, Charles Hamilton Houston Institute for Race and Justice, Criminal Justice Institute, Illinois Association of Criminal Defense Lawyers, National Conference of Black Lawyers, National Lawyers Guild, National Legal Aid & Defender Association, Andrea D. Lyon, Chicago, IL, Monica Foster, Indianapolis.

State v. Azania, 875 N.E.2d 701 (Ind. November 7, 2007) (On Rehearing) (02S03-0508-PD-364)

(Commanding use of current Death Penalty statute at retrial, where Judge must sentence in accordance with jury verdict, except that LWOP is not an option)

Opinion by Sullivan; Shepard, Dickson, J., Concur.

Boehm dissents in part, claiming that Judge always retains discretion to reject jury death finding.

Rucker dissents in part, claiming that LWOP should be an option.

For Defendant: Michael E. Deutsch, Chicago, IL, Jessie A. Cook, Terre Haute, IN

For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

On Remand: On eve of a third trial in Allen County, on October 17, 2008 Averhart pled guilty and was sentenced pursuant to a plea agreement to 74 years imprisonment (consecutive terms of 60 years for Murder and 14 years for Armed Robbery) by Special Judge Robert Altice.

BAER, FREDRICK MICHAEL #102

ON DEATH ROW SINCE 06-09-05
DOB: 10-19-1971 DOC#: 910135 White Male

Madison County Superior Court #1
Judge Fredrick R. Spencer



Trial Cause #: 48D01-0403-MR-062

Prosecutor: Rodney J. Cummings, David L. Puckett

Defense: Jeffrey A. Lockwood, Bryan R. Williams

Date of Murder: February 25, 2004

Method of Murder: slashing throat with knife



Victim(s): Cory Clark W / F /26, Jenna Clark W / F / 4 (No relationship to Baer)

Summary: On the afternoon of February 25, 2004, Cory Clark and her 4-year-old daughter were alone in their home near Lapel. Her 7-year-old daughter was at school and her husband was outside the state. Baer entered the residence and used a knife to slit the throat of Cory Clark, then chased down 4-year-old Jenna and slit her throat as well. Baer had attempted to rape Cory before her death. Baer had been working at a nearby construction site that day, left work, committed the murders, then returned to the job. The apparent motive was to feed a drug habit and a deviate sexual appetite. Baer was also convicted of Rape and Burglary charges in Marion and Hamilton Counties.

Trial: Information/PC for Murder Filed (03-03-04); Amended Information and Death Sentence Request Filed (04-07-04); Recusal of Presiding Judge (12-16-04); Change of Venue Granted (01-31-05); Motion to Plead Guilty But Mentally Ill (02-28-05); Plea Rejected (03-01-05); Motion to Sever Unrelated Offenses Granted (04-04-05); Voir Dire in Huntington County (04-26-05, 04-27-05, 04-28-05); Amended Information Filed (05-02-05, 05-12-05); Jury Trial in Madison County (05-03-05, 05-04-05, 05-05-05, 05-10-05, 05-11-05, 05-12-05); Verdict (05-12-05); Amended Information Filed (05-17-05); DP Trial (05-19-05, 05-20-05); Verdict (05-20-05); Court Sentencing (06-09-05).

Conviction: Murder, Murder, Robbery (A Felony), Attempted Rape (A Felony), Theft (D Felony)

Sentencing: June 9, 2005 (Death Sentence - No sentence entered for Robbery, Attempted Rape, and Theft)

Aggravating Circumstances: b (1) Robbery
b (1) Attempted Rape
b (8) Two Murders
b (9) On Parole
b (12) Victim Less Than 12 Years

Mitigating Circumstances: mental illness, paranoid personality disorder, anxiety disorder
severe drug dependency
difficult childhood, family strife, drug use
toxic parenting
bad report cards, inattentive, impulsive
mother had chemotherapy
sister got killed

Direct Appeal: Baer v. State, 866 N.E.2d 752 (Ind. March 26, 2007) (48S00-0404-DP-181)
Conviction Affirmed 5-0 DP Affirmed 5-0
Affirmed 5-0; Dickson Opinion; Shepard, Sullivan, Boehm, Rucker concur)
For Defendant: Mark D. Maynard, Anderson
For State: Andrew A. Kobe, Deputy Attorney General (S. Carter)
Baer v. Indiana, 128 S.Ct. 1869 (2008) (Cert. denied)

PCR: PCR denied February 27, 2009 by Madison County Superior Court Judge Fredrick R. Spencer.

Baer v. State, 942 N.E.2d 80 (Ind. January 26, 2011) (48S00-0709-PD-362)
(Appeal of PCR denial by Madison County Special Judge Thomas H. Newman Jr.)
Conviction Affirmed 5-0 DP Affirmed 5-0
Shepard Opinion; Dickson, Sullivan, Rucker, David concur.
For Defendant: Joanna Green, Thomas C. Hinesley, Deputy Public Defenders (Owens)
For State: Kelly A. Miklos, Deputy Attorney General (Zoeller)

BAIRD, ARTHUR PAUL, II # 49

OFF DEATH ROW SINCE 08-29-05
DOB: 02-06-1946 DOC#: 872036 White Male

Montgomery County Circuit Court
Judge Thomas K. Milligan

Trial Cause #: CR85-66
Prosecutor: Wayne E. Steele, Peggy O. Lohorn
Defense: Harry A. Siamas

Date of Murder: September 6-7, 1985

Victim(s): Nadine Baird W / F / 32 (wife); Kathryn Baird W / F / 78 (mother);
Arthur Paul Baird, I W / M / 68 (father)

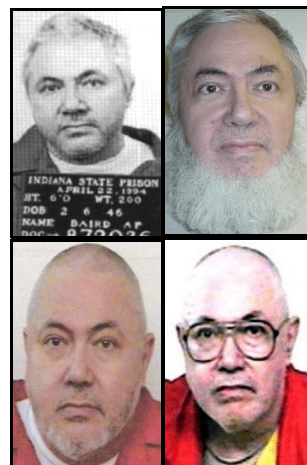
Method of Murder: manual strangulation (Nadine); stabbing with knife (Katherine);
stabbing with knife (Arthur)

Summary: Baird strangled his wife on their bed in their trailer home in Darlington for no apparent reason. His wife was 6 months pregnant. He spent several hours watching TV and holding his wife's body. Early the following morning, he went to his parents' home nearby, and after feeding the chickens and getting a haircut from his Mom, he stabbed them both to death with a butcher knife. He left after loading up his belongings, and was arrested in Huntingburg, 2½ hours away, the next day. (insanity defense)

Trial: Information/PC for Murder filed (09-08-85); Amended Information for DP filed (09-10-85); Plea Agreement filed (10-07-86); Defendant demands Jury Trial (12-22-86); Voir Dire (02-04-87, 02-05-87, 02-06-87, 02-09-87, 02-10-87); Jury Trial (02-11-87, 02-12-87, 02-13-87, 02-14-87, 02-17-87); Verdict (02-17-87); DP Trial (02-18-87); Verdict (02-19-87); Court Sentencing (03-13-87).

Conviction: Murder, Murder, Murder, Feticide (C Felony)

Sentencing: March 13, 1987 (Jury recommended death for the murder of his Mother and his Father, but against death for the murder of his wife. The Court sentenced Baird to 60 years for the Murder of Nadine Baird and 8 years for Feticide, to be served concurrently; Death for the Murder of Kathryn Baird and Death for the Murder of Arthur Paul Baird, I.)



Aggravating Circumstances: b(8) 3 murders

Mitigating Circumstances: extreme mental and emotional disturbance
no criminal history
active in church; person of good character
employed; provided for family
honorable discharge from military

Direct Appeal: Baird v. State, 604 N.E.2d 1170 (Ind. December 1, 1992) (54S00-8804-CR-428)
Conviction Affirmed 5-0 DP Affirmed 5-0
Debruler Opinion; Shepard, Givan, Dickson, Krahulik concur.
For Defendant: David P. Freund, M.E. Tuke, Deputy Public Defenders (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Baird v. Indiana, 114 S.Ct. 255 (1993) (Cert. denied)

PCR: PCR Petition filed 04-29-94.
State's Answer filed 01-23-95.
PCR Hearing 09-12-95.
Special Judge Vincent F. Grogg.
For Defendant: Jessie A. Cook, Mark Earnest
For State: Joseph R. Buser
PCR Petition denied 12-07-95.

Baird v. State, 688 N.E.2d 911 (Ind. 1997) (54S00-9304-PD-434)
(Appeal of PCR denial by Special Judge Vincent F. Grogg)
Affirmed 5-0; Boehm Opinion; Shepard, Dickson, Sullivan, Selby, concur.
For Defendant: Jessie A. Cook, Terre Haute
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Baird v. Indiana, 119 S.Ct. 122 (1998) (Cert. denied)
Baird v. State, 831 N.E.2d 109 (Ind. July 19, 2005) (54S00-0505-SD-240)
Motion for leave to file successive Petition for PCR. Motion denied.
("Mentally ill" short of insanity when murders committed not a defense)
Shepard, Sullivan, Dickson, Boehm, Rucker concur.

Baird v. State, 833 N.E.2d 28 (Ind. August 25, 2005) (54S00-0505-SD-240)
Motion for leave to file second successive Petition for PCR. Motion denied.
(Showing of present incompetency insufficient)
Shepard, Sullivan, Dickson concur; Boehm, Rucker dissent.
Baird v. Indiana, 126 S.Ct. 312 (2005) (Cert. denied).

Habeas: 03-27-98 Petitioner files Notice of Intent to File Habeas.
03-02-99 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Arthur Paul Baird, II v. Rondle Anderson, Superintendent (TH 98-70-C-M/F)
Judge Larry J. McKinney
For Defendant: Jessie A. Cook, Terre Haute
For State: James D. Dimitri, Andrew L. Hedges, Geoffrey Slaughter, James B. Martin,
Deputy Attorneys General (S. Carter)

06-04-99 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
08-25-00 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
07-17-03 Writ of Habeas Corpus denied.

Baird v. Davis, 388 F.3d 1110 (7th Cir. November 12, 2004) (03-3170)
(Appeal of denial of Writ of Habeas Corpus)

Affirmed 2-1; Opinion by Circuit Judge Richard A. Posner.
Judge Diane P. Wood concurs. Judge Kenneth F. Ripple Dissents.
For Defendant: Jessie A. Cook, Terre Haute
For State: Steve Carter, Attorney General
Baird v. Davis, 125 S.Ct. 953 (April 18, 2005) (Cert. denied)

Clemency: On August 29, 2005, Indiana Governor Mitch Daniels commuted the death sentence of Arthur Paul Baird II to Life Imprisonment Without Parole. Baird had served on death row since March 13, 1987. Despite a recommendation against clemency by the Indiana Parole Board, Governor Daniels noted that Life Without Parole was not available at the time of Baird's trial, that Baird had initially accepted a plea agreement to a term of years before trial, and that the victim's family had no objections then or now. This marked only the third time since the reinstatement of the Death Penalty in Indiana in 1977 that an Indiana Governor had commuted a death sentence. On July 2, 2004 Governor Joseph Kernan commuted the death sentence of Darnell Williams to Life Imprisonment Without Parole. On January 7, 2005, outgoing Indiana Governor Joseph Kernan commuted the death sentence of Michael Daniels to Life Without Parole.

BARKER, CHARLES E. # 87

OFF DEATH ROW SINCE 06-12-98
DOB: 01-19-1958 DOC#: 976850 White Male

Marion County Superior Court
Judge John R. Barney, Jr.

Trial Cause #: 49G05-9308-CF-095544

Prosecutor: Lawrence O. Sells, Brian G. Poindexter

Defense: Alex R. Voils, Jr., Carolyn W. Rader

Date of Murder: August 3, 1993

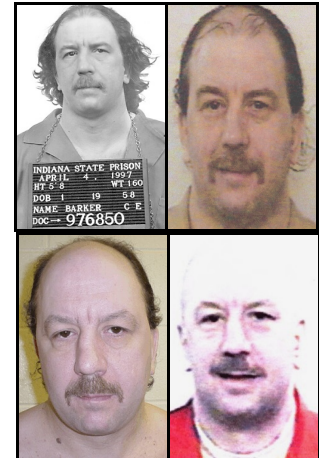
Method of Murder: shooting with handgun

Victim(s): Francis Benefiel W / M / 66; Helen Benefiel W / F / 65 (Grandparents of former girlfriend)

Summary: Barker's former girlfriend, Candice Benefiel, was staying with her grandparents, Francis and Helen Benefiel, in their home. Barker watched the home one night for several hours, then broke in and struggled with Candice. Francis came to her aid and jumped on Barker, who shrugged him aside and shot him through the heart. Barker then broke down a bathroom door and found Helen and the one year old child of Barker and Candice. Barker shot Helen in the head and took the child. He then forced Candice to leave with him, first to the home of his former wife, Deanna Barker, then to Tennessee, where he was later arrested. At trial, Barker claimed he just wanted to see his daughter, he shot Francis in self-defense and shot Helen accidentally.

Trial: Information/PC for Murder filed (08-04-93); Amended Information for DP filed (02-18-94); Voir Dire (06-17-96, 06-18-96, 06-19-96); Jury Trial (06-20-96, 06-21-96, 06-23-96, 06-24-96); Verdict (06-24-96); DP Trial (06-25-96, 06-26-96, 06-27-96); Verdict (06-27-96); Court Sentencing (11-26-96, 12-30-96).

Conviction: Murder, Murder, Kidnapping (A Felony), Confinement (B Felony),
Burglary (B Felony), Burglary (B Felony), Carrying a Handgun (A Misdemeanor)



Sentencing: November 26, 1996 and December 30, 1996 (Death Sentence)
50 years, 20 years, 20 years, 20 years, 1 year, all consecutive, 1210 days credit

Aggravating Circumstances: b (1) Burglary
b (1) Kidnapping
b (8) 2 murders

Mitigating Circumstances: brain damage; low IQ, 3rd grade reading level
progressive neurological disease

Direct Appeal: Barker v. State, 695 N.E.2d 925 (Ind. June 12, 1998) (49S00-9411-DP-1107)
Conviction Affirmed 5-0 DP Vacated 5-0
Boehm Opinion; Shepard, Dickson, Selby, Sullivan concur.
(Failure to instruct on Life Without Parole / Improper admission of prior assaults on Candice)
For Defendant: Susan D. Burke, Carolyn W. Rader, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (Modisett)

On Remand: Marion Superior Court Judge Grant W. Hawkins granted Motion to Dismiss Death Penalty, declaring that the Indiana death penalty statute was unconstitutional in light of Apprendi v. New Jersey, since a jury was not required to make death finding.
State v. Barker, 768 N.E.2d 425 (Ind. April 26, 2002) (49S00-0110-DP-461)
Interlocutory appeal by State. Reversed and remanded for new sentencing phase trial.
Per Curiam Opinion; Shepard, Dickson, Sullivan, Boehm, Rucker.
For Defendant: Monica Foster, Rhonda Long-Sharp, Indianapolis
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

Marion Superior Court Judge Grant W. Hawkins again granted Motion to Dismiss Death Penalty, declaring that the Indiana death penalty statute was unconstitutional in light of Ring v. Arizona, which requires that aggravators outweigh mitigators "beyond a reasonable doubt," which our statute does not require.

Barker v. State, 809 N.E.2d 312 (Ind. May 25, 2004) (49S00-0308-DP-392)
Interlocutory appeal by State. Reversed and remanded for new sentencing phase trial.
Opinion by Dickson; Shepard, Sullivan, Boehm, Rucker concur.
(Rucker notes that Ring/Apprendi requires that weighing be "beyond a reasonable doubt", but would not declare statute unconstitutional. He would simply construe the statute to implicitly require such a standard.)
For Defendant: Monica Foster, Brent L. Westerfield, Indianapolis
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

State v. Barker, 826 N.E.2d 648 (Ind. May 4, 2005) (On Rehearing)
(Death penalty statute requiring court to impose sentence if jury is unable to agree on a sentence recommendation after reasonable deliberations does not violate STATE constitutional right to jury trial.)
For Defendant: Monica Foster, Brent L. Westerfield, Indianapolis
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)
Opinion by Dickson; Shepard, Sullivan, Boehm concur. Rucker dissents.
Barker v. Indiana, 126 S.Ct. 666 (2005) (Cert. denied)

On 12-21-05 Barker entered a guilty plea to all charges in the Marion Superior Court and was sentenced to Life Without Parole on two counts of Murder. Consecutive sentences were given for Kidnapping (50 years), Confinement (20 years), Burglary (20 years), Burglary (20 years), and Carrying a Handgun Without a License (1 year).

BELLMORE, LARRY # 42

OFF DEATH ROW SINCE 10-29-92

DOB: 12-03-1946 DOC# 861877 White Male

Morgan County Circuit Court Judge James E. Harris

Trial Cause #: C85-S-50

Prosecutor: Jane Spencer Craney

Defense: Ronald Tedrow, Kevin P. McGoff

Date of Murder: June 30, 1985

Victim(s): Donna Denney W / F / 46 (No relationship to Bellmore)

Method of Murder: stabbing with knife/ manual strangulation



Summary: Bellmore (age 38) and Wesley Young (age 19) were hired or requested by Wesley's Father, David Young, to "rough up" David Young's girlfriend (Donna Denney) after they broke up. Bellmore and Wesley went to Denney's home near Martinsville. After talking on the back porch, Bellmore suddenly attacked her, choked her, and threw her off the porch. Obeying instructions from Bellmore, Wesley stabbed her twice in the abdomen. Bellmore announced that he would "take something and make it look like a burglary." While they ransacked the home, Denney struggled inside and tried to telephone for help. Bellmore knocked the phone from her hand and said "The bitch won't die." Bellmore then threw her to the floor and stabbed her repeatedly for 30 seconds "like a sewing machine." Bellmore then dragged her outside and told Wesley to take her purse. \$190 found in her purse was split between Bellmore and Wesley. David Young committed suicide before trial. Wesley Young testified against Bellmore at trial.

Trial: Information/PC for Murder filed (07-17-85); Amended Information filed (09-11-85); Jury Trial (01-06-86, 01-07-86, 01-08-86, 01-09-86, 01-10-86, 01-11-86, 01-13-86, 01-14-86, 01-15-86, 01-16-86, 01-17-86, 01-18-86, 01-19-86, 01-20-86); Verdict (01-20-86); Court Sentencing (04-02-86, 04-03-86, 04-04-86).

Conviction: Murder

Sentencing: April 4, 1986 (Death Sentence)

Aggravating Circumstances: b(1) Burglary

Mitigating Circumstances: no violent criminal conduct for 20 years
lesser sentences received by accomplices

Direct Appeal: Bellmore v. State, 602 N.E.2d 111 (Ind. October 29, 1992) (55S00-8703-CR-328)

Conviction Affirmed 5-0 DP Vacated 4-1

Dickson Opinion; Debruler, Krahulik, Shepard concur; Givan dissents.

(Remanded for "new sentencing determination" - Tattoo of knife dripping with blood placed on Bellmore's arm while in jail after trial improperly considered as an aggravating circumstance)

For Defendant: Brent L. Westerfeld, Indianapolis

For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

On Remand: On December 29, 1992, in compliance with Indiana Supreme Court Opinion, Bellmore was sentenced by Morgan County Circuit Court Judge James E. Harris to 60 years imprisonment for Murder.

BENEFIEL, BILL J. # 59

EXECUTED BY LETHAL INJECTION 04-21-05 12:31 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 06-03-1956 DOC#: 886175 White Male

Vigo County Superior Court Judge Michael H. Eldred

Trial Cause #: 84DO1-8705-CF-34

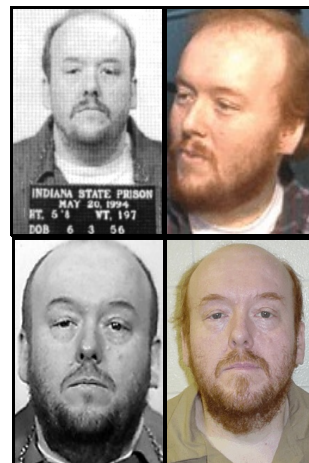
Prosecutor: Phillip I. Adler

Defense: Daniel L. Weber, Christopher B. Gambill

Date of Murder: February 7, 1987

Victim(s): Delores Wells W / F / 19 (No relationship to Benefiel)

Method of Murder: asphyxia with superglue



Summary: The State's case was established by a surviving victim, 17 year old Alicia, who was kidnapped on the way to a store two blocks from her home in Terre Haute by Benefiel, armed with a gun and wearing a mask. Alicia was tied-up and gagged, driven to Benefiel's home and taken inside. During 4 months of captivity inside Benefiel's home, Alicia was raped and sodomized over 60 times at gunpoint. Most of this time she was chained and handcuffed to a bed. He glued her eyelids shut, put tape over her eyes, and toilet paper in her mouth. She was cut with a knife and beaten. After 3½ months, Alicia saw a second girl, Delores Wells, in the home. She was naked and handcuffed on the bed, with tape over her eyes and mouth. She later saw Benefiel beat Delores and put superglue in her nose, then pinch it together. Benefiel left the home for 2 hours and upon his return, confessed to Alicia that he had killed and buried Delores. When police knocked on the door, Benefiel stuffed Alicia into a ceiling crawl space. The police entered with a search warrant and rescued her. The body of Delores was found soon after in a wooded area. An autopsy revealed injuries to her vagina and anus, and established asphyxia as the cause of death. (Insanity Defense)

Trial: Information/PC for Murder, Death Penalty filed (05-06-87); Voir Dire in Vanderburgh County (09-12-88, 09-13-88, 09-14-88, 09-15-88); Jury Trial in Vigo County (09-17-88, 09-19-88, 09-20-88, 09-21-88, 09-22-88, 09-23-88, 09-26-88, 09-27-88, 09-28-88, 09-29-88, 09-30-88, 10-01-88, 10-03-88); Verdict (10-04-88); DP Trial (10-04-88); Verdict (10-04-88); Court Sentencing (11-03-88).

Conviction: Murder, Confinement (B Felony), Rape (B Felony), CDC (B Felony)

Sentencing: November 3, 1988 (Death Sentence)

Aggravating Circumstances: b(1) Rape
b(1) Criminal Deviate Conduct

Mitigating Circumstances: mental disease
irresistible impulse

Direct Appeal: Benefiel v. State, 578 N.E.2d 338 (Ind. September 18, 1991) (84S00-8906-CR-483)
Conviction Affirmed 5-0 DP Affirmed 5-0
Givan Opinion; Shepard, Debruler, Dickson, Krahulik concur.
For Defendant: Christopher B. Gambill, Daniel L. Weber, Vigo County Public Defenders
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Benefiel v. State, 112 S.Ct. 2971 (1992) (Cert. denied)

PCR: Notice of Intent to File PCR filed 07-01-92.

PCR Petition filed 02-28-94. Amended PCR Petition filed 01-26-96.

State's Answer to Amended PCR Petition filed 01-31-96.

PCR Hearing 05-20-96, 05-21-96.

Special Judge Frank M. Nardi.

For Defendant: Kenneth L. Bird, Marie F. Donnelly, J. Jeffreys Merryman, Deputy State Public Defenders.

For State: Phillip I. Adler

PCR Petition denied 09-03-96.

Benefiel v. State, 716 N.E. 2d 906 (Ind. September 29, 1999) (84S00-9207-PD-590)

(Appeal of PCR denial by Special Judge Frank M. Nardi)

Affirmed 5-0; Shepard Opinion; Dickson, Sullivan, Selby, Boehm concur.

For Defendant: Joanna Green, Marie F. Donnelly, Deputy Public Defenders (Carpenter)

For State: Arthur Thaddeus Perry, Deputy Attorney General (Modisett)

Benefiel v. Indiana, 121 S.Ct. 83 (2000) (Cert. denied)

Habeas: 02-01-00 Notice of Intent to File Petition for Habeas Corpus filed.

05-05-00 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.

Bill J. Benefiel v. Rondle Anderson, Superintendent (TH 00-C-0057-Y/H)

Judge Richard L. Young

For Defendant: Marie F. Donnelly, Charlottesville, VA, Alan M. Freedman, Evanston IL

For State: Michael A. Hurst, Thomas D. Perkins, Stephen R. Creason,
Deputy Attorneys General (S. Carter)

09-13-00 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.

03-09-01 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.

01-17-02 Petitioner's Motion to Withdraw Appeals and Set Execution Date.

01-07-03 Petition for Writ of Habeas Corpus denied.

Benefiel v. Davis, 357 F.3d 655 (7th Cir. January 30, 2004) (03-1968)

(Appeal of denial of Writ of Habeas Corpus)

Affirmed 3-0

Opinion by Circuit Judge Terrance T. Evans. Judges Frank H. Easterbrook, William J. Bauer concur.

For Defendant: Alan M. Freedman, Gary Prichard, Evanston, IL

For State: Thomas D. Perkins, Deputy Attorney General (S. Carter)

Benefiel v. Davis, 125 S.Ct. 481 (November 08, 2004) (Cert. denied).

Benefiel v. Davis, 125 S.Ct. 953 (January 10, 2005) (Reh. denied).

Benefiel v. Davis, 403 F.3d 825 (7th Cir. March 31, 2005).

Appeal of denial of Motion to Reopen habeas proceedings by U.S. District Court, Southern District of Indiana. Affirmed 3-0.

For Defendant: Alan M. Freedman, Gary Prichard, Evanston, IL

For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

Frank H. Easterbrook Opinion; William J. Bauer, Terence T. Evans concur.

Benefiel v. Davis, 125 S.Ct. 1884 (April 20, 2005) (Stay Denied).

BENEFIEL WAS EXECUTED BY LETHAL INJECTION ON 04-21-05 AT 12:35 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 83RD CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900, AND 13TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

BENIRSCHKE, WILLIAM J. # 57

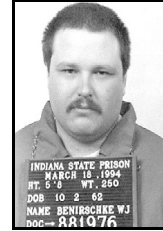
OFF DEATH ROW SINCE 01-06-95
DOB: 10-02-1962 DOC#: 881976 White Male

Lake County Superior Court Judge James L. Clement

Trial Cause #: 45GO4-8802-CF-00049

Prosecutor: Thomas W. Vanes

Defense: William Davis



Date of Murder: February 12, 1988

Victim(s): James Cromwell W / M / 34; Walter Muvich W / M / 35 (Employers of Benirschke)

Method of Murder: shooting with .22 rifle

Summary: Benirschke felt he was being shortchanged by his employers at J&W Janitorial. He walked into the office, shot Muvich 4 times, then shot Cromwell twice, then shot each in the head. He took Muvich's checkbook from his pocket. He later said he went there to shoot Muvich, but had to shoot Cromwell because he was a witness. (Insanity Defense)

Trial: Information/PC for Murder filed (02-18-88); Amended Information for Death Penalty filed (02-29-88); Voir Dire (08-01-88); Jury Trial (08-02-88, 08-03-88, 08-04-88); Deliberations 3 hours, 45 minutes; Verdict (08-04-88); DP Trial (08-05-88); Deliberations 3 hours, 40 minutes; Verdict (08-05-88); Court Sentencing (08-31-88).

Conviction: Murder, Murder, Robbery (B Felony)

Sentencing: August 31, 1988 (Death Sentence, 10 years)

Aggravating Circumstances: b (1) Robbery
b (8) 2 murders

Mitigating Circumstances: no significant prior criminal history
a history of depression and antisocial personality
drug abuse
high school graduate
3 year U.S. Marine Corps service in Germany

Direct Appeal: Benirschke v. State, 577 N.E.2d 576 (Ind. September 4, 1991) (45S00-8902-CR-00108)
Conviction Affirmed 5-0 DP Affirmed 5-0
Kraulik Opinion; Shepard, Givan, Dickson, Debruler concur.
For Defendant: Marce Gonzalez, Jr., Crown Point Public Defender
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Benirschke v. State, 582 N.E.2d 355 (Ind. 1991) (Reh. denied)
Benirschke v. Indiana, 112 S.Ct. 3042 (1992) (Cert. denied)

PCR: PCR Petition filed 02-11-93.
State's Answer to PCR Petition filed 03-17-93.
Hearing set for 01-09-95.
Special Judge Richard J. Conroy.
For Defendant: Ann M. Pfarr, Kathleen A. Sullivan, Deputy Public Defenders

01-06-95 Pursuant to a Joint Motion to Dismiss PCR and Modify Sentence, Special Judge Richard J. Conroy sentenced Benirschke to consecutive terms of 60 years (Murder), 60 years (Murder), and 20 years (Robbery), for a total sentence of 140 years imprisonment.

BIEGHLER, MARVIN # 19

EXECUTED BY LETHAL INJECTION ON 01-27-06 AT 1:17 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 12-15-1947 DOC#: 13153 White Male

Howard County Superior Court Judge Dennis H. Parry
Originally venued to Wabash County.
By agreement, returned to Howard County.

Trial Cause #: C2436 (Howard County)

Prosecutor: Richard L. Russell, Charles J. Myers

Defense: Charles Scruggs, John C. Wood

Date of Murder: December 10, 1981

Victim(s): Tommy Miller W / M / 21 (Drug Customer of Bieghler)
Kimberly Miller W / F / 19 (Drug Customer's Wife)

Method of Murder: shooting with .38 handgun

Summary: Bieghler was in the business of buying and selling marijuana. Tommy Miller sold drugs for Bieghler. After one of Bieghler's chief operatives was arrested and a large shipment seized, he suspected Miller of "snitching" on him. Bieghler and his bodyguard, Brook, drove to Miller's trailer near Kokomo, and while his bodyguard waited outside, Bieghler went in and shot both Tommy Miller and his pregnant wife Kimberly with a .38 pistol. A dime was found near each body. He was later arrested in Florida. Brook cut a deal and was the star witness for the State at trial. While the gun was never recovered, nine .38 casings found at the scene matched those found at Bieghler's regular target shooting range.

Trial: Information/PC for Murder filed (03-30-82); Amended Information for Death Penalty filed (04-12-82); Motion for Speedy Trial (11-29-82); Voir Dire (02-02-83, 02-03-83, 02-04-83, 02-07-83, 02-08-83, 02-09-83, 02-10-83, 02-11-83, 02-12-83); Jury Trial (02-14-83, 02-15-83, 02-16-83, 02-17-83, 02-21-83, 02-22-83, 02-23-83, 02-24-83, 02-25-83, 02-28-83); Deliberations 13 hours, 10 minutes; Verdict (03-01-83); DP Trial (03-03-83); Deliberations 11 hours, 55 minutes; Verdict (03-03-83); Court Sentencing (03-25-83).

Conviction: Murder, Murder, Burglary

Sentencing: March 25, 1983 (Death Sentence; no sentence entered for Burglary)

Aggravating Circumstances: b (1) Burglary
b (8) 2 murders

Mitigating Circumstances: None

Direct Appeal: Bieghler v. State, 481 N.E.2d 78 (Ind. July 31, 1985) (1183S409)

Conviction Affirmed 4-0 DP Affirmed 4-0

Pivarnik Opinion; Givan, Debruler, Prentice concur; Hunter not participating.

For Defendant: Bruce M. Frey, Marion

For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

Bieghler v. Indiana, 106 S.Ct. 1241 (1986) (Cert. denied)



PCR: PCR Petition filed 06-16-86, 09-08-88.

State's Answer to PCR Petition filed 07-31-86, 03-15-93.

PCR Hearing 03-22-93 to 04-14-93 (12 days)

Special Judge Bruce C. Embrey

For Defendant: Novella Nedeff, M.E. Tuke, Kenneth L. Bird, Lorinda Meier Youngcourt,
Deputy Public Defenders (Carpenter)

For State: Robert Bly, James Andrews, Mark A. McCann

03-27-95 PCR Petition denied.

Bieghler v. State, 690 N.E.2d 188 (Ind. December 19, 1997) (34S00-9207-PD-583)

(Appeal of PCR denial by Special Judge Bruce C. Embrey)

Affirmed 5-0; Shepard Opinion; Dickson, Sullivan, Selby, Boehm concur.

For Defendant: Kenneth L. Bird, Lorinda Meier Youngcourt, Deputy Public Defenders (Carpenter)

For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

Bieghler v. Indiana, 119 S.Ct. 550 (1998) (Cert. denied)

Bieghler v. State, 839 N.E.2d 691 (Ind. December 28, 2005) (34S00-0511-SD-679)

Motion for leave to file Successive Petition for PCR. Motion denied.

(Lethal Injection not cruel and unusual, 24 years on death row not cruel and unusual and whether it is deterrent is up to legislature, Whether state should be required to prove burden higher than reasonable doubt should have been raised earlier)

Shepard, Sullivan, Dickson, Boehm, Rucker concur.

Habeas: 04-10-98 Notice of Intent to File Petition for Habeas Corpus filed.

01-20-99 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.

Marvin Bieghler v. Rondle Anderson, Superintendent (IP 98-C-490-M/S)

Judge Larry J. McKinney

For Defendant: Brent L. Westerfield, Indianapolis, Lorinda Meier Youngcourt, Huron

For State: Robert L. Collins, Arthur Thaddeus Perry, Deputy Attorneys General (S. Carter)

09-03-99 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.

01-19-01 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.

07-07-03 Petition for Writ of Habeas Corpus denied.

11-05-03 Certificate of Appealability granted.

Bieghler v. McBride, 389 F.3d 701 (7th Cir. November 18, 2004) (03-3749).

(Appeal of denial of Habeas Writ)

Affirmed 3-0; Terence T. Evans Opinion; Michael S. Kanne, Ilana Diamond Rovner concur.

For Defendant: Brent L. Westerfield, Linda Meier Youngcourt, Huron

For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

Bieghler v. McBride, 126 S.Ct. 430 (2005) (Cert. denied)

Donahue v. Bieghler, 126 S.Ct. 1190 (2006) (Stay vacated)

Bieghler v. Indiana, 126 S.Ct. 1190 (2006) (Stay denied; Cert. denied)

BIEGHLER WAS EXECUTED BY LETHAL INJECTION ON 01-27-06 AT 1:17 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 87TH CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900, AND 17TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

BIVINS, GERALD W. # 75

EXECUTED BY LETHAL INJECTION 03-14-01 1:26 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 12-07-1959 DOC#: 922004 White Male

Boone County Superior Court Special Judge Thomas K. Milligan



Trial Cause #: 06D01-9104-CF-24

Prosecutor: Rebecca S. McClure, Bruce E. Petit

Defense: Allen F. Wharry, Michael D. Gross

Date of Murder: January 16, 1991

Victim(s): William Harvey Radcliffe W / M / 39 (No relationship to Bivins)

Method of Murder: shooting with handgun

Summary: Bivins, Chambers, and Weyls engaged in a 2-day central Indiana crime spree. They shoplifted blue jeans at gunpoint from a Lafayette Lazarus. They then drove to a Holiday Inn in Lebanon, forced their way into a guest's room, robbed him, stole his vehicle, and left him tied to the bathtub. Heading back toward Lafayette, they stopped at a rest stop north of Lebanon, and robbed Reverend Radcliffe at gunpoint in the restroom. After taking his wallet, Bivins turned Radcliffe around into a stall and shot him in the head. Later, Bivins said he did so "because he wanted to know what it felt like to kill." Full confessions followed.

Trial: Information/PC for Murder filed (04-11-91); Amended Information for Death Penalty filed (04-26-91); Voir Dire (02-25-92, 02-26-92, 02-27-92, 02-28-92, 02-29-92); Jury Trial (02-29-92, 03-02-92, 03-03-92, 03-04-92, 03-05-92, 03-06-92); Verdict (03-07-92); DP Trial (03-07-92); Verdict (03-07-92); Court Sentencing (06-05-92).

Conviction: Murder, Robbery (B Felony), Confinement (B Felony), Auto Theft (D Felony), Theft (D Felony) (2 counts)

Sentencing: June 5, 1992 (Death Sentence; 20 years, 20 years, 3 years, 3 years, 3 years consecutive)

Aggravating Circumstances: b(1) Robbery

Mitigating Circumstances: intoxication; drinking heavily on night of murder
used alcohol and drugs as teenager
death of grandfather
he was an alcoholic
his accomplice was the instigator

Direct Appeal: Bivins v. State, 642 N.E.2d 928 (Ind. November 4, 1994) (06S00-9105-DP-00401)

Convictions Affirmed 5-0 (Except Theft must be merged into Robbery)

DP Affirmed 5-0

Dickson Opinion; Debruler, Givan, Shepard, Sullivan concur.

For Defendant: David P. Freund, Deputy Public Defender (Carpenter)

For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)

Bivins v. State, 650 N.E.2d 684 (Ind. 1995)

(State's Petition for Rehearing denied 4-1; Shepard dissents re: victim impact evidence)

Bivins v. Indiana, 114 S.Ct. 892 (1994) (Cert. denied)

Bivins v. Indiana, 116 S.Ct. 783 (1996) (Cert. denied)

PCR: PCR Petition filed 12-18-95.
State's Answer to PCR Petition filed 01-10-96.
Hearing 12-02-96 to 12-04-96 (3 days)
Special Judge James R. Detamore
For Defendant: Lorinda Meier Youngcourt, Huron, Janet S. Dowling, Albuquerque, NM
For State: Geoff P. Davis, Deputy Attorney General, Bruce E. Petit
03-21-97 PCR Petition denied.

Bivins v. State of Indiana, 735 N.E.2d 1116 (Ind. September 26, 2000) (06S00-9602-PD-173)
(Appeal of PCR denial by Special Judge James R. Detamore)
Conviction Affirmed 5-0 DP Affirmed 5-0
Sullivan Opinion; Shepard, Dickson, Boehm, Rucker concur.

For Defendant: Lorinda Meier Youngcourt, Huron, Janet S. Dowling Albuquerque, NM,
Deputy Public Defenders (Carpenter)
For State: Andrew L. Hedges, Deputy Attorney General (Modisett)

Bivins v. State of Indiana, 741 N.E.2d 1196 (Ind. Jan. 19, 2001)
Order of Indiana Supreme Court (5-0) denying rehearing of decision which affirmed the trial court's denial of post-conviction relief, and setting execution date.

BIVINS WAIVED THE REMAINDER OF HIS APPEALS TO FEDERAL COURT AND WAS EXECUTED BY LETHAL INJECTION ON 03-14-01 AT 1:26 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 78TH CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900, AND 8TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

BOYD, RUSSELL ERNEST # 22

OFF DEATH ROW SINCE 09-10-93
DOB: 02-13-1958 DOC#: 9649 White Male

Clark County Circuit Court Judge Clifford H. Maschmeyer

Trial Cause #: 82-CR-27

Prosecutor: Jerome F. Jacobi, Steven D. Stewart

Defense: Michael T. Forsee, Charles Gregory Read

Date of Murder: August 27, 1982

Victim(s): Judith Falkenstein W / F / 30 (No relationship to Boyd)

Method of Murder: ligature strangulation with belt

Summary: When the victim's 10 year old daughter returned one afternoon from next door, she found the living room window open, the couch pulled away from the window, and \$117 missing from the mantel. She went upstairs and found her mother nude and suspended from the bedroom dresser. A belt was pulled tightly around her neck, with the other end knotted and wedged inside the dresser. She was bruised and cut. Burglars had entered the Falkenstein home 4 days earlier through the same window and stole coins and jewelry. Boyd was identified by several neighbors in the area at the time of the murder, and friends testified he had suddenly come into a lot of money. Property from the first burglary was found in a dumpster where Boyd was staying with a friend. After first denying any involvement, Boyd later confessed to committing the first burglary, and to entering the house on the afternoon of the murder, but claimed to have entered the bedroom only to find Falkenstein already dead.



Trial: Information/PC for Murder and DP filed (08-30-82); Voir Dire (08-23-83); Jury Trial (08-24-83, 08-25-83, 08-26-83, 08-29-83, 08-30-83, 08-31-83, 09-01-83, 09-02-83, 09-06-83, 09-07-24-83, 09-08-83, 09-09-83, 09-12-83); Verdict (09-12-83); DP Trial (09-14-83); Verdict (09-14-83); Court Sentencing (10-04-83).

Conviction: Murder, Felony-Murder, Burglary

Sentencing: October 4, 1983 (Death Sentence; Murder and Burglary merged into Felony-Murder)

Aggravating Circumstances: b(1) Burglary

Mitigating Circumstances: None

Direct Appeal: Boyd v. State, 494 N.E.2d 284 (Ind. June 24, 1986) (384-S-113)

Conviction Affirmed 5-0 DP Affirmed 5-0

Pivarnik Opinion; Givan, Debruler, Shepard, Dickson concur.

For Defendant: Michael T. Forsee, Charles G. Read, Jeffersonville, Public Defenders

For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

Boyd v. Indiana, 107 S.Ct. 910 (1987) (Cert. denied)

PCR: PCR Petition filed 01-04-88. Amended PCR Petition filed 09-17-90.

State's Answer to PCR Petition filed 01-25-88, 10-02-90.

Special Judge Robert L. Bennett.

For Defendant: Novella L. Nedeff, J. Michael Sauer, Steven H. Schutte, Deputy Public Defenders

For State: Steven D. Stewart

12-17-92 Defendant files Motion for Summary Judgment as to Death Sentence.

12-17-92 Motion for Summary Judgment as to Death sentence denied.

03-30-93 Hearing on Motion to Reconsider denial of summary Judgment as to Death sentence.

09-10-93 Motion for Summary Judgment as to Death sentence granted.

09-10-93 Death Sentence vacated. New Jury Sentencing Hearing scheduled for 11-08-93.

11-02-93 Parties file Agreement for Resentencing Upon Waiver of Rights and Dismissal of PCR.

11-05-93 Court accepts Agreement. Boyd resentedenced to consecutive terms of 60 years (Murder) and 20 years (Burglary), for a total sentence of 80 years imprisonment.

BREWER, JAMES # 1

OFF DEATH ROW SINCE 06-28-90

DOB: 06-10-1956 DOC#: 13107 Black Male

Lake County Superior Court Judge James L. Clement

Trial Cause #: 4CR-16-178-74

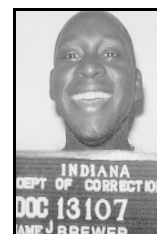
Prosecutor: Thomas W. Vanes, Peter Katic

Defense: James T. Frank

Date of Murder: December 4, 1977

Victim(s): Stephen Skirpan W / M / 29 (No relationship to Brewer)

Method of Murder: shooting with handgun



Summary: Brewer and Kenneth Ray Brooks went to the Skirpan residence, flashed a badge and claimed to be Officers investigating a traffic accident. They announced they had a search warrant, and when Skirpan asked to see it, Brewer shouted "This is a hold up!" Both men drew handguns and Skirpan was pushed aside. A shot was fired and Skirpan was killed. The men took money and fled. Brewer was arrested later the same night with commemorative coins on his person matching those taken in the robbery. Evidence of four other robberies committed in the same area on the same day, with the victims identifying Brewer, was admitted into evidence. Brooks pled guilty to Murder and was sentenced to 60 years imprisonment on December 20, 1978.

Trial: Indictment for Murder and DP filed (01-20-78); Motion for Speedy Trial (01-20-78); Voir Dire (02-13-78); Jury Trial (02-14-78, 02-15-78, 02-16-78, 02-17-78); Verdict (02-17-78); DP Trial (02-18-78); Verdict (02-18-78); Court Sentencing (03-01-78).

Conviction: Murder

Sentencing: March 1, 1978 (Death Sentence) First person sentenced to death under IC 35-50-2-9.

Aggravating Circumstances: b(1) Robbery

Mitigating Circumstances: intoxication
low IQ
21 years old at time of murder
mother died when he was 11 years old
member of minority race

Direct Appeal: Brewer v. State, 417 N.E.2d 889 (Ind. March 6, 1981) (678-S-119)
Conviction Affirmed 5-0 DP Affirmed 4-1
Prentice Opinion; Givan, Hunter, Pivarnik concur; Debruler dissents.
For Defendant: Dennis R. Kramer, Crown Point
For State: Thomas D. Quigley, Palmer K. Ward, Deputy Attorneys General (Pearson)
Brewer v. Indiana, 102 S.Ct. 3510 (1982) (Cert. denied)
Brewer v. Indiana, 103 S.Ct. 18 (1982) (Reh. denied)

PCR: PCR Petition filed 10-08-82. Amended PCR Petition filed 04-19-83.
State's Answer to PCR Petition filed 11-10-82, 05-17-83.
PCR Hearing 02-10-83.
For Defendant: Paul Levy, Deputy Public Defender (Carpenter)
For State: Thomas W. Vanes
PCR Petition denied 09-20-84.

Brewer v. State, 496 N.E.2d 371 (Ind. August 6, 1986) (485-S-167)
(Appeal of PCR denial by Judge Richard W. Maroc)
Conviction Affirmed 4-1 DP Affirmed 3-2
Pivarnik Opinion; Givan, Dickson concur; Debruler, Shepard dissent.
For Defendant: Paul Levy, Deputy Public Defender (Carpenter)
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Brewer v. Indiana, 107 S.Ct. 1591 (1987) (Cert. denied)

Habeas: Brewer v. Shettle, 917 F.2d 1306 (7th Cir. November 1, 1990) (90-2530) (Unpublished)
("We affirm the order of the district court directing that a writ of habeas corpus shall issue unless the State of Indiana conducts a new sentencing hearing for James Brewer within 90 days of the issuance of the mandate. An opinion will follow in due course.")

Brewer v. Aiken, 935 F.2d 850 (7th Cir. June 14, 1991) (90-2530)
(Appeal of granting Writ of Habeas Corpus by Judge S. Hugh Dillon, U.S. District Court, Southern District of Indiana, conditional upon the State providing a new Sentencing Hearing to Brewer within 90 days due to ineffective assistance of counsel during penalty phase: Failure to investigate mental and family history, and to present mitigators relating to limited intellect and passive personality.)
Opinion by Circuit Judge John L. Coffey Judge Easterbrook, Judge Kanne.
For Defendant: Jessie A. Cook, Terre Haute
For State: David A. Arthur, Deputy Attorney General (Pearson)

On Remand: 10-31-91 Sentencing Agreement filed, Brewer resentenced to 54 years imprisonment.

BROWN, DEBRA DENISE # 45

ON DEATH ROW SINCE 06-23-86
DOB: 11-11-1962 DOC#: 864793 Black Female

Lake County Superior Court Judge Richard W. Maroc

Trial Cause #: 1CR-203-1184-842

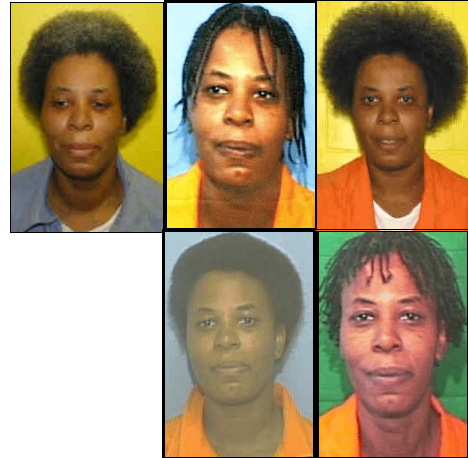
Prosecutor: Thomas W. Vanes, Kathleen M. O'Halloran

Defense: Daniel L. Toomey, Albert E. Marshall, Jr.

Date of Murder: June 18, 1984

Victim(s): Tamika Turks B / F / 7 (No relationship to Brown)

Method of Murder: ligature strangulation with bedsheet



Summary: 7 year old Tamika and her 9 year old niece, Annie, were walking back from the candy store to their home when they were confronted by Brown and Alton Coleman. Brown and Coleman convinced them to walk into the woods to play a game. Once there, they removed Tamika's shirt and tore it into small strips which they used to bind and gag the children. When Tamika began to cry, Brown held her nose and mouth while Coleman stomped on her chest. After carrying Tamika a short distance away, Annie was forced to perform oral sex on both Brown and Coleman, then Coleman raped her. Brown and Coleman then choked her until she was unconscious. When she awoke, they were gone. Tamika was found dead in the bushes nearby, strangled with an elastic strip of bedsheet. The same fabric was later found in the apartment shared by Coleman and Brown. Annie received cuts so deep that her intestines were protruding into her vagina. Evidence of a remarkably similar murder in Ohio was admitted at trial. These acts proved to be part of a midwestern crime spree by Coleman and Brown that included up to 8 murders, 7 rapes, 3 kidnappings, and 14 armed robberies.

Trial: Information/PC for Murder and DP filed (11-26-84); Motion for Detainer filed (05-17-85); Initial Hearing (12-10-85); Coleman Trial (03-31-86 to 04-12-86); Voir Dire (05-07-86, 05-08-86, 05-09-86, 05-10-86, 05-12-86); Jury Trial (05-12-86, 05-13-86, 05-14-86, 05-15-86, 05-16-86, 05-17-86); Deliberations 3 hours, 37 minutes; Verdict (05-17-86); DP Trial (05-17-86; 05-19-86, 05-20-86, 05-21-86); Deliberations 10 hours, 30 minutes; Verdict (05-22-86); Court Sentencing (06-20-86, 06-23-86).

Conviction: Murder, Attempted Murder (A Felony), Child Molesting (A Felony)

Sentencing: June 23, 1986 (Death Sentence, 40 years, 40 years consecutive)

Mitigating Circumstances: borderline mental retardation
substantial domination by Coleman; dependent personality
general lack of aggressiveness
head trauma as a child
21 years old at time of murder

Aggravating Circumstances: b (1) Child Molesting
b (7) 2 prior murder convictions in Ohio

Direct Appeal: Brown v. State, 577 N.E.2d 221 (Ind. August 29, 1991) (45S00-8703-CR-271)
Conviction Affirmed 4-1 DP Affirmed 4-1
Shepard Opinion; Givan, Dickson, Krahulik concur; Debruler dissents.
For Defendant: Daniel L. Toomey, Merrillville

For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Brown v. State, 583 N.E.2d 125 (Ind. 1991) (Rehearing Denied 4-1)
Shepard Opinion; Givan, Dickson, Krahulik concur; Debruler dissents.
Brown v. Indiana, 113 S.Ct. 101 (1992) (Cert. denied)
Brown v. Indiana, 113 S.Ct. 639 (1992) (Reh. denied)

PCR: PCR Petition filed 04-08-93.

State's Answer to PCR Petition filed 10-28-93.

PCR Hearing 06-05-95 to 06-07-95 (3 days)

For Defendant: Ken Murray, Columbus, OH, James N. Thiros, Merrillville

For State: Kathleen M. O'Halloran, Kathleen A. Sullivan, Natalie Bokota

PCR Petition denied 02-28-96.

Brown v. State, 698 N.E.2d 1132 (Ind. July 17, 1998) (45S00-9212-PD-939)

(Appeal of PCR denial by Special Judge Richard P. Conroy)

Conviction Affirmed 5-0 DP Affirmed 5-0

Sullivan Opinion; Shepard, Dickson, Selby, Boehm concur.

For Defendant: Ken Murray, Columbus, OH, Janet S. Dowling, Indianapolis

For State: Christopher L. LaFuse, Deputy Attorney General (Modisett)

Brown v. Indiana, 119 S.Ct. 1367 (1999) (Cert. denied)

Habeas: 12-11-98 Notice of Intent to File Petition for Habeas Corpus filed.

03-16-99 Order denying State's Motion to Transfer Venue to Southern District of Indiana.

07-16-99 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Ohio.

07-02-02 Order granting Brown's Motion to Hold Proceedings in Abeyance

Debra Denise Brown v. Shirley A. Rogers (1:99-CV-00549-ALM-MRA)

Judge Algenon L. Marbley, Magistrate Elizabeth Preston Deavers

For Defendant: Kenneth Foye Murray, Phoenix, AZ, Arizona Public Defender.

For State: Andrew A. Kobe, Stephen R. Creason, Deputy Attorneys General (Zoeller)

Petition filed and pending in the United States District Court, Southern District of Ohio. The State of Indiana's Petition to Transfer to Indiana was denied. Order entered 07-02-2002 granting Motion to Hold Proceedings in Abeyance. State of Indiana's Motion to Remove Stay filed on 02-13-13 and remains pending.

Brown has been incarcerated in Ohio since her conviction for Aggravated Murder. In 1991, Ohio Governor Richard Celeste commuted Brown's Ohio death sentence to life in prison. On April 26, 2002, Alton Coleman was executed by lethal injection in the state of Ohio.

Ohio: State v. Brown, 1987 WL 9743 (Ohio App. 1 April 15, 1987) (Not Reported in N.E.2d)

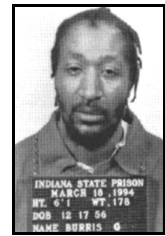
(Direct Appeal of murder conviction and death sentence from Cincinnati, Hamilton County, Ohio, for the killing of Tonnie Storey on July 11, 1984. Judgment and sentence unanimously affirmed.)

BURRIS, GARY # 8 & # 69

EXECUTED BY LETHAL INJECTION 11-20-97 1:00 AM EST
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 12-17-56 DOC#: 11746 Black Male

Marion County Superior Court Judge John W. Tranberg



Trial Cause #: 49GO4-8801-CF-000166

Prosecutor: J. Gregory Garrison, John D. Tinder

Defense: Thomas E. Alsip, L. Craig Turner

Date of Murder: January 29, 1980

Victim(s): Kenneth W. Chambers B / M / 31 (No relationship to Burris)

Method of Murder: shooting with .38 handgun

Summary: Kenneth Chambers was a cab driver in Indianapolis. His nude body was found in an alley near Fall Creek Parkway, face down and stuck to the ground by a pool of his frozen blood. His hands were tied behind his back, and there was a small caliber gunshot wound to the right temple. The cab company log revealed that Burris had called for a cab and was Chambers' last fare. A witness testified that Burris returned to his apartment with Emmett Merriweather and James Thompson with wads of money and a cab driver's run sheet and clipboard. Burris was arrested later that day at the apartment of his girlfriend where a .38 caliber handgun was found hidden in a stereo speaker. The ISP Lab confirmed it to be the murder weapon. Chambers' cab was found parked nearby. Burris later confessed to a cellmate that he had forced Chambers to lie face down on the freezing ground, and shot him in the head as he begged for his life. Accomplice Thompson was later convicted and sentenced to 50 years imprisonment. Accomplice Merriweather testified at both trials and was sentenced to 15 years imprisonment.

Trial: Information/PC for Murder Filed (01-30-80); Death Sentence Request Filed (03-14-80); Jury Trial (12-01-80, 12-02-80, 12-03-80, 12-04-80); Verdict (12-04-80); DP Trial (12-05-80); DP Verdict (12-05-80); Court Sentencing (02-20-81).

Conviction: Felony-Murder

Sentencing: February 20, 1981 (Death Sentence)

Aggravating Circumstances: b(1) Robbery

Mitigating Circumstances: sociopathic personality
accomplices could have committed murder
acts were insufficient to warrant death
abandoned by his parents (presented at 2nd trial)
raised in house of prostitution
at age 12 he was declared a ward of county due to neglect
obtained GED

Direct Appeal: Burris v. State, 465 N.E.2d 171 (Ind. June 29, 1984) (981-S-250)

Conviction Affirmed 5-0 DP Affirmed 5-0

Pivarnik Opinion; Givan, Debruler, Hunter, Prentice concur.

For Defendant: James G. Holland, Indianapolis

For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

Burris v. Indiana, 105 S.Ct. 816 (1985) (Cert. denied)

PCR: Burris v. State, 558 N.E.2d 1067 (Ind. August 24, 1990) (49S00-8610-PC-917)

(Appeal of PCR denial by Special Judge Roy Jones)

Conviction Affirmed 5-0 DP Vacated 3-2

(DP vacated and remanded due to ineffective assistance of counsel - referring to Burris as "street person" and failure to investigate and present mitigators)

Shepard Opinion; Debruler, Dickson concur; Givan, Pivarnik dissent.

For Defendant: Linda Wagoner, Fort Wayne

For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

Burris v. State, 687 N.E.2d 190 (Ind. November 17, 1997)

(Order declining 5-0 to authorize successive PCR on conviction)

Shepard, Dickson, Sullivan, Selby, Boehm concur.

On Remand: Voir Dire (09-23-91, 09-24-91); DP Trial (09-25-91, 09-26-91, 09-27-91); Deliberations 8 hours, 22 minutes; Hung Jury/Mistrial (09-30-91); Court Sentencing (11-22-91).

Special Judge Patricia J. Gifford

For Defendant: Michael Fisher, R. Mark Inman, Indianapolis

For State: Barbara J. Trathen, Carole J. Johnson

11-22-91 Burris again sentenced to death by Special Judge Patricia J. Gifford.

Direct Appeal: Burris v. State, 642 N.E.2d 961 (Ind. November 4, 1994) (49S00-9203-DP-187)

DP Affirmed 5-0

Givan Opinion; Shepard, Dickson, Debruler, Sullivan concur.

For Defendant: Mark Inman, Indianapolis

For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)

Burris v. Indiana, 116 S.Ct. 319 (1995) (Cert. denied)

Habeas: 12-09-02 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.

Gary Burris v. Robert A. Farley, Superintendent (3:92-CV-00755-AS)

Judge Allen Sharp

For Defendant: David E. Vandercoy, Valparaiso University Law Clinic

For State: Wayne E. Uhl, Deputy Attorney General (S. Carter)

03-19-93 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.

06-30-93 Amendment to Petition for Writ of Habeas Corpus filed.

09-03-93 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.

09-07-93 Oral Arguments

01-27-94 Petition for Writ of Habeas Corpus denied.

02-10-94 Certificate of Probable Cause granted.

Burris v. Farley, 845 F. Supp. 636 (N.D. Ind. January 27, 1994) (3:92-CV-0755-AS)

(Petition for Habeas Writ on conviction only; Petition denied 01-27-94)

Burris v. Farley, 51 F.3d 655 (7th Cir. November 22, 1995) (Affirmed) (94-1328)

(Appeal of denial of Habeas Writ; Affirmed 3-0)

Opinion by Judge Frank H. Easterbrook; Judge Daniel A. Manion, Judge Richard D. Cudahay concur

For Defendant: David E. Vandercoy, Valparaiso University Law Clinic

For State: Wayne Uhl, Deputy Attorney General (P. Carter)

Burris v. Indiana, 116 S.Ct. 747 (1996) (Cert. denied)

Petition for Writ of Habeas Corpus filed 11-13-95 in U.S. District Court, Northern District of Indiana.

Gary Burris v. Alan Parks, Superintendent (3:95-CV-00917-AS)

Judge Allen Sharp

For Defendant: Alan M. Freedman, Evanston, IL, Bruce Bornstein, Chicago, IL

For State: Geoffrey P. Davis, Geoffrey Slaughter, Deputy Attorneys General (P. Carter)

11-20-95 Petition for Writ of Habeas Corpus and Stay of Execution denied.

Burris v. Parke, 948 F. Supp. 1310 (N.D. Ind. December 26, 1996) (3:95-CV-0917 AS)
(Petition for Habeas denied by Judge Allen Sharp, U.S. District Court, Southern District of Indiana)

Burris v. Parke, 72 F.3d 47 (7th Cir. November 23, 1995) (95-3725)
(Dismissal of Habeas Writ on grounds of "abuse of writ"; Stay of Execution Denied)
Per Curiam Opinion, Judge Frank H. Easterbrook, Judge Daniel A. Manion concur;
Judge Richard D. Cudahay dissents.

For Defendant: Alan M. Freedman, Bruce H. Bornstein, Chicago, IL

For State: Geoffrey P. Davis, Geoffrey Slaughter, Deputy Attorneys General (P. Carter)

Burris v. Parke, 95 F.3d 465 (7th Cir. September 12, 1996) (95-3725)

(Vacating dismissal of Habeas Writ, with directions for District Court to consider on the merits)

Judge Richard A. Posner, Judge Daniel A. Manion, Judge Michael S. Kanne.

For Defendant: Alan M. Freedman, Bruce H. Bornstein, Chicago, IL, Carol R. Heise, Patricia

Mysza, Chicago, IL, John Blume, Habeas Assistance Project, Columbia, SC

For State: Geoffrey P. Davis, Geoffrey Slaughter, Deputy Attorneys General (P. Carter)

Burris v. Parke, 116 F.3d 256 (7th Cir. June 19, 1997) (97-1218)

(Appeal of denial of Habeas Writ; Affirmed 2-1)

Judge Frank H. Easterbrook, Judge Daniel A. Manion concur; Judge Richard D. Cudahay dissents.

For Defendant: Alan M. Freedman, Chicago, IL

For State: Geoffrey Slaughter, Deputy Attorney General (Modisett)

Burris v. State, 684 N.E.2d 193 (Ind. August 26, 1997) (Order setting execution date)

Burris v. Parke, 130 F.3d 782 (7th Cir. November 15, 1997)

(Request to Recall Mandate dismissed 2-1; Judge Easterbrook Opinion, Manion concurs, Cudahay dissents.)

Burris v. Parke, 118 S.Ct. 462 (November 19, 1997) (Application for stay denied)

BURRIS WAS EXECUTED BY LETHAL INJECTION 11-20-97 1:00 A.M. EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 75TH CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900, AND 5TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

CANAAN, KEITH BRIAN # 48

OFF DEATH ROW SINCE 01-10-03

DOB: 11-02-1958 DOC#: 865840 White Male

Vanderburgh County Circuit Court

Judge William H. Miller

Trial Cause #: 5215

Prosecutor: Robert J. Pigman, Chris Lenn

Defense: Barry L. Standley, Beverly Harris

Date of Murder: December 28, 1985

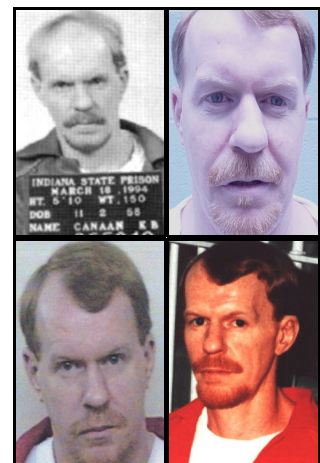
Victim(s): Lori Bullock W / F / 22 (No relationship to Canaan)

Method of Murder: stabbing with butcher knife

Summary: Police responded to a dispatch to an Evansville apartment building.

Inside, they discovered the body of Lori Bullock laying on a bed

with a butcher knife in her neck and cuts to her vaginal area. The apartment was ransacked and



money and jewelry were missing. Police recovered a Kool cigarette butt outside the apartment with saliva consistent with Canaan. His fingerprints were found on a package of spaghetti in the kitchen. Canaan was identified by those in an upstairs apartment as having knocked on their door near the time of the murder. Canaan had previously been at the apartment and was invited into the living room by the victim's roommates after he knocked on their door claiming to be looking for girls who lived upstairs. When arrested, Canaan had a package of Kool cigarettes on him.

Inmate Website: <http://www.ccadp.org/keithcanaan.htm>

Trial: Information/PC for Murder and DP filed (12-30-85); Voir Dire from Knox County (08-14-86; 08-15-86); Jury Trial (08-18-86; 08-19-86); Mistrial granted when officer refers to defendant's "prison shorts" (08-19-86); Voir Dire in Gibson County (11-06-86, 11-07-86); Jury Trial in Vanderburgh County (11-11-86, 11-12-86); ; 08-16-86, 08-14-86; 08-15-86; 08-16-86,); Verdict (11-12-86); Habitual Trial (11-12-86); Verdict (11-12-86); DP Trial (11-13-86); Verdict (11-13-86); Court Sentencing (11-26-86).

Conviction: Murder, Burglary (B Felony), Attempted Criminal Deviate Conduct (A Felony), Habitual Offender
Sentencing: November 26, 1986 (Death Sentence; no sentence entered on other convictions)

Aggravating Circumstances: b (1) Burglary
b (1) Attempted CDC

Mitigating Circumstances: None

Direct Appeal: Canaan v. State, 541 N.E.2d 894 (Ind. July 28, 1989) (82S00-8705-CR-521)
Conviction Affirmed 5-0 DP Affirmed 3-2
Pivarnik Opinion; Shepard, Givan concur; Debruler, Dickson dissent.
For Defendant: Barry L. Standley and Beverly K. Harris, Evansville
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Canaan v. Indiana, 111 S.Ct. 230 (1990) (Cert. denied)

PCR: Notice of Intent to File PCR Petition filed 11-07-90.
PCR Petition filed. Amended PCR Petition filed 06-12-91, 10-01-91, 04-22-93, 05-16-94.
State's Answer to Amended PCR Petition filed 06-17-91, 10-08-91, 06-03-94.
PCR Hearing 11-08-91.
Judge Richard L. Young
For Defendant: Michael C. Keating, Glenn A. Grampp, Special Deputy Public Defenders (Carpenter)
For State: Robert J. Pigman, Ron Bell
PCR Petition denied 07-13-92.
Motion to Reopen Hearing granted without objection 12-08-92.
PCR Hearing 04-22-93, 04-23-93.
PCR Petition denied 01-06-94.

Canaan v. State, 683 N.E.2d 227 (Ind. June 23, 1997) (82S00-9012-PD-816)
(Appeal of PCR denial by Judge Richard L. Young)
Affirmed 5-0; Sullivan Opinion; Shepard, Dickson, Selby, Boehm concur.
For Defendant: Steven H. Schutte, Lisa Malmer, Deputy Public Defenders, Michael C. Keating,
Glenn A. Grampp, Special Assistants, Indianapolis (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Canaan v. Indiana, 118 S.Ct. 2064 (1998) (Cert denied)

Habeas: 11-17-97 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
06-22-98 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Keith B. Canaan v. Ronald Anderson, Superintendent (IP 97-C-1847 H/K)

Judge David Hamilton

For Defendant: F. Thomas Schornhorst, AL, John Pinnow, Greenwood

For State: Michael A. Hurst, Thomas D. Perkins, Stephen R. Creason, Deputy Attorneys General

12-14-98 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.

02-04-99 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.

04-07-00 Motion to Amend Petition denied.

01-10-03 Petition for Writ of Habeas Corpus granted.

02-06-03 State's Notice of Appeal filed.

Canaan v. Davis, 2003 WL 118003 (S.D. Ind. January 10, 2003) (Not reported in F.Supp.2d) (Habeas Corpus Petition granted by Judge David Hamilton of the U.S. District Court for the Southern District of Indiana, on the grounds that trial counsel was ineffective for failure to object to inadequate instructions for the crime of Attempted Criminal Deviate Conduct, upon which the death sentence was partially based. Conviction for Criminal Deviate Conduct and Death Sentence vacated. Conviction for murder, burglary, and habitual offender affirmed. Remanded for new sentencing hearing.)

For Defendant: John Pinnow, Greenwood, F. Thomas Schornhorst, Orange Beach, AL

For State: Thomas D. Perkins, Deputy Attorney General (S. Carter)

Canaan v. McBride, 395 F.3d 376 (7th Cir. January 11, 2005) (03-1384).

(Appeal of granting of Habeas Writ)

Affirmed 3-0 as to Death Penalty, Reversed as to Attempted Criminal Deviate Conduct.

Diane P. Wood Opinion; William J. Bauer, Ilana Diamond Rovner concur.

For Defendant: Stephen R. Creason, Scott A. Kreider, Deputy Attorney General (S. Carter)

For State: F. Thomas Schornhorst, Gulfshores, AL, John Pinnow, Greenwood

On Remand: On June 7, 2005 Canaan was resentenced by Vanderburgh Circuit Court Judge Carl A. Heldt, pursuant to a Sentencing Agreement, to the maximum term of years on the remaining charges: 90 years (Murder/Habitual Offender), 50 years (Attempted Criminal Deviate Conduct), 20 years (Burglary), consecutive, for a total sentence of 160 years imprisonment.

CASTOR, MARVIN D. # 55

OFF DEATH ROW SINCE 03-02-92

DOB: 02-09-1941 DOC#: 881975 White Male

Wayne County Superior Court Judge Robert L. Reinke

Venued from Hancock County

Trial Cause #: S2-86-1933-CR (Wayne County)

Prosecutor: J. Gregory Garrison, Terry K. Snow

Defense: Patrick Murphy, Mark D. Maynard

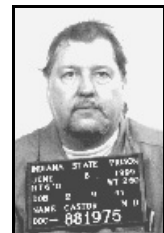
Date of Murder: May 8, 1986

Victim(s): Malcolm Grass W / M / 42 (Hancock County Deputy Sheriff)

Victim Website: <http://home1.gte.net/joking1/grass.htm>

Method of Murder: shooting with .357 handgun

Summary: Castor and his brother worked for Sugar Creek Resort near Greenfield. After reviewing company documents, they concluded that the corporate owners of the resort had been defrauding lending



institutions, and decided to blackmail them for \$250,000. When they contacted their superior at the company to do so, the company called in the FBI and local sheriff and recorded the conversations. Castor claimed that the company had hired hit men who had looked for him and ransacked his home. A meeting was eventually arranged for the payoff to take place at an Amoco station on State Road 9 just north of I-70. Castor and his brother arrived driving separately. While Castor was waiting inside his truck, several unmarked FBI and Sheriff vehicles closed in. One vehicle pulled directly in front of Castor, blocking his escape. The passenger, Deputy Malcolm Grass, jumped out with his gun drawn. While no one was in uniform, officers announced themselves as Castor got out of his truck firing a .357. A ricochet bullet killed Deputy Grass. Castor surrendered and claimed that he thought they were the company's hit men.

Trial: Information/PC for Murder and Death Penalty Filed (05-08-86); DP Request Filed (05-08-86); Venued to Wayne County (07-19-86); Amended DP Request Filed (03-14-88); Voir Dire (03-14-88, 03-15-88, 03-16-88); Jury Trial (03-16-86, 03-17-88, 03-18-88, 03-21-88, 03-22-88, 03-23-88, 03-24-88, 03-25-88); Verdict (03-25-88); DP Trial (03-26-88); DP Verdict (03-27-88); Pro-Se Request Granted (06-07-88); Court Sentencing (07-29-88).

Conviction: Murder, Carrying a Handgun Without a License

Sentencing: July 29, 1988 (Death Sentence, 6 months concurrent)

Aggravating Circumstances: b (6) Victim was law enforcement officer

Mitigating Circumstances: None

Direct Appeal: Castor v. State, 587 N.E.2d 1281 (Ind. March 2, 1992) (89S00-9006-DP-409)

Conviction Affirmed 5-0 DP Vacated 4-1

Krahulik Opinion; Debruler, Dickson, Givan concur; Shepard dissents.

(Defendant must "know," not merely "should know," that murder victim was officer; appointment of psychiatrist was required for DP hearing)

For Defendant: Keith A. Dilworth, Charles R. Hyde, Richmond

For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

Castor v. Clark, 111 S.Ct. 2276 (1991) (Cert. denied)

Castor v. Clark, 112 S.Ct. 16 (1991) (Reh. denied)

On Remand: March 1995 Castor committed to Logansport Mental Hospital; proceedings stayed. 05-07-96 DP Request withdrawn, resentenced by Wayne Superior Court Judge Barbara A. Harcourt to a fixed term of 60 years imprisonment for Murder.

Castor v. State, 754 N.E.2d 506 (Ind. September 13, 2001)

(Direct appeal after remand and sentence of 60 years imposed; Affirmed)

Castor v. State, 876 N.E.2d 388 (Ind. App. November 7, 2007)

(Appeal of PCR denial by trial court on 60 year sentence; Affirmed)

COLEMAN, ALTON # 43

EXECUTED 04-26-02 10:13 AM BY STATE OF OHIO
DOB: 11-06-1955 DOC#: 865839 Black Male

Lake County Superior Court Judge Richard W. Maroc



Trial Cause #: 1CR-203-1184-842

Prosecutor: Thomas W. Vanes, Richard Cook

Defense: Cornell Collins, Lonnie Randolph

Date of Murder: June 18, 1984

Victim(s): Tamika Turks B / F / 7 (No relationship to Coleman)

Method of Murder: ligature strangulation with bedsheet

Summary: Seven year old Tamika and her nine year old niece, Annie, were walking back from the candy store to their home when they were confronted by Debra Denise Brown and Coleman. Brown and Coleman convinced them to walk into the woods to play a game. Once there, they removed Tamika's shirt and tore it into small strips which they used to bind and gag the children. When Tamika began to cry, Brown held her nose and mouth while Coleman stomped on her chest. After carrying Tamika a short distance away, Annie was forced to perform oral sex on both Brown and Coleman, then Coleman raped her. Brown and Coleman then choked her until she was unconscious. When she awoke, they were gone. Tamika was found dead in the bushes nearby, strangled with an elastic strip of bedsheet. The same fabric was later found in the apartment shared by Coleman and Brown. Annie received cuts so deep that her intestines were protruding into her vagina. Evidence of a remarkably similar murder in Ohio was admitted at trial. These acts proved to be part of a midwestern crime spree by Coleman and Brown that included up to 8 murders, 7 rapes, 3 kidnappings, and 14 armed robberies. Brown has accumulated death sentences in Indiana, Illinois, and Ohio.

Trial: Information/PC for Murder and DP filed (11-26-84); Motion for Detainer filed (05-17-85); Initial Hearing (10-01-85); Voir Dire (03-31-86, 04-01-86, 04-02-86); Jury Trial (04-02-86, 04-03-86, 04-04-86, 04-07-86, 04-08-86, 04-09-86, 04-10-86); Deliberations 02 hours; Verdict (04-11-86); DP Trial (04-12-86); Deliberations 1 hour, 40 minutes; Verdict (04-12-86); Court Sentencing (05-02-86); Brown Trial (05-07-86 to 05-22-86).

Conviction: Murder, Attempted Murder (A Felony), Child Molesting (A Felony)

Sentencing: May 7, 1986 (Death Sentence, 50 years, 50 years consecutive)

Aggravating Circumstances: b (1) Child Molesting
b (7) 2 prior murder convictions in Ohio

Mitigating Circumstances: None

Direct Appeal: Coleman v. State, 558 N.E.2d 1059 (Ind. August 24, 1990) (45S00-8610-CR-937)
Conviction Affirmed 5-0 DP Affirmed 4-1
(Infamous note left for Coleman in elevator by lead prosecutor Thomas Vanes: "Pissy you got the balls (ball) to testify???" constituted misconduct but was not reversible error)
Shepard Opinion; Givan, Pivarnik, Dickson concur; Debruler dissents.
For Defendant: James F. Stanton, Crown Point, Public Defender
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Coleman v. Indiana, 111 S.Ct. 2912 (1991) (Cert. denied)

PCR: PCR Petition filed 05-15-92.

State's Answer to PCR Petition filed 07-30-92

PCR Hearing 11-15-94, 11-16-94, 11-17-94.

Special Judge Richard J. Conroy

For Defendant: Kathleen J. Littell, Valerie K. Boots, Robert E. Lancaster, Deputy Public Defenders

For State: Kathleen A. Sullivan, Natalie Bokota

PCR Petition denied 03-23-95.

Coleman v. State, 703 N.E.2d 1022 (Ind. 1998) (45S00-9203-PD-158)

(Appeal of PCR denial by Special Judge Richard J. Conroy)

Conviction Affirmed 5-0 DP Affirmed 5-0

Shepard Opinion; Dickson, Sullivan, Selby, Boehm concur.

For Defendant: Kathleen Cleary, Robert E. Lancaster, Deputy Public Defenders (Carpenter)

For Amicus Curiae: Charles A. Asher, South Bend, Indiana Association of Criminal Defense Lawyers.

For State: Christopher L. Lafuse, Deputy Attorney General (Modisett)

Coleman v. Indiana, 120 S.Ct. 1717, 146 L.Ed.2d 389 (2000)

(Petition for Writ of Certiorari granted. Judgment vacated and remanded back to Indiana Supreme Court for further consideration in light of Williams v. Taylor, 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000), where Virginia death sentence reversed on grounds of ineffective assistance of counsel, relying upon two-pronged test of Strickland)

Coleman v. State, 741 N.E.2d 697 (Ind. December 29, 2000) (45S00-9203-PD-158)

(On Remand from U.S. Supreme Court to Indiana Supreme Court)

Conviction Affirmed 4-0 DP Affirmed 4-0

Shepard Opinion; Dickson, Sullivan, Boehm concur. Rucker did not participate.

For Defendant: Kathleen Cleary, Robert E. Lancaster, Deputy Public Defenders (Carpenter)

For State: Christopher L. Lafuse, Deputy Attorney General (Freeman-Wilson)

Coleman v. Indiana, 122 S.Ct. 649 (2001) (Cert. denied)

Coleman v. Indiana, 122 S.Ct. 1137 (2002) (Reh. denied)

COLEMAN WAS INCARCERATED IN OHIO ON DEATH ROW SINCE HIS 1988 CONVICTIONS AND DEATH SENTENCE FOR AGGRAVATED MURDER IN HAMILTON COUNTY. COLEMAN WAS EXECUTED BY LETHAL INJECTION BY THE STATE OF OHIO ON APRIL 26, 2002, AT 1:26 AM EST. AT THE TIME OF HIS EXECUTION THERE WAS OVER 3,500 PRISONERS ON DEATH ROWS ACROSS THE U.S. COLEMAN WAS THE ONLY ONE WITH DEATH SENTENCES IN 3 STATES: INDIANA, OHIO, AND ILLINOIS.

Ohio:

State v. Coleman, 37 Ohio St.3d 286, 525 N.E.2d 792 (Ohio July 6, 1988)

(Direct appeal of murder conviction and death sentence in Hamilton County for the killing of Marlene Walters on July 13, 1984 - Affirmed)

Coleman v. Ohio, 488 U.S. 900, 109 S.Ct. 250, 102 L.Ed.2d 238 (October 11, 1988) (Cert. denied)

State v. Coleman, 45 Ohio St.3d 298, 544 N.E.2d 622 (Ohio September 20, 1989)

(Direct appeal of murder conviction and death sentence in Hamilton County for the killing of 15-year-old Tonnie Storey on July 19, 1984 - Affirmed)

Coleman v. Ohio, 493 U.S. 1051, 110 S.Ct. 855, 107 L.Ed.2d 849 (January 16, 1990) (Cert. denied)

Illinois:

People v. Coleman, 544 N.E.2d 330 (Ill. June 19, 1989)

(Direct appeal of murder conviction and death sentence in Lake County for the kidnapping and killing of 9-year-old Vernita Wheat on June 19, 1984 - Affirmed)

Coleman v. Illinois, 497 U.S. 1032, 110 S.Ct. 3294, 111 L.Ed.2d 802 (June 28, 1990) (Cert. denied)

CONNER, KEVIN AARON # 60

EXECUTED BY LETHAL INJECTION 07-27-05 12:31 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 03-27-1965 DOC#: 881980 White Male

Marion County Superior Court Judge John W. Tranberg



Trial Cause #: 49GO1-8802-CF-08449

Prosecutor: John V. Commons, David E. Cook

Defense: Steven B. Lazinsky, Rick Mendes

Date of Murder: January 26, 1988

Victim(s): Steve Wentland W / M / 19; Tony Moore W / M / 24; Bruce Voge W / M / 19 (Acquaintances)

Method of Murder: stabbing with knife (Wentland); shooting with shotgun (Moore/Voge)

Summary: Conner was drinking with friends Steve Wentland, Tony Moore, and Bruce Voge at Moore's home. Wentland left for a drive with Moore in the front seat and Conner in the back. Wentland and Moore argued and Moore struck Wentland with Conner's knife. Wentland fled from the car but was chased down and run over by Moore. Conner then stabbed him to death. They drove to the warehouse of Conner's employer, where Conner and Moore began arguing about the nights events. Conner shot Moore to death with a shotgun. Conner then returned to Moore's home and shot Voge on the couch. Conner then fled to Texas.

Trial: Information/PC for Murder and Death Penalty Filed (01-28-88); Death Sentence Request Filed (02-03-88); Jury Trial (10-03-88, 10-04-88, 10-05-88, 10-06-88, 10-07-88); Verdict (10-07-88); DP Trial (10-09-88); DP Verdict (10-09-88); Court Sentencing (11-03-88).

Conviction: Murder, Murder, Murder

Sentencing: November 3, 1988

(Death Sentences for murder of Moore and Voge, 60 years for murder of Wentland)

Aggravating Circumstances: b (8) 3 murders

Mitigating Circumstances: intoxication
22 years old at time of murder
no significant history of criminal conduct
genuine remorse
loss of his father
interest in drawing and writing
generosity in helping pay rent for girlfriend

Direct Appeal: Conner v. State, 580 N.E.2d 214 (Ind. October 24, 1991) (49S00-8904-CR-00314)

Conviction Affirmed 5-0 DP Affirmed 5-0

Krahulik Opinion; Shepard, Debruler, Givan, Dickson concur.

For Defendant: L. Craig Turner, Indianapolis

For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

Conner v. Indiana, 112 S.Ct. 1501 (1992) (Cert. denied)

Conner v. Indiana, 112 S.Ct. 2006 (1992) (Reh. denied)

PCR: PCR Petition filed 01-12-93. Amended PCR Petition filed 01-30-95.
State's Answer to PCR Petition filed 01-28-93, .
PCR Hearing 02-07-95, 02-08-95, 02-09-95, 02-14-95, 02-21-95.
Special Judge James K. Coachys
For Defendant: Kathleen J. Littell, Thomas C. Hinesley.
For State: John V. Commons, Frank A. Gleaves.
PCR Petition denied 03-29-95.

Conner v. State, 711 N.E.2d 1238 (Ind. May 25, 1999) (49S00-9207-PD-00591)
(Appeal of PCR denial by Special Judge James K. Coachys)
Affirmed 5-0. Dickson Opinion; Shepard, Sullivan, Selby, Boehm concur.
For Defendant: Thomas C. Hinesley, Kathleen Littell-Cleary, Deputy Public Defenders (Carpenter)
For State: Preston W. Black, Deputy Attorney General (P. Carter)
Conner v. Indiana, 121 S.Ct. 81 (2000) (Cert. denied)

Conner v. State, 829 N.E.2d 21 (Ind. June 16, 2005) (49S00-0504-SD-164).
(Conner sought permission to file Successive Petition for Postconviction Relief. Held: Denied.)
Shepard, Dickson, Sullivan, Boehm, Rucker concur.

Habeas: 12-21-99 Notice of Intent to file Petition for Writ of Habeas Corpus filed.
09-26-00 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Kevin A. Conner v. Ron Anderson, Superintendent (IP 99-C-1923-B/S)
Judge Sarah Evans Barker
For Defendant: Kathy Lea Stinton-Glen, Linda M. Wagoner, Indianapolis
For State: Michael A. Hurst, James B. Martin, Deputy Attorneys General

02-05-01 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
11-08-02 Petitioner files Findings of Fact, Conclusions of Law for Writ of Habeas Corpus.
01-15-03 Petition for Writ of Habeas Corpus denied.
06-05-03 Certificate of Appealability granted in part.

Conner v. Anderson, 259 F.Supp.2d 741 (S.D. Ind. January 15, 2003) (IP 99-C-1923-B/S)
(Habeas denied by Judge Sarah Evans Barker, U.S. District Court, Southern District of Indiana.)
For Defendant: Kathy Lea Stinton-Glen, Linda M. Wagoner, Indianapolis
For State: Timothy W. Beam, Deputy Attorney General (S. Carter)

Conner v. McBride, 375 F.3d 643 (7th Cir. July 20, 2004) (03-1951).
(Appeal of denial of Habeas Writ)
Affirmed 3-0.
Michael S. Kanne Opinion; Frank H. Easterbrook, Ilana Diamond Rovner concur.
For Defendant: Linda M. Wagoner, Indianapolis, Kathy Lea Stinton-Glen, Zionsville
For State: James B. Martin, Deputy Attorney General (S. Carter)
Conner v. McBride, 125 S.Ct. 1399 (February 28, 2005) (Cert. denied).
Conner v. McBride, 125 S.Ct. 1930 (April 25, 2005) (Reh. denied).

CONNER WAS EXECUTED BY LETHAL INJECTION ON 07-27-05 12:31 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 85TH CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900, AND THE 15TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

COOPER, PAULA R. # 46

OFF DEATH ROW SINCE 07-13-89
DOB: 08-25-1969 DOC#: 864800 Black Female

Lake County Superior Court Judge James C. Kimbrough

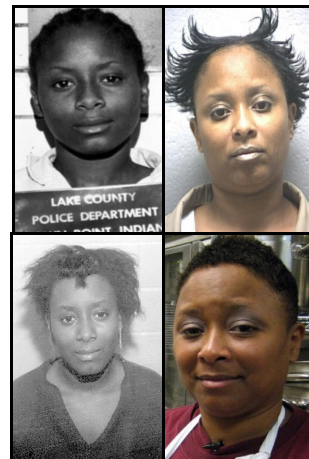
Trial Cause #: 3CR-109-685-433

Prosecutor: James W. McNew

Defense: Kevin B. Relphorde

Date of Murder: May 14, 1985

Victim(s): Ruth Pelke B / F / 78 (No relationship to Cooper)



Method of Murder: stabbing with knife 33 times

Summary: Cooper, age 15, devised a scheme with her friends to obtain money. They went to the home of a 78 year old Bible teacher and, armed with a knife, asked her to write down information about the classes. Cooper then knocked her to the floor from behind, struck her with a vase, cut her arms and legs, then stabbed her in the chest and stomach 33 times. Cooper and the other girls searched the house for money. Cooper took \$10 and Pelke's car.

Trial: Information/PC for Murder and Juvenile Waiver Order filed (06-28-85); Initial Hearing (07-01-85); Amended Information for DP filed (07-08-85); Guilty Plea Without Agreement (04-21-86); Sentencing (07-11-86); Resentenced to 60 years imprisonment (08-18-89).

Conviction: Pled Guilty to Murder and Felony-Murder without Plea Agreement

Sentencing: July 11, 1986 (Death Sentence)

Aggravating Circumstances: b(1) Robbery

Mitigating Circumstances: 15 years old at time of murder
youngest ever on Indiana Death Row

Direct Appeal: Cooper v. State, 540 N.E.2d 1216 (Ind. July 13, 1989) (45S00-8701-CR-61)

Conviction Affirmed 5-0 DP Vacated 5-0

Shepard Opinion; Debruler, Givan, Dickson, Pivarnik concur.

(Violates 8th Amendment and Indiana Constitution; murderers less than 16 years old at the time of the murder cannot receive the death sentence - Remanded to impose 60 year term of imprisonment)

For Defendant: William L. Touchette, Lake County Public Defender,

Victor L. Streib, Marshall College of Law, Cleveland, OH

For State: Michael Gene Worden, Deputy Attorney General (Pearson)

Amicus Curiae: John R. Van Winkle, John G. Shubat, Indiana Juvenile Justice Task Force; Richard A. Waples, Indiana Civil Liberties Union; Lawrence A. Vanore, ICLU; Nigel Rodley, Joan W. Howarth, Michael Sutherlin, Joan Fitzpatrick, Alice M. Miller, Jane G. Rocamora, David Weissbrodt, Amnesty International; Joseph A. Morris, Dennis J. Stanton, Mid-America Legal Foundation, Leadership Councils of America, and the Lincoln Institute for Research and Education.

On Remand: Pursuant to Indiana Supreme Court Opinion, Cooper was resentenced to a 60 year term of imprisonment on August 18, 1989 by Special Judge Richard J. Conroy. Cooper is scheduled to be released in June 17, 2013.

CORCORAN, JOSEPH EDWARD # 91

ON DEATH ROW SINCE 08-26-99
DOB: 04-18-1975 DOC#: 992454 White Male

Allen County Superior Court Judge Frances C. Gull



Trial Cause #: 02D04-9707-CF-000465

Prosecutor: Robert W. Gevers, II

Defense: John S. Nimmo and Mark A. Thoma

Date of Murder: July 26, 1997

Victim(s): James Corcoran W / M / 30 (brother);
Robert Turner W / M / 32 (sister's fiancé);
Timothy Bricker W / M / 30 (friend of brother);
Doug Stillwell W / M / 30 (friend of brother).



Method of Murder: Shooting with Ruger Mini-14 Semi-Automatic Rifle

Summary: The defendant was living in a home along with his brother James Corcoran, his sister Kelly Nieto, and her fiancé' Robert Turner. On July 26, 1997 the defendant was upstairs while his brother and Turner sat in the living room with friends Timothy Bricker and Doug Stillwell. According to the defendant, he heard them talking about him, so he went downstairs and confronted them. He first placed his 7 year old niece in an upstairs bedroom to protect her from the gunfire, then loaded his semi-automatic rifle. Before they had a chance to move, the defendant shot and killed his brother, Turner, and Bricker. Stillwell fled to the kitchen, but was cornered, shot and killed. The defendant then laid down the rifle, went to a neighbor's house, and asked them to call the police. A search of the defendant's room and secure attic, to which only he had access, revealed over 30 firearms, several munitions, explosives, guerilla tactic military issue books, and a copy of The Turner Diaries. Corcoran asserted an insanity defense based upon his diagnosis as having either a paranoid or schizotypal personality disorder.

Trial: Information/PC for Murder filed (07-31-97); Amended Information for DP filed (05-13-98); 2nd Amended Information for DP filed (05-10-99); Voir Dire in Porter County (05-17-99, 05-18-99, 05-19-99); Jury Trial in Allen County (05-20-99, 05-21-99, 05-22-99); Verdict (05-22-99); DP Trial (05-24-99); Verdict (05-25-99); Court Sentencing (08-26-99); New Sentencing Order entered (09-30-01).

Conviction: Murder (4 counts)

Sentencing: August 26, 1999 (Death Sentence); Revised Sentencing Order filed September 30, 2001.

Aggravating Circumstances: b (8) Multiple Murders

Mitigating Circumstances: Extreme mental / emotional disturbance
Capacity to appreciate criminality impaired
Unable to assist defense because of mental illness
Fully cooperated with police, admitted guilt
Good behavior in jail
Protected 7 year old niece before murders
No significant prior criminal conduct
Remorseful
Young age (22)

Direct Appeal: Corcoran v. State, 739 N.E.2d 649 (Ind. December 6, 2000) (02S00-9805-DP-293)
Conviction Affirmed 5-0 DP Vacated 5-0
Dickson Opinion; Shepard, Sullivan, Boehm, Rucker concur.
(DP Vacated and remanded for more specific sentencing order, since trial court may have impermissibly relied upon non-statutory aggravating factors.)
For Defendant: P. Stephen Miller, John C. Bohdan, Fort Wayne
For State: Priscilla J. Fossum, Deputy Attorney General (Freeman-Wilson)

On Remand: Corcoran again sentenced to death by Allen County Superior Court Judge Frances Gull, filing a new sentencing order on 09-30-01.

Direct Appeal: Corcoran v. State, 774 N.E.2d 495 (Ind. September 5, 2002) (02S00-9805-DP-293)
Conviction Affirmed 5-0 DP Affirmed 4-1
Shepard Opinion; Dickson, Boehm, Sullivan concur. (Rucker dissents, stating that a person suffering a "severe mental illness" should only be sentenced to LWOP.)
For Defendant: P. Stephen Miller, John C. Bohdan, Fort Wayne
For State: James B. Martin, Deputy Attorney General (S. Carter)

PCR: Notice of Intent to file PCR Petition filed 04-02-03.
Motion by Defendant to Determine Competency filed 09-09-03.
10-21-03 "Cause is submitted and evidence heard on the issue of Defendant's competency to waive Post-Conviction Relief. All matters taken under advisement."
12-19-03 Court notifies Indiana Supreme Court "of the Court's finding of competency and the lack of any Petition for Post-Conviction Relief being filed."
01-07-04 Notice of Appeal filed by Defendant.

Allen County Superior Court Judge Frances C. Gull
For Defendant: Laura L. Volk, Joanna McFadden, Deputy Public Defenders (Carpenter)
For State: J. Michael Loomis

Corcoran v. State, 820 N.E.2d 655 (Ind. January 11, 2005) (02S00-0304-PD-00143)
Finding of competency affirmed 4-1.
Sullivan Opinion; Shepard, Dickson, Boehm concur. Rucker dissents.
(Corcoran waived PCR, but Public Defender filed anyway claiming that Corcoran was incompetent to waive. Trial Court found Corcoran competent to waive PCR. Corcoran recanted his waiver during the appeal of that decision, requesting dismissal of appeal and remand back to trial court to litigate PCR.)
For Defendant: Joanna McFadden, Deputy Public Defender (Carpenter)
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

Corcoran v. State, 827 N.E.2d 542 (Ind. May 12, 2005) (On Rehearing) (02S00-0304-PD-00143)
(Affirming ruling that Corcoran was competent to waive, and denying request for dismissal of appeal)
For Defendant: Joanna McFadden, Deputy Public Defender (Carpenter)
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)
Sullivan Opinion; Shepard, Dickson, Boehm concur. Rucker dissents.

Corcoran v. State, 845 N.E.2d 1019 (Ind. April 18, 2006) (02S00-0508-PD-350)
Affirmed 4-1; Sullivan Opinion; Shepard, Dickson, Boehm concur. Rucker dissents.
(Affirming dismissal of PCR Petition as too late, after Corcoran changed his mind and signed Petition)
For Defendant: Joanna McFadden, Laura L. Volk Deputy Public Defenders (Carpenter)
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

Habeas: 11-08-05 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Joseph Edward Corcoran v. Cecil Davis, Superintendent (3:05-CV-00389-AS-CAN)
Judge Allen Sharp
For Defendant: Alan M. Freedman, Laurence E. Komp, Midwest Center for Justice, Chicago, IL

For State: Stephen R. Creason, James B. Martin, Deputy Attorneys General (S. Carter)
12-02-05 Petition by Corcoran pro-se to halt all appeals
03-31-06 Hearing on Petitioner's Motion to halt all appeals
Respondent to file brief by 08-01-06, Petitioner to Reply by 10-02-06.
Respondent to file Return to Order to Show Cause by 06-29-06

Corcoran v. Buss, 483 F.Supp. 709 (N.D. Ind. April 9, 2007) (#3:05-CV-00389-AS-CAN)
(Judge Allen Sharp granting Writ of Habeas Corpus as to death sentence, holding that Prosecutor had unreasonably offered to forego death penalty if Corcoran would waive jury trial. 120 days to resentence to penalty less than death)
For Defendant: Alan M. Freedman, Evanston, IL; Laurence E. Komp, Manchester, MO.
For State: Stephen R. Creason, James B. Martin, Deputy Attorneys General (S. Carter)

Corcoran v. Buss, 551 F.3d 703 (7th Cir. December 31, 2008) (07-2093, 07-2182)
(Cross Appeals after granting Writ of Habeas Corpus)
Reversed 3-0 on issue of Prosecutor offer to forego death sentence.
Affirmed 2-1 on issue of waiver of PCR proceedings.
Opinion by William J. Bauer.
Judge Diane S. Sykes concurs; Judge Ann Claire Williams dissents on waiver issue.
For Defendant: Alan M. Freedman, Laurence E. Komp, Midwest Center for Justice, Chicago, IL
For State: James B. Martin, Deputy Attorney General (S. Carter)

Corcoran v. Levenhagen, 130 S.Ct. 8 (October 20, 2009) (08-10495)
In a Per Curiam Opinion, the U.S. Supreme Court held that the 7th Circuit erred by rejecting the remaining sentencing issues without discussion and remanded the case back to the 7th Circuit.

Corcoran v. Levenhagen, 593 F.3d. 547 (7th Cir. January 27, 2010) (07-2093, 07-2182)
DP Vacated 3-0; Remanded for new DP Judge Sentencing Hearing.
Opinion by Judge William J. Bauer; Judge Diane S. Sykes and Judge Ann Claire Williams concur.
For Defendant: Alan M. Freedman, Evanston, IL; Laurence E. Komp, Manchester, MO.
For State: James B. Martin, Deputy Attorney General (Zoeller)
(Trial Court improperly considered non-statutory aggravators in death sentence: Corcoran's "future dangerousness," his victims' innocence, and the heinousness of the murders.)

Wilson v. Corcoran, 131 S.Ct. 13 (November 08, 2010) (10-91)
(Appeal of granting of Habeas Writ of Habeas Corpus by U.S. District Court Judge Allen Sharp)
Vacating Court of Appeals Opinion at 593 F.3d 547 (7th Cir. April 14, 2010).
7th Circuit could not find a federal violation when the Indiana Supreme Court made a factual determination that a state trial Judge had not considered non-statutory aggravators. No opinion on merits of Writ.

Corcoran v. Wilson, 651 F.3d 611 (June 23, 2011) (07-2093, 07-2182)
(On remand, the 7th Circuit held that remand to District Court required to decide unaddressed issues)
Per Curiam Opinion. (Judge William J. Bauer, Judge Diane S. Sykes, Judge Ann Claire Williams)

Corcoran v. Buss, 2013 WL 140378 (N.D. Ind. January 10, 2013) (3:05-CV-389 JD)
Denying Habeas on remaining grounds. (Consideration of non-aggravators and failure of Indiana DP statute to distinguish circumstances where death or LWOP are warranted)
For Defendant: Alan M. Freedman, Evanston, IL; Laurence E. Komp, Manchester, MO.
For State: James B. Martin, Deputy Attorney General (Zoeller)

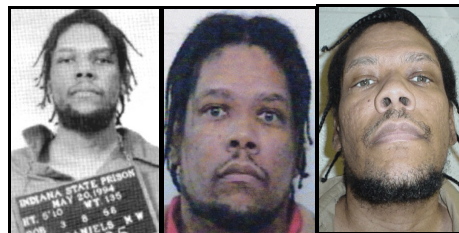
APPEAL PENDING IN 7TH CIRCUIT U.S. COURT OF APPEALS.

DANIELS, MICHAEL WILLIAM # 3

OFF DEATH ROW SINCE 01-07-05

DOB: 03-08-1958 DOC#: 13135 Black Male

Marion County Superior Court
Judge Patricia J. Gifford



Trial Cause #: CR78-47D

Prosecutor: Thomas J. Young, Marcus C. Emery (Stephen Goldsmith)

Defense: Merle B. Rose, William F. Wurster

Date of Murder: January 16, 1978

Victim(s): Allan H. Streett W / M / 43 (No relationship to Daniels)

Victim Website: <http://www.arlingtoncemetery.net/astreett.htm>

Method of Murder: shooting with handgun

Summary: Defendant and two other men drove around residential neighborhoods in Indianapolis stopping and robbing persons shoveling snow in front of their homes. At the residence of U.S. Army Chaplain Allan Streett, Daniels and another man confronted Streett and his 15 year old son who were shoveling snow at approximately 9:30 p.m. Two men came up from behind and said, "Don't move and no one will get hurt." The 15 year old turned and saw Daniels waving a gun at him. Daniels ordered Allen Streett and his son to hand over their wallets. When Allen Streett responded that he did not have his wallet with him, Daniels shot and killed him. The 15 year old handed over his wallet to the other intruder, who then fled with Daniels. Three other residents at other locations were victimized that same night in a similar fashion. In all, six eyewitnesses identified Daniels at trial. In addition, accomplice Kevin Edmonds testified for the State, also implicating Daniels.

Trial: Information/PC for Murder and Death Penalty Filed (01-27-78); Death Sentence Request Filed (05-17-78); Jury Trial (08-20-79, 08-21-79, 08-22-79, 08-23-79, 08-24-79); Verdict (08-24-79); DP Trial (08-24-79); DP Verdict (08-24-79); Court Sentencing (09-14-79).

Conviction: Felony-Murder, Robbery (A Felony) (4 counts), Attempted Robbery (A Felony)

Sentencing: September 14, 1979 (Death Sentence)

Aggravating Circumstances: b(1) Robbery

Mitigating Circumstances: lack of education
below normal IQ, slow learner

Direct Appeal: Daniels v. State, 453 N.E.2d 160 (Ind. September 9, 1983) (380-S-66)
Conviction Affirmed 5-0 DP Affirmed 3-2
Hunter Opinion; Givan, Pivarnik concur; Debruler, Prentice dissent.
For Defendant: Richard Kammen, Indianapolis
For State: Palmer K. Ward, Deputy Attorney General (Pearson)
Daniels v. Indiana, 109 S.Ct. 3182 (1989)
(Judgment Vacated and remanded for consideration of Gathers victim impact)

Daniels v. State, 561 N.E.2d 487 (Ind. October 19, 1990) (49S00-8601-PC-33)
(Appeal after Remand, DP Affirmed 4-1)

Dickson Opinion; Shepard, Givan, Pivarnik concur; Debruler dissents.
For Defendant: Richard A. Waples, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

PCR: Daniels v. State, 528 N.E.2d 775 (Ind. September 23, 1988) (49S00-8601-PC-33)
(Appeal of PCR denial by Special Judge Thomas A. Alsip)
Conviction Affirmed 5-0 DP Affirmed 5-0
Debruler Opinion; Shepard, Givan, Pivarnik, Dickson concur.
For Defendant: Richard A. Waples, Indianapolis
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

11-16-92 Defendant files pro-se PCR Petition.
11-23-92 Judge Patricia J. Gifford denies as not in proper form.
03-15-93 Defendant files PCR Petition.
04-02-93 Judge Thomas Alsip denies motion.
11-22-93 Defendant files Form for Successive PCR Rule 1.
12-06-94 Defendant files Motion for Summary Judgment on death penalty claim.
03-29-95 Special Judge James R. Detamore denies Motion for Summary Judgment.
03-30-95 Defendant files Motion for Summary Judgment.
04-03-95 Defendant files Motion for Summary Judgment.
For Defendant: Judith G. Menadue, Elkhart, Mark A. Earnest, Indianapolis
For State: Marc E. Lundy

06-26-95 Hearing held; Special Judge James R. Detamore granted Defendant's Motion for Summary Judgment, enforcing plea agreement for a term of years, and resentenced Daniels to concurrent terms of 60 years (Murder), 50 years (Robbery), 20 years (Robbery), 20 years (Robbery), 20 years (Robbery), for a total sentence of 60 years imprisonment.

State v. Daniels, 680 N.E.2d 829 (Ind. May 16, 1997) (49S00-9411-SD-1079)
(State's appeal of granting of partial summary judgment by Special Judge James R. Detamore on 2nd PCR - PCR Court directed to enter judgment for State on Plea Agreement issue; remanded on remaining issues)
Reversed 5-0; Boehm Opinion; Shepard, Dickson, Sullivan, Selby concur.
For Defendant: Judith G. Menadue, Elkhart, Mark A. Earnest, Indianapolis
For State: Meredith J. Mann, Deputy Attorney General (P. Carter)

09-24-96 Sentence imposed on 06-26-95 set aside and original convictions and sentence reinstated.
02-10-97 Amended PCR Petition filed.
Hearing held on remaining issues 02-11-97, 03-04-97, 03-05-97.
For Defendant: Judith G. Menadue, Elkhart, Mark A. Earnest, Indianapolis
For State: Marc E. Lundy
07-09-97 PCR Petition denied by Special Judge James R. Detamore.

Daniels v. State, 741 N.E.2d 1177 (Ind. January 12, 2001) (49S00-9411-SD-1079)
(Appeal of 2nd PCR denial by Special Judge James R. Detamore)
Conviction Affirmed 5-0 DP Affirmed 3-2
Shepard Opinion; Sullivan, Dickson, concur. Boehm, Rucker dissent as to DP.
For Defendant: Mark A. Earnest, Eric K. Koselke, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (Freeman-Wilson)

Habeas: 09-26-00 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Michael W. Daniels v. Robert A. Farley, Superintendent (IP 93-C-0586- M/F)
Judge Larry J. McKinney
For Defendant: Judith G. Menadue, Elkhart, Mark A. Earnest, Indianapolis
For State: Wayne E. Uhl, Deputy Attorney General (Freeman-Wilson)
03-18-94 Entry directing dismissal until state remedies exhausted.

05-01-01 Notice of Intent to Amend pro-se Petition for Writ of Habeas Corpus filed.
 02-01-02 Amended Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District
Michael W. Daniels v. Daniel McBride, Superintendent (IP 01-C-0550-Y/K)
 Judge Richard L. Young
 For Defendant: Mark A. Earnest, Eric Koselke, Brent L. Westerfield, Indianapolis
 For State: Thomas D. Perkins, Stephen R. Creason, Deputy Attorneys General

07-02-02 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
 12-04-02 Petitioner's Motion to Appoint Guardian Ad Litem
 04-25-03 Petitioner's Motion for psychological examination.
 10-07-03 Mr. Hailey appointed Guardian Ad Litem at \$125 per hour.
 05-04-04 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
 02-24-05 Amended Petition for Writ of Habeas Corpus filed.
 04-07-05 Amended Petition for Writ of Habeas Corpus denied.

Daniels v. Knight, 476 F.3d 426 (7th Cir. 2007) (05-2620) (Habeas denial affirmed after Clemency)

Clemency: On January 7, 2005, outgoing Indiana Governor Joseph Kernan commuted the death sentence of Michael Daniels, the longest serving prisoner on Indiana Death Row. Daniels was sentenced to death on September 14, 1979. Governor Kernan showed less than courage in granting the clemency, without notice to the Indiana Attorney General, in his last days in office after being defeated in his bid for reelection. As reasons for the clemency, Governor Kernan basically stated that Daniels was "almost" retarded, "almost" entered into a plea agreement for a lesser sentence, and the case was "almost" reversed on appeal. Also the case was very old. This marked only the second time since the reinstatement of the Death Penalty in Indiana in 1977 that an Indiana Governor had commuted a death sentence. On July 2, 2004 Governor Kernan issued an Executive Order commuting the death sentence of Darnell Williams to Life Imprisonment Without Parole.

DAVIS, FRANK R. # 27

OFF DEATH ROW SINCE 12-08-93
 DOB: 01-29-1953 DOC#: 1181 White Male

Marshall County Circuit Court Judge Michael D. Cook
 Venued from LaPorte County

Trial Cause #: 50C01-8307-CF-23 (Marshall County)
 5066-C (LaPorte County)

Prosecutor: Craig V. Braje

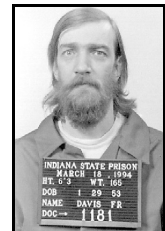
Defense: Gregory H. Hofer

Date of Murder: June 16 & 18, 1983

Victim(s): D.R. W / M / 14; J.L. W / M / 15 (No relationship to Davis)

Method of Murder: manual strangulation (D.R.); strangulation with wire (J.L.)

Summary: Charges arose from 3 separate incidents. On January 10, 15 year old J.S. was confronted by Davis at gunpoint in a cornfield in LaPorte on the way back to his home. Davis put a wire around his neck and performed oral sex on him. Davis later pistol-whipped him until he thought he was unconscious. J.S. recovered from the attack and later identified Davis. On June 16, 14 year old D.R. was confronted by Davis with a knife after he and Davis drank a beer provided by Davis. Davis tied a wire around his neck, performed oral sex on him, then strangled him to death with his hands. On June 18, two 15 year old boys, J.L. and E.F. were camping out when they came



across Davis in the woods. Davis was smoking pot and shared it with the teenagers. Davis left while the boys returned to the campsite. Davis watched and waited until the boys went to sleep, then went into the tent, woke up J.L., and escorted him into the woods at knifepoint. Davis tied J.L. up with wire, then performed oral sex on him, then strangled him with the wire. Davis returned and got E.F., tied him up with wire, and performed oral sex on him. Davis then struck him in the head with the axe and left. Davis had used his own name and was identified by the survivors. He gave a complete confession.

Trial: Information for Murder filed, PC Hearing held (06-21-83); Amended Information for DP filed (07-13-83); Venued to Marshall County (07-13-83); Notice of Insanity Defense (08-29-83); Competency Hearing 11-01-83; Insanity Defense Withdrawn (01-09-94); Voir Dire (01-09-04, 01-10-84, 01-11-84); Jury Trial (01-12-84, 01-13-84); Plea Agreement Filed/Guilty Plea Entered (01-13-84); DP Sentencing Hearing (01-18-84, 01-19-04); Court Sentencing (01-25-84).

Conviction: Pled guilty to Murder (2 counts) and Attempted Murder (A Felony) pursuant to a Plea Agreement, which called for dismissal of CDC (A Felony) (4 counts) and Felony-Murder (2 counts), but allowed the State to seek a Death Sentence.

Sentencing: January 25, 1984 (Death Sentence, Death Sentence, 50 years, 50 years)

Aggravating Circumstances: b (1) Child Molesting
b (3) Lying in Wait

Mitigating Circumstances: emotional pressure
antisocial character disorder
sexually abused as a prisoner in Boy's School

Direct Appeal: Davis v. State, 477 N.E.2d 889 (Ind. May 22, 1985) (484-S-142)
Conviction Affirmed 5-0 DP Affirmed 4-1
Hunter Opinion; Prentice, Givan, Pivarnik concur; Debruler dissents.
For Defendant: Gregory H. Hofer, LaPorte, Jere L. Humphrey, Plymouth
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Davis v. Indiana, 106 S.Ct. 546 (1985) (Cert. denied)

PCR: PCR Petition filed 02-11-86. Amended PCR filed 05-03-93, 08-18-93.
State's Answer to PCR Petition filed 06-05-86.
PCR Hearing 11-10-93, 11-12-93, 11-15-93, 11-17-93.
Marshall Circuit Court Special Judge Marvin D. McLaughlin
For Defendant: Eric Koselke, Ann M. Pfarr and Kenneth L. Bird, Deputy Public Defenders (Carpenter).
For State: Thomas F. Wagner, DPA.

11-17-93 Parties file Joint Motion for Equitable Relief, accepted by Court, which vacates the death sentence, leaving intact the guilty pleas to Murder (2 Counts) and Attempted Murder (2 Counts), and the 50 year sentences for each count of Attempted Murder.

12-08-93 Following a new Sentencing Hearing, Davis was resentenced by Special Judge Marvin D. McLaughlin to consecutive terms of 60 years (Murder), 60 years (Murder), 50 years (Attempted Murder), and 50 years (Attempted Murder), for a total sentence of 220 years imprisonment.

Davis v. State, 675 N.E.2d 1097 (Ind. 1996) (50S00-9008-PD-539)
(Appeal of PCR denial on conviction only)
Affirmed 5-0; Shepard Opinion, Dickson, Sullivan, Selby, Boehm concur.

**DAVIS, GREAGREE C. # 31
(Chijioke Bomani Ben-Yisrayl)**

OFF DEATH ROW SINCE 01-16-08
DOB: 01-06-1962 DOC#: 13158 Black Male

Marion County Superior Court Judge Roy F. Jones



Trial Cause #: CR84-076E

Prosecutor: David E. Cook, Brian F. Jennings

Defense: Timothy L. Bookwalter

Date of Murder: April 2, 1984

Victim(s): Debra A. Weaver W / F / 21 (Former roommate of acquaintance)

Method of Murder: stabbing with 2 knives 113 times (11 before death)

Summary: Davis was acquainted with victim's former roommate, and visited her residence many times. He had told the roommate of his sexual interest in her. He went to her unoccupied residence, broke and entered through a back window, removed the light bulbs, and waited. When the victim arrived, she called her brother and feared that an intruder may still be inside. When she hung up, Davis attacked her, tied her hands, and gagged her. Davis took her to a highway overpass, where he raped, sodomized, and stabbed her to death. The body was discovered and revealed chipped teeth, abrasions, multiple bruises on lips and gums, strangulation marks, seminal fluid in her vagina, and 113 stab wounds on the chest and abdomen. After initially claiming that he had only witnessed the crime, Davis confessed and took police to a creek where the knives were recovered. Serology from the semen showed Davis to be in the 1% of the general population with the same characteristics.

Trial: Information/PC for Murder and Death Penalty Filed (04-06-84); Death Sentence Request Filed (05-11-84); Jury Trial (09-24-84, 09-25-84, 09-26-84, 09-27-84, 09-28-84); Verdict (09-28-84); Court Sentencing (10-26-84).

Conviction: Murder, Burglary (B Felony), Confinement (B Felony), Rape (A Felony)
Found Not Guilty of Criminal Deviate Conduct (A Felony)

Sentencing: October 26, 1984 (Death Sentence, 20 years, 20 years, 50 years)

Aggravating Circumstances: b (1) Burglary
b (1) Confinement
b (1) Rape
b (3) Lying in Wait

Mitigating Circumstances: no significant history of criminal conduct
(although prior Burglary conviction and Delinquency finding)
hung jury at DP Sentencing Hearing
alcoholism
confessed

Hung Jury on Death Sentence

Direct Appeal: Davis v. State, 598 N.E.2d 1041 (Ind. September 1, 1992) (50S00-9008-PD-539)
Conviction Affirmed 5-0 DP Affirmed 5-0
Dickson Opinion; Shepard, Debruler, Givan, Krahulik concur.
For Defendant: Alex R. Voils, Jr., J. Murray Clark, Indianapolis
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Davis v. Indiana, 114 S.Ct. 392 (1993) (Cert. denied)

PCR: 10-29-93 Defendant's Request to Refer to Him by Legal Name "Chijioke Bomani Ben-Yisrayl"
PCR Petition filed 02-14-94. Amended PCR filed 08-17-95, 11-17-95.
State's Answer to PCR Petition filed 03-09-94.
PCR Hearing 01-16-96, 01-17-95, 01-18-95, 01-19-95, 01-22-95, 01-23-95, 01-24-95.
Special Judge Cynthia S. Emkes
For Defendant: Joanna Green, Steven Schutte.
For State: Marc Lundy.
05-31-96 PCR Petition granted as to death sentence, denied as to convictions.

Ben-Yisrayl v. State, 738 N.E.2d 253 (November 8, 2000) (49S00-9307-PD-826)
(Appeal by State of the granting of PCR as to death penalty)
(Appeal by Ben-Yisrayl of the denial of PCR as to convictions)
Conviction Affirmed 5-0 DP Vacated 5-0
Dickson Opinion; Shepard, Sullivan, Boehm, Rucker concur.
For Defendant: Steven H. Schutte, Joanna Green, Deputy Public Defender
For State: James D. Dimitri, Deputy Attorney General (Modisett)
Ben-Yisrayl v. Indiana, 122 S.Ct. 1178 (2002) (Cert. denied)

On Remand: On 06-27-03 Marion County Superior Court Judge Grant W. Hawkins granted a Motion to Dismiss Death Penalty, holding IC 35-50-2-9 unconstitutional on the grounds that Ring v. Arizona requires that aggravators outweigh mitigators "beyond a reasonable doubt," which our statute does not require.

State v. Ben-Yisrayl, 809 N.E.2d 309 (Ind. May 25, 2004) (49S00-0308-PD-391)
(Interlocutory appeal by State, on transfer from the Indiana Court of Appeals, following dismissal of death penalty charges by Marion Superior Court Judge Grant W. Hawkins)
Reversed 5-0; Opinion by Dickson; Shepard, Sullivan, Boehm, Rucker concur.
(Rucker notes that Ring/Apprendi requires that weighing be "beyond a reasonable doubt", but would not declare statute unconstitutional. He would simply construe the statute to implicitly require such a standard.) Remanded for reinstatement of the death penalty request.
Ben-Yisrayl v. Indiana, 126 S.Ct. 659 (2005) (Cert. denied)

On January 16, 2008 the State withdrew the Request for Death Penalty. On January 22, 2008, Marion Superior Court #3 Judge Sheila A. Carlisle resentence Davis to consecutive terms of 60 years (Murder), 50 years (Rape), 20 years (Burglary), and 20 years (Confinement), for a total sentence of 150 years imprisonment.

Ben-Yisrayl v. State, 908 N.E.2d 1223 (Ind. App. July 10, 2009) (49A02-0806-CR-512)
(Direct Appeal of 150 year sentence on remand, affirming the trial court's sentences of 50 years (Rape), 20 Years (Confinement), and 20 years (Burglary), but reversing the trial court's imposition of the "alternative" 60 year sentence for Murder at the original sentencing, and remanding for a new Blakely Sentencing Hearing for Murder)
Reversed in part 3-0; Bradford Opinion; Friedlander, May Concur.
For Defendant: Elizabeth A. Gabig, Marion County Public Defender.
For State: Stephen R. Creason, Deputy Attorney General (Zoeller)

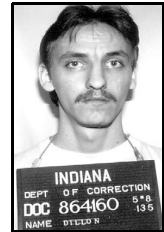
On remand, a new sentencing hearing, in compliance with Blakely, was held on February 16, 2010. The Court sentenced Davis to a 60 year sentence for Murder, consecutive to the 90 year sentences on the other charges, for a total executed sentence of 150 Years imprisonment.

Ben-Yisrayl v. State, 939 N.E.2d 130 (Ind. App. December 14, 2009) (49G03-8404-CF-5165)
(Direct Appeal of 150 year sentence - Memorandum Decision, Not for Publication)
Affirmed 3-0; Opinion by Brown; Darden and Bradford concur.
For Defendant: Lisa M. Johnson, Brownsburg, IN.
For State: Ellen H. Meilaender, Deputy Attorney General (Zoeller)

DILLON, RICHARD # 11

OFF DEATH ROW SINCE 12-28-84
DOB: 12-12-1962 DOC#: 864160 White Male

Knox County Superior Court Judge Edward C. Theobald
Venued from Pike County



Trial Cause #: 81-CR-10 (Pike), SCR-81-17 (Knox)
Prosecutor: Jerry J. McGaughey, Mark K. Sullivan, Dale P. Webster
Defense: Jimmy E. Fulcher

Date of Murder: March 8, 1981

Victim(s): William T. Hilborn W / M / 72; Mary H. Hilborn W / F / 65 (No relationship to Dillon)

Method of Murder: stabbing with knife

Summary: William and Mary Hilborn were found stabbed to death in their home in Petersburg. Dillon was identified by a Deputy Sheriff as near the property at the time of the murders. When questioned, Dillon said he was not in Petersburg, but was in Princeton at the home of a friend, Jay R. Thompson. The murder weapon, a knife, was later found at Thompson's car. Dillon later gave a complete confession admitting that he and Thompson had committed the Burglary and that he (Dillon) stabbed both victims. They gained entry by requesting to use the telephone. Dillon was armed with a buck knife and stabbed both Hilborns. Both men then forced Mrs. Hilborn, by holding a knife under her chin, to obtain money for them. Dillon then stabbed her again, and when she fell to the floor, cut her throat. Thompson then stabbed both victims with a folding knife to insure that both were dead. At Thompson's trial, a pathologist testified that the fatal wound to both Hilborns was made with a knife similar to the folding knife.

Trial: Information/PC for Murder filed (03-17-81); Amended Information for DP filed (03-23-81); Venued to Knox County (04-08-81); Appearance in Knox County (04-16-81); Voir Dire (07-13-81, 07-14-81, 07-15-81, 07-16-81); Jury Trial (07-20-81, 07-21-81, 07-22-81, 07-23-81, 07-24-81, 07-27-81, 07-28-81); Verdict (07-28-81); DP Trial (07-29-81); Verdict (07-29-81); Court Sentencing (08-21-81); Venued to Clark County after Remand (03-06-86).

Conviction: Felony-Murder (2 counts), Burglary (A Felony), Conspiracy to Commit Burglary (A Felony)

Sentencing: August 21, 1981 (Death Sentence)

Aggravating Circumstances: b (1) Burglary
b (8) 2 murders

Mitigating Circumstances: no significant history of prior criminal conduct
intoxication
18 years old at time of murder

Companion Case to Thompson

Direct Appeal: Dillon v. State, 454 N.E.2d 845 (Ind. October 3, 1983) (282-S-67)
Conviction Affirmed 5-0 DP Affirmed 3-2
Hunter Opinion; Givan, Pivarnik concur; Debruler, Prentice dissent.
For Defendant: Howard B. Lytton, Jr., Steven E. Ripstra, Jasper
For State: Palmer K. Ward, Deputy Attorney General (Pearson)
Dillon v. Indiana, 104 S.Ct. 1617 (1984) (Cert. denied)

Habeas: Dillon v. Duckworth, 751 F.2d 895 (7th Cir. December 28, 1984) (84-2208)
(Appeal of Habeas denial by Judge Gene E. Brooks, U.S. District Court, Southern District of Indiana, Evansville Division)
Writ Granted due to ineffective assistance of counsel - Counsel was appointed 4 months before trial; member of the bar only 2 1/2 years; wife filed for divorce, brother had motorcycle accident, and father had emergency heart surgery shortly before trial)
Writ Granted 3-0; Judge Walter Cummings, Judge John L. Coffey, Judge Clement F. Haynsworth
For Defendant: Steven E. Ripstra, Jasper
For State: David A. Arthur, Deputy Attorney General (Pearson)
Duckworth v. Dillon, 105 S.Ct. 2344 (1985) (Cert. denied)

On Remand: 03-06-86 Venued to Clark County (86-CR1-29)
08-29-86 Dillon pled guilty to two counts of murder and was sentenced to concurrent 60 year terms of imprisonment on each count.
For Defendant: J. Richard Kiefer, William G. Smock, Paul Levy
For State: Jeffrey Biesterveld

DYE, WALTER L. # 89

OFF DEATH ROW SINCE 06-29-01
DOB: 10-02-64 DOC#: 987990 Black Male

Marion County Superior Court
Judge Patricia J. Gifford



Trial Cause #: 49G04-9608-CF-112831

Prosecutor: Scott C. Newman, Barbara J. Trathen, Stephanie J. Schankerman

Defense: John F. Crawford Jr., Carolyn W. Rader, Kimberly Devane

Date of Murder: July 22, 1996

Victim(s): Hannah Clay, B / F / 14 (wife's daughter); Celeste Jones, B / F / 7 (wife's granddaughter); Lawrence Cowherd, B / M / 2 (wife's grandson)

Method of Murder: Jones & Cowherd (beaten and strangled);
Clay (beaten with pry bar, strangled, and stabbed)

Summary: Dye was married to Myrna Dye, who was the mother of 14 year old Hannah Clay. Following marital arguments, Myrna and Hannah moved out of the marital home. One week later while Myrna was at work, Hannah was babysitting at their new residence for her 7 year old niece

(Celeste Jones) and her 2 year old nephew (Lawrence Cowherd). Dye went to the residence and brutally assaulted the children in revenge for Myrna leaving him. He had a history of violence against Myrna and had threatened Hannah. Hannah was found beaten to death with a pry bar, strangled and stabbed. The bodies of the two young children were found beaten and strangled, stuffed into garbage bags in a nearby alley.

Trial: Information/PC for Murder filed (08-06-96); Amended Information for DP filed (08-22-96); Voir Dire (09-02-97, 09-03-97; 09-04-97); Jury Trial (09-05-97, 09-06-97; 09-07-97, 09-08-97, 09-09-97; 09-10-97, 09-11-97, 09-12-97; 09-13-97, 09-15-97, 09-16-97; 09-17-97); Verdict (09-17-97); DP Trial (09-18-97); Verdict (09-18-97); Court Sentencing (01-20-98).

Conviction: Murder (3 counts)

Sentencing: January 20, 1998 (Death Sentence on murder of Celeste Jones; other convictions "merged")

Aggravating Circumstances: 3 murders

Mitigating Circumstances: Innocence

Direct Appeal: Dye v. State, 717 N.E.2d 5 (Ind. September 30, 1999) (49S00-9801-DP-55)

Conviction Affirmed 5-0 Affirmed 5-0

Boehm Opinion; Shepard, Dickson, Selby, Sullivan concur

For Defendant: Teresa D. Harper, Bloomington

For State: Janet Brown Mallett, Deputy Attorney General (Modisett)

Dye v. Indiana, 121 S.Ct. 379 (2000) (Cert. denied)

PCR: PCR Petition filed 09-15-00. Amended PCR filed 01-16-01, 03-15-01.

State's Answer to PCR Petition filed 10-16-00, 02-15-01.

PCR Hearing 05-14-01, 05-15-01. 05-16-01, 05-17-01, 05-21-01, 05-22-01.

Marion Superior Court Judge Patricia J. Gifford

For Defendant: Laura L. Volk, Kathleen Cleary, Barbara S. Blackman, Deputy Public Defenders (Carpenter)

For State: Thomas D. Perkins, Timothy W. Beam, Deputy Attorneys General, Barbara J. Trathen.

06-29-01 PCR Petition granted, vacating convictions and death sentence.

State v. Dye, 784 N.E.2d 469 (Ind. March 6, 2003) (49S00-0002-PD-112)

(State's appeal of granting of PCR on conviction and death sentence by Marion Superior Court Judge Patricia J. Gifford on grounds that juror failed to disclose information critical to defense - Affirmed.)

Conviction Reversed 5-0 DP Vacated 5-0

Dickson Opinion; Shepard, Sullivan, Boehm, Rucker concur.

For Defendant: Laura L. Volk, Kathleen Cleary, Barbara S. Blackman, Deputy Public Defenders (Carpenter)

For State: Timothy W. Beam, Deputy Attorney General (S. Carter)

On Remand: On November 8, 2004, pursuant to a Plea Agreement, Dye pled guilty to Murder (3 Counts) and was sentenced to Life Without Parole.

EVANS, CHARLES G. # 47

OFF DEATH ROW SINCE 09-08-92

DOB: 04-14-1959 DOC#: 865019 Black Male

Marion County Superior Court Judge John R. Barney, Jr.

Trial Cause #: 49G03-8510-CF-007318

Prosecutor: Timothy M. Morrison, Stephen Goldsmith

Defense: David L. Martenet, Alex R. Voils, Jr.



Date of Murder: October 3, 1985

Victim(s): Darlene Hendrick W / F / 20 (Date, met Evans on night of murder)

Method of Murder: stabbing with knife 45 times

Summary: Evans met Darlene Hendrick, decided to purchase whiskey, and proceeded to an abandoned building. Once there, Evans pulled a knife and raped her. They then went to a Lounge for a drink, returned to the abandoned building and consumed more alcohol. Evans forced her to perform oral sex, raped her, then stabbed her 45 times, cut her hair, applied makeup to her face, and dragged her almost nude body outside. Evans then walked to a nearby phone booth, called police, and waited for them to arrive. Evans gave a complete confession before and during trial. (insanity defense)

Trial: Information/PC for Murder and Death Penalty Filed (10-03-85); Death Sentence Request Filed (01-24-86); Jury Trial (08-21-86, 08-22-86, 08-23-86); Verdict (08-23-86); DP Trial (08-23-86, 08-24-86, 08-25-86); DP Verdict (08-25-86); Court Sentencing (09-19-86).

Conviction: Murder, Felony-Murder, Rape (A Felony) (2 counts), Confinement (B Felony)

Sentencing: September 19, 1986 (Death Sentence, 50 years, 50 years, 20 years)

Aggravating Circumstances: b (1) Rape
b (1) Criminal Deviate Conduct

Mitigating Circumstances: turned himself in and confessed
intoxication
anti-social, lonely and rejected childhood, psychopathic
severe personality disorder; extreme emotional disturbance
mother was alcoholic; father died when he was a teenager
worked as male prostitute to support himself
above average intellect

Direct Appeal: Evans v. State, 563 N.E.2d 1251 (Ind. December 7, 1990) (49S00-8704-CR-453)
Conviction Affirmed 5-0 DP Affirmed 3-2
Givan Opinion; Pivarnik, Dickson concur; Debruler, Shepard dissent.
For Defendant: Theodore M. Sosin, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

Evans v. State, 598 N.E.2d 516 (Ind. September 8, 1992) (49S00-8704-CR-453)
(On Rehearing, DP Vacated 3-2 with instructions to impose 60 year sentence - Personality disorder should have been considered as mitigating; aggravators do not preponderate)
Debruler Opinion; Shepard, Krahulik concur; Givan, Dickson dissent.
For Defendant: Theodore M. Sosin, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

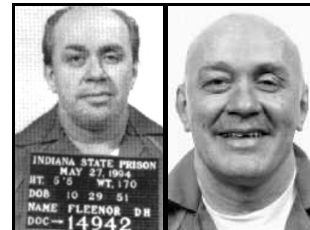
On Remand: 12-08-92 Pursuant to Indiana Supreme Court Opinion, Evans was resentenced by Marion County Superior Court Judge John R. Barney to consecutive terms of 60 years (Murder), 50 years (Rape - A Felony), 50 years (Rape - A Felony), 20 years (Confinement - B Felony), for a total sentence of 180 years imprisonment.
For Defendant: David L. Martenet, Indianapolis
For State: Lawrence O. Sells

FLEENOR, D. H. # 25

EXECUTED BY LETHAL INJECTION 12-09-99 1:37 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 10-29-1951 DOC#: 14942 White Male

Johnson County Circuit Court Judge Larry J. McKinney
Venued from Jefferson County
Trial Cause #: 1367 (Jefferson County), 8954 (Johnson County)



Prosecutor: Merritt K. Alcorn, Wilmer E. Goering II, Robert C. Shook
Defense: Ted R. Todd, Larry D. Combs

Date of Murder: December 12, 1982

Victim(s): Nyla Jean Harlow W / F / 49 (Mother-In-Law); William J. Harlow W / M / 58 (Husband of Mother-In-Law)

Method of Murder: shooting with .22 handgun

Summary: Fleenor went to an evening church service attended by his estranged wife, Sandra Sedam, and her parents, Bill and Nyla Harlow. He stayed briefly, then left. When Sandra and her parents returned to their home, Fleenor appeared in the hallway and immediately shot Bill with a .22 he purchased earlier in the day. Fleenor ordered Sandra, her mother, and 3 grandchildren to sit on the couch. He allowed Nyla to go to her husband. As Nyla assisted Bill on the floor, Fleenor shot her in the head. He ordered Sandra and the kids to carry her body to the bedroom. He forced Sandra to drive to her brother's home to tell him they would be out of town for a few days, then returned to the Harlow home. Bill was still alive and asked about his wife. Fleenor said, "I can't let him suffer" and shot him dead. The next morning, Fleenor fled to Tennessee with Sandra and the children in tow.

Trial: Information for Murder filed/PC Hearing (12-20-82); Change of Venue Ordered (03-17-83); Voir Dire (11-07-83; 11-09-83, 11-10-83, 11-14-83; 11-15-83, 11-16-83,); Jury Trial (11-17-83; 11-21-83, 11-23-83, 11-28-83; 11-29-83, 11-30-83 12-01-83); Deliberations 3 hours, 55 minutes; Verdict (12-01-83); DP Trial (12-05-83, 12-06-83); Deliberations 8 hours, 5 minutes; Verdict (12-06-83); Court Sentencing (01-04-84).

Conviction: Murder, Murder, Burglary

Sentencing: January 4, 1984 (Death Sentence; no sentence entered for Burglary)

Aggravating Circumstances: b (1) Burglary
b (3) Lying in Wait
b (8) 2 murders

Mitigating Circumstances: history of alcohol abuse
stepfather abused him in formative years
low intelligence; IQ 80-90
low tolerance for stress
continuous depression
turbulent childhood
antisocial personality disorder
reckless with poor judgment control

remorseful
he could lead a useful and productive life in prison
he was kind to children

Direct Appeal: Fleenor v. State, 514 N.E.2d 80 (Ind. October 13, 1987) (1184-S-458)
Conviction Affirmed 5-0 DP Affirmed 5-0
Debruler Opinion; Shepard, Givan, Pivarnik, Dickson concur.
For Defendant: David P. Freund, Deputy Public Defender (Carpenter)
For State: Louis E. Ransdell, Deputy Attorney General (Pearson)
Fleenor v. Indiana, 109 S.Ct. 189 (1988) (Cert. denied)

PCR: 11-04-88 Defendant files Motion for Stay of Execution Pending PCR Petition.
PCR Petition filed 01-30-89. Amended PCR filed 09-29-89, 04-03-90.
State's Answer to PCR Petition filed 02-23-89, 10-19-89.
PCR Hearing 01-16-90, 03-09-90, 05-10-90, 05-11-90, 10-10-90.
Special Judge Mark Lloyd
For Defendant: F. Thomas Schornhorst, Bloomington, Brent L. Westerfeld, Indianapolis
For State: Merritt K. Alcorn
02-12-91 PCR Petition denied.

Fleenor v. State, 622 N.E.2d 140 (Ind. 1993) (41S00-9106-PD-433)
(Appeal of PCR denial by Special Judge Mark Lloyd)
Conviction Affirmed 5-0 Affirmed 5-0
DeBruler Opinion; Shepard, Givan, Dickson, Krahulik concur.
For Defendant: F. Thomas Schornhorst, Bloomington, Brent L. Westerfeld, Indianapolis
For State: Louis E. Ransdell, Deputy Attorney General (Pearson)
Fleenor v. Indiana, 115 S.Ct. 507 (1994) (Cert. denied)

Habeas: Notice of Intent to file Petition for Writ of Habeas Corpus filed 04-28-94.
Petition for Writ of Habeas Corpus filed 08-22-94 in U.S. District Court, Southern District of Indiana.
D.H. Fleenor v. Ron Anderson, Superintendent (IP 94-C-0717-H/G)
Judge David Hamilton
For Defendant: Alan M. Freedman, Chicago, IL, Carol R. Heise, Evanston, IL
For State: Randall Koester, Geoff Davis, Deputy Attorneys General (P. Carter)

02-13-95 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
08-25-95 Petitioner files Findings of Fact, Conclusions of Law for Writ of Habeas Corpus.
02-02-98 Petition for Writ of Habeas Corpus denied.
06-05-03 Certificate of Probable Cause for Appeal granted.

Fleenor v. Farley, 47 F.Supp.2d 1021 (S.D. Ind. February 2, 1998) (IP 94-717-C-H/G)
(Petition for Habeas Writ denied by Judge David Hamilton)

Fleenor v. Anderson, 171 F.3d 1096 (7th. Cir. 1999) (98-1916)
(Appeal of denial of Habeas Writ)
Affirmed 2-1; Judge Richard A. Posner, Judge John L. Coffey ; Judge Kenneth F. Ripple dissents.
For Defendant: Alan M. Freedman, Carol R. Heise, Midwest Center for Justice, Chicago, IL
For State: Michael A. Hurst, Deputy Attorney General (Modisett)
Fleenor v. Anderson, 120 S.Ct. 215 (October 4, 1999) (Cert. denied)
Fleenor v. Anderson, 120 S.Ct. 211 (October 10, 1999) (Cert. denied)

Fleenor v. State, 718 N.E.2d 752 (Ind. October 25, 1999)
(Order setting date for execution of death sentence)

Schornhorst v. Anderson, 77 F.Supp.2d 944 (S.D. Ind. December 7, 1999)
(Petition to stay execution on grounds of incompetence filed by former attorneys, denied by Judge David Hamilton)

Fleenor v. Anderson, 120 S.Ct. 611 (December 8, 1999)
(Stay of execution denied) (Cert. denied)

FLEENOR WAS EXECUTED BY LETHAL INJECTION ON 12-09-99 1:37 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 77TH CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900, AND THE 7TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

GAMES, JAMES # 29

OFF DEATH ROW SINCE 08-31-95
DOB: 07-22-1964 DOC#: 13156 White Male

Marion County Superior Court Judge John W. Tranberg

Trial Cause #: 49G01-8307-CF-004134

Prosecutor: David E. Cook

Defense: Grant Hawkins

Date of Murder: July 14, 1983

Victim(s): Thomas Ferree W / M / 42 (Acquaintance of Games)

Method of Murder: stabbing and bludgeoning with knife, meat cleaver and fireplace poker.



Summary: Games and his 14 year old accomplice, Earl Tillberry, agreed upon a scheme to lure Thomas Ferree into taking them to his home, where they would tie him up, knock him out, and steal his stereo and car. Ferree was a homosexual who anticipated sexual favors from Games and Tillberry. Once at Ferree's home, he invited Tillberry upstairs to take a shower with him. Games told Tillberry to consent and to stab him on the stairs. Tillberry did so, and when Ferree fell, Games then attacked him, stabbing him with the same knife. Then with an assortment of knives, a meat cleaver, and fireplace poker provided by Tillberry, Games continued to stab and bludgeon Ferree. They took the victim's car and fled, Ferree died as a result of the multiple stab wounds. Tillberry was the star witness for the State at trial, pled guilty, and received a 55 year sentence.

Trial: Information/PC for Murder filed (07-18-83); Information for DP filed (10-11-83); Sentencing (04-05-84).

Conviction: Murder, Robbery (A Felony), Conspiracy to Commit Robbery (C Felony),
Conspiracy to Commit Battery (C Felony)

Sentencing: April 5, 1984 (Death Sentence), 30 years, 5 years, 5 years.

Aggravating Circumstances: b(1) Robbery

Mitigating Circumstances: 18 years old at the time of the murder
minimal prior criminal record
paltry education
unstable family life
consumed alcohol and marijuana on day of murder

remorse over killings
voluntarily surrendered to police
alcohol and drug abuse as teenager
father was abusive alcoholic prone to violence

Direct Appeal: Games v. State, 535 N.E.2d 530 (Ind. March 14, 1989) (185-S-7)
Conviction Affirmed 5-0 DP Affirmed 4-1
Dickson Opinion; Shepard, Givan, Pivarnik concur; Debruler dissents.
For Defendant: George K. Shields, Indianapolis
For State: Louis E. Ransdell, Deputy Attorney General (Pearson)
Games v. Indiana, 110 S.Ct. 205 (1989) (Cert. denied)
Games v. Indiana, 110 S.Ct. 523 (1989) (Reh. denied)

PCR: PCR Petition filed 10-11-90. Amended PCR filed 03-06-95, 03-29-95.
State's Answer to PCR Petition filed 10-22-90.
Hearing 03-27-95, 03-28-95, 03-29-95, 03-30-95, 04-03-95, 04-05-95.
Special Judge James R. Detamore
For Defendant: J. Michael Sauer, Marie Donnelly
For State: John V. Commons, Frank A. Gleaves, Marc E. Lundy
08-31-94 Defendant files Motion for Summary Judgment as to Death Sentence.
09-05-95 PCR Petition granted as to death sentence, denied with respect to convictions.
10-28-96 Court requires State to elect between new DP Phase or new Sentencing Hearing.

Games v. State, 684 N.E.2d 466 (Ind. July 22, 1997) (49S00-9002-PD-114)
(Appeal of PCR denial by Special Judge James R. Detamore with respect to convictions; State did not appeal granting of PCR with respect to Death Sentence due to ineffective assistance of counsel)
Affirmed 5-0, except that Conspiracy to Battery conviction vacated
Remanded for new DP Sentencing Hearing.
Dickson Opinion; Shepard, Sullivan, Selby, Boehm concur.
For Defendant: Michael Sauer, Marie F. Donnelly, Deputy Public Defenders (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)

Games v. State, 690 N.E.2d 211 (Ind. 1997) (49S00-9002-PD-114)
(On Rehearing; Affirmed 5-0, Dickson Opinion; Shepard, Sullivan, Selby, Boehm concur - granted solely to clarify proper appellate standard for review of ineffective assistance claims)
For Defendant: Michael Sauer, Marie F. Donnelly, Deputy Public Defenders (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Games v. Indiana, 119 S.Ct. 98 (1998) (Cert. denied)

On Remand: Marion County Superior Court Tonya Walton Pratt
02-18-99 Plea Agreement filed. (Open plea, 60 to 118 years imprisonment)
05-17-99, 05-18-99 Guilty Plea Hearing
06-15-99 Defendant sentenced to 60 years for Murder, 50 years for Robbery (A Felony), and 8 years for Conspiracy to Commit Robbery (C Felony), with Murder and Robbery sentences to run consecutively for a total of 110 years imprisonment.
For Defendant: Joseph M. Cleary, Robert Hill
For State: Barbara J. Trathen, Marc E. Lundy

Games v. State, 743 N.E.2d 1132 (Ind. March 20, 2001) (49S00-9908-CR-447)
(Direct appeal of sentencing - Affirmed)

HARRIS, JAMES ALLEN # 28

OFF DEATH ROW SINCE 03-05-92

DOB: 10-27-1954 DOC#: 9581 Black Male

Marion County Superior Court Judge John W. Tranberg

Cause #: 49G01-8307-CF-004233

Prosecutor: Timothy M. Morrison, Michael T. Conway

Defense: L. Craig Turner



Date of Murder: March 28, 1983

Victim(s): Jane Brumblay W / F / 31 (No relationship to Harris)

Method of Murder: manual strangulation

Summary: Harris confronted Jane Brumblay as she was preparing to get into her car parked in the Glendale Shopping Mall. Brumblay was startled and threatened to report Harris, who promptly overpowered her, and forced her into her car. Harris removed her pantyhose and tied her hands, then drove to a movie theater lot and raped her more than once. Brumblay began to struggle and Harris choked her with her scarf until she was semi-conscious. He then placed the scarf in her mouth and drove to Broad Ripple Park. The victim had by this time swallowed part of the scarf and had stopped breathing. Harris placed her body in the trunk and abandoned the car. The pathologist testified that Brumblay died as a result of manual strangulation, not the scarf.

Trial: Information/PC for Murder and Death Penalty Filed (07-14-83); Death Sentence Request Filed (08-01-83); Guilty Plea (11-30-83); Plea Accepted (12-15-83); DP Sentencing Hearing (01-18-83, 01-19-83); Court Sentencing (02-10-84).

Conviction: Harris pled Guilty But Mentally Ill to Murder, Kidnapping, and Rape

Sentencing: February 10, 1984 (Death Sentence)

Aggravating Circumstances: b (1) Rape
b (1) Kidnapping

Mitigating Circumstances: suffering from a psychiatric disorder which substantially disturbed his thinking, feeling, and behavior; extreme emotional disturbance

Direct Appeal: Harris v. State, 499 N.E.2d 723 (Ind. November 5, 1986) (784-S-270)
Conviction Affirmed 5-0 DP Affirmed 4-1
Pivarnik, Opinion; Givan, Shepard, Dickson concur; Debruler dissents.
For Defendant: Kenneth M. Stroud, Michael T. Conway, L. Craig Turner, Indianapolis
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Harris v. Indiana, 107 S.Ct. 2490 (1987) (Cert. denied)

PCR: PCR Petition filed 10-03-90. Amended PCR filed 09-30-91.
State's Answer to PCR Petition filed 10-16-91.
PCR Hearing (02-24-92, 02-25-92, 02-26-92, 02-27-92, 02-28-92, 03-03-92, 03-04-92, 03-05-92)
Marion County Superior Court Judge Paula E. Lapossa
For Defendant: Kathleen Little, Lorinda Youngcourt, Rhonda Long-Sharp.
For State: John V. Commons, Frank A. Gleaves
03-05-92 Joint Petition to End Litigation While Insuring that Petitioner is Never Released From Prison
03-05-92 Defendant pled guilty to Murder, Kidnapping (A Felony), and Rape (A Felony), and is sentenced to consecutive terms of 60 years, 50 years, 50 years for a total of 160 years imprisonment.

HARRISON, JAMES PATRICK # 70

OFF DEATH ROW SINCE 01-22-04
DOB: 11-09-1949 DOC#: 913713 White Male

Posey County Circuit Court Judge James M. Redwine

Trial Cause #: 65CO1-9104-CF-00008

Prosecutor: Kimberley Kelley Mohr, Trent Van Haaften

Defense: Ronald Warrum, Thomas M. Swain

Date of Murder: January 17, 1989

Victim(s): Stacey Forsee W / F / 20 (Acquaintance from church);
Tia Forsee W / F / 3 and Jordan Hanmore, W / M / 21mo (Children of Stacey)

Method of Murder: stabbing w/ knife (Stacey); fire burns (Tia); smoke inhalation (Jordan)

Summary: Harrison met Stacey Forsee at church. An arson fire burned down the Forsee home containing the bodies of Stacey and her 2 children, Tia Forsee and Jordan Hanmore. Stacey had been stabbed to death and semen was found in her mouth. Evidence at trial showed that Harrison often carried a hunting knife and was seen near the fire scene before fire trucks arrived; that the fire was started by a flammable liquid and Harrison had purchased kerosene several days before the murders; and that Harrison confessed to a fellow jail inmate. Charges were not filed until 2 years after the fire. Harrison was arrested and returned from Maryland. Harrison has prior convictions of Involuntary Manslaughter (1972) and Murder (1973) in Virginia.

Trial: Information/PC for Murder and DP filed (04-18-91); Amended Information filed (06-12-91, 10-04-91); Voir Dire (11-06-91); Jury Trial (11-06-91; 11-07-91, 11-08-91, 11-09-91; 11-11-91, 11-12-91); Deliberations over 3 days; Verdict (11-14-91); Habitual Sentencing Hearing (11-14-91); DP Trial (11-15-91); Verdict (11-15-91); Court Sentencing (12-14-91).

Conviction: Knowing Murder of Tia, Felony-Murder of Jordan, Arson, Habitual Offender
Found Not Guilty of the Knowing Murder of Stacey

Sentencing: December 14, 1991 (Death Sentence (Tia) Death Sentence (Jordan))

Aggravating Circumstances: b (12) 2 victims less than 12 years old
b (1) Arson (Jordan);
b (7) 1973 Murder Conviction

Mitigating Circumstances: wounded in Vietnam
suffered emotional, physical and sexual abuse as a child
56 years old after remand
evidence not overwhelming

Direct Appeal: Harrison v. State, 644 N.E.2d 1243 (Ind. January 4, 1995) (65S00-9105-DP-380)
Conviction Affirmed 5-0 DP Remanded for more specific Sentencing Order 5-0
Sullivan Opinion; Shepard, Debruler, Givan, Dickson concur.
For Defendant: William H. Bender, Poseyville
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Harrison v. State, 659 N.E.2d 480 (Ind. 1995) (65S00-9105-DP-380)
(Direct Appeal after remand and more specific sentencing order entered)
DP Affirmed 5-0; Sullivan Opinion; Shepard, Debruler, Givan, Dickson concur.
For Defendant: William H. Bender, Poseyville
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Harrison v. Indiana, 117 S.Ct. 307 (1996) (Cert. denied)



PCR: 05-08-96 Petitioner files Notice of Intent to File PCR Petition.
PCR Petition filed 10-01-96. Amended PCR filed 11-01-96, 01-02-97, 02-07-97.
State's Answer to PCR Petition filed 11-19-96, 01-16-97, 02-24-97.
Hearing 03-03-97, 03-04-97, 03-05-97, 03-06-97.
Posey Circuit Court Judge James M. Redwine
For Defendant: Thomas C. Hinesley, Joanna Green, Robert E. Lancaster, Deputy Public Defenders.
For State: Geoff Davis, Robert L. Collins, Deputy Attorneys General (P. Carter), Trent Van Haaften.
05-29-97 PCR Petition denied.
Harrison v. State, 707 N.E.2d 767 (Ind. 1999) (65S00-9605-PD-318)
(Appeal of PCR denial by Judge James M. Redwine)
Conviction Affirmed 5-0 DP Affirmed 5-0
Boehm Opinion; Shepard, Dickson, Sullivan, Selby concur.
For Defendant: Thomas C. Hinesley, Joanna Green, Robert E. Lancaster, Deputy Public Defenders
For State: Priscilla J. Fossum, Deputy Attorney General (Modisett)
Harrison v. Indiana, 120 S.Ct. 1722 (2000) (Cert. denied)

Habeas: 02-17-00 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
James P. Harrison v. Rondle Anderson, Superintendent (IP 99-C-0933-B/S)
Judge Sarah Evans Barker
For Defendant: Joseph M. Cleary, Indianapolis, IN
For State: Priscilla J. Fossum, Deputy Attorney General (S. Carter)

07-27-00 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
11-17-00 Petitioner files Findings of Fact, Conclusions of Law for Writ of Habeas Corpus.
10-08-02 Evidentiary Hearing granted on claim of judicial bias.
01-22-04 Petition for Writ of Habeas Corpus granted as to conviction and sentence.
02-12-04 Notice of Appeal filed by State.

Harrison v. Anderson, 300 F.Supp.2d 690 (S. D. Ind. January 22, 2004) (IP 99-C-0933-B/S)
(Habeas granted as to conviction and death sentence by U.S. District Court for the Southern District of Indiana, Judge Sarah Evans Barker. Actual bias by trial judge Redwine was established, and different judge should have been named. "The State of Indiana shall set a new trial date within sixty (60) days of the date of this Entry at which time the State can retry its case against Harrison before an impartial judge.")

Harrison v. McBride, 428 F.3d 652 (7th Cir. October 27, 2005) (04-1398)
(State's Appeal of granting Petition for Writ of Habeas Corpus)
Affirmed 3-0. Opinion by Circuit Judge Kenneth F. Ripple.
Judge Anne Claire Williams and Judge Joel M. Flaum concur.

On Remand: On May 5, 2008, Harrison pled guilty to Murder (Tia Forsee), Felony-Murder (Arson Causing death of Jordan Hanmore), and Habitual Offender pursuant to a fixed Plea Agreement and was sentenced in the Posey Circuit Court by Special Judge Carl A. Heldt to a 60+60+30 = 150 year term of imprisonment.

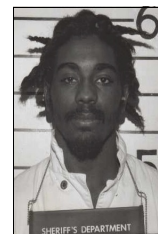
HICKS, LARRY # 2

OFF DEATH ROW SINCE 04-02-80
DOB: 02-12-1958 DOC#: 13124 Black Male

Lake County Superior Court Judge James C. Kimbrough

Trial Cause #: 3CR-49-378-195

Prosecutor: Michael M. Greener / Marilyn E. Hrnjak



Defense: J. Robert Vegter / Nile Stanton, Kevin McShane

Date of Murder: February 5, 1978

Victim(s): Norton Miller B / M / 28; Stephen Crosby B / M / 26

Method of Murder: stabbing with knife

Summary: Hicks attended a party at the apartment of a neighbor. Hicks was seen waving a knife in his hand while arguing with Norton Miller and Stephen Crosby. They were later found stabbed to death in an alley outside the apartments.

Trial: Indictment for Murder and DP filed (03-02-78); Voir Dire (08-14-78); Jury Trial (08-15-78, 08-16-78); Deliberations 6 hours, Verdict (08-16-78); DP Trial (08-17-78); Deliberations over 2 Days, Hung Jury (08-18-78); Court Sentencing (09-01-78); Defense Attorney Stanton enters Appearance (05-17-79); Motion to Correct Errors Granted (04-02-80); Voir Dire (11-10-80, 11-12-80); Jury Trial (11-13-80, 11-14-80, 11-17-80, 11-18-80 11-19-80, 11-20-80); Verdict (11-21-80 12:05 a.m.).

Conviction: Murder (2 counts)

Sentencing: September 1, 1978

Aggravating Circumstances: b (8) 2 murders

Mitigating Circumstances: 19 years old
lack of prior criminal record

Hung Jury on Death Sentence

Direct Appeal: None.

Following his sentencing, Hicks filed a Motion to Correct Errors and a Motion for Competency Hearing. On April 2, 1980, trial Judge James Kimbrough, following the appointment of two psychiatrists, granted the motions and held that at the time of the defendant's trial, he was incompetent. A new trial was held on November 13-20, 1980 with Nile Stanton and Kevin McShane representing Hicks, and Deputy Prosecutor Marilyn E. Hrnjak representing the State. Two eyewitnesses, who had identified Hicks in the first trial as menacing the victims with a knife in his hand, recanted their testimony in the second trial. Other evidence reinforcing Hicks' claim of actual innocence was also presented. Hicks was found Not Guilty of the charges. (See webpage of defense counsel Nile Stanton, "The Ordeal of Larry Hicks: How an Innocent Man was Almost Executed" at <http://ac-support.europe.umuc.edu/~nstanton/Larry.html>)

HOLLIS, DAVID # 14

OFF DEATH ROW SINCE SUICIDE 02-19-84
DOB: 08-14-1960 DOC#: 13152 White Male

Lake County Superior Court Judge James L. Clement

Trial Cause #: 4CR-55-382-214

Prosecutor: Thomas W. Vanes

Defense: Herbert I. Shaps

Date of Murder: February 27, 1982

Victim(s): Debbie Hollis W / F / 18 (wife); Kim Mezei W / F / 18 (neighbor);
Craig Mezei W / M / 2 (neighbor's son)

Method of Murder: strangulation (Debbie, Kim, Craig); stabbing with knife (Debbie)

Summary: Hollis went looking one night for his estranged wife, Debbie, and found her at an apartment in Hammond in the company of a neighbor, Kim Mezci, and her two year old son. Hollis repeatedly stabbed Debbie and Kim and strangled all three. The following day, Hollis went to the residence of an acquaintance, Donald K. White, in Griffith armed with a shotgun. When White told Hollis that the police suspected him of killing his wife, a neighbor, and a baby, Hollis replied that he did kill them, and he was sorry for killing the neighbor and child, but they just got in the way. Hollis then tied up White and his roommate, and forced White to perform oral sex.

Trial: Information/PC for Murder filed (03-01-82); Amended Information for DP filed (09-22-82); Insanity Defense filed (09-20-82); Guilty Plea (10-13-82); DP Trial (10-20-82, 10-21-82, 10-22-82, 10-28-82); Court Sentencing (11-12-82).

Conviction: Murder, Murder, Murder, Criminal Deviate Conduct (A Felony), Confinement (B Felony)
Pled guilty without plea agreement.

Sentencing: November 12, 1982 (Death Sentence, 30 years, 10 years, concurrent)

Aggravating Circumstances: b (8) 3 murders

Mitigating Circumstances: None

Direct Appeal: None

COMMITTED SUICIDE BY HANGING AT INDIANA STATE PRISON, MICHIGAN CITY ON FEBRUARY 19, 1984.



HOLMES, ERIC D. # 78

ON DEATH ROW SINCE 03-26-93

DOB: 08-23-1968 DOC#: 932132 Black Male

Marion County Superior Court Special Judge Cynthia S. Emkes

Trial Cause #: 49G05-8911-CF-131401

Prosecutor: David S. Milton

Defense: Robert F. Alden, Arnold P. Baratz

Date of Murder: November 16, 1989

Victim(s): Charles Ervin W / M / 30; Theresa Blosl W / F / 20
(Supervisors of Holmes at work)



Method of Murder: stabbing with knife

Summary: Holmes was fired from his job at Shoney's Restaurant after getting into an argument with co-worker Amy Foshee. At closing on the day of his firing, Holmes waited in the parking lot with Michael Vance. Foshee left the restaurant with Charles Ervin, a manager, and Theresa Blosl, a manager. Ervin was carrying the till. Holmes and Vance trapped them in the foyer leaving the restaurant and attacked them, stabbing them multiple times, and grabbed the till. Ervin and Blosl died, but Foshee survived. Vance was tried separately, convicted, and sentenced to 190 years imprisonment.

Trial: Information/PC for Murder filed (11-17-89); Amended Information for DP filed (01-31-90); Competency Hearing (04-18-90); Motion for Speedy Trial (09-21-92); Voir Dire (11-04-92, 11-04-92, 11-05-92, 11-06-92, 11-07-92, 11-09-92, 11-10-92, 11-11-92, 11-12-92, 11-13-92, 11-14-92); Jury Trial (11-14-92; 11-16-92, 11-17-92, 11-18-92, 11-19-92, 11-20-92 11-21-92, 11-23-92, 11-24-92, 11-27-92, 11-28-92); Verdict (11-28-92); DP Trial (11-29-92, 11-30-92, 12-01-92, 12-02-92); Deliberations over 2 days; Hung Jury/Mistrial (12-03-92); Court Sentencing (03-24-92, 03-25-92, 03-26-92).

Conviction: Murder (Ervin), Murder (Blosl), Attempted Murder (A Felony), Robbery (A Felony), Conspiracy to Commit Robbery (B Felony)

Sentencing: March 26, 1993 (Death Sentence, 60 years, 50 years, 50 years, 20 years, all consecutive)
May 23, 1997 (8 years on Conspiracy to Commit Robbery, reduced to C Felony on appeal)

Aggravating Circumstances: b (1) Robbery
b (8) 2 murders

Mitigating Circumstances: 21 years old at time of murders
accomplice did not receive death sentence
no prior criminal record
mother died when he was 7 years old
suffered from child neglect and abuse as a child
IQ of 79; has adjusted well to jail

Hung Jury on Death Sentence

Direct Appeal: Holmes v. State, 671 N.E.2d 841 (Ind. August 7, 1996) (49S00-9002-DP-00104)
Conviction Affirmed 5-0 DP Affirmed 5-0
DeBruler Opinion; Shepard, Dickson, Sullivan, Selby concur.
For Defendant: Richard Kammen, James T. Flanigan, Susan D. Rayl, Arnold P. Baratz, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Holmes v. Indiana, 118 S.Ct. 137 (1997) (Cert. denied)

PCR: PCR Petition filed 09-25-97. Amended PCR filed 11-10-97, 03-18-98, 04-01-98, 04-20-98.
State's Answer to PCR Petition filed.
PCR Hearing 05-18-98, 05-19-98, 05-20-98.
Marion County Superior Court Judge Tonya Walton Pratt
For Defendant: Steven H. Schutte, Joanna Green, Kathleen Cleary, Linda K. Hughes,
Deputy Public Defenders.
For State: Michael A. Hurst, Greg Ulrich, Deputy Attorneys General (Modisett).
07-28-98 PCR Petition granted as to Death Sentence only.

Holmes v. State, 728 N.E.2d 164 (Ind. May 19, 2000) (49S00-9808-PD-436)
(Appeal by State of the granting of PCR as to death penalty)
(Appeal by Holmes of the denial of PCR as to convictions)
Conviction Affirmed 5-0 DP Affirmed 5-0; PCR denied.
Dickson Opinion, Shepard, Sullivan, Boehm, Rucker concur.
For Defendant: Steven H. Schutte, Joanna Green, Kathleen Cleary, Linda K. Hughes,
Deputy Public Defenders (Carpenter)
For State: Michael A. Hurst, Deputy Attorney General (Modisett)
Holmes v. Indiana, 121 S.Ct. 2220 (2001) (Cert. denied)

Holmes v. State, 820 N.E.2d 136 (Ind. January 7, 2005)
n/k/a Koor An Nur of Mary Katie Brown.
Shepard Opinion; Dickson, Boehm concur. Rucker, Sullivan dissent.
(Holmes sought leave to file successive petition for state postconviction relief. Held: Denied; Even though hung jury on death sentence, neither change in statute nor Apprendi warranted relief from death sentence.)

Habeas: 09-22-00 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
08-29-01 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Eric D. Holmes v. Ron Anderson, Superintendent (IP 00-1477-C-D/F)
Judge Larry J. McKinney
For Defendant: Michael J. Benza, Cleveland, OH, Kathy Lea Stinton-Glen, Indianapolis
For State: Michael A. Hurst, Thomas D. Perkins, Gary Damon Secrest, Stephen R. Creason,
Deputy Attorneys General (S. Carter)

08-12-02 Amended Petition for Writ of Habeas Corpus filed.
09-16-02 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
01-15-03 Motion for Stay pending competency evaluation.
07-01-03 Petitioner files Traverse.
07-16-04 Motion for Stay pending review by Indiana Supreme Court.
09-02-04 Amended Petition for Writ of Habeas Corpus denied.
01-18-05 Certificate of Appealability granted in part.

11-23-05 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Eric D. Holmes v. Ed Buss, Superintendent (1:05-CV-1763-LJM-WTL)
Judge Larry J. McKinney
For Defendant: Michael J. Benza, Cleveland, OH, Kathy Lea Stinton-Glen, Indianapolis
For State: James B. Martin, Stephen R. Creason, Deputy Attorneys General (S. Carter)

06-12-06 Order of Dismissal for Lack of Jurisdiction as Successive Petition entered.

08-10-05 Remanded to the District Court for the limited purpose of determining petitioner's current competence to proceed in this appeal. Because the referenced affidavits are now over a year old, we suggest that the district court solicit contemporary affidavits from counsel and consider obtaining the opinion of an expert. This court shall retain jurisdiction in this matter and briefing is stayed.

01-31-06 Psychiatric Reports filed with U.S. District Court.

06-20-06 Entry holding that Holmes is competent to proceed and assist his attorneys in the appellate phase of this habeas action.

Holmes v. Buss, 506 F.3d 576 (7th Cir. October 30, 2007) (04-3549, 06-2905)
Remanded to District Court 3-0.

Court should have allowed cross examination of State's expert witness on the issue of competency. Opinion by Judge Richard A. Posner. Joined by Judge Joel M. Flaum , Judge Diane P. Wood. For Defendant: Michael J. Benza, Cleveland, OH, Kathy Lea Stinton-Glen, Zionsville, IN, For State: James B. Martin, Stephen R. Creason, Indiana Attorneys General (S. Carter)

Holmes v. Levenhagen, 600 F.3d 756 (7th Cir. April 2, 2010) (04-3549, 06-2905)

Appeal of competency finding by U.S. District Judge Larry J. McKinney.

Reversed 3-0. Opinion by Judge Richard A. Posner; Judge Joel M. Flaum and Judge Diane P. Wood concur. ("We reverse the judgment with instructions to suspend the habeas corpus proceeding unless and until the State provides substantial new evidence that Holmes' psychiatric illness has abated, or its symptoms sufficiently controlled, to justify resumption of the proceeding.")

For Defendant: Michael J. Benza, Chagrin Falls, OH, Kathy Lea Stinton-Glen, Indianapolis, IN

For State: Stephen R. Creason, James B. Martin, Deputy Attorneys General (Zoeller)

HOUGH, KEVIN LEE # 52

EXECUTED BY LETHAL INJECTION 05-02-03 12:25 AM EST
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 08-17-1959 DOC#: 872039 White Male

Allen County Superior Court Special Judge Edward J. Meyers

Trial Cause #: CR-86-185

Prosecutor: Stephen M. Sims, Robert E. Love

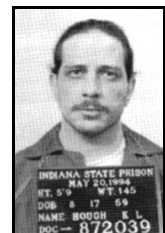
Defense: Bruce R. Snyder, Bruce S. Cowan

Date of Murder: November 6, 1985

Victim(s): Theodore G. Bosler W / M / 49; Gene Eugene Rubrake W / M / 56 (Landlords of Hough's cousin)

Method of Murder: shooting with .45 handgun

Summary: Hough was upset with his cousin's landlords, Bosler and Rubrake. When his cousin failed to pay rent, his landlords took his cousin's property. Along with his brother, Duane Lapp, Hough went to their residence in Fort Wayne "to get the property back." They were invited inside and once downstairs, Hough pulled a .45 automatic pistol. When Rubrake swung at him, Hough shot him in the chest. Bosler dropped to the floor and Hough shot him in the back. Hough then shot Rubrake again in the face. Hough took a TV remote and a beer which he thought may have fingerprints and left. Lapp testified at trial as the State's star witness.



Trial: Information/PC for Murder filed (04-10-86); Amended Information for DP filed (05-21-86); Voir Dire in Marion County (05-11-87); Jury Trial in Allen County (05-12-87, 05-13-87, 05-14-87); Verdict (05-14-87); DP Trial (05-15-87); Verdict (05-15-87); Court Sentencing (06-11-87).

Conviction: Murder, Murder

Sentencing: June 11, 1987 (Death Sentence, Death Sentence)

Aggravating Circumstances: b (1) Robbery
b (7) Prior murder conviction
b (8) 2 murders

Mitigating Circumstances: dysfunctional childhood
drug and alcohol abuse

Direct Appeal: Hough v. State, 560 N.E.2d 511 (Ind. October 4, 1990) (02S00-8712-CR-1179)
Conviction Affirmed 5-0 DP Affirmed 3-2
Pivarnik Opinion; Givan, Shepard concur; Debruler, Dickson dissent.
For Defendant: Bruce R. Snyder and Bruce S. Cowan, Fort Wayne
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Hough v. State, 560 N.E.2d 522 (Ind. 1990) (On Rehearing)

PCR: 05-06-92 Notice of Intent to File PCR Petition filed.
06-21-93 PCR Petition filed.
01-07-94 State's Answer to PCR Petition filed.
Special Judge Edward J. Meyers
For Defendant: Kevin L. Likes
For State: Stephen M. Sims
08-09-94 PCR Petition denied, Summary Judgment to State.

Hough v. State, 690 N.E.2d 267 (Ind. 1997) (02S00-9305-PD-497)
(Appeal of PCR denial by Special Judge Edward J. Meyers, granting State's Summary Judgment)
Affirmed 5-0; Selby Opinion; Shepard, Dickson, Sullivan, Boehm concur.
For Defendant: Kevin L. Likes, Auburn, David L. Doughten, Cleveland
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Hough v. Indiana, 119 S.Ct. 550 (1998) (Cert. denied)

Habeas: 05-13-98 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
08-11-98 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Kevin L. Hough v. Ron Anderson, Superintendent (3:98-CV-246-AS)
Judge Allen Sharp
For Defendant: John L. Stainthorp, Joey Mogul, People's Law Office, Chicago, IL
For State: Michael A. Hurst, Deputy Attorney General (Modisett)

05-04-99 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
06-21-99 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
07-22-99 Amended Petition for Writ of Habeas Corpus filed.
10-14-99 Writ of Habeas Corpus denied.
12-07-99 Certificate of Appealability granted in part.

Hough v. Anderson, 73 F.Supp.2d 981 (N.D. Ind. October 12, 1999) (3:98-CV-246-AS)
(Petition for Habeas Writ denied by Judge Allen Sharp)

Hough v. Anderson, 272 F.3d 878 (7th Cir. November 20, 2001) (99-3968)
(Appeal of denial of Habeas Writ by Judge Allen Sharp)

Affirmed 3-0; Opinion by Judge Kenneth F. Ripple, Judge Diane P. Wood, Judge Terence T. Evans
For Defendant: John L. Stainthorp, Joey Mogul, People's Law Office, Chicago, IL
For State: Thomas D. Perkins, Deputy Attorney General (Freeman-Wilson)
Hough v. Indiana, 123 S.Ct. 661 (December 2, 2002) (Cert. denied)
Hough v. Indiana, 123 S.Ct. 1927 (May 1, 2003) (Application for stay denied)

HOUGH WAS EXECUTED BY LETHAL INJECTION ON 05-02-03 12:25 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 80TH CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900, AND THE 10TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

HUFFMAN, RICHARD D., JR. # 39

OFF DEATH ROW SINCE 08-05-93
DOB: 12-31-1960 DOC#: 853859 White Male

Marion County Superior Court Judge Thomas E. Alsip

Trial Cause #: 49G01-8406-CF-004843

Prosecutor: David E. Cook, Robert P. Thomas

Defense: Gerald DeWester

Date of Murder: June 5, 1984

Victim(s): Kerry Golden W / M / 29 (Acquaintance of Huffman, met on night of murder)

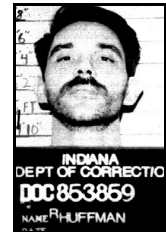
Method of Murder: beating with tire iron; stomping; manual strangulation

Summary: Kerry Golden was introduced to Huffman while at the 50 Yard Line Bar in Indianapolis. They sat together and Golden displayed a large amount of money and marijuana on his person. They met Huffman's longtime friends, Herb Underwood and Rick Asbury and closed down the bar. They smoked some marijuana in the parking lot together and left in a car with Huffman driving, Underwood in the front, and Asbury with Golden in the back. The car was stopped in a remote area. Underwood got out and pulled Golden from the car. Huffman and Underwood told Golden to "give up the pot," then attacked him, both punching and kicking him. They stripped off his clothing and Underwood grabbed his penis and lifted him off the ground as Golden screamed. Underwood then took money from Golden's pants. Asbury got out and kicked Golden and gave his knife to Huffman when he asked. Huffman threatened to kill Golden if he told. Underwood stated that he had to kill him because he did not want to be identified and go to prison. Huffman got a tire iron from the trunk and both he and Underwood beat Golden. Underwood then told Asbury he had to hit Golden. Asbury "tapped" Golden twice with the tire iron. Asbury testified for the State at trial, pled guilty, and received a 25 year sentence for his role in the killing.

Trial: Information/PC for Murder Filed (06-06-84); Death Sentence Request Filed (10-16-84); Jury Trial (07-17-85 through 07-24-85); Verdict (07-24-85); DP Trial (07-25-85); DP Verdict (07-25-85); Court Sentencing (08-23-85).

Conviction: Murder, Felony-Murder, Robbery (A Felony), Conspiracy to Commit Murder (A Felony), Conspiracy to Commit Robbery (A Felony)

Sentencing: August 23, 1985 (Death Sentence - Murder and Felony-Murder merged)
50 years, 50 years, 50 years consecutive



Joint Trial with Herbert Underwood

Aggravating Circumstances: b (1) Robbery

Mitigating Circumstances: alcohol and marijuana intoxication on night of murder
penalty disproportionate to other murder cases

Direct Appeal: Huffman v. State, 543 N.E.2d 360 (Ind. September 7, 1989) (49S00-8602-CR-207)
Conviction Affirmed 3-2 DP Affirmed 3-2
Givan Opinion; Shepard, Pivarnik concur; Debruler, Dickson dissent.
For Defendant: Jill E. Greuling, Monica Foster, Indianapolis
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Huffman v. Indiana, 110 S.Ct. 3257 (1990) (Cert. denied)

PCR: Notice of Intent to File PCR Petition filed 08-21-90.
PCR Petition filed 03-23-92.
State's Answer to PCR Petition filed 05-29-92.
Special Judge James E. Harris
For Defendant: Monica Foster, Scott A. Weathers, Indianapolis
For State: John V. Commons, Frank A. Gleaves
09-03-92 Defendant files Motion for Summary Judgment.
08-11-93 PCR Petition granted as to convictions and sentence, Summary Judgment to Defendant.

State v. Huffman, 643 N.E.2d 899 (Ind. December 7, 1994) (49S00-9312-PD-1320)
(State's appeal of Special Judge James E. Harris granting PCR on convictions and sentence)
Affirmed 4-1 and remanded for new trial due to jury instruction which shifted burden on intoxication.
DeBruler Opinion; Givan, Dickson, Sullivan concur; Shepard dissents.
For Defendant: Monica Foster, Scott A. Weathers, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)

On Remand: 06-14-96 Plea Agreement filed.
Huffman pleads guilty to Murder and Conspiracy to Commit Robbery (A Felony).
10-31-96 Plea accepted. Huffman sentenced to concurrent terms of 60 years (Murder) and 30 years (Conspiracy to Commit Robbery - A Felony), for a total sentence of 60 years imprisonment. (30,959 days credit)
Marion County Superior Court Judge Paula E. Lapossa
For Defendant: Monica Foster, Richard Kammen, Indianapolis
For State: Barbara Crawford, Diane Moore, James Nave
Huffman v. State, 717 N.E.2d 571 (Ind. October 4, 1999) (49S00-9704-CR-260) (Affirmed)

INGLE, JOHN E. # 90

OFF DEATH ROW SINCE 05-08-01
DOB: 10-29-49 DOC: #987991 White Male

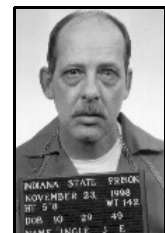
Floyd County Superior Court Judge Richard G. Striegel

Trial Cause #: 22D01-0607-CF-183

Prosecutor: Stanley O. Faith, Susan L. Orth, Cynthia L. Winkler, Robert L. Collins

Defense: Michael J. McDaniel, Patrick Biggs, Steven E. Ripstra

Date of Murder: July 27, 1996



Victim(s): Debbie Chaffin Ingle W/F 41 (estranged wife)

Method of Murder: Shooting with handgun

Summary: Ingle and his wife Debbie had been married approximately twenty-five years. They married immediately after his release from federal prison when she was seventeen years of age. The marriage was one of repeated domestic violence. Debbie tried to leave on numerous occasions, but he physically intimidated her into remaining in the marriage. In July 1996, Debbie moved out of the house and made it clear to Ingle she would not return. Ingle stalked her for weeks using disguises and borrowed cars and kept her under constant surveillance. On the morning of the murder, Ingle donned a disguise, loaded a handgun, and walked up to Debbie where she worked as a waitress. His confessed plan was to take her out of the restaurant and physically force her to return as he had done on prior occasions. Debbie recognized him, screamed his name and instructed co-workers to call for police. Ingle responded by shooting her 7 times with a handgun and fled. Within minutes, Ingle was confronted by police on the street and shot a New Albany Police Officer three times, once in the back, and fled a second time before he was arrested. The officer was wearing a vest and survived with serious injuries. (Insanity Defense)

Trial: Information/PC for Murder filed (07-29-96); Motion for Speedy Trial (10-03-96); Amended Information for DP filed (02-03-04); Voir Dire in Dubois County (08-31-98, 09-01-98, 09-02-98, 09-03-98, 09-04-98, 09-08-98, 09-09-98, 09-10-98, 09-11-98); Jury Trial in Floyd County (09-21-98, 09-22-98, 09-23-98, 09-24-98, 09-25-98, 09-28-98, 09-29-98, 09-30-98, 10-01-98, 10-02-98, 10-05-98, 10-07-98, 10-08-98, 10-09-98, 10-12-98, 10-13-98, 10-14-98, 10-15-98); Verdict (10-15-98); DP Trial (10-16-98, 10-19-98, 10-20-98); Verdict (10-20-98); Court Sentencing (11-19-98, 11-23-98); Resentencing after Remand (06-20-01).

Conviction: Murder, Attempted Murder (A Felony), Attempted Kidnapping (A Felony)

Sentencing: November 23, 1998 (Death Sentence, 50 years, 50 years, consecutive)

Aggravating Circumstances: b (3) Lying in Wait
b (1) Attempted Kidnapping

Mitigating Circumstances: Mental State (not rising to level of insanity)
Intermittent Explosive Disorder

Direct Appeal: Ingle v. State, 746 N.E.2d 927 (Ind. May 8, 2001) (22S00-9611-DP-724)

Conviction Affirmed 5-0 DP Vacated 5-0

Sullivan Opinion; Shepard, Dickson, Boehm, and Rucker concur.

(Convictions for Murder and Attempted Murder affirmed, but conviction for Attempted Kidnapping reversed; Death sentenced vacated due to insufficient evidence to show aggravators - No evidence to show Ingle confined victim to secure act by a third party, therefore not a hostage and no Attempted Kidnapping; Although Ingle did watch, wait and conceal himself outside restaurant, this was day before murder. A disguise alone worn when entering restaurant was not enough to show lying in wait; Remanded for resentencing to a term of years.)

For Defendant: Michael J. McDaniel, New Albany

For State: Andrew L. Hedges, Deputy Attorney General (Modisett)

On Remand: Ingle resentenced by Floyd Superior Court Judge Richard G. Striegel on June 20, 2001 to consecutive terms of 65 years imprisonment for Murder and 50 years imprisonment for Attempted Murder (A Felony).

Ingle v. State, 766 N.E.2d 392 (Ind. 2002) (22A01-0109-CR-340)

(Appeal after remand and imposition of 115 years imprisonment - Affirmed)

ISOM, KEVIN CHARLES # 105

ON DETH ROW SINCE 03-08-2013
DOB: 01-04-1966 DOC#: 108003 Black Male

Lake County Superior Court Judge Thomas Stefaniak, Jr.

Trial Cause #: 45G04-0708-MR-00008

Prosecutor: David Urbanski, Michelle Jatkiewicz

Defense: Herb Shaps, Casey McCloskey



Date of Murder: August 6, 2007

Victim(s): Cassandra Isom B / F / 40 (wife); Michael Moore B / M / 16 (stepson);
Ci'Andria Cole B / F / 13 (stepdaughter)

Method of Murder: shooting with shotgun and handgun

Summary: Isom was convicted of the murders of his wife of 12 years and her two teenage children from prior relationships in their apartment in Gary's Miller Beach neighborhood. The triple homicide was discovered when Gary police raided Isom's apartment after a standoff of several hours. All three victims had been shot at close range with a shotgun and with handguns. A neighbor of the family had alerted police to the sound of gunshots about 10:30 p.m. Isom was found on the floor of a bedroom with a revolver in his waistband and his wife and stepchildren shot dead. He told the police his wife was upset about his unemployment, and had mentioned leaving him a few days before the shootings. Though disputed by the defense, police also testified that Isom said, "I can't believe I killed my family."

Trial: Information for Murder/PC Affidavit filed (08-08-07); Request for DP filed (01-17-08); Individual Voir Dire 11-26-12 to 12-18-12); Jury Trial (01-07-13 to 01-12-13, 01-14-13 to 01-19-13, 01-21-13 to 01-26-13, 01-28-13 to 02-02-13, 02-04-05, 02-05-13); Verdict (02-05-13); DP Trial (02-06-13, 02-07-13, 02-08-13); Verdict (02-08-13); Court Sentencing (03-08-13).

Conviction: Murder, Murder, Murder, Criminal Recklessness (Class D Felony) (3 Counts)

Sentencing: March 8, 2013 (3 Consecutive Death Sentences; 3 Consecutive Terms of 18 Months)

Aggravating Circumstances: b (8) 3 Murders

Mitigating Circumstances: extreme emotional disturbance
mental illness
raised by women without male role model
raised in Chicago gang-ridden housing project
lost job one month before murders
post-traumatic stress syndrome
dissociative amnesia
significant limitations in cognitive development

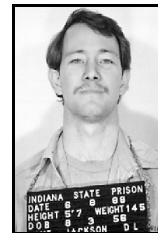
DIRECT APPEAL PENDING IN INDIANA SUPREME COURT (#45S00-0803-DP- 00125)

JACKSON, DONALD LEE, JR. # 54

OFF DEATH ROW SINCE 08-19-92

DOB: 08-03-1956 DOC#: 881974 White Male

Franklin County Circuit Court Judge Eugene A. Stewart
Venued from Dearborn County



Trial Cause #: 9766 (Dearborn County) 24CO1-8704-CF-072 (Franklin County)

Prosecutor: James D. Humphrey

Defense: Terrance W. Richmond, Ronald Richmer

Date of Murder: October 9, 1986

Victim(s): Michelle Seagraves W / F / 22 (No relationship to Jackson)

Method of Murder: shooting .41 handgun; strangulation with a strap

Summary: Michelle Seagraves was kidnapped as she was getting into her car in an apartment complex parking lot in Columbus, Ohio. Witnesses identified Stuart Kennedy as driving Seagraves' Ford Grenada while holding a woman down in the seat. Other witnesses identified a Corvette following the Ford Grenada from Columbus to Moores Hill, Indiana. The license plate of the Corvette showed it registered to Jackson. On the same day, the Peoples National Bank in Moores Hill was robbed by 2 men matching the description of Jackson and Kennedy. The Ford Grenada was identified as the getaway car. Jackson was arrested at his home in Columbus, Ohio as he was getting into the Corvette. Officers recovered \$5000 in cash, a .45 handgun, and a submachine gun from the car. Jackson gave a complete confession, directing Officers to the body of Seagraves. An autopsy showed she had been strangled with a strap still on her neck, and shot once in the back of the neck through her head. Jackson also directed Officers to the bloody clothing worn by Kennedy and Jackson discarded in a dumpster.

Trial: Information for Murder filed (12-04-86); Agreement for Change of Venue to Franklin County (04-06-87); Voir Dire/Jury Trial (04-25-88, 04-26-88, 04-27-88, 04-28-88, 04-29-88, 05-02-88, 05-04-88, 05-05-88, 05-06-88, 05-09-88, 05-10-88, 05-11-88, 05-12-88, 05-13-88, 05-16-88, 05-17-88); Verdict (05-17-88); DP Trial (05-18-88, 05-19-88); Verdict (05-19-88); Court Sentencing (06-07-88); Resentencing after Remand (01-25-93).

Conviction: Murder, Felony-Murder(Robbery), Felony-Murder(Kidnapping),
Robbery (A Felony), Kidnapping (A Felony)

Sentencing: June 7, 1988 (Death Sentence, 50 years, 50 years consecutive)

Judge Overrides Jury Recommendation against DP
Companion Case to Kennedy

Aggravating Circumstances: b (1) Robbery, b (1) Kidnapping

Mitigating Circumstances: uncertainty as to triggerman

Direct Appeal: Jackson v. State, 597 N.E.2d 950 (Ind. August 19, 1992) (24S00-8811-CR-906)
Conviction Affirmed 5-0 DP Vacated 3-2
Shepard Opinion; Debruler, Krahulik concur; Givan, Dickson dissent.
(remanded to impose term of years; Judge findings overruling jury recommendation fails to meet Martinez test, due to uncertainty as to who was triggerman)
For Defendant: Terrance W. Richmond, Milan
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Jackson v. Indiana, 113 S.Ct. 1424 (1993) (Cert. denied)

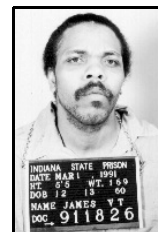
On Remand: On January 25, 1993, in compliance with Indiana Supreme Court Opinion setting aside death sentence and mandating a term of years, Franklin County Circuit Court Judge Eugene A. Stewart sentenced Jackson to consecutive terms of 60 years (Murder), 50 years (Robbery - A Felony), and 50 years (Kidnapping - A Felony), for a total sentence of 160 years imprisonment.

Direct Appeal: Jackson v. State, 625 N.E.2d 1219 (1993) (24S00-9306-CR-597)
(Appeal after remand and 160 year sentence imposed - Affirmed)

JAMES, VINCENT (a/k/a Victor James) # 67

OFF DEATH ROW SINCE 04-29-93
DOB: 12-13-1960 DOC#: 911826 Black Male

Porter County Superior Court Judge Thomas W. Webber, Sr.
Venued from LaPorte County



Trial Cause #: 46D01-8912-CF-118 (LaPorte), 64DO2-9002-CF-30 (Porter)

Prosecutor: William F. Herrbach

Defense: Donald W. Pagos, William Janes

Date of Murder: December 15, 1989

Victim(s): Gayle Taylor W / F / 35 (No relationship to James)

Method of Murder: shooting with handgun

Trial: Information/PC for Murder filed (12-21-89); Change of Venue to Porter County (02-02-90); Amended Habitual Information (10-01-90); Voir Dire/Jury Trial (09-24-90, 09-25-90, 09-26-90, 09-27-90, 09-28-90, 09-29-90, 09-30-90, 10-01-90, 10-02-90); Verdict (10-01-90); DP Trial (10-02-90); Verdict (10-02-90); Court Sentencing (02-28-91).

Summary: James entered an Insurance agency in Michigan City intending to rob. He instructed Gayle Taylor, an employee, to give him her ring, and she complied. He moved Taylor to a back room where she was shot once in the head with a handgun. James was identified going into the Agency. Upon his arrest, James attempted to swallow a ring, later identified as Taylor's engagement ring. James then gave a full confession, but said that when he took Taylor to the back room, an argument ensued and the gun went off accidentally. An ISP blood splatter expert testified that Taylor's head was 1 foot from the floor when shot, implying that she was shot while on the ground, not accidentally during a scuffle.

Conviction: Felony-Murder, Habitual Offender

Sentencing: February 28, 1991 (Death Sentence, 30 year enhancement of sentence for Murder and Habitual Offender "if Death Penalty is overturned")

Aggravating Circumstances: b (1) Robbery

Mitigating Circumstances: None

Direct Appeal: James v. State, 613 N.E.2d 15 (Ind. April 29, 1993) (64S00-9012-DP-01050)

Conviction Affirmed 5-0 DP Vacated 5-0

Krahulik Opinion; Shepard, Debruler, Givan, Dickson concur.

(Remanded with instructions for either a new Death Sentence Hearing or imposition of a term of years - Defendant denied blood spatter expert when State's expert's testimony critical to show intentional murder)

For Defendant: Donald W. Pagos, William Janes, Michigan City

For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)

On Remand: 11-22-93 State files Motion to Withdraw Pursuit of Death Penalty.
11-29-93 James resented to consecutive terms of 60 years (Murder) and 30 years (Habitual Offender), for a total sentence of 90 years imprisonment.

James v. State, 643 N.E.2d 321 (Ind. 1994) (64S00-9404-CR-310)
(Appeal after remand and defendant resented to 90 years imprisonment - Affirmed)

JOHNSON, GREGORY SCOTT # 44

EXECUTED BY LETHAL INJECTION 05-25-05 12:28 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 02-18-1965 DOC#: 863293 White Male

Madison County Superior Court
Judge Thomas Newman, Jr.

Trial Cause #: 3SCR-85-71

Prosecutor: William F. Lawler, Jr.

Defense: Gary Miracle

Date of Murder: June 23, 1985

Victim(s): Ruby Hutslar W / F / 82 (No relationship to Johnson)

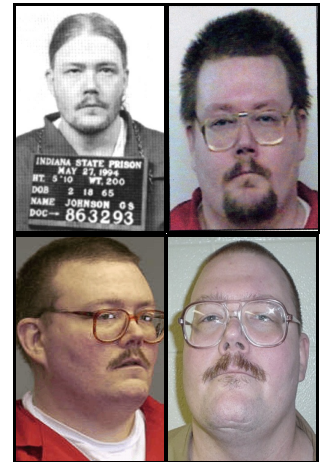
Method of Murder: stomping with feet; beating with broom handle

Summary: A newspaper delivery boy noticed the home of 82 year old Ruby Hutslar on fire and roused a neighbor to call police. He returned but could not enter the home due to the fire and smoke. Firemen were able to put out the fire in about a half hour. Ruby Hutslar was found 5 feet from the front door with broken bones on her nose and cheek and 20 fractured ribs. Her larynx and spine were also fractured. An autopsy revealed that she died as a result of these injuries and not fire or smoke inhalation. A dispatch was sent out that Johnson was a suspect in several fires in the area. Johnson was seen by Officers watching the firemen fight the fire and was arrested for Public Intoxication. In custody, Johnson initially denied any involvement, but admitted setting 4 recent fires in the area. During a later interrogation, Johnson was asked if by killing Hutslar he was trying to join his friend, Mark Wisehart, on death row. Johnson became emotional and gave a full confession. (Johnson had testified as a prosecution witness against his friend Mark Wisehart charged with capital murder) Johnson stated that he had entered the home by breaking a front window with a broom and immediately confronted 90 pound Hutslar in her night clothes. Hutslar slumped to the floor, breathing heavily. Johnson said he stepped on her as he moved around the house. He took a watch and silver dollars, found matches, started the fire and fled.

Trial: Information/PC for Murder and Death Penalty Filed (06-27-85); Jury Trial (05-12-86, 05-13-86, 05-14-86, 05-15-86, 05-16-86); Verdict (05-16-86); DP Trial (05-19-86, 05-20-86); DP Verdict (05-20-86); Court Sentencing (06-19-86).

Conviction: Felony-Murder (Burglary), Arson (B Felony)

Sentencing: June 19, 1986 (Death Sentence, 10 years imprisonment)



Aggravating Circumstances: b(1) Burglary

Mitigating Circumstances: alcoholism, intoxication; got along well in jail
20 years old at the time of the crime
graduated from high school at Indiana Boys School
served 9 months in National Guard / 2 months in Army

Direct Appeal: Johnson v. State, 584 N.E.2d 1092 (Ind. January 27, 1992) (48S00-8611-CR-992)
Conviction Affirmed 4-0 DP Affirmed 4-0
Debruler Opinion; Shepard, Dickson, Krahulik concur. Givan Not Participating
For Defendant: William Byer, Jr., Anderson
For State: Gary Damon Secrest, Deputy Attorney General (Pearson)
Johnson v. Indiana, 113 S.Ct. 155 (1992) (Cert. denied)

PCR: PCR Petition filed 12-01-93. Amended PCR filed 06-21-94.
State's Answer to PCR Petition filed.
03-31-95 Indiana Supreme Court issues "no more continuances" Order.
PCR Hearing 05-04-95.
Special Judge Richard D. Culver
For Defendant: Linda M. Wagoner, Indianapolis, Michelle Fennessy, Fort Wayne
For State:
07-19-95 PCR Petition denied.

Johnson v. State, 693 N.E.2d 941 (Ind. 1998) (48S00-9305-PD-00498)
(Appeal of PCR denial by Special Judge Richard D. Culver)
Affirmed 5-0; Sullivan Opinion; Shepard, Dickson, Selby, Boehm concur.
For Defendant: Linda M. Wagoner, Indianapolis, Michelle Fennessy, Fort Wayne
For State: Geoff Davis, Deputy Attorney General (P. Carter)

Johnson v. State, 827 N.E.2d 547 (Ind. May 16, 2005) (48S00-0505-SD-192).
(Johnson sought leave to file successive petition for state postconviction relief. Held: Denied.)
Shepard Opinion; Dickson, Sullivan, Boehm, Rucker concur.

Habeas: 07-16-98 Notice of Intent to file Petition for Writ of Habeas Corpus filed.
06-29-99 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Gregory Scott Johnson v. Cecil Davis, Superintendent (IP 98-963-C-Y/G)
Judge Richard L. Young
For Defendant: Michelle F. Kraus, Stanley C. Campbell, Fort Wayne
For State: Michael A. Hurst, Deputy Attorney General (Modisett)

04-15-02 Amended Petition for Writ of Habeas Corpus filed.
01-10-03 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
10-28-03 Entry dismissing Petition as untimely.
02-02-04 Certificate of Appealability denied.

Johnson v. McBride, 381 F.3d 587 (7th Cir. August 20, 2004) (04-1354).
(Appeal of Habeas Denial; Affirmed 3-0)
For Defendant: Stanley L. Campbell, Michelle F. Kraus, Ft. Wayne
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)
Frank H. Easterbrook Opinion; William J. Bauer, Daniel A. Marion concur.
Johnson v. McBride, 125 S.Ct. 1649 (March 21, 2005) (Cert. denied)

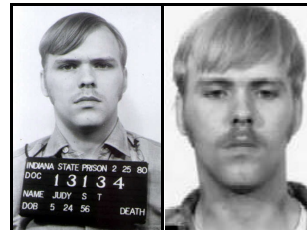
JOHNSON WAS EXECUTED BY LETHAL INJECTION ON 05-25-05 12:28 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 84TH CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900, AND 14TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

JUDY, STEVEN TIMOTHY # 4

EXECUTED BY ELECTRIC CHAIR 03-09-81 AT 12:12 CST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 05-24-1956 DOC#: 13134 White Male

Morgan County Superior Court Special Judge Jeffrey V. Boles



Trial Cause #: 79 S 61

Prosecutor: G. Thomas Gray, Stephen A. Oliver

Defense: Steven L. Harris

Date of Murder: April 28, 1979

Victim(s): Terry Chasteen W / F / 21 and her 3 children: Misty Zollers W / F / 5;
Stephen Chasteen W / M / 4; Mark Chasteen W / M / 2 (No relationship to Judy)

Method of Murder: strangulation with strips of cloth (Terry Chasteen);
asphyxia due to drowning (children)

Summary: Hunters discovered Terry Chasteen's body in White Lick Creek, near State Road 67 and Mooresville in Morgan County. A police search of the creek led to the discovery of the bodies of 3 small children, aged 2, 4 and 5. Terry Chasteen was found naked, with her hands and feet bound with strips of material torn from her clothing, and her head covered with her slacks. She had been gagged and strangled with other strips of cloth. The evidence established that Terry Chasteen had been raped and that she died of strangulation, while the children died of asphyxia due to drowning. At trial, Judy presented an insanity defense and testified at length concerning his commission of the rape and murders. Judy stated that he was driving on Interstate 465 in Marion County when he passed Terry Chasteen's car. He testified that he motioned for her to pull over to the shoulder of the road, indicating that something was wrong with the rear of her car. The two vehicles pulled to the shoulder and stopped, and Judy purported to assist the victims. In the process, he removed the coil wire, thereby rendering Terry Chasteen's car inoperable. When her car would not start, Judy offered her and the children a ride, and she accepted. Judy then drove the victims to the location of the killings and pulled his truck off the road. He testified that he directed them on foot toward the creek, and that he sent the children down the path ahead of Terry and him. Judy testified that he then raped Terry Chasteen and bound her hands and feet and gagged her. When Terry cried out, the children ran back up the path to them. Judy stated that the children stood around him and yelled. At that point, he strangled Terry Chasteen and threw her body into the creek. Judy testified that he then threw each of the children as far as he could into the water. He stated that he remembered seeing one of the children standing in the creek. Judy returned to his truck after attempting to eradicate his footprints. He then drove away. Judy's version of the events very substantially corroborated the evidence presented by the State. At the death phase of the trial, Judy ordered his attorneys not to present any evidence of mitigating circumstances. Judy stated to the jury in open court at the sentencing hearing that he would advise them to give him the death sentence, because he had no doubt that he would kill again if he had an opportunity, and some of the people he might kill in the future might be members of the jury. A similar comment was directed to the trial judge. (Insanity defense)

Trial: Information for Murder filed (05-01-79); Probable Cause Hearing (05-03-79); Competency Hearing (07-09-79); Amended "Indictment" (01-07-80); Voir Dire/Jury Trial (01-07-80, 01-08-80, 01-09-80, 01-10-80, 01-11-80, 01-12-80, 01-14-80, 01-15-80, 01-16-80, 01-17-80, 01-18-80, 01-19-80, 01-21-80, 01-22-80, 01-23-80, 01-24-80, 01-25-80, 01-28-80, 01-29-80, 01-30-80, 01-31-80, 02-01-80, 02-02-80); Verdict (02-02-80); DP Trial (02-02-80); Verdict (02-02-80); Court Sentencing (02-25-80).

Conviction: Murder (Misty), Murder (Stephen), Murder (Mark), Felony-Murder (Terry)

Sentencing: February 25, 1980 (Death Sentence)

Aggravating Circumstances: b (1) Rape
b (8) 4 murders

Mitigating Circumstances: None

Direct Appeal: Judy v. State, 416 N.E.2d 95 (Ind. January 30, 1981) (580-S-128)

Conviction Affirmed 5-0 DP Affirmed 4-1

Pivarnik Opinion; Givan, Hunter, Prentice concur; Debruler dissents.

For Defendant: Kenneth M. Stroud, Indianapolis, Stephen L. Harris, Mooresville

For State: Michael Gene Worden, Charles D. Rodgers, Deputy Attorneys General (Pearson)

JUDY WAIVED ALL APPEALS AND WAS EXECUTED BY ELECTRIC CHAIR ON 03-09-81 AT 12:12 CST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 71ST CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900, AND 1ST SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

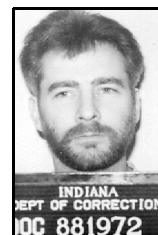
KENNEDY, STUART S. # 53 & # 72

OFF DEATH ROW SINCE 09-16-93

DOB: 12-20-1960 DOC#: 881972 White Male

Decatur County Circuit Court Judge John A. Westhafer

Venued from Dearborn County



Trial Cause #: 9767 (Dearborn County), 16CO1-8704-CF-045 (Decatur County)

Prosecutor: James D. Humphrey, Mike Miller

Defense: J. Richard Kiefer, Kevin P. McGoff

Date of Murder: October 9, 1986

Victim(s): Michelle Seagraves W / F / 22 (No relationship to Kennedy)

Method of Murder: shooting with .41 handgun; strangulation with a strap.

Summary: Michelle Seagraves was kidnapped as she was getting into her car in an apartment complex parking lot in Columbus, Ohio. Witnesses identified Stuart Kennedy as driving Seagraves' Ford Grenada while holding a woman down in the seat. Other witnesses identified a Corvette following the Ford Grenada from Columbus to Moores Hill, Indiana. The license plate of the Corvette showed it registered to Jackson. On the same day, the Peoples National Bank in Moores Hill was robbed by 2 men matching the description of Jackson and Kennedy. The Ford Grenada was identified as the getaway car. Jackson was arrested at his home in Columbus, Ohio as he was getting into the Corvette. Officers recovered \$5000 in cash, a .45 handgun, and a submachine gun from the car. Jackson gave a complete confession, directing Officers to the body of Seagraves. An autopsy showed she had been strangled with a strap still on her neck, and shot once in the back of the neck through her head. Jackson also directed Officers to the bloody clothing worn by Kennedy and Jackson discarded in a dumpster.

Trial: Information/PC for Murder filed (12-04-86); Change of Venue to Decatur County (04-06-87); Voir Dire (01-12-88, 01-13-88, 01-14-88, 01-15-88, 01-18-88, 01-19-88, 01-20-88, 01-21-88); Jury Trial (01-21-88, 01-22-88, 01-25-88, 01-26-88, 01-27-88, 01-28-88, 01-29-88, 02-01-88, 02-02-88, 02-03-88, 02-04-88, 02-05-88); Verdict (02-05-88); DP Trial (02-08-88, 02-09-88); Verdict (02-09-88); Court Sentencing (03-21-88); Resentencing After Remand (04-20-95).

Conviction: Murder, Felony-Murder, Kidnapping (A Felony), Robbery (C Felony)

Sentencing: March 21, 1988 (Death Sentence, 50 years, 8 years, consecutive)

Judge Overrides Jury Recommendation against DP
Companion Case to Jackson

Aggravating Circumstances: b (1) Kidnapping
b (1) Robbery

Mitigating Circumstances: None

Direct Appeal: Kennedy v. State, 578 N.E.2d 633 (Ind. September 19, 1991) (16S00-8808-CR-785)
Conviction Affirmed 4-1 DP Vacated 4-1
(Remanded for a “new sentencing determination”; Judge findings overruling jury recommendation fails to meet Martinez test)
Krahulik Opinion; Shepard, Dickson concur; Debruler dissents against conviction; Givan dissents for DP.
For Defendant: J. Richard Kiefer, Kevin P. McGoff, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Kennedy v. Indiana, 112 S.Ct. 1299 (1992) (Cert. denied)

On Remand: On April 28, 1992 Decatur County Circuit Court Judge John A. Westhafer again sentenced Kennedy to death, again overriding the jury recommendation against death, without a hearing in compliance with Indiana Supreme Court Opinion setting aside death sentence and mandating a “new sentencing determination.”

Direct Appeal: Kennedy v. State, 620 N.E.2d 17 (Ind. September 16, 1993) (16C01-8704-CF-45)
DP Vacated 3-2 with instructions to impose a term of years.
(Judge findings overruling recommendation again fails to meet Martinez test)
Krahulik Opinion; Debruler, Dickson concur; Givan, Shepard dissent.
(Shepard cites argument of Deputy AG Thad Perry in dissent)
For Defendant: Richard Kiefer, Kevin P. McGoff, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)

Kennedy v. State, 644 N.E.2d 854 (Ind. 1994) (16S00-9208-DP-651) (Reh. denied 3-2)
Debruler, Dickson, Sullivan; Shepard, Givan dissent to uphold death sentence)

On Remand: On April 20, 1995, in compliance with Indiana Supreme Court Opinion setting aside death sentence and mandating a “new sentencing determination,” Decatur County Circuit Court Judge John A. Westhafer resentenced Kennedy to consecutive terms of 60 years (Murder), 50 years (Kidnapping - A Felony), and 8 years (Robbery - C Felony), for a total sentence of 118 years imprisonment.

Kennedy v. State, 674 N.E.2d 966 (Ind. 1996) (16S00-9508-CR-960)
(Appeal after remand and sentence of 118 years imposed - Affirmed)

KUBSCH, WAYNE D. # 94 & # 101

ON DEATH ROW SINCE 04-18-05
DOB: 10-31-67 DOC#: 108000 White Male

St. Joseph County Superior Court
Judge Jerome Frese

Trial Cause #: 71D02-9812-CF-00592
Prosecutor: Scott H. Duerring, Joel V. Williams
Defense: James F. Korpall, Neil Wiseman

Date of Murder: September 18, 1998

Victim(s): Beth Kubsch W / F / 31 (wife);
Rick Milewski W / M / 35 (Beth's Ex-Husband);
Aaron Milewski W / M / 10 (Son of Beth & Rick)

Method of Murder: stabbing, shooting with handgun

Summary: September 18, 1998 was the 31st birthday of the defendant's wife Elizabeth Kubsch. It was also the day she was found dead by her 13 year old son under the stairs in the basement of the home she shared with the defendant. She had been stabbed numerous times, and was hogtied with duct tape. Also discovered in the basement were the bodies of Elizabeth's former husband, Rick Milewski, and their 10 year old son from that marriage, Aaron Milewski. Aaron had been stabbed 21 times and shot once in the mouth. Rick had been stabbed in the heart and shot twice in the head. Kubsch claimed to have worked all day, then went straight to pick up his other son in Michigan. However, cell phone records put him in the vicinity of the murder at the time of the murders. Duct tape from Elizabeth was matched to a wrapper in his vehicle. A receipt that was received by Elizabeth two hours before the murder was also found in his vehicle. He was overheard bragging about the murders at a local restaurant. He was over \$400,000 in debt and 2 months before the murders had taken out a life insurance policy on the life of Elizabeth for \$575,000.

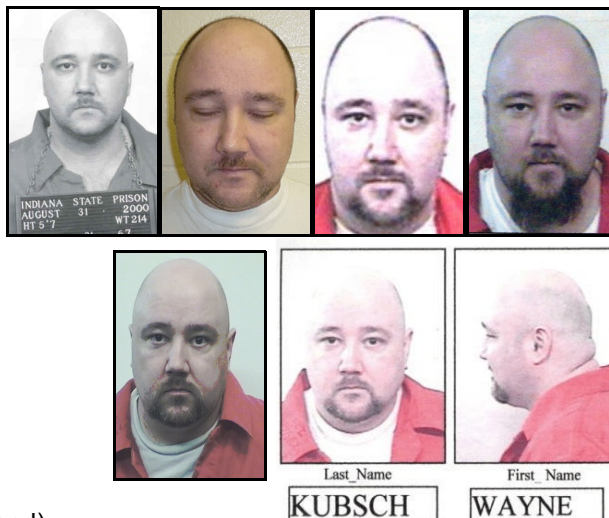
Trial: Information/PC for Murder filed (12-22-98); Amended Information for DP filed (04-07-99); Voir Dire (05-15-00, 05-22-00, 05-23-00, 05-24-00, 05-25-00, 05-26-00, 05-30-00, 05-31-00); Jury Trial (06-01-00, 06-02-00, 06-03-00, 06-05-00, 06-06-00, 06-07-00, 06-08-00, 06-09-00, 06-10-00, 06-12-00, 06-13-00, 06-14-00, 06-15-00); Deliberations 10 hours, 22 minutes; Verdict (06-15-00); DP Trial (06-16-00); Deliberations 1 hour, 30 minutes; Verdict (06-16-00); Court Sentencing (08-28-00).

Conviction: Murder (3 counts)

Sentencing: August 28, 2000 (Death Sentence)

Aggravating Circumstances: b (12) Victim less than 12 years of age
b (8) 3 Murders

Mitigating Circumstances: No significant prior criminal record
Poor and deprived childhood
Dysfunctional family
Has young children who need his support



Direct Appeal: Kubsch v. State, 784 N.E.2d 905 (Ind. March 14, 2003) (71S00-9904-DP-239)
Conviction Reversed 5-0 DP Vacated 5-0
Rucker Opinion; Shepard, Dickson, Sullivan, Boehm concur.
(In violation of Doyle v. Ohio, the State presented videotaped interrogation where Kubsch asserted right to remain silent.)
For Defendant: Monica Foster, Rhonda Long-Sharp, Indianapolis
Amicus Curiae: Kenneth J. Falk, Indiana Civil Liberties Union
Marshall L. Dayan, NC Commission on Social Action of Reform Judaism
For State: James B. Martin, Deputy Attorney General (S. Carter)

On Remand: Following a new jury trial, on March 19, 2005 Kubsch was found guilty of 3 counts of Murder. After the verdict, Kubsch fired his lawyers, who remained only as standby counsel for the abbreviated sentencing hearing. On March 21, 2005 the jury recommended a death sentence. On April 18, 2005, St. Joseph County Superior Court Judge William H. Albright sentenced Kubsch to death in accordance with the jury verdict.
For State: Deputy Prosecutors Scott H. Duerring, Frank E. Schaffer.
For Defendant: Philip R. Skodinski, Brian J. May.

Retrial: Jury Panel Present to Complete Questionnaires (02-07-05, 02-08-05); Small Group Voir Dire (02-23-05, 02-24-05, 02-25-05, 02-28-05, 03-01-05, 03-02-05); Regular Voir Dire (03-03-05); Trial (03-04-05, 03-05-05, 03-07-05, 03-08-05, 03-09-05, 03-10-05, 03-11-05, 03-12-05, 03-14-05, State Rests, 03-15-05, 03-16-05, 03-17-05, 03-18-05, Defendant Rests, (03-19-05); Deliberations and Verdict (03-19-05); DP Trial (03-21-05); Deliberations and Verdict (03-21-05); Court Sentencing (04-18-05).

Direct Appeal: Kubsch v. State, 866 N.E.2d 726 (Ind. May 22, 2007) (71S00-0507-DP-333)
Conviction Affirmed 5-0 DP Affirmed 5-0
Shepard Opinion; Dickson, Sullivan, Boehm, Rucker concur.
For Defendant: Eric Koselke, Brent L. Westerfeld, Indianapolis
For State: James B. Martin, Deputy Attorney General (S. Carter)
Kubsch v. Indiana, 128 S.Ct. 2501 (May 27, 2008) (Cert. denied)

PCR: PCR denied January 7, 2009 by St. Joseph Superior Court Judge Jane Woodward Miller.

Kubsch v. State, 934 N.E.2d 1138 (Ind. October 05, 2010) (71S00-0708-PD-335)
(Appeal of denial of postconviction relief by St. Joseph Superior Court Judge Jane Woodward Miller)
Conviction Affirmed 5-0, DP Affirmed 5-0
Rucker Opinion; Shepard, Dickson, Sullivan, Boehm, concur.
For Defendant: Steven H. Shutte, Laura L. Volk, Deputy Public Defenders (Carpenter)
For State: James B. Martin, Deputy Attorney General (Zoeller)

Habeas: 01-27-11 Notice of Intent to file Petition for Writ of Habeas Corpus filed.
04-27-11 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Wayne Kubsch v. Superintendent (3:11-cv-00042-PPS)
Judge Philip P. Simon
For Defendant: Joseph M. Cleary, Indianapolis, Marie F. Donnelly, Chicago, IL
For State: James B. Martin, Stephen R. Creason, Deputy Attorneys General (Zoeller)

09-14-11 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
02-29-12 Petitioner's Traverse and Memorandum filed in support of Writ of Habeas Corpus.
08-21-12 Oral Arguments heard.

FULLY BRIEFED AND AWAITING DECISION BY JUDGE PHILIP P. SIMON, U.S. DISTRICT COURT, NORTHERN DISTRICT OF INDIANA.

LAMBERT, MICHAEL ALLEN # 71

EXECUTED BY LETHAL INJECTION 06-15-07 AT 12:29 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 10-21-1970 DOC#: 922001 White Male

Delaware County Superior Court
Judge Robert L. Barnet, Jr.

Trial Cause #: 18D01-9101-CF-02

Prosecutor: Richard W. Reed, J. A. Cummins, Jeffrey L. Arnold

Defense: Ronald E. McShurley, Mark D. Maynard

Date of Murder: December 28, 1990

Victim(s): Gregg Winters W / M / 31 (Muncie Police Officer - No relationship to Lambert)

Method of Murder: shooting with .25 handgun

Summary: Muncie Police Officers were dispatched to a traffic accident and observed an abandoned utility truck. The truck was towed and Lambert was found nearby crawling under a vehicle. Lambert had spent most of the night getting drunk and after telling officers he was trying to sleep, was arrested by Officer Kirk Mace for Public Intoxication. He was patted down and placed into the back of a police car driven by Officer Gregg Winters for transport to jail. A few minutes later, the police vehicle was observed sliding off the road into a ditch. Lambert was still handcuffed in the backseat and Officer Winters had been shot 5 times in the back of the head and neck. A .25 handgun was found laying on the floorboard. It was later learned that Lambert had stolen the .25 pistol from his employer. A demonstration/re-enactment video was introduced into evidence showing the manner in which a gun could be retrieved and fired while handcuffed. A statement by the defendant was admitted despite his .18 BAC.

Trial: Information/PC for Murder and DP filed (01-09-91); Voir Dire (11-04-91, 11-06-91, 11-07-91, 11-08-91, 11-11-91, 11-12-91, 11-13-91); Jury Trial (11-13-91, 11-14-91, 11-15-91, 11-16-91); Deliberations over 2 days; Verdict (11-16-91); DP Trial (11-18-91); Verdict (11-18-91); Court Sentencing (01-17-92).

Conviction: Murder

Sentencing: January 17, 1992 (Death Sentence)

Aggravating Circumstances: b (6) Victim was law enforcement officer

Mitigating Circumstances: 20 years old and intoxicated at the time of the murder
lack of guidance in upbringing
positive signs of rehabilitation

Also Serving Time For: Burglary, sentenced to 8 years imprisonment on 08-31-92. (Delaware)
Battery, sentenced to 8 years imprisonment on 11-07-97. (LaPorte)

Direct Appeal: Lambert v. State, 643 N.E.2d 349 (Ind. December 6, 1994) (18S00-9107-DP-544)
Conviction Affirmed 5-0 DP Affirmed 3-2
Givan Opinion; Shepard, Dickson concur; Debruler, Sullivan dissent.



(Case was remanded back to the trial court before this opinion to allow for correct application of intoxication as mitigating circumstance)
For Defendant: Mark D. Maynard, Anderson, Ronald E. McShurley, Muncie
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)

Lambert v. State, 675 N.E.2d 1060 (Ind. December 31, 1996) (18S00-9107-DP-544)
(On Rehearing, DP Affirmed 4-1 despite error in admitting victim impact evidence)
Selby Opinion; Shepard, Dickson, Sullivan concur; Boehm dissents.

Lambert v. Indiana, 117 S.Ct. 2417 (1997) (Cert. denied)
Lambert v. Indiana, 118 S.Ct. 7 (1997) (Reh. denied)

PCR: Notice of Intent to File PCR Petition filed 02-04-97.
PCR Petition filed 10-01-97. Amended PCR Petition filed 03-25-98.
State's Answer to PCR Petition filed 11-14-97, 04-15-98.
PCR Hearing 06-08-98, 06-09-98.
Delaware Superior Court Judge Robert L. Barnet, Jr.
For Defendant: Thomas C. Hinesley, Scott B. Rudolf, Kathleen Cleary,
Deputy Public Defenders (Carpenter)
For State: Geoffrey Davis, James Dimitri, Deputy Attorneys General, Richard W. Reed
07-10-98 PCR Petition denied.

Lambert v. State, 743 N.E.2d 719 (Ind. March 5, 2001) (18S00-9702-PD-96)
(Appeal of PCR denial by Delaware Superior Court Judge Robert L. Barnet, Jr.)
Conviction Affirmed 5-0 DP Affirmed 5-0
Sullivan Opinion; Shepard, Dickson, Boehm, Rucker concur.
For Defendant: Thomas C. Hinesley, Kathleen Cleary, Deputy Public Defenders (Carpenter)
For State: Priscilla J. Fossum, Deputy Attorney General (Modisett)
Lambert v. Indiana, 122 S.Ct. 1082 (2002) (Cert. denied)

Lambert v. State, 825 N.E.2d 1261 (Ind. Apr 28, 2005) (18S00-0412-SD-503).
(Lambert sought leave to file successive petition for state postconviction relief. Held: Denied; Indiana Supreme Court, on direct appeal, had appellate authority to independently reweigh the proper aggravating and mitigating circumstances, as remedy for improper victim impact evidence admitted during trial.)
Shepard Opinion; Dickson, Sullivan concur. Rucker, Boehm dissent.

Lambert v. State, 867 N.E.2d 134 (Ind. May 21, 2007) (18S00-0412-SD-503)
(Lambert sought leave to file successive petition for state postconviction relief. Held: Denied 3-2)
Shepard, Dickson, Sullivan concur; Boehm, Rucker dissent.
Lambert v. Indiana, 127 S.Ct. 7970 (2007) (Cert. denied)

Habeas: 06-19-01 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
Petition for Writ of Habeas Corpus filed 11-13-01 in U.S. District Court, Southern District of Indiana.
Michael Allen Lambert v. Ron Anderson, Superintendent (IP 01-C- 864-M/S)
Judge Larry J. McKinney
For Defendant: Alan M. Freedman, Evanston, IL, Thomas A. Durkin
For State: Michael A. Hurst, Stephen R. Creason, Deputy Attorneys General (S. Carter)

03-12-02 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
07-15-02 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
11-07-02 Writ of Habeas Corpus denied.
01-31-03 Certificate of Appealability granted.

Lambert v. McBride, 365 F.3d 557 (7th Cir. April 7, 2004) (03-1015)
(Appeal of denial of Habeas Writ by U.S. District Court for the Southern District of Indiana)
Affirmed 3-0 (Ring does not apply retroactively)
Circuit Judge Terence T. Evans, Judge Kenneth F. Ripple, Judge Michael S. Kanne.
For Defendant: Alan M. Freedman, Evanston, IL, Laurence E. Komp, Ballwin, MO
For State: Stephen R. Creason Deputy Attorney General (S. Carter)
Lambert v. McBride, 125 S.Ct. 669 (December 6, 2004) (Cert. denied)

05-12-05 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Michael Allen Lambert v. Cecil Davis, Superintendent (1:05-CV-00708-LJM-VSS)
Judge Larry J. McKinney
05-31-05 Petition for Writ of Habeas Corpus dismissed for lack of jurisdiction; Stay denied.
For Defendant: Alan M. Freedman, Carol R. Heise, Evanston, IL, Laurence E. Kemp, Baldwin, MO
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

06-17-05 Stay of Execution ordered by 7th Circuit U.S. Court of Appeals for scheduled 06-22-05 execution date. "In due course, the court will issue an order addressing whether a certificate of appealability should be issued.

Davis v. Lambert, 125 S.Ct. 2954 (2005) (Application to vacate stay denied)

Lambert v. Davis, 449 F.3d 774 (7th Cir. May 31, 2006) (05-2610)
Appeal of dismissal of Successive Petition for Habeas Relief.
(Whether Lambert was entitled to benefit of "Saylor" rule is a matter of state, not federal, law)
Affirmed 2-1; Opinion by Circuit Judge Terence T. Evans.
Judge Michael S. Kanne concurs; Judge Kenneth F. Ripple dissents.
For Defendant: Alan M. Freedman, Midwest Center for Justice, Evanston, IL
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)
Lambert v. Buss, 127 S.Ct. 1814 (2007) (Cert. denied)
Lambert v. Buss, 127 S.Ct. 2158 (2007) (Reh. denied)

Lambert v. Buss, 489 F.3d 779 (7th Cir. June 12, 2007) (03-1015, 05-2610)
(Stay / Mandate Recall denied;)
Per Curiam Opinion. (Judge Kenneth F. Ripple, Judge Michael S. Kanne , Judge Terrance T. Evans)
For Defendant: Alan M. Freedman, Evanston, IL; Laurence E. Komp, Manchester, MO.
For State: Stephen R. Creason, Deputy Attorney General (S.Carter)

Lambert v. Buss, 498 F.3d 446 (7th Cir. June 14, 2007) (07-2378)
(Challenge to lethal injection method of execution; Stay / Injunction denied since no showing that inmate would suffer unnecessary pain)
Per Curiam Opinion. (Judge Kenneth F. Ripple, Judge Michael S. Kanne , Judge Terrance T. Evans)
For Defendant: Alan M. Freedman, Midwest Center for Justice, Evanston, IL
For State: Stephen R. Creason, Deputy Attorney General (S.Carter)

LAMBERT WAS EXECUTED BY LETHAL INJECTION 06-15-07 AT 12:29 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 89TH CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900 AND 19TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

LANDRESS, CINDY LOU # 61

OFF DEATH ROW SINCE 10-15-92

DOB: 01-20-1958 DOC#: 893767 White Female

Lake County Superior Court Judge Richard J. Conroy

Trial Cause #: 45G03-8805-CF-00118

Prosecutor: John J. Burke

Defense: Kevin B. Relphorde, Albert E. Marshall, Jr.

Date of Murder: April 23, 1988

Victim(s): Leonard Fowler W / M / 46 (Live-In boyfriend of Landress)

Method of Murder: stabbing with knives

Summary: Landress lived with her boyfriend, Leonard Fowler. They were joined one morning by Landress' friend, Julie Lewellen. All three sat around the kitchen table talking and drinking. Lewellen suddenly threatened Fowler with a knife and forced him to the floor. Landress retrieved an extension cord and Lewellen tied Fowler up and took his wallet, giving it to Landress. While they were removing the money, Landress told Lewellen that Fowler had escaped and was in the bedroom loading his shotgun. Lewellen ran to the bedroom and began stabbing Fowler. Landress got a knife from the kitchen and returned to the bedroom where she says she attempted only to break up the fight. Landress received a deep cut to her hand and dropped the knife. Landress then got the keys from Fowler's pocket and they fled in his car. They were apprehended in California two weeks later. The day before the murder, Landress had displayed a large buck knife and Lewellen had displayed a smaller butterfly knife. Both had expressed a desire to go "rolling." (knocking someone out and robbing them). Most all of the above details came from the testimony of Landress and Lewellen.

Trial: Information filed/PC Hearing for Murder (05-04-88); Amended Information for DP filed (12-13-88); Voir Dire (05-15-89); Jury Trial (05-16-89, 05-17-89, 05-18-89, 05-19-89); Verdict (05-19-89); DP Trial (05-20-89); Deliberations 4 hours, 15 minutes; Verdict (05-20-89); Court Sentencing (06-26-89).

Conviction: Felony-Murder (Robbery)

Sentencing: June 26, 1989 (Death Sentence)

Aggravating Circumstances: b (1) Robbery

Mitigating Circumstances: None

Direct Appeal: Landress v. State, 600 N.E.2d 938 (Ind. October 15, 1992) (45S00-8911-CR-837)

Conviction Affirmed 5-0 DP Vacated 4-1

(Intent to kill of one Defendant cannot be imputed to accomplice)

Krahulik Opinion; Shepard, Debruler, Dickson concur; Givan dissents.

For Defendant: James F. Stanton, Crown Point

For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

On Remand: On March 18, 1993, in compliance with Indiana Supreme Court Opinion setting aside death sentence and "remanded for imposition of a new sentence," Lake County Superior Court Judge Richard J. Conroy resentenced Landress to 60 years imprisonment for Murder

Landress v. State, 638 N.E.2d 787 (Ind. August 18, 1994) (45S00-9311-CR-1285)

(Appeal after remand and sentence of 60 years imposed; Affirmed)



LOCKHART, MICHAEL LEE # 62

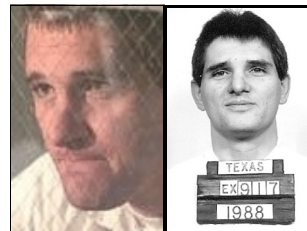
EXECUTED 12-09-97 6:24 PM BY STATE OF TEXAS
DOB: 09-30-1960 DOC#: 892136 White Male

Lake County Superior Court Judge James E. Letsinger

Trial Cause #: 45GO2-8806-CF-00134

Prosecutor: Thomas W. Vanes, Joan Kuoros

Defense: Robert L. Lewis, Willie Harris, Darnail Lyles



Date of Murder: October 13, 1987

Victim(s): Windy Gallagher W / F / 16 (No relationship to Lockhart)

Method of Murder: stabbing with large knife 21 times

Summary: The body of 16 year old Windy Gallagher was found by her sister in the bedroom of their home in Griffith, Indiana. She was nude from the waist down with her hands tied behind her back, and her bra pushed up above her breasts. She was stabbed with a large knife 4 times in the neck and 17 times in the abdomen. There was a large pool of blood and her intestines were hanging out. Missing from her room was a photo of Windy and a small purse. Fingerprints in the room were identified as Lockhart's. The day before in Chicago, a woman was robbed of her purse at knifepoint. She identified Lockhart as her attacker. She was fortunate to recover her purse 3 days later. Inside it, she found the small purse belonging to Windy Gallagher. In January 1988, a 14 year old girl was raped and stabbed to death in Florida. Lockhart was identified by witnesses and DNA as the murderer. Because of striking similarities, evidence of this crime was admitted at trial. Lockhart's crime spree ended in Texas, where he murdered a police officer in Beaumont. He was convicted of Capital Murder in Texas in October 1988. This crime and conviction was kept from the jury until the penalty phase of the trial. Following the trial, Lockhart was returned and held on Texas Death Row until his execution on 12-09-97.

Trial: Information filed/PC Hearing for Murder (06-17-88); Amended Information for DP filed (02-02-89); Competency Hearing (04-05-89); Voir Dire (06-12-89, 06-13-89, 06-14-89); Jury Trial (06-14-89, 06-15-89, 06-16-89, 06-17-89, 06-19-89, 06-23-89); Verdict (06-23-89); DPTrial (06-23-89, 06-24-89, 06-25-89, 06-26-89); Verdict (06-26-89); Court Sentencing (07-19-89).

Conviction: Murder

Sentencing: July 19, 1989 (Death Sentence)

Aggravating Circumstances: b (1) Robbery
b (7) Convicted of another murder in Texas

Mitigating Circumstances: None

Direct Appeal: Lockhart v. State, 609 N.E.2d 1093 (Ind. March 8, 1993) (45S00-8911-CR-851)
Conviction Affirmed 5-0 DP Affirmed 4-1
Shepard Opinion; Givan, Dickson, Krahulik concur; Debruler dissents.
For Defendant: Daniel L. Bella, Crown Point
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

PCR: PCR Petition filed 01-06-94.
State's Answer to PCR Petition filed 03-03-94.
PCR Hearing 01-27-95.
Lake County Magistrate T. Edward Page
For Defendant: Juliet Yackel, Steven Schutte, Thomas Essex
For State: Natalie Bokota, Susan Collins, Cynthia Taylor
02-28-96 PCR Petition denied.

LOCKHART WAS EXECUTED BY LETHAL INJECTION ON 12-09-97 AT 6:24 PM BY THE STATE OF TEXAS.

LOWERY, JIM # 5 & # 17

EXECUTED BY LETHAL INJECTION 06-27-01 12:29 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 03-16-1947 DOC#: 18667 White Male

Boone County Superior Court Judge Paul H. Johnson, Jr.
Venued from Tippecanoe County



Trial Cause #: S459191 (Tippecanoe County)
S6751C (Boone County)
CCRV882-92 (Hendricks County)
32C01-8208-CF-000092 (Hendricks County)

Prosecutor: John H. Meyers, IV, John W. Barce

Defense: Lawrence D. Giddings, Donald R. Peyton

Date of Murder: September 30, 1979

Victim(s): Mark Thompson W / M / 80; Gertrude Thompson W / F / 80 (Former employers)

Method of Murder: shooting with .32 handgun

Summary: Mark and Gertrude Thompson were 80 years of age, in declining health, and needed assistance in caring for themselves and their property. Both were found shot to death in their country home in West Point, Indiana. The Thompsons has earlier employed Lowery and his wife as caretakers. The Thompsons, dissatisfied with the Lowerys, asked them to leave. Lowery and his friend Jim Bennett discussed committing robbery and Lowery told Bennett he knew where he could get some money. On September 30, Bennett picked Lowery up and followed Lowery's directions. Lowery told Bennett they were going to the Thompson's residence to force him to write a check for \$9,000, then to kill and bury both Thompsons. Janet Brown, housekeeper and caretaker for the Thompsons, was sitting in her trailer adjacent to the Thompson's garage when Lowery, armed with a pistol and sawed-off shotgun, kicked the door open and entered. After some conversation, Lowery forced her to take him into the Thompson's residence. Lowery took Brown into the kitchen where Mark Thompson was standing. He told Thompson he was being held up and then shot him in the stomach. Lowery then went to another room, forced Mrs. Thompson into the kitchen and shot her in the head. He also shot Brown, but Brown had her hand over her head when Lowery fired at her, causing injury to her hand and her head, but not fatally wounding her. A burglar alarm began ringing and Lowery became excited. He went back to and shot Mr. Thompson in the head before fleeing the scene. Lowery admitted killings during penalty phase testimony. Bennett pled guilty by agreement, received a 40 year sentence, and testified against Lowery at his first trial. When he refused to testify at the second trial, his previous testimony was admitted.

Trial: Information/PC for Murder and DP filed (10-16-79); Agreed Change of Venue to Boone County (12-04-79); Voir Dire (06-09-80, 06-10-80); Jury Trial (06-11-80, 06-12-80, 06-16-80, 06-17-80); Verdict (06-18-80); DP Trial (06-19-80); Verdict (06-19-80); Court Sentencing (07-11-80).

Conviction: Murder, Murder, Attempted Murder (A Felony)

Sentencing: July 11, 1980 (Death Sentence)

Aggravating Circumstances: b (1) Burglary
b (1) Robbery
b (8) 2 murders

Mitigating Circumstances: no parental love
mental commitment as a teenager

Direct Appeal: Lowery v. State, 434 N.E.2d 868 (Ind. May 5, 1982) (1280-S-448)
Conviction Reversed 3-2 DP Vacated 3-2 (Failure to sequester)
Debruler Opinion; Hunter, Prentice concur; Givan, Pivarnik dissent.
For Defendant: Lawrence D. Giddings, Lebanon
For State: Michael Gene Worden, Deputy Attorney General (Pearson)

Lowery v. State, 471 N.E.2d 258 (Ind. 1984) (184-S-11)
(Regarding attorney fees for public defenders at DP trial)

On Remand: On remand, the trial was venued to Hendricks County and Lowery was again convicted of Murder, Murder, Attempted Murder (A Felony) and sentenced to death and 50 years imprisonment by Hendricks County Circuit Court Judge Jeffrey V. Boles on 01-07-83.

Voir Dire/Jury Trial (11-30-82 to 12-08-82); Deliberations 2 hours; Verdict (12-08-82); DP Trial (12-09-82, 12-10-82); Deliberations 2 hours, 15 minutes; Verdict (12-10-82); Court Sentencing (01-07-83).

Special Judge Judge Jeffrey V. Boles
For Defendant: Lawrence D. Giddings, Lewis
For State: John H. Meyers, IV, Richard J. Rudman

Direct Appeal: Lowery v. State, 478 N.E.2d 1214 (Ind. June 4, 1985) (483-S-116)
Conviction Affirmed 5-0 DP Affirmed 4-1
Pivarnik Opinion; Givan, Hunter, Prentice concur; Debruler dissents.
For Defendant: David P. Freund, Deputy Public Defender (Carpenter)
For State: Michael Gene Worden, Deputy Attorney General (Pearson)
Lowery v. Indiana, 106 S.Ct. 1500 (1986) (Cert. denied)

PCR: PCR Petition filed 07-18-86. Amended PCR filed 03-03-87, 05-02-88, 03-30-89.
State's Answer to PCR Petition filed 04-03-87.
PCR Hearing 12-13-88, 12-14-88, 12-15-88, 12-16-88, 12-19-88.
Special Judge Thomas K. Milligan
For Defendant: Monica Foster, Brent L. Westerfield
For State: Daniel A. Lane, Timothy L. Kern, Jerry Bean
10-22-90 PCR Petition denied.

Lowery v. State, 640 N.E.2d 1031 (Ind. 1994) (32S00-9008-PD-542)
(Appeal of PCR denial by Special Judge Thomas Milligan)
Affirmed 5-0, except Attempted Murder conviction reversed.
Debruler Opinion; Shepard, Dickson, Givan, Sullivan concur.

For Defendant: Brent L. Westerfeld, Monica Foster, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Lowery v. Indiana, 116 S.Ct. 525 (1995) (Cert. denied)

Habeas: 06-19-01 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
02-05-96 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Jim Lowery v. Rondle Anderson, Superintendent (IP 96-71-C-H/G)
Judge David Hamilton
For Defendant: Brent L. Westerfeld, Monica Foster, Indianapolis
For State: Robert L. Collins, Stephen R. Creason, Deputy Attorneys General (Modisett)

04-04-96 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
08-19-96 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
07-06-99 Writ of Habeas Corpus denied.
12-21-99 Certificate of Appealability granted.

Lowery v. Anderson, 69 F.Supp.2d 1078 (S.D. Ind. July 6, 1999) (IP 96-71-C-H/G)
(Petition for Habeas Writ denied by Judge David Hamilton)
For Defendant: Brent L. Westerfeld, Monica Foster, Indianapolis
For State: Robert L. Collins, Deputy Attorney General (Modisett)

Lowery v. Anderson, 225 F.3d 833 (7th Cir. August 29, 2000) (99-3227)
(Affirming the denial of Writ of Habeas Corpus 3-0.
Opinion by Judge William J. Bauer; Judge Joel M. Flaum, Judge Daniel A. Manion concur.
For Defendant: Brent L. Westerfeld, Monica Foster, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Lowery v. Anderson, 121 S.Ct. 1488 (April 2, 2001) (Cert. denied)

Clemency: Lowery v. Anderson, 138 F.Supp.2d 1128 (S.D. Ind. April 13, 2001) (IP 96-0071-C H/G)
(Order of Judge Hamilton granting the Motion for Appointment of Counsel for state clemency proceedings; Monica Foster and Brent L. Westerfeld appointed; "the Court anticipates that a maximum of approximately 80 hours of attorney work may be 'reasonably necessary' in the clemency proceedings.")
For Defendant: Monica Foster, Brent L. Westerfeld, Indianapolis
For State: Robert L. Collins, Deputy Attorney General (Modisett)

Stay: Lowery v. Indiana, 121 S.Ct. 2580 (2001) (Application for stay denied)

LOWERY WAS EXECUTED BY LETHAL INJECTION ON 06-27-01 12:29 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 79TH CONVICTED MURDER EXECUTED IN INDIANA SINCE 1900, AND THE 9TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

LOWERY TERRY LEE (a/k/a Terry Lee Spencer) # 41

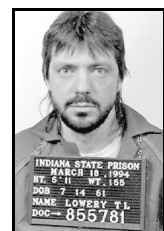
OFF DEATH ROW SINCE 06-16-94
DOB: 07-04-1961 DOC#: 855781 White Male

Allen County Superior Court Judge Alfred W. Moellering

Trial Cause #: CR-85-298

Prosecutor: Stephen M. Sims Michael J. McAlexander

Defense: Barrie C. Tremper, Charles F. Leonard



Date of Murder: May 19, 1985

Victim(s): Tricia L. Woods W / F / 13 (Girlfriend of Lowery's friend)

Method of Murder: beating with board

Summary: Lowery and his 14 year old friend, Johnnie Winners, drove to a wooded area along with Winners' 13 year old girlfriend, Tricia Woods. Lowery asked Woods to have sex with him, and when she refused, Lowery hit her in the head with a 2 X 4 piece of wood. Lowery then got on top of her and had sex. Lowery instructed Winners to go back to the car. 10-15 minutes later, Lowery also returned to the car with blood on his hands, admitting that he had killed Woods. These facts were testified to by Winners at trial. Lowery's pretrial statement differed significantly, claiming that it was Winners who forced sex with Woods. Lowery stated that he hit Woods in the back of the head with the 2 X 4, then Winners hit her in the face, caving it in. Lowery stated that Winners then put a stick in her vagina and kicked it. The body was discovered 30 days after her death. A stick was found between her legs and death was caused by the blows with the wooden boards.

Trial: Information/PC for Murder filed (06-26-85); Amended Information for DP filed (06-28-85); Voir Dire (11-19-85); Jury Trial (11-20-85, 11-21-85); Deliberations 6 hours, 20 minutes; Verdict (11-21-85); DP Trial (11-22-85); Deliberation 5 hours, 45 minutes; Verdict (11-22-85); Court Sentencing (12-19-85).

Conviction: Murder, Aiding Murder, Felony-Murder, Battery (C Felony)

Sentencing: December 19, 1985

(Death Sentence for Murder; Aiding Murder, Felony-Murder, and Battery (C Felony) merged)

Aggravating Circumstances: b (1) Rape
b (1) Child Molesting
b (1) Criminal Deviate Conduct

Mitigating Circumstances: mental illness
no significant prior criminal history
23 years old and married at the time of the murder
extreme emotional disturbance
disproportionate treatment of accomplice
turbulent childhood

Direct Appeal: Lowery v. State, 547 N.E.2d 1046 (Ind. December 8, 1989) (02S00-8606-CR-591)
Conviction Affirmed 5-0 DP Affirmed 4-1
Dickson Opinion; Shepard, Givan, Pivarnik concur; Debruler dissents.
For Defendant: Barrie C. Tremper, Charles F. Leonard, Fort Wayne Public Defenders
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Lowery v. Indiana, 111 S.Ct. 217 (1990) (Cert. denied)

PCR: PCR Petition filed 04-19-92. Amended PCR filed 07-16-93.
State's Answer to PCR Petition filed 08-13-92, 09-14-93.
03-18-93 Defendant advises of name change to "Terry Lee Spencer."
Allen County Superior Court Judge Alfred W. Moellering
For Defendant: Judith G. Menadue, Kevin L. Likes
For State: Fran C. Gull, David H. McClamrock
06-14-94 Agreed disposition entered, resentenced to 60 years imprisonment.

MARTINEZ-CHAVEZ, ELADIO # 36

OFF DEATH ROW SINCE 03-01-89

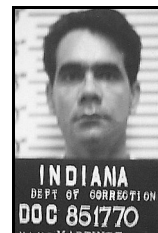
DOB: 08-04-1951 DOC#: 851770 Hispanic Male

Lake County Superior Court Judge James E. Letsinger

Trial Cause #: 2CR-199-1184-811

Prosecutor: John F. Crawford, Jr.

Defense: Robert L. Lewis



Date of Murder: October 11, 1984

Victim(s): Francisco Alarcon H / M / 82 (Acquaintance)

Method of Murder: stabbing with a knife 15 times

Summary: The body of 82 year old Francisco Alarcon was found in the bathroom of his home, stabbed 15 times. A trail of blood was noted from the living room to the bathroom. The evidence showed that Everett Amiotte drove Martinez Chavez and Reynaldo Rondon to a place near Alarcon's home on the night of the murder. As Amiotte stayed in the car, Martinez Chavez and Rondon walked around the corner and returned 20 minutes later. Both men were overheard earlier planning to rob Alarcon. The next day, Rondon gave his girlfriend 2 knives and told her to hide them. A search of Rondon's residence recovered blood-stained money and jewelry.

Trial: Information/PC for Murder and DP filed (11-13-84); Amiotte Guilty Plea (04-02-85); Amiotte Sentencing (05-21-85); Voir Dire (04-15-85); Jury Trial (04-16-85, 04-17-85, 04-18-85, 04-19-85); Verdict (04-18-85); DP Trial (04-20-85); Verdict (04-20-85); Court Sentencing (05-15-85).

Conviction: Murder, Felony-Murder

Sentencing: May 15, 1985 Death Sentence (Martinez); Death Sentence (Rondon)

Aggravating Circumstances: b (1) Robbery

Mitigating Circumstances: None

Judge Overrides Jury Recommendation against DP

Joint Trial with Reynaldo Rondon. Jury recommended a death sentence for Rondon, did not recommend a death sentence for Martinez-Chavez. Amiotte pled guilty before trial to Assisting a Criminal (C Felony) and was sentenced after trial to 7 years imprisonment. The death sentence of Rondon was later vacated on appeal and he was resentenced to 55 years imprisonment on remand.

Direct Appeal: Martinez-Chavez v. State, 534 N.E.2d 731 (Ind. March 1, 1989) (1085-S-426)

Conviction Affirmed 5-0

DP Vacated 4-1 with Instructions to impose a term of years.

(Judge Findings insufficient to override jury recommendation against DP)

Shepard Opinion; Debruler, Givan, Dickson concur; Pivarnik dissents.

For Defendant: M.E. Tuke, Hector L. Flores, Deputy Public Defenders (Carpenter)

For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

Martinez-Chavez v. State, 539 N.E.2d 4 (Ind. 1989) (Reh. denied)

On Remand: On July 12, 1989 Lake County Superior Court Judge James E. Letsinger resentenced Martinez-Chavez to 60 years imprisonment for Felony-Murder in compliance with Indiana Supreme Court Opinion setting aside death sentence and remanding "for sentencing to a term of years on the felony murder conviction."

MATHENEY, ALAN LEHMAN # 65

EXECUTED BY LETHAL INJECTION 09-27-05 AT 12:27 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 11-06-1950 DOC#: 875922 White Male

Lake County Superior Court Judge James E. Letsinger
Venued from St. Joseph County

Trial Cause #: 71D05-8903-CF-000181 (St. Joseph)
45G02-9001-CF-00022 (Lake County)

Prosecutor: John D. Krisor

Defense: Scott L. King

Date of Murder: March 4, 1989

Victim(s): Lisa Bianco W / F / 34 (Ex-wife of Matheney)

Method of Murder: beating with shotgun

Summary: Matheney was convicted and sent to prison in 1987 for Battery and Confinement of his ex-wife, Lisa Bianco. While in prison, Matheney had repeatedly expressed a desire to kill Bianco, and attempted to solicit others to do so. After serving almost 2 years, he was given an 8-hour furlough from Pendleton, where he was an inmate. Although the pass authorized a trip to Indianapolis, Matheney headed straight for St. Joseph County. Once there, he parked the car in a lot two doors down from his ex-wife's house, then broke in through the back door. Bianco ran from the home, pursued by Matheney through the neighborhood. When he caught her, he beat her with a shotgun that broke into pieces. He then got into his car and drove away. Bianco died as a result of this blunt force trauma. (insanity defense) (This case generated massive amounts of publicity and led to legislation requiring DOC to notify victims of any release from prison)

Trial: Information/PC for Murder Filed (03-07-89); Death Sentence Request Filed (03-20-89); State Motion for Change of Venue (03-20-89); Jury Trial (04-02-90, 04-03-90, 04-04-90, 04-05-90, 04-06-90, 04-09-90, 04-10-90, 04-11-90); Verdict (04-11-90); DP Trial (04-12-90); DP Verdict (04-12-90); Court Sentencing (05-11-90).

Conviction: Murder, Burglary (B Felony)

Sentencing: May 11, 1990 (Death Sentence)

Aggravating Circumstances: b (1) Burglary
b (3) Lying in wait

Mitigating Circumstances: turned himself in
extreme mental and emotional disturbance
helpful, useful, generous and kind
mental disease (schizophreniform disorder)

Direct Appeal: Matheney v. State, 583 N.E.2d 1202 (Ind. January 9, 1992) (45S00-9002-DP-116)
Conviction Affirmed 5-0 DP Affirmed 4-1
Givan Opinion; Shepard, Dickson, Krahulik concur; Debruler dissents.
For Defendant: Scott L. King, Crown Point Public Defender
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Matheney v. Indiana, 112 S.Ct. 2320 (1992) (Cert. denied)



PCR: PCR Petition filed 11-25-92. Amended PCR filed 09-09-94, 10-26-94.
State's Answer to PCR Petition filed 12-08-92, 10-11-94.
PCR Hearing 10-11-94.
Special Judge Richard J. Conroy
For Defendant: J. Jeffreys Merryman, Jr., Steven H. Schutte, Deputy Public Defenders (Carpenter)
For State: Michael G. Gotsch
04-10-95 PCR Petition denied.

Matheney v. State, 688 N.E.2d 883 (Ind. 1997) (45S00-9207-PD-584)
(Appeal of PCR denial by Special Judge Richard J. Conroy)
Affirmed 5-0; Shepard Opinion; Dickson, Sullivan, Selby, Boehm concur.
For Defendant: J. Jeffreys Merryman, Jr., Steven H. Schutte, Deputy Public Defenders (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (Modisett)
Matheney v. Indiana, 119 S.Ct. 1046 (1999) (Cert. denied)

Matheney v. State, 833 N.E.2d 454 (Ind. August 29, 2005) (45S00-0506-SD-271)
Motion for leave to file successive Petition for Postconviction Relief. Motion denied.
("Mentally ill" persons not on same footing as mentally retarded)
Shepard, Sullivan, Dickson, Boehm, Rucker concur.

Matheney v. State, 834 N.E.2d 658 (Ind. September 23, 2005) (45S00-0509-SD-425)
Motion for leave to file second successive Petition for Postconviction Relief. Motion denied.
(Not entitled to appointment of counsel on second successive petition, Post-Conviction DNA testing not material, Ineffective Assistance and Prosecutorial Misconduct claims were procedurally barred)
Shepard, Sullivan, Dickson, Boehm, Rucker concur.

Habeas: 04-14-98 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
07-11-98 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
08-17-98 Amended Petition for Writ of Habeas Corpus filed
Alan L. Matheney v. Ron Anderson, Superintendent (3:98-CV-00183-AS)
Judge Allen Sharp
For Defendant: Marie F. Donnelly, Alan M. Freedman, Chicago, IL
For State: Andrew L. Hedges, Michael A. Hurst, Deputy Attorneys General (Modisett)

03-29-99 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
06-08-99 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
07-30-99 Writ of Habeas Corpus denied.
10-25-99 Certificate of Appealability granted in part.
Matheney v. Anderson, 60 F.Supp.2d 846 (N.D. Ind. July 30, 1999) (3:98-CV-183-AS)
(Petition for Habeas Writ denied by Judge Allen Sharp)

Matheney v. Anderson, 253 F.3d 1025 (7th Cir. June 18, 2001) (99-3657)
(Appeal of habeas denial; Affirmed 2-1, but remanded to U.S. District Court for evidentiary hearing on issue of competency at trial)
Circuit Judge Michael S. Kanne, Judge John L. Coffey; Judge Ilana Diamond Rovner dissents.
For Defendant: Alan M. Freedman, Midwest Center for Justice, Chicago, IL
For State: Michael R. McLaughlin, Deputy Attorney General (Freeman-Wilson)
Anderson v. Matheney, 122 Sct. 1635 (2002) (Cert. denied).

Matheney v. Anderson, 377 F.3d 740 (7th Cir. July 29, 2004) (03-1739).
(After remand to U.S. District Court for evidentiary hearing on issue of competency at trial, and denial of habeas)
Affirmed 3-0; . Michael S. Kanne Opinion; William J. Bauer, Ilana Diamond Rovner concur.
For Defendant: Alan M. Freedman, Carol R. Heise, Evanston, IL

For State: Thomas D. Perkins, Stephen R. Creason, Deputy Attorney General (S. Carter)
Matheney v. Davis, 125 S.Ct. 2252 (May 16, 2005) (Cert. denied)

MATHENEY WAS EXECUTED BY LETHAL INJECTION 09-28-05 AT 12:27 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 86TH CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900 AND 16TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

MCCOLLUM, PHILLIP # 33

OFF DEATH ROW SINCE 04-29-99
DOB: 06-19-1965 DOC#: 850552 Black Male

Lake County Superior Court Judge Richard W. Maroc

Trial Cause #: 1CR-227-1283-898

Prosecutor: Thomas L. Jackson, Kathleen M. O'Halloran

Defense: Cornell Collins, Daniel L. Toomey, Hamilton Carmouche

Date of Murder: November 28, 1983

Victim(s): Hal Fuller B / M / 65; Margaret Fuller B / F / 63 (Acquaintances of Townsend)

Method of Murder: stabbing with a steak knife 10 times (Hal) and 9 times (Margaret)

Summary: The bodies of Hal and Margaret Fuller were discovered in their home with multiple stab wounds. Mr. Fuller's open wallet was found at his feet and a serrated steak knife with blood was found in the driveway. The Fuller's car was found abandoned two days later. The girlfriends of Phillip McCollum and Johnny Townsend gave statements that they had driven in a similar car with McCollum and Townsend, that they had picked up a radio to sell, and that Townsend had a cut hand. Bloody clothing was later recovered from their residence. Both Townsend and McCollum gave remarkably similar statements to police. They said they went to the Fuller home and talked for awhile. When Mr. Fuller started to use the phone, Townsend stabbed him in the back. McCollum then started stabbing Mrs. Fuller, who cried out "Please don't kill me." McCollum told her to shut up and kept on stabbing her. When Townsend asked for help with Mr. Fuller, he stabbed him in the chest to finish him off. They found no money, but took a radio, stole the Fullers' car, and fled.

Conviction: Murder, Felony-Murder

Sentencing: March 8, 1985 Death Sentence (McCollum); Death Sentence (Townsend)

Aggravating Circumstances: b (1) Robbery, b (8) 2 murders

Mitigating Circumstances: 18 years old and single at the time of the murder
no prior criminal record

Joint Trial and Direct Appeal (Both McCollum and Townsend Received DP)

Direct Appeal: Townsend v. State, 533 N.E.2d 1215 (Ind. February 14, 1989) (885-S-339)

Conviction Affirmed 5-0 DP Affirmed 5-0

Pivarnik Opinion; Shepard, Debruler, Givan, Dickson concur.

For Defendant: James F. Stanton, Merrillville

For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)



Townsend v. Indiana, 110 S.Ct. 1327 (1990) (Cert. denied)
McCollum v. Indiana, 110 S.Ct. 2633 (1990) (Cert. denied)
McCollum v. Indiana, 111 S.Ct. 9 (1990) (Reh. denied)

PCR: 11-13-90 Townsend PCR filed; Denied by Special Judge Richard J. Conroy 04-10-95.
07-08-91 McCollum PCR filed; Denied by Special Judge Richard J. Conroy 04-10-95.
(While appeal pending, on 04-29-99 parties entered into agreement. Judge Richard W. Maroc modified sentence of both McCollum and Townsend to 60 years consecutive on each count, for a total sentence of 120 years imprisonment.)

MCMANUS, PAUL MICHAEL # 96

ON DEATH ROW SINCE 06-05-02
DOB: 07-14-72 DOC#: White Male

Vanderburgh County Circuit Court Judge Carl A. Heldt

Trial Cause #: 82C-01012-CF-00192

Prosecutor: Stanley M. Levco, Steven A. Hunt

Defense: Glenn A. Grampp, Mitchell Rothman

Date of Murder: February 26, 2001

Victim(s): Melissa McManus W / F / 29 (wife);
Lindsey McManus W / F / 8 (daughter);
Shelby McManus W / F / 23 months (daughter)



Method of Murder: shooting with .38 handgun

Summary: McManus was separated from his wife, Melissa. His two daughters, Lindsay (8) and Shelby (23 months) lived with Melissa. Shelby was born with severe birth defects. Divorce papers were served on him at his mother's house on the day of the murders. McManus took a taxi to his wife's residence and shot her once in the leg and 3 times in the head, killing her. He then shot 8 year old Lindsey 3 times in the head, then shot Shelby once in the head. He then drove to the Henderson bridge between Indiana and Kentucky and climbed to the very top (the equivalent of 11 stories). Despite the best efforts of law enforcement to talk him down, he jumped into the Ohio River. Miraculously, he was rescued from the water with only minor back injuries. An insanity defense was unsuccessfully presented at trial. McManus had told acquaintances the weekend before the murders to "watch the papers," because he was going to "do something big."

Trial: Information/PC for Murder filed (02-27-01); Amended Information for DP filed (03-20-01); Voir Dire (04-24-02, 04-25-02); Jury Trial (04-29-02, 04-30-02, 05-01-02, 05-09-02, 05-09-02); Verdict (05-09-02); DP Trial (05-10-02); Verdict (05-10-02); Court Sentencing (06-05-02).

Conviction: Murder, Murder, Murder

Sentencing: June 5, 2002 Death Sentence

Aggravating Circumstances: b (8) 3 murders
b (12) two victims less than 12 years of age

Mitigating Circumstances: Lack of prior criminal history
Depression and mental abnormalities
Irresistible impulse

Direct Appeal: McManus v. State, 814 N.E.2d 253 (Ind. August 31, 2004) (82S00-0104-DP-188)
Conviction Affirmed 5-0 DP Affirmed 5-0
Shepard Opinion; Dickson, Sullivan, Boehm, Rucker concur.
For Defendant: Timothy R. Dodd, John P. Brinson, Evansville
For State: Scott A. Kreider, Deputy Attorney General (S. Carter)
McManus v. Indiana, 126 S.Ct. 53 (2005) (Cert. denied)

PCR: 02-28-05 Notice of Intent to File PCR filed.
PCR Petition filed 08-22-05; Amended Petition filed 01-06-06.
For Defendant: Steven H. Shutte, JoAnna McFadden, Deputy Public Defenders (Carpenter)
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

05-10-06 Senior Judge William J. Brune grants Petition for Postconviction Relief as to death sentence, holding that McManus meets the statutory requirements of mental retardation, and imposes a sentence of Life Without Parole.

State v. McManus, 868 N.E.2d 778 (Ind. June 27, 2007) (82S00-0503-PD-78)
(State's Appeal of granting of PCR as to death sentence by Special Judge William J. Brune)
Reversed; Conviction Affirmed 5-0 DP Affirmed 3-2
Shepard Opinion; Dickson, Sullivan concur; Boehm, Rucker dissent, maintaining that the determination of mental retardation by the PCR Court should have been given greater deference.
For Defendant: Steven H. Schutte, Joanna Green, Deputy Public Defenders (Carpenter)
For State: Andrew A. Kobe, James B. Martin, Deputy Attorneys General (S. Carter)
McManus v. Indiana, 128 S.Ct. 1739 (2008) (Cert. denied)

Habeas: 11-19-07 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
02-18-08 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Paul M. McManus v. Ed Buss, Superintendent (1:07-CV-01483-DFH-JMS)
Judge David F. Hamilton, Referred to Judge Jane Magnus Stinson.
For Defendant: Marie F. Donnelly, Chicago, IL, Joseph M. Cleary, Indianapolis
For State: Stephen R. Creason, Kelly A. Miklos, Deputy Attorneys General (S. Carter)

05-30-08 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
10-31-08 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
01-08-09 Pay Vouchers for Joseph M. Cleary (\$14,824) and Marie F. Donnelly (\$25,160).

McManus v. Wilson, 2011 WL 1257969 (S.D. Ind. April 1, 2011) (1:07-CV-1483-TWP-MJD)
Southern District of Indiana, U.S. District Judge Tanya Walton Pratt
Petition for Writ of Habeas Corpus denied.
For Defendant: Mary F. Donnelly, Chicago, IL and Joseph Martin Cleary, Indianapolis, IN
For State: Kelly A. Miklos, Stephen R. Creason, Deputy Attorneys General (Zoeller)

McManus v. Wilson, 2012 WL 1035012 (S.D. Ind. March 27, 2012) (1:07-CV-1483-TWP-MJD)
Southern District of Indiana, U.S. District Judge Tanya Walton Pratt
(Order Denying Motion to Alter or Amend Judgment)

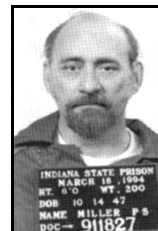
McManus v. Wilson, 2012 WL 4755354 (S.D. Ind. October 4, 2012) (1:07-CV-1483-TWP-MJD)
Southern District of Indiana, U.S. District Judge Tanya Walton Pratt
(Entry Discussing Certificate of Appealability; Granted as to Atkins claim and denied as to all others)

APPEAL PENDING IN THE 7TH CIRCUIT U.S. COURT OF APPEALS. (#12-2001)

MILLER, PERRY S. # 68

OFF DEATH ROW SINCE 06-29-01

DOB: 10-14-1947 DOC#: 911827 White Male



Porter County Superior Court Judge Roger V. Bradford

Trial Cause #: 64DO1-9011-CF-181**Prosecutor:** James H. Douglas, Gwenn R. Rinkenberger**Defense:** Ronald V. Aungst, Robert S. Kentner**Date of Murder:** November 14, 1990**Victim(s):** Christel Helmchen W / F / 19 (No relationship to Miller)**Method of Murder:** shooting with shotgun

Summary: At 1:30 a.m. Valparaiso Police discovered that Christel Helmchen, the attendant at the White Hen Pantry on Calumet Avenue was missing. A few hours later, her body was found near Highway #6 with evidence of sexual assault and severe injuries to her pubic area and anal canal. The cause of death was a shotgun wound to the head. Helmchen's checkbook was later found in Miller's driveway. Miller's stepson, Rodney Wood, had lived with Miller at that address for 3 months, and during that time committed numerous burglaries and thefts. Wood and his friend, William Harmon, were arrested in Kentucky in a stolen car that contained clothing belonging to Helmchen. Wood entered into a plea agreement whereby the State would not pursue a Death Sentence in exchange for a statement. In the statement, Wood admitted that he, Miller, and Harmon had discussed robbing the White Hen, and that Harmon told them he had found a remote place to take the clerk where they could rape her and kill her. Miller drove Wood and Harmon to the White Hen and waited in the car while Wood and Harmon went inside, robbed the clerk at gunpoint, and escorted her to her car. Wood drove Helmchen's car and Miller followed to Highway #6. Harmon gagged and tied her and she was then dragged to a construction site. Miller fondled her, threw her to the floor and ordered Wood to have sex with her, which he did. Miller instructed Wood and Harmon to tie her upright to a wall and Miller beat her with his fists. Harmon struck her with the shotgun. Miller then beat her with a 2 X 4 and stuck her with an ice pick in the thigh and breast. Upon Miller's direction, Wood and Harmon retrieved a tire iron and inserted it into her rectum while Miller watched. Miller and Wood then walked to the car. Harmon followed Helmchen out, put the shotgun to the back of her head and fired. An ISP hair examiner identified pubic hairs from Miller on the body of the victim.

Miller had previously been sentenced to Life Imprisonment for Kidnapping in Hamilton County on 10-08-69. (SC9-032)

Inmate Website: <http://www.ccadp.org/stevenmiller.htm>

Trial: Information/PC for Murder and DP filed (11-19-90); Motion for Early Trial (12-18-90); Amended Information filed (02-22-91); Voir Dire (04-01-91, 04-02-91, 04-03-91, 04-04-91, 04-05-91); Jury Trial (04-08-91, 04-09-91, 04-10-91, 04-11-91, 04-12-91, 04-13-91, 04-15-91, 04-16-91, 04-17-91); Verdict (04-17-91); DP Trial (04-18-91); Verdict (04-18-91); Court Sentencing (05-20-91).

Conviction: Murder, Felony-Murder (3 counts), Confinement (B Felony), Rape (A Felony), CDC (A Felony), Robbery (A Felony), Conspiracy to Commit Murder (A Felony)

Sentencing: May 20, 1991 (Death Sentence, 20 years, 50 years, 50 years, 50 years, 50 years imprisonment)

Aggravating Circumstances: b (1) Rape, b (1) Criminal Deviate Conduct, b (1) Robbery
b (9) On parole

Mitigating Circumstances: behaved well as a prisoner for 19 years
kind and helpful to roommate and child
during childhood did not display sadistic tendencies
sensitive and caring individual
stepdaughter allowed him to babysit

Direct Appeal: Miller v. State, 623 N.E.2d 403 (Ind. October 26, 1993) (64S00-9012-DP-817)
Conviction Affirmed 5-0 DP Affirmed 4-1
Givan Opinion; Shepard, Debruler, Krahulik concur; Dickson dissents.
For Defendant: John E. Martin, Valparaiso
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

PCR: PCR Petition filed 03-17-95. Amended PCR filed 02-14-96.
State's Answer to PCR Petition filed 04-17-95, 03-12-96.
PCR Hearing by affidavit and deposition.
Special Judge Raymond D. Kickbush
For Defendant: Ann M. Pfarr, Joanna Green, Deputy Public Defenders (Carpenter)
For State: James H. Douglas, Gwenn R. Rinkenberger.
07-22-96 PCR Petition denied.

Miller v. State, 702 N.E.2d 1053 (Ind. 1998) (64S00-9408-PD-00742)
(Appeal of PCR denial by Special Judge Raymond D. Kickbush)
Affirmed 5-0; Sullivan Opinion; Shepherd, Dickson, Selby, Boehm concur.
For Defendant: Ann M. Pfarr, Joanna Green, Deputy Public Defenders (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (Modisett)

Habeas: 05-07-99 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
08-17-99 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Perry Steven Miller v. Rondle Anderson, Superintendent (3:99-CV-00258-AS)
Judge Allen Sharp
For Defendant: Eric Koselke, Brent L. Westerfeld, Indianapolis
For State: James B. Martin, Deputy Attorney General (S. Carter)

12-07-99 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
02-06-00 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
06-19-00 Writ of Habeas Corpus denied.

08-21-00 Attorney Payment Voucher for Brent L. Westerfeld for \$29,053.75
08-21-00 Attorney Payment Voucher for Eric Koselke for \$22,600.00
09-07-00 Certificate of Appealability granted in part.

Miller v. Anderson, 255 F.3d 455 (7th Cir. June 29, 2001) (00-2979)
(Appeal of denial of Habeas Writ by Judge Allen Sharp)
REVERSED 3-0
Opinion by Circuit Judge Richard A. Posner, Judge Frank H. Easterbrook, Judge Kenneth F. Ripple.
(Habeas Granted as to conviction and sentence on grounds of ineffective assistance of trial counsel for failure to call as witnesses hair and DNA experts, and in calling psychologist which allowed impeachment by Miller's prior convictions. State ordered to retry or release Miller within 120 days.)
For Defendant: Eric Koselke, Brent L. Westerfeld, Indianapolis
For State: James B. Martin, Deputy Attorney General (S. Carter)

Miller v. Anderson, 268 F.3d 485 (7th Cir. September 28, 2001) (00-2979)

(Based upon Joint Motion: "This court's order directing the district court to issue a conditional writ of habeas corpus and the award of costs are vacated and the petition for rehearing is DISMISSED.")

Opinion by Circuit Judge Richard A. Posner, Judge Frank H. Easterbrook, Judge Kenneth F. Ripple.

On Remand: On August 7, 2001, Miller entered a guilty plea to the charges pursuant to a Plea Agreement calling for a 138 year sentence, and was sentenced by Porter County Superior Court Judge Roger V. Bradford to consecutive terms of 60 years (Murder), 50 years (Conspiracy to Murder), 20 years (Confinement), and 8 years (Robbery).

MINNICK, WILLIAM A. # 13 & # 40

OFF DEATH ROW SINCE 08-22-00

DOB: 08-21-1963 DOC#: 13150 White Male

Clay County Circuit Court Judge Ernest E. Yelton
Venued from Putnam County



Trial Cause #: CR-81-104 (Putnam County)
CR-81-86 (Clay County)
C-85-CR-39 (Lawrence County)

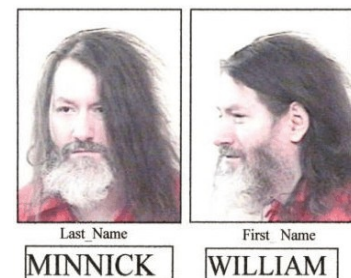
Prosecutor: Delbert H. Brewer, Fritz D. Modesitt

Defense: Woodrow S. Nasser

Date of Murder: October 26, 1981

Victim(s): Martha Payne W / F / 24 (Acquaintance of Minnick)

Method of Murder: stabbing with knife



Summary: James D. Payne returned to his home in Greencastle and found the body of his wife, Martha, on the bedroom floor. She had been raped, anally sodomized, and stabbed in the shoulder/back area, which caused her death. There were also ligature marks on her neck, and burns on her ankles indicating an attempt at electrocution. Among other things, a jugful of coins was taken. Minnick's car was observed in the area near the time of death. When confronted, Minnick admitted being at the victim's home earlier in the day, but only to ask if she needed work done. A more incriminating statement made later was admitted at the first trial in violation of Edwards / Miranda, and was the basis for reversal on appeal. A hair on an electrical wire recovered from Minnick's car matched those of the victim. Minnick was found in possession of coins and broken glass. His girlfriend testified that Minnick told her that "Ace" killed the woman, but he raped her.

Trial: Information/PC for Murder filed (10-27-81); Amended Information for DP filed (10-29-81, 01-05-82); Venued to Clay County (12-81); Voir Dire (04-22-82, 04-23-82, 04-26-82, 04-28-82); Jury Trial (04-28-82, 04-29-82, 04-30-82, 05-03-82, 05-05-82, 05-06-82, 05-07-82, 05-10-82, 05-11-82, 05-12-82, 05-13-82, 05-14-82, 05-17-82, 05-19-82, 05-20-82, 05-21-82, 05-22-82); Verdict (05-22-82); DP Trial (05-24-82); Verdict (05-24-82); Court Sentencing (06-10-82).

Conviction: Murder, Rape (A Felony), Robbery (A Felony); Directed verdict of Not Guilty on CDC

Sentencing: June 10, 1982 (Death Sentence)

Aggravating Circumstances: b (1) Robbery
b (1) Rape

Mitigating Circumstances: 18 years old at the time of the murder

Inmate Website: <http://justice4minnick.moonfruit.com/>

Direct Appeal: Minnick v. State, 467 N.E.2d 754 (Ind. September 7, 1984) (1282-S-467)
Conviction Reversed 5-0 DP Vacated 5-0 with Instructions for new trial
(Confession improperly admitted in violation of Edwards / Miranda)
Givan Opinion; Debruler, Prentice, Pivarnik, Hunter concur.
For Defendant: Woodrow S. Nasser, Terre Haute
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Indiana v. Minnick, 105 S.Ct. 3512 (1985) (Cert. denied)

On Remand: Venued to Lawrence County (07-15-85); Voir Dire (09-04-85, 09-05-85, 09-06-85); Jury Trial (09-06-85, 09-06-85, 09-09-85, 09-10-85, 09-11-85, 09-12-85, 09-13-85, 09-16-85, 09-17-85, 09-18-85); Verdict (08-18-85); DP Trial (09-19-85); Verdict (09-19-85); Court Sentencing (10-16-85).

On remand, trial was venued to Lawrence County and Minnick was again convicted of Murder, Rape (A Felony), and Robbery (A Felony) and sentenced to death on 10-16-85 by Lawrence County Circuit Court Judge Linda Chezem, despite a jury recommendation against death. No sentence was entered on Rape (A Felony) or Robbery (A Felony).

Judge Overrides Jury Recommendation against DP
For Defendant: Woodrow S. Nasser, Terre Haute
For State: Delbert H. Brewer

Direct Appeal: Minnick v. State, 544 N.E.2d 471 (Ind. October 2, 1989) (47S00-8603-CR-314)
Conviction Affirmed 5-0 DP Affirmed 3-2
Givan Opinion; Shepard, Pivarnik concur; Debruler, Dickson dissent.
For Defendant: Woodrow S. Nasser, Terre Haute Public Defender
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

PCR: 12-31-90 Petition for Enlargement of Time to File PCR Petition
11-15-91 Pro se Petition to Terminate Post Conviction.
PCR Petition filed 06-03-92. Amended PCR filed 07-29-94, 03-01-95.
State's Answer to PCR Petition filed 06-08-92, 08-24-94.
PCR Hearing 11-21-94.
Judge Richard D. McIntyre
For Defendant: Lorinda Meier Youngcourt
For State: Robert J. Lowe
06-13-95 PCR Petition denied.

Minnick v. State, 698 N.E.2d 745 (Ind. 1998) (47S00-9008-PD-497)
(Appeal of PCR denial by Judge Richard D. McIntyre) Affirmed 4-1
Dickson Opinion; Shepard, Selby, Boehm concur. Sullivan dissents.
For Defendant: Lorinda Meier Youngcourt, Kevin P. McGoff, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Minnick v. State, 705 N.E.2d 179 (Ind. 1999) (Reh. denied 4-1)
Minnick v. Indiana, 120 S.Ct. 501 (1999) (Cert. denied)

07-28-04 The Indiana Supreme Court remanded William Minnick's case back to the Lawrence Circuit Court, authorizing the filing of a successive post-conviction relief petition, to consider arguments for resentencing in light of Saylor v. State. The post-conviction court was directed to first determine competency.

09-14-04 Successive Petition for PCR filed.

10-12-04 State's Answer filed.

12-01-04 PCR granted by Lawrence Circuit Court Judge Richard D. McIntyre, Sr.

(Judge originally sentenced Minnick to death over the recommendation of the jury against imposition of death penalty. Under Saylor v. State the death sentence was "inappropriate," since under current statute, Judge must sentence in accordance with jury verdict. The parties agreed that Minnick was not competent at this time.)

Following the Indiana Department of Mental Health's certification of competency, on August 23, 2011 Minnick was resentenced by Lawrence County Circuit Court Judge Andrea McCord to 60 years (Murder), 50 years (Robbery), and 50 years (Rape) to run consecutively for a total sentence of 160 years imprisonment.

Minnick v. State, 965 N.E.2d 124 (Ind. April 3, 2012) (47A05-1108-CR-448)

Direct Appeal of 160 year sentence.

Affirmed in part 3-0. Opinion by Bradford. Vadik and Crone concur.

(Robbery (A Felony) and Murder sentences constitute Double Jeopardy. Robbery (A Felony) reduced to Robbery (B Felony) and 50 year sentence reduced to 20 years, for a total sentence of 130 years imprisonment. Otherwise affirmed)

Habeas: 03-16-99 Notice of Intent to File Petition for Writ of Habeas Corpus filed.

09-08-99 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.

William A. Minnick v. Ron Anderson, Superintendent (3:99-CV-00157-RLM)

Judge Robert L. Miller, Jr.

For Defendant: Alan M. Freedman, Thomas A. Durkin, Chicago, IL, Monica Foster, Indianapolis,
Donald C. Swanson, Michelle F. Kraus, Ft. Wayne

For State: Stephen R. Creason, Thomas D. Perkins, Deputy Attorneys General (S. Carter)

12-03-99 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.

03-16-00 Oral Argument held in Lafayette, Indiana

08-22-00 Order conditionally granting Petition for Writ of Habeas Corpus.

Minnick v. Anderson, 151 F.Supp.2d 1015 (N.D. Ind. August 22, 2000) (3:99-CV-00157-RLM)

(Granting Habeas Writ as to death sentence only, conditioned upon resentencing to "imprisonment during his natural life without parole." - Imposition of death sentence in the face of a contrary jury recommendation violated equal protection clause)

For Defendant: Donald C. Swanson, Michelle F. Kraus, Ft. Wayne

For State: Michael A. Hurst, Michael R. McLaughlin, Deputy Attorneys General (S. Carter)

03-25-02, 03-26-02, 04-10-02 Sanity Hearing as Ordered by 7th Circuit U.S. Court of Appeals.

04-24-02 Guardian Ad Litem appointed for Minnick

07-01-02 7th Circuit U.S. Court of Appeals relieves lawyers of authority to represent Minnick

08-25-04 Petitioner's Motion to Stay Proceedings granted (to pursue state PCR)

MOORE, RICHARD D. # 7 & # 92

DIED OF NATURAL CAUSES ON DEATH ROW 12-24-06
DOB: 06-05-1931 DOC#: 13140 Black Male

Hamilton County Superior Court Judge Jerry M. Barr
Venued from Marion County

Trial Cause #: CR79-369A (Marion County)
2SCR-80-005 (Hamilton County)
06D02-9904-CF-176 (Boone County)

Prosecutor: J. Gregory Garrison, John D. Tinder, Stephen Goldsmith

Defense: Wilmer E. Goering, II

Date of Murder: November 6, 1979

Victim(s): Rhonda L. Caldwell B / F / 27 (Ex-wife);
John H. Caldwell B / M / 54 (Ex-Father-In-Law);
Gerald F. Griffin W / M / 29 (Indianapolis Police Officer - No relationship to Moore)

Method of Murder: shooting with shotgun

Summary: Moore was divorced from his second wife, Rhonda Caldwell, 8 days before murdering her. Moore went to the home of her parents on 36th Street in Indianapolis and talked to Rhonda in the carport for awhile. Rhonda began to cry and headed back in the house. As she did, she shouted at her parents to "get inside, lock the doors, Richard's got a gun." Moore was armed with a shotgun and when it was all over he had shot John Caldwell to death in the living room, shot Rhonda to death in the kitchen, and seriously injured Ruth Caldwell with shots to her right arm and buttocks. A responding Indianapolis Police Officer in full uniform, Gerald Griffin was dead just outside, Moore having shot him with the shotgun through the garage/patio doorway. Another Officer, Cicero Mukes was also in full uniform and shot while getting out of his marked patrol car.

Trial: Information/PC for Murder and Death Sentence filed (11-07-79); Petition to Allow Marriage (01-07-90); Guilty Plea (08-25-80); DP Trial (10-22-80, 10-23-80, 10-24-80); Court Sentencing (10-24-80).

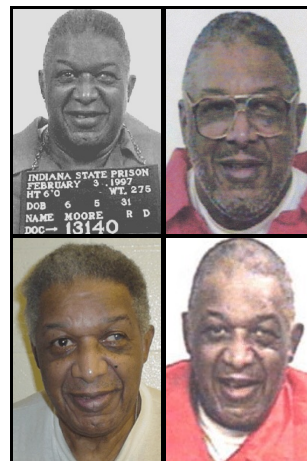
Conviction: Pled Guilty to Murder, Murder, Murder with no Plea Agreement; State dismissed Attempted Murder (A Felony) (3 counts) and Confinement (B Felony) (3 counts) upon the Court's acceptance of the guilty pleas.

Sentencing: October 24, 1980 (Death Sentence)

Guilty Plea

Aggravating Circumstances: b (6) Victim was law enforcement officer
b (8) 3 murders

Mitigating Circumstances: improvements made in his life as he overcame alcoholism
religious activities while in jail
opinion evidence that he is not likely to repeat crimes
extreme emotional disturbance
good works
no significant prior criminal record



Direct Appeal: Moore v. State, 479 N.E.2d 1264 (Ind. June 26, 1985) (1082-S-400)
Conviction Affirmed 4-0 DP Affirmed 3-1
Pivarnik Opinion; Givan, Prentice concur; Debruler dissents. Hunter did not participate
For Defendant: Kenneth M. Stroud, Indianapolis, John Proffitt, Noblesville
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Moore v. Indiana, 106 S.Ct. 583 (1985) (Cert. denied)

PCR: PCR Petition filed 02-13-86. Amended PCR filed 11-25-86.
State's Answer to PCR Petition filed 03-11-86, 12-09-86.
11-30-90 Motion for Default Judgment to Defendant denied.
11-24-93 Motion for Summary Judgment to Defendant denied.
PCR Hearing 05-16-94, 05-17-94, 05-18-94, 05-19-94, 05-20-94, 01-06-95.
Special Judge Thomas Newman, Jr.
For Defendant: Joanna Green, Thomas C. Hinesley, Deputy Public Defenders (Carpenter)
For State: John V. Commons
05-15-95 PCR Petition granted as to conviction and sentence.
(Appealed by the State on conviction only)

State v. Moore, 678 N.E.2d 1258 (Ind. April 23, 1997) (29S00-9008-PD-543)
(State's appeal on granting of PCR on conviction only by Special Judge Thomas Newman)
Reversed 5-0; Boehm Opinion; Shepard, Dickson, Sullivan, Selby concur.
(Guilty Plea reinstated and remanded for new sentencing hearing.)
For Defendant: Thomas C. Hinesley, Joanna Green, Deputy Public Defenders (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Moore v. Indiana, 118 S.Ct. 1528 (1998) (Cert. denied)

On Remand: Stipulation to Change Venue to Boone County (04-01-99);
DP Trial (11-30-99, 12-01-99, 12-02-99, 12-03-99, 01-13-00).

On remand, venued to Boone County by agreement. Following a new sentencing hearing,
Special Judge James R. Detamore sentenced Moore to death on 01-13-00.
For Defendant: Eric K. Koselke, Lorinda Meier Youngcourt
For State: John V. Commons, Sheila Carlisle

Direct Appeal: Moore v. State, 771 N.E.2d 46 (Ind. June 26, 2002) (06S00-0006-PD-389)
Conviction Affirmed 5-0 DP Affirmed 5-0
Dickson Opinion; Shepard, Boehm, Sullivan, Rucker concur.
For Defendant: Lorinda Youngcourt, Indianapolis, Janice L. Stevens, Marion Public Defender
For State: Thomas D. Perkins, Deputy Attorney General (S. Carter)
Moore v. Indiana, 123 S.Ct. 1931 (May 5, 2003) (Cert. denied)

Habeas: 06-04-03 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
03-29-04 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Richard Moore v. Daniel McBride, Superintendent (1:03-CV-00828-LJM-WTL)
Judge Larry J. McKinney
For Defendant: Alan M. Freedman, Chicago, IL, Laurence E. Komp, Ballwin, MO
For State: Stephen R. Creason, Scott Alan Kreider, Deputy Attorneys General (S. Carter)

07-30-04 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
10-28-04 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
04-29-04 Attorney Payment Vouchers for Alan M. Freedman for \$10,437.50, \$12,250.00
04-29-04 Attorney Payment Vouchers for Laurence E. Komp for \$5,375.00, \$11,975.00

WHILE AWAITING DECISION BY U.S. DISTRICT COURT ON PETITION FOR WRIT OF HABEAS CORPUS, MOORE DIED OF NATURAL CAUSES ON DEATH ROW AT INDIANA STATE PRISON, MICHIGAN CITY, INDIANA ON 12-24-06.

OVERSTREET, MICHAEL DEAN # 93

ON DEATH ROW SINCE 07-31-00

DOB: 11-18-1966 DOC#: 993801 White Male

Johnson County Superior Court
Judge Cynthia S. Emkes



Trial Cause #: 41D02-9711-CF-00158

Prosecutor: Lance D. Hamner, Bradley D. Cooper, Tina L. Mann

Defense: Jeffrey A. Baldwin, Peter D. Nugent

Date of Murder: September 27, 1997

Victim(s): Kelly Eckart W / F / 18 (No relationship to Overstreet)



Method of Murder: ligature strangulation with shoestring and overalls strap

Summary: Kelly Eckart was an 18 year old freshman attending Franklin College, working her way through school with a part-time job at Walmart. On September 27, 1997 she left work, met briefly with her boyfriend and drove towards her home in Shelby County. That was the last time she was seen alive. The next morning, her car was found abandoned in a rural area, with its lights on and keys in the ignition. Four days later, the partially nude body of Kelly Eckart was found in a ravine in Brown County. She had been strangled with her own shoe string and a strap cut from the suspenders of her overalls. She had also been shot once in the forehead. Semen was discovered on the victim which was later matched through DNA analysis as having been contributed by Overstreet. The defendant's brother first contacted the police and admitted that the defendant called him on the 27th, he had met him at a hotel, drove his van, and transported him and a girl to a remote wooded area where he dropped them off. The Defendant returned later and moved the body to Brown County. Fibers found on the victim's body matched those from the defendant's van, which he had spent several hours cleaning before the victim's body was found. An eyewitness identified the defendant near the dump site on the day the body was recovered.

Trial: Information/PC for Murder filed (11-10-97); Amended Information for DP filed (04-15-98, 04-11-00); Voir Dire in Clark County (04-24-00, 04-25-00, 04-26-00, 04-27-00); Jury Trial in Johnson County (05-01-00, 05-02-00, 05-03-00, 05-04-00, 05-05-00, 05-08-00, 05-09-00, 05-10-00, 05-11-00, 05-12-00); Deliberations 10 hours, 43 minutes; Verdict (05-13-00); DP Trial (05-15-00, 05-16-00, 05-17-00, 05-18-00); Deliberations 2 hours, 15 minutes; Verdict (05-18-00); Court Sentencing (06-20-00, 07-31-00).

Conviction: Murder, Rape (B Felony), Confinement (B Felony)

Sentencing: July 31, 2000 (Death Sentence, 20 years, 20 years consecutive)

Aggravating Circumstances: b (1) Rape

Mitigating Circumstances: Deprived and abusive childhood
Schizotypal Personality Disorder / Psychological deterioration
Hallucination as a child, including "demons"
Mother failed to seek mental help for him
3 months in Marines before discharge for mental illness
He loves his children and nieces who idolize him
Has only a misdemeanor criminal history
Model prisoner since his incarceration

Direct Appeal: Overstreet v. State, 783 N.E.2d 1140 (Ind. February 24, 2003) (41S00-9804-DP-217)
Conviction Affirmed 5-0 DP Affirmed 5-0
Sullivan Opinion; Shepard, Dickson, Boehm, Rucker concur.
For Defendant: Teresa D. Harper, Bloomington, Jeffrey Baldwin, Indianapolis
For State: Timothy W. Beam, Deputy Attorney General (S. Carter)
Overstreet v. Indiana, 124 S.Ct. 1145 (January 20, 2004) (Cert. denied)

PCR: Notice of Intent to File PCR Petition filed 06-12-03.
12-03-04 PCR denied by Johnson County Superior Court Judge Cynthia S. Emkes.
For Defendant: Kathleen Cleary, Thomas C. Hinesley, Deputy Public Defenders (Carpenter)
For State: James B. Martin, Deputy Attorney General (S. Carter)

Overstreet v. State, 877 N.E.2d 144 (Ind. November 27, 2007) 41S00-0306-PD-249.
(Appeal of PCR denial by Johnson Superior Court Judge Cynthia S. Emkes.
Affirmed 5-0; Opinion by Rucker. Shepard, Dickson, Sullivan, Boehm concur.
For Defendant: Steven H. Schutte, Thomas C. Hinesley, Kathleen Cleary,
Deputy Public Defenders (Carpenter)
For State: James B. Martin, Deputy Attorney General (S. Carter)
Overstreet v. Indiana, 129 S.Ct. 458 (Oct. 20, 2008) (Cert. Denied)

Overstreet v. State, 910 N.E.2d 272 (Ind. App. July 17, 2009) (41A05-0902-CV-060)
(Memorandum Decision - Not for Publication)
Appeal of denial of Motion for Return of Property by Johnson Superior Court Judge Cynthia S. Emkes
Cause#: 41D02-9711-CF-159
For Defendant: Pro-se
For State: James B. Martin, Deputy Attorney General (Zoeller)
Affirmed 3-0; Mathias Opinion; Riley, Kirsch concur.
(No need to return property, even though not introduced as evidence, since case still pending on Habeas and no "final disposition" reached)

Habeas: 05-09-08 Notice of Intent to File Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
08-11-08 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Michael Dean Overstreet v. Superintendent (3:08-CV-00226-PPS)
Judge Philip P. Simon
For Defendant: Marie F. Donnelly, Chicago, IL; Laurence E. Komp, Manchester, MO
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)
01-28-09 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
06-15-09 Traverse filed by Petitioner in support of Writ of Habeas Corpus.
03-04-11 Petition denied.

Overstreet v. Superintendent, 2011 WL 836800 (N.D. Ind. March 04, 2011) (3:08-CV-226 PS)
U.S. District Judge Philip P. Simon, Northern District of Indiana, denied the Petition for Writ of Habeas Corpus, rejecting claims of ineffective assistance of counsel.
For Defendant: Marie F. Donnelly, Chicago, IL; Laurence E. Komp, Manchester, MO.
For State: James B. Martin, Deputy Attorney General (Zoeller)

Overstreet v. Superintendent, 686 F.3d 404 (7th Cir. July 11, 2012) (11-2276)
Appeal of denial of Habeas Writ by U.S. District Court, Northern District Judge Philip P. Simon.
Conviction Affirmed 2-1 DP Affirmed 2-1
Opinion by Judge Frank H. Easterbrook; Judge William J. Bauer concurs. Judge Diane P. Wood dissents on IAC grounds for failure to present evidence of schizophrenia.
For Defendant: Marie F. Donnelly, Chicago, IL; Laurence E. Komp, Manchester, MO.
For State: James B. Martin, Deputy Attorney General (Zoeller)

PETITION FOR CERTIORARI PENDING IN U.S. SUPREME COURT.

PATTON, KEITH LAMONT # 30

OFF DEATH ROW SINCE 12-30-87
DOB: 07-24-1966 DOC#: 13157 Black Male

Marion County Superior Court Judge Thomas E. Alsip

Trial Cause #: CR83-232D, CR84-050D

Prosecutor: David E. Cook

Defense: Arnold P. Baratz

Date of Murder: October 21, 1983

Victim(s): Michael Pack B / M / 19 (No relationship to Patton)

Method of Murder: shooting with shotgun

Summary: Patton and Leroy Johnson discussed plans to commit a robbery. They drank some beer, armed themselves with shotguns, and went to Washington Park in Indianapolis. Patton approached the driver's side of a parked car, while Johnson went to the passenger side. Michael Pack sat in the driver's seat, with Dietra Maxey and her young daughter in the passenger seat. Patton shot out the driver side window and ordered Michael Pack out of the car. Instead, Pack attempted to start the car. Johnson shot out the rear tire, and Patton's second shot killed Pack. Patton and Johnson took Maxey to a wooded area and raped her, then went through her pockets for money. Patton admitted that he knowingly killed Pack at the guilty plea hearing, but at the sentencing hearing denied that he knew anyone was in the car.

Trial: Information/PC for Murder and Death Penalty Filed (10-28-83); Death Sentence Request Filed (12-02-83); Guilty Plea (06-01-84); Court Sentencing (07-20-84).

Conviction: Pled Guilty to Murder, Rape (A Felony), Attempted Murder (A Felony), Criminal Confinement, Criminal Deviate Conduct (3 counts), Dealing in Sawed Off Shotgun (C Felony).

Sentencing: July 20, 1984 (Death Sentence, 30 years, 30 years, 10 years, 30 years, 30 years, 30 years, 2 years, all sentences to run consecutively).

Aggravating Circumstances: b (1) Rape

Mitigating Circumstances: None

Guilty Plea

Direct Appeal: Patton v. State, 517 N.E.2d 374 (Ind. December 30, 1987) (1284-S-488)

Conviction Reversed 5-0 DP Vacated 5-0

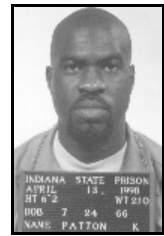
(Appeal of Murder and Rape convictions and sentences only - Equivocation and later refusal of Defendant at Guilty Plea/Sentencing Hearing to admit he "knowingly" killed requires setting aside guilty plea for Murder. Remanded for trial on Murder and for sentencing on Rape (A Felony)

Shepard Opinion; Debruler, Givan, Dickson, Pivarnik concur.

For Defendant: L. Craig Turner, Indianapolis

For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

On Remand: Voir Dire (03-12-90, 03-13-90, 03-14-90, 03-15-90); Jury Trial (03-15-90, 03-16-90, 03-17-90); Deliberations 1 hour, 46 minutes; Verdict (03-17-90); DP Trial (03-17-90, 03-19-90, 03-20-90, 03-21-90); Deliberations 7 hours, 3 minutes; Verdict (03-21-90); Court Sentencing (04-17-90).



Murder and Rape charges were tried to a jury. Patton was convicted of both and sentenced to 60 years for Murder and 30 years for Rape (Class A Felony), consecutive to the sentences imposed for Attempted Murder and the other offenses, bringing the total sentence to 222 years. Marion County Superior Court Judge Patricia J. Gifford
For Defendant: Robert Joe Hill, Jr., Arnold P. Baratz
For State: John V. Commons, Richard R. Plath

State ex rel. Patton v. Superior Court, 547 N.E.2d 255 (Ind. December 6, 1989)
(49S00-8904-OR-294) (On remand, dispute as to which Division should retry case)

Patton v. State, 588 N.E.2d 494 (Ind. March 16, 1992) (49S00-9007-CR-00475)
(Appeal after remand where jury recommended against DP - Affirmed)

Patton v. State, 810 N.E.2d 690 (Ind. June 22, 2004) (49S02-0309-PC-402)
(Appeal of denial of PCR - Guilty Plea to Attempted Murder not "knowing" and set aside; Other convictions and sentences affirmed.)

Patton v. Davis, ___ F.Supp. ___, 2007 WL 129036 (2:05-CV-00050-AS-CAN)
(N.D. Ind. January 11, 2007) (Judge Allen Sharp denying habeas relief)

**PETERSON, CHRISTOPHER DWAYNE # 74
(Obadyah Ben-Yisrayl)**

OFF DEATH ROW SINCE 09-10-04
DOB: 01-20-1969 DOC#: 922005 Black Male

Lake County Superior Court Judge James L. Clement

Trial Cause #: 45G04-9103-CF-00042

Prosecutor: James J. Olszewski, Ralph W. Staples, Jr., John G. Evon

Defense: I. Alexander Woloshansky, Jerry Jarrett

Date of Murder: 12-18-90

Victim(s): Eli Balovsky W / M / 60;
George Balovsky W / M / 66 (No relationship to Peterson)

Method of Murder: shooting with sawed-off shotgun

Summary: The Balovsky brothers were found dead in their tailor shop as a result of shotgun wounds to the head. A sawed-off shotgun, identified as the murder weapon, was later recovered from Peterson's home after his mother consented to the search. Peterson made incriminating statements to an acquaintance, and gave a complete confession to police. He also confessed to two additional shotgun murders in Porter County, upon which he was later convicted. These convictions served as the basis for a second aggravating circumstance in this case.

Peterson was also convicted of the 1991 Attempted Murder/Armed Robbery of Ronald Nitsch in Lake County, and was sentenced to 50 years and 20 years imprisonment on 11-16-93.
(See Peterson v. State, 653 N.E.2d 1022 (Ind.App. 1995) (45G04-9101-CF-00014).



Trial: Information/PC for Murder and Death Sentence filed (03-01-91); Individual Voir Dire (04-20-92, 04-21-92, 04-22-92, 04-23-92); Jury Trial (04-24-92, 04-25-92, 04-27-92, 04-28-92, 04-29-92, 04-30-92, 05-01-92, 05-02-92); Deliberations (05-02-92, 05-03-92, 05-04-92); Guilty Verdict (05-04-92); DP Trial (05-04-92); Verdict Against DP (05-04-92); Court Sentencing (06-05-92).

Inmate Website: <http://www.ccadp.org/obadyahben-yisrayl.htm>

Conviction: Murder, Murder

Sentencing: June 5, 1992 (Death Sentence)

Aggravating Circumstances: b (7) Convicted of murders in Porter County
b (8) 2 murders



Mitigating Circumstances: neglected in childhood by Father
caring, supportive of others, including girlfriend and baby
good and quiet prisoner during confinement in jail
extreme emotional disturbance
high school graduate
2 years in Marines
Father of 11 month old baby
21 years old at the time of the murders

Judge Overrides Jury Recommendation against DP

Direct Appeal: Peterson v. State, 674 N.E.2d 528 (Ind. December 13, 1996) (45S00-9103-DP-223)
Conviction Affirmed 5-0 DP Affirmed 5-0
Dickson Opinion; Shepard, Sullivan, Selby, Boehm concur.
For Defendant: James F. Stanton, Crown Point
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Peterson v. Indiana, 118 S.Ct. 858 (1998) (Cert. denied)

PCR: Notice of Intent to File PCR filed 08-15-97.
PCR Petition filed 12-29-97. Amended PCR Petition filed 04-06-98, 07-31-98.
State's Answer to PCR Petition filed 02-20-98, 04-13-98.
PCR Hearing 07-27-98, 07-28-98, 07-29-98, 07-30-98
For Defendant: Steven H. Schutte, Emily Mills Hawk, Deputy Public Defenders (Carpenter)
For State: Robert L. Collins, Deputy Attorney General (Modisett), Natalie Bokota, DPA
PCR Denied 09-30-98.

Ben-Yisrayl v. State, 729 N.E.2d 102 (Ind. May 25, 2000) (45S00-9708-PD-460)
(Appeal of Lake County Judge James L. Clement and Magistrate Kathleen A. Sullivan denial of PCR)
Affirmed 5-0, Shepard Opinion, Dickson, Sullivan, Boehm, Rucker concur)
For Defendant: Steven H. Schutte, Emily Mills Hawk, Deputy Public Defenders (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (Freeman-Wilson)
Ben-Yisrayl v. Indiana, 122 S.Ct. 73 (2001) (Cert. denied)

Permission to file successive PCR denied by Indiana Supreme Court 02-15-02.

09-10-04 Post-Conviction Relief is granted as to death sentence only, based upon the decision of the Indiana Supreme Court in Saylor v. State, where the Court ruled that any death sentence not returned by the jury was "inappropriate."

Habeas: 01-23-01 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
12-12-01 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Obadyah Ben-Yisrayl v. Ron Anderson, Superintendent (3:01-CV-00065-AS)
Judge Allen Sharp

For Defendant: Prentice H. Marshall Jr., John H. Gallo, Kelly Cox, Chicago, IL
For State: Thomas D. Perkins, Gary Damon Secrest, Deputy Attorneys General (S. Carter)

05-28-02 Order holding in abeyance until U.S. Supreme Court decision in Ring v. Arizona.
07-26-02 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
09-20-02 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
12-27-02 Writ of Habeas Corpus denied.
04-07-03 Certificate of Appealability granted.

Ben-Yisrayl v. Davis, 245 F.Supp.2d 960 (N.D.Ind. December 27, 2002) (3:01-CV-65-AS)
(Order of United States District Court, Northern District of Indiana, Judge Allen Sharp, denying
Petition for Writ of Habeas Corpus.)

For Defendant: Prentice H. Marshall Jr., John H. Gallo, Denise Keliuotis, Kelly Cox, Chicago, IL
For State: Thomas D. Perkins, Gary Damon Secrest, Deputy Attorneys General (S. Carter)

Ben-Yisrayl v. Davis, 245 F.Supp.2d 973 (N.D.Ind. February 19, 2003) (3:01-CV-65-AS)
(Order of United States District Court, Northern District of Indiana, Judge Allen Sharp, denying
Motion to Amend Judgment, holding that Ring v. Arizona is not to be applied retroactively.)
For Defendant: Prentice H. Marshall Jr., John H. Gallo, Denise Keliuotis, Kelly Cox, Chicago, IL
For State: Thomas D. Perkins, Gary Damon Secrest, Deputy Attorneys General (S. Carter)

Ben-Yisrayl v. Davis, 114 Fed.Appx. 760, 2004 WL 2496711 (7th Cir. October 29, 2004) (03-1851).
(Unpublished). State Lake County PCR Court granted PCR relief while appeal from Northern District
denial of habeas pending. Seventh Circuit holds that because resentencing has not taken place,
habeas is not ripe for review. Appeal dismissed.

Order of Circuit Judge Joel M. Flaum, Judge Daniel A. Manion, Judge Ann C. Williams concur.

For Defendant: John N. Gallo, Chicago, IL

For State: Steve Carter, Attorney General

On Remand: 12-12-04 Peterson was resentenced by Lake County Superior Court Judge Thomas Stefaniak
to consecutive terms of 60 years imprisonment on each of two murder counts, for a total
sentence of 120 years imprisonment. Affirmed by Memorandum decision at Ben-Yisrayl v.
State, 841 N.E.2d 248 (Ind. App. December 15, 2005).

Ben-Yisrayl v. Buss, 540 F.3d 542 (7th Cir. August 28, 2008)

Appeal of denial Habeas as to convictions, Cross appeal of granting Habeas as to sentence.
Convictions and sentences affirmed. Reversing partial grant of Habeas as to 60 year sentence.

Ben-Yisrayl v. Levenhagen, 129 S.Ct. 2890 (2009) (Cert. Denied)

Ben-Yisrayl v. State, 923 N.E.2d 27 (Ind. App. February 10, 2010)

(Memorandum Decision Not for Publication)

Appeal of trial court denial of Successive PCR. Affirmed.

**PETERSON, CHRISTOPHER DWAYNE # 73
(Obadyah Ben-Yisrayl)**

OFF DEATH ROW SINCE 07-23-03
DOB: 01-20-1969 DOC#: 922005 Black Male

Porter County Superior Court
Judge Thomas W. Webber

Trial Cause #: 64D02-9102-CF-022

Prosecutor: James H. Douglas, Gwen R. Rinkenberger

Defense: Jerry T. Jarrett, I. Alexander Woloshansky

Date of Murder: December 13 & 15, 1990

Victim(s): Marie Meitzler W / F / 48; Harchand Dhaliwal I / M / 54 (No relationship to Peterson)

Method of Murder: shooting with sawed-off shotgun

Summary: Harchand Dhaliwal was working alone in the evening as an attendant at a Hudson Oil station in Portage. He was robbed and shot in the head at close range with a .12 gauge shotgun. Two days later, Marie Meitzler was working alone in the evening as the desk clerk in a Howard Johnson motel. She was robbed and shot in the neck at close range with a .12 gauge shotgun. Three days later, George and Eli Balovsky were found dead following a robbery in their tailor shop in Gary (Lake County). Both were shot in the head at close range by a .12 gauge shotgun. A sawed-off shotgun, identified as the murder weapon in all four murders, was later recovered from Peterson's home after his mother consented to the search, and several witnesses saw Peterson with the shotgun. Peterson made incriminating statements to an acquaintance, and gave a complete confession to police. Evidence of the Lake County murders of the Balovsky brothers was admitted into evidence at the Porter County trial.

Peterson was also convicted of the 1991 Attempted Murder/Armed Robbery of Ronald Nitsch in Lake County, and was sentenced to 50 years and 20 years imprisonment on 11-16-93.
(See Peterson v. State, 653 N.E.2d 1022 (Ind.App. 1995) (45G04-9101-CF-00014).

Inmate Website: <http://www.ccadp.org/obadyahben-yisrayl.htm>

Trial: Information/PC for Murder filed (02-14-91); Amended Information for DP filed (03-01-91); Voir Dire (02-18-92, 02-19-92, 02-20-92, 02-21-92, 02-22-92, 02-24-92, 02-25-92, 02-26-92, 02-27-92); Jury Trial (02-27-92, 02-28-92, 02-29-92, 03-03-92, 03-04-92, 03-05-92, 03-06-92, 03-07-92, 03-09-92, 03-10-92, 03-11-92, 03-12-92, 03-13-92, 03-14-92, 03-16-92); Verdict (03-16-92); DP Trial (03-17-92); Verdict (03-17-92); Court Sentencing (05-15-92).

Conviction: Murder, Felony-Murder, Murder, Felony-Murder

Sentencing: May 15, 1992 (Death Sentence)

Aggravating Circumstances: b (1) Robbery
b (8) 2 murders

Mitigating Circumstances: None



Direct Appeal: Ben-Yisrayl v. State, 690 N.E.2d 1141 (Ind. December 31, 1997) (64S00-9103-DP-00229)
Conviction Affirmed 5-0 DP Affirmed 5-0
Dickson Opinion; Shepard, Sullivan, Selby, Boehm concur.
For Defendant: Gary S. Germann, Portage, I. Alexander Woloshansky, Merrillville
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Ben-Yisrayl v. Indiana, 119 S.Ct. 877 (1999) (Cert. denied)

PCR: Notice of Intent to File PCR Petition 08-07-98.
PCR Petition filed 01-04-99. Amended PCR filed 08-18-99.
State's Answer to PCR Petition filed 02-04-99, 09-01-99, 11-18-99.
Porter County Superior Court Judge Thomas W. Webber
For Defendant: Deputy State Public Defenders (Carpenter)
For State: Joseph L. Chamption, Arthur Thaddeus Perry, Deputy Attorney General (S. Carter)
02-10-00 PCR Petition denied.

Ben-Yisrayl v. State, 753 N.E.2d 649 (Ind. August 28, 2001) (64S00-9808-PD-429)
(Appeal of PCR denial by Porter County Superior Court Judge Thomas W. Webber)
Affirmed 5-0; Shepard Opinion, Dickson, Sullivan, Boehm, and Rucker concur.
For Defendant: Steven H. Schutte, Emily Mills Hawk, Deputy Public Defenders (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (S. Carter)
Ben-Yisrayl v. Indiana, 122 S.Ct. 2382 (June 10, 2002) (Cert. denied)

Habeas: 12-07-01 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
11-05-02 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Obadyah Ben-Yisrayl v. Ron Anderson, Superintendent (3:01-CV-00871-AS)
Judge Allen Sharp
For Defendant: John H. Gallo, Denise D. Keliuotis, Kelly J. Cox, Sidney Austin Brown, Chicago, IL
For State: James B. Martin, Gary Damon Secrest, Deputy Attorneys General (S. Carter)

04-28-03 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
06-02-03 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
07-23-03 Writ of Habeas Corpus granted.
08-14-03 Respondent Motion to Stay Judgment granted.

Ben-Yisrayl v. Davis, 277 F.Supp.2d 898 (N. D. Ind. July 23, 2003) (3:01-CV-0871-AS)
(Writ of Habeas Corpus granted by Judge Allen Sharp, U.S. District Court for the Northern District of Indiana; Prosecutor's argument was comment on Defendant's failure to testify, and the error was not harmless; Inadequate state trial court record amounted to due process violation. State is to release or retry Petitioner within 120 days.)
For Defendant: John H. Gallo, Denise D. Keliuotis, Kelly J. Cox, Sidney Austin Brown, Chicago, IL
For State: James B. Martin, Gary Damon Secrest, Deputy Attorneys General (S. Carter)

Ben-Yisrayl v. Davis, 431 F.3d 1043 (7th Cir. December 13, 2005) (03-3169)
State's appeal of granting of habeas relief. Affirmed 3-0.
Circuit Judge Anne Claire Williams Opinion; Joel M. Flaum, Daniel A. Manion concur.
For Defendant: John H. Gallo, Kelly Huggins, Chicago, IL
For State: Andrew K. Kobe, Deputy Attorney General (S. Carter)

RETRIAL PENDING IN THE PORTER COUNTY SUPERIOR COURT.

POTTS, LARRY DALE # 58

OFF DEATH ROW SINCE 04-08-96

DOB: 08-04-1938 DOC#: 881979 White Male

Lake County Superior Court Judge Richard J. Conroy

Trial Cause #: 3CR-170-1087-676

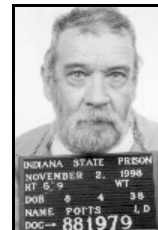
Prosecutor: Joseph L. Curosh

Defense: Kevin B. Relphorde, Scott L. King

Date of Murder: October 12, 1987

Victim(s): Sharon Oke W / F / 46 (girlfriend of Potts); Robert Davey W / M / 23 (no relationship)

Method of Murder: shooting with handgun



Summary: Sharon and Jerry Oke were separated from marriage, but continued their operation of Oke's Lounge. While separated, Sharon moved in with Potts. However, after Potts beat her and broke her jaw, Sharon moved back in with Jerry. One night, Potts came to the Lounge and got into an argument with Sharon. Potts attempted to pick a fight with Jerry, who declined. Potts drew a gun and shot him 3 times. As Sharon came towards him, Potts shot her in the heart and killed her. One patron of the bar, John Smith, was shot in the leg and another, Robert Pavey, was shot dead. Potts returned to Smith and despite his pleas shot him twice more. He shot another patron in the shoulder. As he shot, Potts ran out of ammunition, inserted a fresh clip, and continued to shoot. In all, Potts shot 14 times, each shot striking someone. He then walked behind the bar, called the police and waited for their arrival. When police asked him why he had shot these people, Potts asserted that they were all trying to jump him and were picking on him.

Trial: Information/PC for Murder and Death Penalty Filed (10-12-87); Death Sentence Request Filed (12-21-87); Jury Trial (08-23-88, 08-24-88, 08-25-88, 08-26-88); Verdict (08-26-88); DP Trial (08-27-88); DP Verdict (08-27-88); Court Sentencing (10-06-88).

Conviction: Murder, Murder, Attempted Murder (A Felony) (3 counts)

Sentencing: October 6, 1988 (Death Sentence, 30 years, 30 years, 30 years consecutive)

Aggravating Circumstances: b (8) 2 murders

Mitigating Circumstances: no prior criminal record
kind, generous non-violent father
on pain medication and alcohol on day of murders
turned himself in
constant and severe back pain
addicted to prescription narcotics; alcoholic
divorced a year before murders
mental disease of depression
sudden heat
40 years old at the time of the murders

Direct Appeal: Potts v. State, 594 N.E.2d 438 (Ind. June 23, 1992) (45S00-8907-CR-536)
Conviction Affirmed 5-0 DP Affirmed 3-2
Givan Opinion; Shepard, Krahulik concur; Debruler, Dickson dissent.
For Defendant: Albert Marshall, Crown Point Public Defender
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Potts v. Indiana, 113 S.Ct. 1869 (1993) (Cert. denied)

PCR: 12-02-93 PCR filed; Agreed disposition entered, resentenced by Special Judge James L. Clement on 04-08-96 to 210 years imprisonment.

PROWELL, VINCENT JUAN # 80

OFF DEATH ROW SINCE 01-11-01

DOB: 03-04-1964 DOC#: 942131 Black Male

Vanderburgh County Circuit Court Judge Richard L. Young

Trial Cause #: 82CO1-9305-CF-00313

Prosecutor: Brett J. Niemeier, Jonathan J. Parkhurst

Defense: Dennis A. Vowels, Michael J. Danks

Date of Murder: May 27, 1993

Victim(s): Christopher Fillbright W / M / 22; Denise Powers W / F / 22 (neighbor and her friend)

Method of Murder: shooting with .38 handgun

Summary: Denise Powers was sitting in her car in the parking lot of Green River Manor Apartments in Evansville, waiting for her friend, Chris Fillbright. As Fillbright reached for the passenger door handle, Prowell approached him from behind and shot him in the head without any words or provocation. Prowell then shot twice more through the passenger window, striking Powers in the face and back. Both Powers and Fillbright died. Prowell fled, running over the body of Fillbright as he went. He was later arrested in Benton County, and the murder weapon and ammunition was recovered from his car. He later gave a statement admitting his involvement in the shootings, stating that he felt "threatened" by Fillbright, a Gulf War veteran, who looked at him with a "military look" in his eye earlier.

Trial: Information/PC for Murder filed (05-28-95); Amended Information for DP filed (07-07-93); Guilty Plea (01-18-94); Court Sentencing (05-05-94).

Conviction: Pled guilty to Murder (2 counts) without Plea Agreement

Sentencing: May 5, 1994 (Death Sentence)

Aggravating Circumstances: b (8) 2 murders

Mitigating Circumstances: no significant history of prior criminal conduct
grew up in dysfunctional family
may have been physically and emotionally abused
extreme mental or emotional distress
paranoid personality disorder

Guilty Plea

Direct Appeal: Prowell v. State, 687 N.E.2d 563 (Ind. November 4, 1997) (82S00-9407-DP-666)

Conviction Affirmed 5-0 DP Affirmed 4-1

Dickson Opinion; Shepard, Selby, Boehm concur; Sullivan dissents against DP.

For Defendant: Dennis A. Vowels, Michael C. Keating, Evansville

For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)

Prowell v. Indiana, 119 S.Ct. 104 (1998) (Cert. denied)

PCR: PCR Petition filed 10-13-98. Amended PCR filed 02-12-99.

State's Answer to PCR Petition filed 01-13-99, 02-24-99

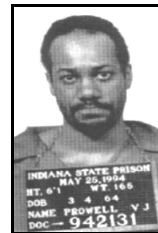
PCR Hearing 04-19-99, 04-20-99, 04-21-99.

Vanderburgh County Circuit Court Judge Carl A. Heldt

For Defendant: Steven H. Schutte, Laura K. Volk, Barbara Blackman, Deputy Public Defenders (Carpenter)

For State: Thomas D. Perkins, Gregory Ullrich, Deputy Attorneys General (Freeman-Wilson)

07-07-99 PCR Petition denied.



Prowell v. State, 741 N.E.2d 704 (Ind. January 11, 2001) (82S00-9803-PD-138)
(Appeal of denial of PCR by Vanderburgh County Circuit Court Judge Carl A. Heldt)
Conviction Reversed 5-0 DP Vacated 5-0

Boehm Opinion; Shepard, Sullivan, Dickson, Rucker concur.

(Ineffective assistance of trial counsel by failure to investigate and develop expert testimony to support mental illness as defense/plea/mitigator, and a knowing violation of caseload restrictions by trial attorney Vowels)

For Defendant: Barbara S. Blackman, Laura L. Volk, Steven H. Schutte, Deputy Public Defenders

For State: Thomas D. Perkins, Deputy Attorney General (Freeman-Wilson)

On Remand: State withdraws request for death sentence.

On February 27, 2002 Prowell entered a Guilty But Mentally Ill plea to two counts of Murder pursuant to a Plea Agreement calling for a sentence of up to 100 years imprisonment. On March 19, 2002 Vanderburgh County Circuit Court Judge Carl A. Heldt sentenced Prowell to consecutive terms of 50 years on each of two Murder counts, for a total of 100 years imprisonment.

Prowell v. State, 787 N.E.2d 997 (Ind. App. May 9, 2003) (82A04-0204-CR-160)
(Direct appeal of 100 year sentence - Affirmed)

PRUITT, TOMMY RAY # 100

ON DEATH ROW SINCE 11-21-03

DOB: 03-04-62 DOC#: 881037 White Male

Dearborn County Circuit Court
Venued from Morgan County
Judge James D. Humphrey

Trial Cause #: 15C01-0101-CF-54

Prosecutor: Steven P. Sonnega, Terry E. Iacoli

Defense: William Vanderpol, Jr., Douglas A. Garner

Date of Murder: June 14, 2001

Victim(s): Daniel Starnes W / M / 46 (Morgan County Warrant Officer and Reserve - No relationship to Pruitt.

Method of Murder: shooting with .45 handgun

Summary: Having information that Pruitt had been involved in a burglary a few days earlier in Bloomington and may have stolen guns in the vehicle, Morgan County Deputy Dan Starnes pulled Pruitt over on a rural county road. Pruitt had a scanner in his car, and it is believed that he overheard Deputy Starnes say that he was going to search the vehicle. Pruitt then got out and pulled a .45 caliber handgun. A gun battle ensued, with Deputy Starnes suffering five gunshot wounds to his chest and abdomen. He died from these injuries almost a month later on July 10, 2001. Pruitt was shot seven times, but recovered. Pruitt also shot at the 19 year old son of Deputy Starnes, Ryan, who was in the vehicle as part of a summer internship program.

Pruitt had prior felony convictions of Robbery (C Felony) in 1981, and Forgery (C Felony) in 1988, which served as a basis for the Habitual Offender adjudication.



Trial: Amended Information for DP filed (08-27-01); Amended Information filed (07-10-01, 08-16-01); Venued to Dearborn County (09-04-01); Hearing on Mental Retardation (08-12-03, 08-15-03); Voir Dire (10-06-03, 10-07-03, 10-08-03, 10-09-03, 10-10-03); Jury Trial (10-13-03, 10-14-03, 10-15-03, 10-16-03, 10-17-03, 10-21-03); Verdict (10-21-03); DP Trial (10-22-03, 10-23-03, 10-30-03); Verdict (10-30-03); Court Sentencing (11-21-03).

Victim Webpage: <http://home1.gte.net/joking1/starnes.htm>

Conviction: Murder, Attempted Murder (A Felony), Possession of Firearm by Serious Violent Felon (B Felony), Receiving Stolen Property (D Felony) (4 Counts), Resisting Law Enforcement (D Felony), Habitual Offender.

Sentencing: November 21, 2003 (Death Sentence, 50 years, 20 years, 3 years, 3 years, 3 years, 3 years, 3 years, 30 years, consecutive for a total of 115 years imprisonment)

Aggravating Circumstances: b (6) Victim was law enforcement officer

Mitigating Circumstances: Mental Retardation, IQ of 60
Mental Illness, Repeated head injuries
Traumatic childhood
Medical malpractice caused death of Deputy Starnes

Direct Appeal: Pruitt v. State, 834 N.E.2d 90 (Ind. September 13, 2005) (15S00-0109-DP-393)
Conviction Affirmed 5-0 DP Affirmed 4-1
Boehm Opinion; Shepard, Dickson, Sullivan concur; Rucker Dissents against DP.
For Defendant: William Van Der Pol Jr., Martinsville, Teresa D. Harper, Bloomington
For State: Andrew A. Kobe, Deputy Attorney General (S. Carter)
Pruitt v. Indiana, 126 S.Ct. 2936 (2006) (Cert. denied)

PCR: Notice of Intent to File PCR filed 12-21-06.
PCR Petition filed 07-07-06. Amended PCR filed 12-27-06, 02-16-07.
State's Answer to PCR Petition filed 08-31-06.
PCR Hearing 02-26-07, 02-27-07, 02-28-07, 03-01-07.
Special Judge James D. Humphrey
For Defendant: William Van Der Pol, Jr., Martinsville, and Douglas A. Garner, Lawrenceburg.
For State: Stephen Creason, Deputy Attorney General (S. Carter)
05-25-07 PCR Petition denied.

Pruitt v. State, 903 N.E.2d 899 (Ind. March 31, 2009) (15S00-0512-PD-617)
Conviction Affirmed 5-0 DP Affirmed 4-1
Sullivan Opinion; Shepard, Dickson, Boehm concur; Rucker Dissents against DP.
For Defendant: Thomas C. Hinesley, Laura L. Volk, Deputy Public Defenders (Carpenter)
For State: Stephen Creason, James B. Martin, Deputy Attorneys General (G. Zoeller)

Pruitt v. State, 907 N.E.2d 973 (Ind. June 16, 2009) (15S00-0512-PD-617) (On Rehearing)
DP Affirmed 4-1.
Per Curiam Opinion; Shepard, Dickson, Sullivan, Boehm concur; Rucker Dissents against DP.
For Defendant: Thomas C. Hinesley, Laura L. Volk, Deputy Public Defenders (Carpenter)
For State: Stephen Creason, James B. Martin, Deputy Attorneys General (Zoeller)

Habeas: 11-18-09 Petition for Writ of Habeas Corpus filed.
Tom R. Pruitt v. Superintendent (3:09-cv-00380-RLM)
U.S. District Court, Northern District of Indiana, Judge Robert L. Miller
07-15-10 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.

01-19-11 Petitioner's Traverse and Memorandum filed in support of Writ of Habeas Corpus.
10-02-12 Habeas denied by Judge Robert L. Miller
For Defendant: Marie F. Donnelly, Chicago, IL, Laurence E. Komp, Manchester, MO
For State: James B. Martin, Stephen R. Creason, Deputy Attorneys General (Zoeller)

Pruitt v. Wilson, 2012 WL 4513961 (N.D. Ind. October 2, 2012) (3:09-cv-00380-RLM)
Habeas denied by Judge Robert L. Miller.
For Defendant: Thomas C. Hinesley, Laura L. Volk, Deputy Public Defenders (Carpenter)
For State: Stephen Creason, James B. Martin, Deputy Attorneys General (Zoeller)

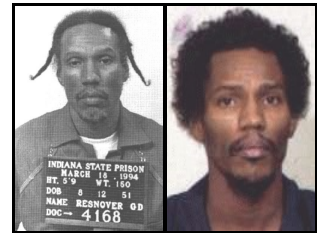
PENDING APPEAL IN THE 7TH CIRCUIT U.S. COURT OF APPEALS. (#13-1880)

RESNOVER, GREGORY # 9

EXECUTED BY ELECTRIC CHAIR 12-08-94 12:13 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 08-12-1951 DOC#: 4168 Black Male

Marion County Superior Court Judge Jeffrey V. Boles
(Originally venued to Hendricks County;
by agreement, returned to Marion, with Hendricks Circuit Judge Jeffrey V. Boles presiding)



Trial Cause #: CR-80-442A

Prosecutor: J. Gregory Garrison / David E. Cook (Stephen Goldsmith)

Defense: Thomas E. Alsip

Date of Murder: December 11, 1980

Victim(s): Jack Ohrberg W / M / 44 (Indianapolis Police Officer - No relationship to Resnover)

Method of Murder: shooting with AR-15 rifle

Summary: On December 11, 1980 at 5:30 a.m., Indianapolis Police Sergeant Jack Ohrberg and other officers went to 3544 North Oxford in Indianapolis attempting to serve papers on persons believed to be at that location. Ohrberg banged on the door several times and identified himself as a police officer. Two other officers on the front porch were in uniform. After the next door neighbor told officers that there was noise from inside the apartment, Ohrberg crouched and pounded with his shoulder on the door, which began to open. Officers saw furniture blocking the door, and saw 2 or 3 muzzle flashes from two different locations inside. Ohrberg was shot and collapsed on the porch. Officers took cover and saw a man come out onto the porch, point a rifle, and fire at least 2 additional shots into Ohrberg. Officers took cover and returned fire. Shots continued to come from inside the house. After a few minutes, Gregory Resnover came out, threw down an AR-15 rifle and surrendered. Earl Resnover followed, laying down an AR-15 and a pistol. Ohrberg's business card was found in Earl's wallet. Two women then came out, leaving wounded Smith inside. An AR-15 which was recovered next to Smith was found to be the murder weapon. An arsenal of weapons and ammunition was recovered inside the apartment.

Tommie Smith, Gregory Resnover, and Earl Resnover were also convicted of the 1980 murder and robbery of Brink's guard William Sieg in Marion County, and were sentenced to consecutive terms of 60 years and 20 years imprisonment on 10-22-81. (See Smith v. State, 474 N.E.2d 973 (1985) (CR80-473A))

Trial: Information/PC for Murder and Death Penalty Filed (12-11-80); Death Sentence Request Filed (12-11-80); Jury Trial (06-23-81, 06-24-81, 06-25-81, 06-26-81, 06-29-81); Verdict (06-29-81); DP Trial (06-30-81); DP Verdict (06-30-81); Court Sentencing (07-23-81).

Victim Webpage: <http://www.indy.gov/eGov/City/DPS/IMPD/About/Memorial/Pages/johrberg.aspx>
<http://www.odmp.org/officer/10144-detective-sergeant-jack-r-ohrberg>

Conviction: Murder, Conspiracy to Commit Murder (Class A Felony)

Sentencing: July 23, 1981 (Death Sentence, 50 years imprisonment)

Aggravating Circumstances: b (6) Victim was law enforcement officer

Mitigating Circumstances: None

Joint Trial with Tommie J. Smith, who also received a Death Sentence and was executed on 07-18-96.

Direct Appeal: Resnover v. State, 460 N.E.2d 922 (Ind. March 19, 1984) (182-S-21)
Conviction Affirmed 5-0 DP Affirmed 5-0
Pivarnik Opinion; Givan, Hunter, Debruler, Prentice concur.
For Defendant: Dawn D. Duffy, Indianapolis
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Resnover v. Indiana, 105 S.Ct. 231 (1984) (Cert. denied)

PCR: Resnover v. State, 507 N.E.2d 1382 (Ind. 1987) (1285-S-515)
(Appeal of PCR denial by Special Judge John Tranberg)
Affirmed 5-0; Givan Opinion; Shepard, Debruler, Pivarnik, Dickson concur.
For Defendant: Paul Levy, Deputy Public Defender (Carpenter)
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Resnover v. Indiana, 108 S.Ct. 762 (1988) (Cert. denied)

Resnover v. State, 547 N.E.2d 814 (Ind. 1989) (49S00-8904-CR-261)
(Appeal of 2nd PCR denial by Special Judge Mary Lee Comer)
Affirmed 4-1; Pivarnik Opinion; Shepard, Givan, Dickson concur; Debruler dissents.
For Defendant: Brent L. Westerfeld, Kevin P. McGoff, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Resnover v. Indiana, 111 S.Ct. 216 (1990) (Cert. denied)

Habeas: Resnover v. Pearson, 754 F.Supp. 1374 (N.D.Ind. 1991) (S88-128)
(Habeas Writ denied by Judge Allen Sharp, U.S. District Court, Northern District of Indiana)
For Defendant: Charles A. Asher, South Bend
For State: David A. Arthur, Deputy Attorney General (Pearson)
Resnover v. Pearson, 965 F.2d 1453 (7th Cir. 1992) (91-1367)
Affirmed 3-0; Circuit Judge William J. Bauer, Richard A. Posner, Joel M. Flaum.
For Defendant: Charles A. Asher, South Bend, Kevin P. McGoff, Indianapolis
For State: David A. Arthur, Deputy Attorney General (Pearson)

Resnover v. Pearson, 9 F.3d 113 (1993) (Petition for Judgment Relief denied)
Resnover v. Carter, 113 S.Ct. 2935 (1993) (Cert. denied)
Resnover v. Carter, 114 S.Ct. 16 (1993) (Reh. denied)
Resnover v. Carter, 114 S.Ct. 2769 (1994) (Cert. denied)
Resnover v. Carter, 115 S.Ct. 29 (1994) (Reh. denied)
Resnover v. Indiana, 115 S.Ct. 658 (1994) (Application for stay denied)

RESNOVER WAS EXECUTED BY ELECTRIC CHAIR ON 12-08-94 AT 12:13 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 73RD CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900 AND 3RD SINCE THE DEATH PENALTY WAS REINSTATED IN 1977. RESNOVER WAS THE FIRST CONVICTED MURDERER TO BE EXECUTED AGAINST THEIR WILL IN INDIANA IN OVER 30 YEARS AND THE LAST TO BE EXECUTED BY ELECTRIC CHAIR.

RITCHIE, BENJAMIN DONNIE # 98

ON DEATH ROW SINCE 10-15-02
DOB: 05-30-80 DOC#: 967072 White Male

Marion County Superior Court Judge Patricia J. Gifford

Trial Cause #: 49G04-0010-CF-172900

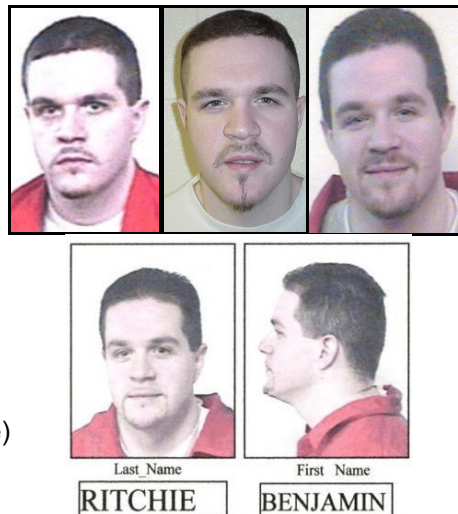
Prosecutor: Scott C. Newman, Joel D. Hand

Defense: Kevin M. McShane, John F. Crawford, Jr.

Date of Murder: September 29, 2000

Victim(s): William Toney W / M / 32
(Beech Grove Police Officer - No relationship to Ritchie)

Method of Murder: Shooting with .9 mm handgun



Summary: While on routine patrol, Beech Grove police officer Matthew Hickey noticed a white van matching the description of a van stolen earlier in the evening. Officer Hickey followed the white van, which accelerated at a high rate of speed. Officer Hickey gave chase and was joined by Officer William Toney and Sergeant Robert Mercuri, each driving separate marked police cars. The vehicular chase ended when the driver, Benjamin Ritchie, wrecked the van, then fled on foot. The passenger, Michael Greer fell from the van and also ran. Officer Hickey chased Greer on foot and caught up to him a short distance away. Officer Toney chased Ritchie on foot through several yards and into the backyard of 717 Fletcher Avenue, where he was shot five times with a .9 mm Glock handgun. One of the four bullets Ritchie fired missed Officer Toney's bulletproof vest by an inch, cut through an artery, punctured his lung and lodged itself in his vertebrae. Ritchie ditched a wig and the handgun in shrubbery nearby and eventually made his way to the home of a friend, where he was arrested the next morning. While in jail, Ritchie was interviewed by four local television reporters. During all four interviews, Ritchie both claimed to be very sorry for what he had done and for the death of Officer Toney, but that he had not fired the fatal shot. Rather, Ritchie claimed that he dropped his weapon and that he heard it go off as he ran away.

At sentencing, the victim's wife was reading her victim impact statement when Ritchie repeatedly interrupted her, laughed, and called her a "bitch" when she declared him a coward. The victim statement was given in the presence of Ritchie after sentencing in accordance with a new statute which was enacted in 2002 despite warnings that such outbursts would become commonplace from defendants with nothing to lose after being sentenced to death.

Trial: Information/PC for Murder filed (10-04-00); Gag Order entered (10-10-00); Amended Information for DP filed (11-01-00); Guilty Plea to Poss Firearm (07-31-02); Voir Dire (07-31-02, 08-01-02, 08-02-02, 08-05-02); Jury Trial (08-05-02, 08-06-02, 08-07-02, 08-08-02, 08-09-02, 08-10-02); Verdict (08-10-02); DP Trial (08-12-02, 08-13-02, 08-14-02); Verdict (08-14-02); Court Sentencing (10-15-02).

Victim Webpage: <http://home1.gte.net/joking1/toney.htm>

Conviction: Murder, Possession of a Firearm by a Serious Violent Felon, Auto Theft, Resisting Law Enforcement, Resisting Law Enforcement.

Sentencing: October 15, 2002 (Death Sentence, 20 years, 3 years, 3 years, 1 year - all concurrent)

Aggravating Circumstances: b (6) Victim was law enforcement officer
b (9) On probation or parole

Mitigating Circumstances: Defendant's youthful age
Unstable family
Diagnosis of Cognitive Disorder N.O.S.
Low I.Q.
Abused, head injuries as a child
Mother abused drugs and alcohol during pregnancy
True natural father unknown
Meager economic status

Direct Appeal: Ritchie v. State, 809 N.E.2d 258 (Ind. May 25, 2004) (49S00-0011-DP-638)
Conviction Affirmed 5-0 DP Affirmed 5-0
Boehm Opinion; Shepard, Dickson, Sullivan, and Rucker concur.
(Rucker concurs and dissents noting that he would require aggravators to outweigh mitigators "beyond a reasonable doubt," but that here Ritchie did not object and there is no showing of fundamental error.)
For Defendant: Mark Small, Kevin McShane, Marion County Public Defender
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)
Ritchie v. Indiana, 126 S.Ct. 42 (2005) (Cert. denied)

PCR: 09-20-04 Notice of Intent to File PCR
04-26-05 PCR Petition filed; Amended 09-09-05.
06-02-05 Answer filed; Amended 10-05-05.
PCR Hearing 11-29-05, 11-30-05, 12-01-05, 12-02-05.
For Defendant: Brent L. Westerfield, Joseph M. Cleary, Deputy Public Defender (Carpenter)
For State: Stephen R. Creason, James B. Martin,, Deputy Attorneys General (S. Carter)
Andrew A. Kobe, Joel D. Hand, Special Deputy Attorneys General (S. Carter)
01-27-06 Marion Superior Court Judge Patricia J. Gifford denied postconviction relief on all conviction and sentencing issues, except one count of misdemeanor Resisting Law Enforcement.

Ritchie v. State, 875 N.E.2d 706 (Ind. November 8, 2007) (49S00-0409-PD-420)
Appeal of PCR denial by Marion Superior Court Judge Patricia Gifford.
Affirmed 5-0; Opinion by Rucker. Shepard, Dickson, Sullivan, Boehm concur.
Joseph Cleary, Brent Westerfeld, Indianapolis, IN, Attorneys for Appellant.
Stephen R. Creason, Deputy Attorney General (Scarter)

Habeas: 04-18-08 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
04-21-08 Order entered granting Stay of Execution for 90 days.
Benjamin Ritchie v. Mark Levenhagen, Superintendent (1:08-CV-00503-RLY-MJD)
U.S. District Court, Southern District of Indiana
Judge Richard L. Young, Referred to Magistrate .
For Defendant: Brent Westerfield, Joseph M. Cleary, Indianapolis
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)
07-21-08 Petition for Writ of Habeas Corpus filed.
11-05-08 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
01-19-10 Authorization for payment of Attorney fees to Joseph McCleary \$14,530.00.
01-19-10 Authorization for payment of Attorney fees to Brent Westerfeld \$24,303.00.
06-16-10 Reassignment to Magistrate Tim A. Baker.
12-17-10 Reassignment to Magistrate Judge Mark J. Dinsmore.

FULLY BRIEFED AND AWAITING DECISION FROM U.S. DISTRICT COURT, SOUTHERN DISTRICT OF INDIANA, JUDGE RICHARD L. YOUNG.

ROARK, DENNIS RAY # 63 & # 76

OFF DEATH ROW SINCE 12-19-94
DOB: 04-12-1963 DOC#: 892138 White Male

Lake County Superior Court Judge James L. Clement

Trial Cause #: 45GO4-8902-CF-00017

Prosecutor: John J. Burke

Defense: I. Alexander Woloshansky

Date of Murder: February 3, 1989

Method of Murder: stabbing with knife (all); smoke inhalation (Dennis); burns (Elizabeth)

Victim(s): Mary Waggoner W / F / 19 (live-in girlfriend); Dennis Waggoner W / M / 20 months,
Elizabeth Waggoner W / F / 4 months (children of Mary Waggoner and Roark),
Betty Waggoner W / F / 61 (mother of Mary Waggoner)

Summary: Roark lived with his girlfriend, Mary Waggoner, at the home of her mother, Betty Waggoner, along with their two children aged 20 months (Elizabeth) and 4 months (Dennis). Roark returned to the home after a night of heavy drinking at 5:00 a.m. and was scolded by Betty Waggoner. Roark told Mary that he would rather leave the home than be yelled at by her mother. Betty decided to leave with him and take the kids. Betty grabbed the 20 month old son and told them she would kill herself if they left. She then lunged at Roark with a knife. Roark wrestled the knife away from her, then proceeded to stab Betty, Mary, and the two children multiple times, then fled. The house was later set on fire. (insanity defense)

Trial: PC Affidavit filed (02-03-89); Information/PC for Murder and DP filed (02-07-89); Gag Order entered (02-09-89); Voir Dire (09-25-89, 09-26-89); Jury Trial (09-26-89, 09-27-89, 09-28-89); Verdict (09-28-89); DP Trial (09-29-89) Verdict (09-29-89); Court Sentencing (10-17-89); Voir Dire on Remand (08-17-92); Jury Trial (08-18-92, 08-19-92, 08-20-92, 08-21-92); Verdict (08-21-92); DP Trial (08-21-92); Verdict (08-21-92); Court Sentencing (10-29-92).

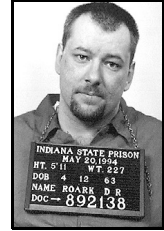
Conviction: Murder (3 counts), Voluntary Manslaughter (Betty)

Sentencing: October 17, 1989 (Death Sentence)

Aggravating Circumstances: b (8) 4 murders
b (12) 2 victims less than 12 years of age

Mitigating Circumstances: no prior criminal record
drug and alcohol abuse, alcoholism
extreme mental and emotional disturbance
father was alcoholic who abused his mother
model prisoner for 3 1/2 years awaiting trial
murder weapon was introduced by victim

Direct Appeal: Roark v. State, 573 N.E.2d 881 (Ind. June 21, 1991) (45S00-9004-CR-260)
Conviction Reversed 5-0 DP Vacated 5-0
(Should have instructed on voluntary manslaughter)
Shepard Opinion: Debruler, Givan, Dickson, Krahulik concur.
For Defendant: Albert Marshall, Crown Point Public Defender
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)



On Remand: Voir Dire (08-17-92); Jury Trial (08-18-92, 08-19-92, 08-20-92, 08-21-92); Verdict (08-21-92), DP Trial (08-21-92); Verdict (08-21-92); Court DP Sentencing (10-29-92).

08-21-92 Roark was found guilty of Murder (3 counts) and Voluntary Manslaughter (Betty), and recommended against the death penalty.

10-29-92 Lake County Superior Court Judge James L. Clement sentences Roark to 50 years imprisonment for Voluntary Manslaughter (A Felony), and to death for Murder (3 counts).

Lake County Superior Court Judge James L. Clement

For Defendant: Kevin Relphorde, Noah L. Holcomb, Jr.

For State: John J. Burke

Judge Overrides Jury Recommendation against Death Sentence

Direct Appeal: Roark v. State, 644 N.E.2d 565 (Ind. December 19, 1994) (45S00-9302-DP-234)

Conviction Affirmed 5-0 DP Vacated 3-2

Sullivan Opinion; Debruler, Dickson concur; Shepard, Givan dissent.

(Judge findings overriding jury recommendation fails to meet Martinez test, due to "impressive" testimony of defense psychologist regarding defendant's IQ of 72 and poor impulse control; 50+50+50+50=200 year term of imprisonment imposed by Indiana Supreme Court)

For Defendant: Marce Gonzalez, Jr., Merrillville

For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)

ROCHE, CHARLES EDWARD, JR. # 66

OFF DEATH ROW SINCE SUICIDE 02-06-01

DOB: 08-20-1963 DOC#: 902303 White Male

Lake County Superior Court Judge James L. Clement

Trial Cause #: 45G04-9005-CF-00095

Prosecutor: Joseph L. Curosh, Jr.

Defense: Noah L. Holcomb, Jr.

Date of Murder: May 10, 1990

Victim(s): Ernest Graves W / M / 25; Daniel Brown W / M / 22
(Acquaintances of Roche)

Method of Murder: shooting with .38 Derringer and .22 rifle

Summary: Edward Nicksich suspected Ernest Graves of stealing \$120 worth of food stamps from his girlfriend. He and Roche, Jr. arranged a phoney drug deal and lured Ernest Graves and his friend Daniel Brown to the basement of Roche, Jr.'s home. Roche, Jr. came upstairs and remarked to his girlfriend that there were two men downstairs that he was going to shoot because they owed someone \$120. He retrieved a .38 derringer and a .22 rifle and went back downstairs. Nine bullets were later recovered from the victim's bodies. Four of the bullets were found to have come from the derringer owned by Roche, Jr. This meant that he had to reload at least three times. After the shots, Roche, Jr., Roche, Sr., and Nicksich came upstairs and they shared a bag of cocaine taken from the victims. They used the car of Roche, Jr.'s girlfriend to remove and dispose of the bodies. Roche and Nicksich admitted to friends that each of them had shot one of the victims. Roche testified at trial that he shot both men while acting in self-defense.



Trial: Information/PC for Murder filed (05-16-90); Amended Information for DP filed (07-26-90); Voir Dire (10-29-90); Jury Trial (10-30-90, 10-31-90, 11-01-90, 11-02-90, 11-05-90, 11-06-90, 11-07-90); Feliberations 3 hours, 35 minutes; Verdict (11-07-90); DP Trial (11-08-90, 11-09-90) Deliberations 7 hours, 40 minutes; Verdict (11-09-90); Court Sentencing (11-30-90).

Conviction: Murder, Murder, Felony-Murder, Felony-Murder, Robbery.
Roche was tried jointly with John Nicksich. The jury returned a verdict against a Death Sentence for Nicksich, who was sentenced to two consecutive 40 year terms of imprisonment. The jury was hung on a Death Sentence for Roche. John Roche, Sr. was tried separately, convicted of Murder and sentenced to two consecutive 40 year terms of imprisonment.

Sentencing: November 30, 1990 Death Sentence (Roche)
40 years, 40 years consecutive (Nicksich)

Hung Jury on Death Sentence

Aggravating Circumstances: b (1) Robbery
b (8) 2 murders

Mitigating Circumstances: no significant prior criminal record
hung jury in death phase
traumatic childhood
psychiatric treatment during puberty
drug and alcohol addiction
accomplice was catalyst

Direct Appeal: Roche v. State, 596 N.E.2d 896 (Ind. July 20, 1992) (45S00-9012-DP-812)
Conviction Affirmed 5-0 DP Affirmed 5-0
Givan Opinion: Shepard, Dickson, Debruler, Krahulik concur.
For Defendant: Charles E. Stewart, Jr., Crown Point
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

PCR: Notice of Intent to File PCR Petition filed 05-21-93
10-21-93 PCR filed; PCR denied 02-28-96.
Roche v. State, 690 N.E.2d 1115 (Ind. December 30, 1997) (45S00-9305-PD-588)
(Appeal of PCR denial by Special Judge Richard J. Conroy)
Affirmed 5-0; Sullivan Opinion; Shepard, Dickson, Selby, Boehm concur.
For Defendant: Kenneth L. Bird, Marie F. Donnelly, John S. Sommer, Deputy Public Defenders
For State: Arthur Thaddeus Perry, Deputy Attorney General (Modisett)

12-23-96 Pro Se Motion to Waive all appeals

01-28-97 Competency Hearing held in PCR Court; Roche found competent to waive appeals.

Habeas: 07-07-98 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Josephine Brinkman-Roche, as Next Friend and Charles E. Roche Jr. v. Ron Anderson, Superintendent (3:98-CV-347-AS)
Judge Allen Sharp
For Defendant: Alan M. Freedman, Evanston, IL, Marie F. Donnelly, Charlottesville, VA
For State: Geoffrey Slaughter, Deputy Attorney General (S. Carter)

07-11-98 Evidentiary Hearing Held

07-14-98 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.

04-28-00 Amended Petition for Writ of Habeas Corpus filed.

09-05-00 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.

10-24-00 Death Penalty Oral Argument

02-06-01 Writ of Habeas Corpus conditionally granted.

Roche v. Anderson, 132 F.Supp.2d 688 (N.D. Ind. Feb. 6, 2001) (3:98-CV-347-AS)
(Order of United States District Court, Northern District of Indiana, Judge Allen Sharp, granting Petition for Writ of Habeas Corpus conditioned upon resentencing to Life Without Parole - Ineffective assistance of counsel for failure to object to shackling of defendant during trial)

Roche v. Davis, 291 F.3d 473 (7th Cir. May 28, 2002) (01-1664, 01-1665)
(Cross appeals of granting of Habeas Writ as to death sentence, not as to conviction)
Affirmed 3-0, except that case remanded for new sentencing hearing since Life Imprisonment Without Parole was not an option at original sentencing.
Opinion by Judge Michael S. Kanne, Judge John L. Coffey and Judge Ilana Diamond Rovner.
For Defendant: Alan M. Freedman, Midwest Center for Justice, Chicago, IL
Marie F. Donnelly, Virginia Capital Representation Resource Center
For State: Thomas D. Perkins, Deputy Attorney General (S. Carter)

Davis v. Roche, 123 S.Ct. 649 (December 2, 2002) (Motion to Allow Belated Writ denied)

§ 1983: Roche v. Adkins, 998 F.2d 1016 (7th Cir. May 14, 1993) (Unpublished)
(Civil rights action against warden for requiring Roche to drink from only wax coated dixie cups. Dismissed - "The fact that he was required to drink beverages from a wax covered Dixie cup simply does not implicate the constitution.")

Roche v. State, 699 N.E.2d 752 (Ind. September 22, 1998)
(Direct appeal of 45 year sentence for Attempted Murder of prison guard in LaPorte County, after Roche and 3 others attempted escape in 1994; REVERSED due to admission of prior bad acts as prisoner. On 06-18-99 Roche was convicted of Attempted Aggravated Battery and sentenced to 15 years imprisonment.)

WHILE AWAITING DEATH PENALTY RETRIAL, COMMITTED SUICIDE BY HANGING AT INDIANA STATE PRISON, MICHIGAN CITY, INDIANA ON JANUARY 10, 2006 12:44 AM.

RONDON, REYNALDO GORIA # 35

OFF DEATH ROW SINCE 05-25-99
DOB: 01-06-1949 DOC#: 851769 Hispanic Male

Lake County Superior Court Judge James E. Letsinger

Trial Cause #: 45G02-8410-CR-00186

Prosecutor: John F. Crawford, Jr.

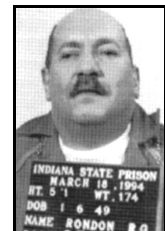
Defense: Eric O. Clark

Date of Murder: October 11, 1984

Victim(s): Francisco Alarcon H / M / 82 (Acquaintance of Rondon)

Method of Murder: stabbing with a knife 15 times

Summary: The body of 82 year old Francisco Alarcon was found in the bathroom of his home, stabbed 15 times. A trail of blood was noted from the living room to the bathroom. The evidence showed that Everette Amiotte drove Martinez Chavez and Reynaldo Rondon to a place near Alarcon's home on the night of the murder. As Amiotte stayed in the car, Martinez Chavez and Rondon walked around the corner and returned 20 minutes later. Both men were overheard earlier planning to rob Alarcon, and if caught, would kill him. Rondon was identified as driving Alarcon's stolen car on the night of the murder. The next day, Rondon gave his girlfriend 2 knives and told her to hide them. A search of Rondon's residence recovered blood-stained money and the dog tags of Alarcon.



Trial: Information/PC for Murder (10-17-84); Amended Information for DP filed (10-19-84); Amiotte Guilty Plea (04-02-85); Amiotte Sentencing (05-21-85); Voir Dire (04-15-85); Jury Trial (04-16-85, 04-17-85, 04-18-85, 04-19-85); Verdict (04-18-85); DP Trial (04-20-85); Verdict (04-20-85); Court Sentencing (05-10-85).

Conviction: Murder, Felony-Murder

Sentencing: May 10, 1985 Death Sentence (Rondon); Death Sentence (Martinez)

Aggravating Circumstances: b (1) Robbery

Mitigating Circumstances: None

Joint Trial with Eladio Martinez-Chavez. Jury recommended a death sentence for Rondon, but recommended against a death sentence for Martinez-Chavez. The Trial Court nevertheless sentenced both to death. The death sentence of Martinez-Chavez was vacated on appeal and he was resentenced to 60 years imprisonment on remand. Amiotte pled guilty before trial to Assisting a Criminal (C Felony) and was sentenced to 7 years imprisonment.

Direct Appeal: Rondon v. State, 534 N.E.2d 719 (Ind. March 1, 1989) (1085-S-427)
Conviction Affirmed 5-0 DP Affirmed 3-2
Givan Opinion; Shepard, Pivarnik concur; Debruler, Dickson dissent.
For Defendant: Terrance W. Richmond, Milan
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Rondon v. Indiana, 110 S.Ct. 418 (1989) (Cert. denied)
Rondon v. Indiana, 110 S.Ct. 765 (1990) (Reh. denied)

PCR: State ex rel. Rondon v. Lake Superior Court, 569 N.E.2d 635 (Ind. 1991)
(Mandamus action for change of judge on PCR)

PCR Petition filed 06-29-90. Amended PCR filed 09-27-94, 02-13-95.
State's Answer to PCR Petition filed 07-31-90.
PCR Hearing 01-23-95, 01-24-95, 01-25-95, 01-26-95, 01-27-95, 01-31-95, 02-02-95.
Special Judge Richard J. Conroy
For Defendant: Judith G. Menadue, James N. Thiros
For State: Kathleen Sullivan, Natalie Bokota
06-20-94 Motion for Partial Summary Judgment
04-01-95 PCR Petition denied

Rondon v. State, 711 N.E.2d 506 (Ind. May 25, 1999) (45S00-9403-PD-229)
(Appeal of PCR denial by Special Judge Richard J. Conroy)
Conviction Affirmed 5-0 DP Vacated 5-0
Selby Opinion; Shepard, Dickson, Sullivan, Boehm concur.
For Defendant: Judith C. Menadue, Elkhart, Thomas M. Carusillo, Indianapolis
Amicus Curiae: Richard A. Waples, Indiana Civil Liberties Union, Lawrence A. Vanore, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)

On Remand: On August 2, 2000 the State withdrew its request for a death sentence and Rondon was sentenced to 55 years imprisonment for Murder pursuant to a Sentencing Agreement.
For Defendant: Thomas W. Vanes, Lemuel Stigler
For State: Susan L. Collins

**ROUSTER, GREGORY ANTHONY # 50
(Gamba Mateen Rastafari)**

OFF DEATH ROW SINCE 06-16-03
DOB: 02-07-1968 DOC#: 872038 Black Male

Lake County Superior Court Judge James E. Letsinger



Trial Cause #: 2CR-133-886-531

Prosecutor: Thomas W. Vanes, Kathleen Burns

Defense: Robert L. Lewis, Noah L. Holcomb

Inmate Website: <http://home4.inet.tele.dk/lepan/lene/indiana/gmrinfo.htm>
<http://ccadp.org/gregoryrouster.htm>

Date of Murder: August 12, 1986

Victim(s): John Rease B / M / 74; Henrietta Rease B / F / 59 (Ex-Foster Parents of Rouser)

Method of Murder: shooting with .32 and .22 handgun

Summary: John and Henrietta Rease were elderly foster parents, regularly taking into their home children who were often incorrigible and unwanted. One such child was Gregory Rouser, who was placed in the Rease home by the Welfare Dept. in November 1985 and stayed through February 1986. The Rease's operated a small candy store out of the first floor of their home in Gary. On August 12, 1986 both were shot to death in their home. John Rease was shot once in the shoulder area with a .32 handgun. Henrietta Rease was shot once in the abdomen with the same .32 handgun and twice in the head at close range with a .22 handgun. Ammunition and casings were found on the floor. Numerous witnesses placed Rouser and his companion, Darnell Williams, going into the home with guns on the day of the murder. A foster child of the Rease's, 17 year old Derrick Bryant, testified that he was hiding in the house as Rouser and Williams entered, heard Rouser arguing with Henrietta over money they owed him, heard Henrietta say "Greg, why are you doing this?," then heard two more shots as he ran out the back door. Bryant also testified that he heard the voice of Rouser or Williams say, "'it's your turn to kill them.'" Other witnesses testified that Rouser was outside when the last shots were fired. Rouser had bumped into his Welfare caseworker at the drugstore earlier the same day and asked if the Rease's received a clothing allowance for him while he was in foster care. When he was told that they had received \$5-6 per month, Rouser declared that they owed him money and he was going to get it. Williams was later found in possession of the same .30 caliber ammunition found at the scene, as well as cash and a wristwatch that Bryant identified as the watch he had given to Henrietta as a gift. Rouser was arrested wearing a shirt/vest with blood drops matching both victims. Accomplice Edwin Garland Taylor pled guilty to Robbery (C Felony) and testified for the prosecution.

Trial: Information/PC for Murder filed (08-14-86); Amended Information for DP filed (09-16-86); Voir Dire (02-09-87, 02-10-87); Jury Trial (02-11-87, 02-12-87, 02-13-87, 02-14-87, 02-16-87); Verdict (02-17-87); DP Trial (02-17-87, 02-18-87); Deliberations (02-18-87, 02-19-87); Verdict (02-19-87); Court Sentencing (03-20-87).

Conviction: Felony-Murder (John Rease), Felony-Murder (Henrietta Rease).
(Rouser was tried jointly with Darnell Williams, and Teresa Newsome (Rouser's girlfriend and Williams' sister). Newsome was found not guilty.)

Sentencing: March 20, 1987 Death Sentence (Rouser); Death Sentence (Williams)

Aggravating Circumstances: b (1) Robbery
b (8) 2 murders

Mitigating Circumstances: 18 years old at the time of the murder
a ward of the State at birth
no family support
mildly mentally ill, emotionally disturbed
speech defect and stuttered
excessive drug and alcohol intake

Joint Trial and Direct Appeal with Darnell Williams

Direct Appeal: Rouster v. State, 600 N.E.2d 1342 (Ind. October 16, 1992) (45S00-8710-CR-914)
Conviction Affirmed 5-0 DP Affirmed 4-1
Shepard Opinion; Givan, Dickson, Krahulik concur; Debruler dissents.
For Defendant: Scott L. King, Daniel L. Bella, Nathaniel Ruff, Crown Point Public Defenders
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

PCR: PCR Petition filed 08-27-93. Amended PCR filed 04-28-95, 06-05-95.
State's Answer to PCR Petition filed.
PCR Hearing 06-12-95, 06-26-95, 06-27-95, 06-28-95, 06-29-95, 06-30-95.
Special Judge Richard J. Conroy
For Defendant: Alan M. Freedman, Carol R. Heise, Midwest Center for Justice, Chicago, IL
For State: Kathleen Sullivan, Natalie Bokota
02-28-96 PCR Petition denied.

Rouster v. State, 705 N.E.2d 999 (Ind. February 19, 1999) (45S00-9304-PD-408)
(Appeal of PCR denial by Special Judge Richard J. Conroy)
Affirmed 5-0; Shepard Opinion; Dickson, Sullivan, Selby, Boehm concur.
For Defendant: James N. Thiros, Merrillville, Alan M. Freedman, Carol R. Heise, Chicago, IL
For State: Arthur Thaddeus Perry, Deputy Attorney General (Modisett)

Rouster v. State, 718 N.E.2d 737 (Ind. September 28, 1999)
(Petition for Rehearing denied, execution date set for November 17, 1999)

Successive PCR Petition filed 02-20-03. Amended PCR filed 04-28-95, 06-05-95.
State's Answer to PCR Petition filed.
PCR Hearing 05-20-03, 05-21-03, 05-22-03.
Special Judge T. Edward Page
For Defendant: Alan M. Freedman, Carol R. Heise, Midwest Center for Justice, Chicago, IL
For State: Rhonda Long-Sharp, Alan M. Freedman, Carol R. Heise, Chicago, IL
06-16-03 PCR Petition granted on grounds that Rouster is mentally retarded.
12-03-03 State's Appeal Dismissed.

Habeas: 10-21-99 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
02-04-00 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Gamba M. Rastafari a/k/a Gregory Rouster v. Ron Anderson, Superintendent (3:99-CV-608-AS)
Judge Allen Sharp
For Defendant: Alan M. Freedman, Carol R. Heise, Midwest Center for Justice, Chicago, IL
For State: Arthur Thaddeus Perry, Deputy Attorney General (Freeman-Wilson)

06-09-00 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
08-08-00 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.

08-11-00 Oral Arguments
10-24-00 Writ of Habeas Corpus denied.
11-29-00 Certificate of Appealability granted.

Rastafari v. Anderson, 117 F.Supp2d 788 (N.D. Ind. October 24, 2000) (3:99-CV-608-AS)
(Order of United States District Court, Judge Allen Sharp, denying Habeas Writ)

Rastafari v. Anderson, 278 F.3d 673 (7th Cir. January 22, 2002) (00-4063)
(Appeal of denial of Habeas Writ; Affirmed 3-0)
Opinion by Judge Michael S. Kanne, Judge Frank H. Easterbrook and Judge William J. Bauer.
For Defendant: Alan M. Freedman, Carol R. Heise, Midwest Center for Justice, Chicago, IL
For State: Arthur Thaddeus Perry, Deputy Attorney General (S. Carter)
Rastafari v. Indiana, 123 S.Ct. 294 (October 7, 2002) (Cert. denied)

On Remand: 03-11-05 Rouster was resentenced by Lake County Superior Court Judge Clarence D. Murray to 60 years imprisonment.

SAYLOR, BENNY LEE # 79

OFF DEATH ROW SINCE 05-21-04
DOB: 11-14-1967 DOC#: 894793 White Male

Madison County Superior Court Judge Thomas Newman, Jr.

Trial Cause #: 48D03-9206-CF-185

Prosecutor: William F. Lawler, Jr.

Defense: Jeffrey A. Lockwood, Mitchell P. Chabraja

Date of Murder: June 18, 1992

Victim(s): Judy VanDuyn W / F / 41 (No relationship to Saylor)

Method of Murder: stabbing with knife 45 times



Summary: On an evening of a severe rainstorm, Judy VanDuyn went to the laundromat at 8th Street in Anderson. While taking clothes to her car, she was confronted by Saylor. Saylor forced her into her van at knifepoint, directing her to drive to a remote area of the county. A few hours later, a farmer went outside to check his livestock after the storm had subsided, and came upon a van which was parked in a muddy field. He approached the van and saw a female driving, and a man in the passenger seat. He later identified this man in a lineup as Saylor. He asked if they needed help and both said no. After checking his grounds, the farmer returned to the van. He could not see inside, and assumed that the couple had been "parking" and had abandoned the van when it was stuck in the mud. He returned inside his home. A neighbor would later come across the van, thinking there had been an accident. Upon looking inside, he discovered the body of Judy VanDuyn, cut or stabbed approximately 45 times in the chest and abdomen. Footprints inside the van, and away from the van in the muddy field, were discovered with a "Jordache" imprint. The husband of Judy VanDuyn went looking for his wife, and at the laundromat, he made note of an automobile parked nearby and wrote down the make and license number. This car was later found to be registered to Saylor. When questioned, Saylor was found to have scratches over his body and dried blood on his head. A search warrant recovered a pair of soaking wet Jordache tennis shoes from his home. At trial, a fellow inmate at the jail testified that Saylor had admitted the murder. Saylor had been released from IDOC in 1991 on Probation for 4 years following his 1989 conviction for Burglary in Madison County. A Petition to Revoke was pending.

Trial: Information filed/PC Hearing for Murder and DP (06-23-92); Voir Dire (01-05-93, 01-06-93, 01-07-93); Jury Trial (01-10-93, 01-11-93, 01-12-93, 01-13-93, 01-14-93, 01-17-93, 01-18-93); Verdict (01-18-93); DP Trial (01-19-93, 01-20-93, 01-21-93); Verdict (01-21-93); Court Sentencing (02-17-93, 02-23-93).

Conviction: Murder, Felony-Murder, Robbery (B Felony), Confinement (B Felony)

Sentencing: February 17, 1994 (Death Sentence)
February 23, 1994 (20 years for Robbery and 20 years for Confinement, consecutive)

Aggravating Circumstances: b (1) Robbery; b (9) On Probation

Mitigating Circumstances: functioned well in correctional system
he was a good employee
non-nurturing background and upbringing
worked to add veteran's name to memorial
intoxication at the time of the murder

Judge Overrides Jury Recommendation Against Death Sentence.

Inmate Website: <http://www.ccadp.org/bennysaylor.htm>

Direct Appeal: Saylor v. State, 686 N.E.2d 80 (Ind. September 19, 1997) (48S00-9301-DP-6)
Conviction Affirmed 5-0 DP Affirmed 5-0
Boehm Opinion; Shepard, Dickson, Sullivan, Selby concur.
For Defendant: Jeffrey A. Lockwood, Mitchell P. Chabraja, Anderson
For State: Arthur Thaddeus Perry, Deputy Attorney General (Modisett)
Saylor v. Indiana, 119 S.Ct. 847 (1998) (Cert. denied)

PCR: 01-02-98 Notice of Intent to File PCR Petition.
07-01-98 PCR Petition filed.
State's Answer to PCR Petition filed 08-05-98
PCR Hearing 04-12-99, -04-13-99, 04-14-99, 04-15-99, 04-16-99.
Special Judge Fredrick Spencer
For Defendant: Thomas C. Hinesley, Emily Mills Hawk, Deputy Public Defenders (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (Freeman-Wilson)
06-18-99 PCR Petition denied.

Saylor v. State, 765 N.E.2d 535 (Ind. March 20, 2002) (48S00-9712-PD-647)
(Appeal of PCR denial by Special Judge Fredrick Spencer)
Conviction Affirmed 5-0 DP Affirmed 4-1
Rucker Opinion; Shepard, Dickson, Boehm concur.
Sullivan dissents as to death sentence based upon Apprendi.
For Defendant: Thomas C. Hinesley, Emily Mills Hawk, Deputy Public Defenders (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (Freeman-Wilson)

Saylor v. State, 808 N.E.2d 646 (Ind. May 21, 2004) (48S00-9712-PD-647) (On Rehearing)
Judgment denying PCR reversed 4-1.
Opinion by Boehm; Dickson, Sullivan, Rucker concur; Shepard Dissents.
(Judge override of jury recommendation against DP. 2002 amendments to IC 35-50-2-9 require Judge to sentence in accordance with jury verdict. It is "inappropriate" for Saylor to be executed today.)
Remanded with instructions to impose sentence of 60 years for Murder, 20 years for Robbery (B Felony), and 20 years for Confinement (B Felony), consecutive, for a total sentence of 100 years.
For Defendant: Thomas C. Hinesley, Emily Mills Hawk, Deputy Public Defenders (Carpenter)
For State: Arthur Thaddeus Perry, Stephen R. Creason, Deputy Attorneys General (Freeman-Wilson)

SCHIRO, THOMAS N. # 12

OFF DEATH ROW SINCE 08-07-96

DOB: 12-22-1960 DOC#: 13147 White Male

Brown County Circuit Court Judge Samuel R. Rosen
Venued from Vanderburgh County**Trial Cause #:** 81-CR-243 (Brown County)**Prosecutor:** Jerry A. Atkinson**Defense:** Michael C. Keating**Date of Murder:** February 5, 1981**Victim(s):** Laura Luebbehusen W / F / 28 (Schiro worked in neighborhood)**Method of Murder:** manual strangulation

Summary: Schiro was an inmate at a halfway house in Evansville for those about to be released from prison. Schiro was serving a 3 year suspended sentence for Robbery (C Felony). Schiro went to the home of Laura Luebbehusen and gained entrance on the pretext that he had car trouble and needed to use the telephone. Once inside Schiro used the bathroom with permission, exposed himself, and assured her that she need not fear because he was "gay." During the conversation, Luebbehusen revealed that she had been sexually abused as a child and was a lesbian. Over the next few hours, Luebbehusen would be raped repeatedly. Schiro then took her to get more liquor and upon return raped her a third time, then passed out. When Schiro awoke, he found Luebbehusen headed out the door. He dragged her to the bedroom. When he thought she was asleep, he beat her with a vodka bottle, then an iron, then strangled her to death. He then dragged her body into another room, sexually assaulted the corpse, straightened up the house, and left. Her car was found abandoned near the Halfway House two days later. Schiro received the assistance of Halfway House employees in falsifying documents showing his whereabouts, but later confessed to a counselor, and to his girlfriend. An insanity defense was presented at trial. No less than 5 experts testified at trial, none of which gave an opinion that Schiro was insane at the time of the crime. The jury returned a verdict against a Death Sentence after less than 1 hour deliberations. Judge Samuel L. Rosen sentenced Schiro to death anyway, noting that Schiro had constantly rocked back and forth throughout the trial, but only in front of the jury.

Trial: Information/PC for Murder filed (02-10-81); Amended Information for DP filed (04-09-81); Venued to Brown County (04-21-81); Voir Dire (09-02-81, 09-03-81); Jury Trial 09-03-81, 09-04-81, 09-08-81, 09-09-81, 09-10-81, 09-11-81, 09-12-81); Deliberations 5 hours; Verdict (09-12-81); DP Trial (09-15-81); Deliberations 1 hour, 1 minute; Verdict (09-15-81); Court Sentencing (10-02-81).

Conviction: Felony-Murder; Murder verdict left blank by jury
Jury Recommendation against Death Sentence

Sentencing: October 2, 1981 (Death Sentence)

Aggravating Circumstances: b (1) Rape

Mitigating Circumstances: 20 years old at the time of the murder
sick, rejected, tormented
victim of forces beyond his control

Judge Overrides Jury Recommendation against a Death Sentence

Also Serving Time For: Battery, sentenced to 5 years imprisonment on 03-25-83. (Knox)

Direct Appeal: Schiro v. State, 451 N.E.2d 1047 (Ind. August 5, 1983) (1181-S-329)
Conviction Affirmed 5-0 DP Affirmed 3-2
Pivarnik Opinion; Givan, Hunter concur; Debruler, Prentice dissent.
For Defendant: Michael C. Keating, John D. Clouse, Laurie A. Baiden, Evansville
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Schiro v. Indiana, 104 S.Ct. 510 (1983) (Cert. denied)

PCR: PCR Petition filed 10-18-82. Amended PCR filed 05-10-84.
State's Answer to PCR Petition filed 10-31-83, 05-14-84.
11-22-83 State's Motion to Dismiss granted while appeal pending.
PCR Hearing 05-17-84.
Special Judge James M. Dixon
For Defendant: Frances Watson Hardy, Angela D. Chapman, Deputy Public Defender (Carpenter)
For State: Robert J. Pigman, Jerry A. Atkinson
05-29-84 PCR Petition denied.

Schiro v. State, 479 N.E.2d 556 (Ind. June 28, 1985) (1084-S-423)
(Appeal of PCR denial by Special Judge James M. Dixon)
Affirmed 3-1; Givan Opinion; Prentice, Pivarnik concur; Debruler dissents; Hunter did not participate.
For Defendant: Frances Watson Hardy, Deputy Public Defender (Carpenter)
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Schiro v. Indiana, 106 S.Ct. 1247 (1986) (Cert. denied)

Schiro v. State, 533 N.E.2d 1201 (Ind. February 8, 1989) (07S00-8807-PC-656)
(Appeal of 2nd PCR denial by Special Judge John Baker)
Affirmed 3-2; Pivarnik Opinion; Shepard, Givan concur; Debruler, Dickson dissent.
For Defendant: Alex R. Voils, Jr., Indianapolis
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Schiro v. Indiana, 110 S.Ct. 268 (1989) (Cert. denied) (Marshall, Brennan, Stevens dissent)

Schiro v. State, 669 N.E.2d 1357 (Ind. August 7, 1996) (07S00-9403-SD-273)
(Appeal of 3d PCR denial by Judge Heather M. Mollo)
DP REVERSED 4-1; Debruler Opinion; Dickson, Sullivan, Selby concur; Shepard dissents.
Death Sentence vacated and remanded to impose 60 year term of imprisonment.
For Defendant: Monica Foster, Rhonda Long-Sharp, Indianapolis
For State: Dana Childress-Jones, Deputy Attorney General (P. Carter)

Habeas: Schiro v. Clark, 754 F.Supp. 646 (N.D.Ind. December 26, 1990) (S83-588)
(Habeas Writ denied by Judge Allen Sharp, U.S. District Court, Northern District of Indiana)
For Defendant: Alex R. Voils, Jr., Indianapolis
For State: David A. Arthur, Deputy Attorney General (Pearson)

Schiro v. Clark, 963 F.2d 962 (7th Cir. May 8, 1992) (91-1509)
Affirmed 3-0; Circuit Judges Frank H. Easterbrook, Harlington Wood, Jr., Judge Walter Cummings.
For Defendant: Richard D. Gilroy, Alex R. Voils, Jr., Indianapolis
For State: David A. Arthur, Deputy Attorney General (Pearson)

Schiro v. Farley, 114 S.Ct. 783 (January 19, 1994) (92-7549)
(Affirmed 7-2; O'Connor Opinion, joined by Rehnquist, Scalia, Kennedy, Souter, Thomas; Blackmun, Stevens dissent.)
First U.S. Supreme Court Opinion of a post-Furman Indiana death penalty case.
For Defendant: Monica Foster, Indianapolis
For State: Arend J. Abel, Deputy Attorney General (P. Carter)
Schiro v. Farley, 114 S.Ct. 1341 (1994) (Rehearing denied)

On Remand: Scheduled to be released on parole in 2007, Schiro was charged in Vanderburgh County with two counts of Rape (Class A Felony) and Criminal Deviate Conduct (Class A Felony), based upon sexual assaults committed in 1980. Jury Trial was venued to Clark County. Following a guilty verdict on one count of Rape and one count of Criminal Deviate Conduct, Schiro was sentenced by Judge Carl A. Heldt to 40 years imprisonment in September 2006.

Schiro v. State, 888 N.E.2d 828 (Ind. App. June 19, 2008) (10A01-0701-CR-21)
(Direct Appeal of Rape/CDC convictions and 40 year sentence - Affirmed)

SMITH, CHARLES # 23

OFF DEATH ROW SINCE 12-13-89
DOB: 10-10-1953 DOC#: 10440 Black Male

Allen County Superior Court Judge Alfred W. Moellering

Trial Cause #: CR-83-86

Prosecutor: Gregory L. Fumarolo, James P. Posey

Defense: Theodore D. Wilson

Date of Murder: December 10, 1982

Victim(s): Carmine Zink W / F / 20 (No relationship to Smith)

Method of Murder: shooting with .32 handgun

Summary: Smith allegedly left in a car one night accompanied by Phillip Lee and Briddie Johnson. They stopped to let Smith pick up a .32 handgun and agreed to stake out a local restaurant for likely robbery victims. They went to The Elegant Farmer in Ft. Wayne, parked the car in the lot, and waited. Brenda Chandler and Carmine Zink arrived to attend a Christmas party at the restaurant. Smith and Johnson left the car and with stockings over their heads confronted Chandler and Zink, intent on taking their purses. Smith seized Zink, put her in a headlock, and put the .32 handgun to her head. Johnson was struggling with Chandler, who heard a single gunshot. Smith and Johnson fled. Zink lay on the ground dead as a result of a single gunshot to the head. Lee testified at trial under an agreement with the State and confirmed the above scenario. (Alibi defense presented)

Trial: Information/PC for Murder filed (02-05-83); Amended Information for DP filed (02-22-83); Amended Information for Habitual filed (09-19-83); Voir Dire (09-19-83); Jury Trial (09-19-83, 09-20-83, 09-21-83); Deliberations 3 hours, 15 minutes; Verdict (09-21-83); DP Trial (09-22-83); Deliberations 1 hour, 10 minutes; Verdict (09-22-83); Habitual Offender Sentencing Hearing (09-22-83); Deliberations 15 minutes; Verdict (09-22-83); Court Sentencing (10-18-83).

Conviction: Murder, Felony-Murder, Habitual Offender (trifurcated trial)

Sentencing: October 18, 1983 (Death Sentence)

Aggravating Circumstances: b (1) Robbery

Mitigating Circumstances: None



Direct Appeal: Smith v. State, 475 N.E.2d 1139 (Ind. March 25, 1985) (584-S-195)
Conviction Affirmed 5-0 DP Affirmed 4-1
Givan Opinion; Hunter, Pivarnik, Prentice concur; Debruler dissents.
For Defendant: Barrie C. Tremper, Fort Wayne
For State: Theodore E. Hansen, Deputy Attorney General (Pearson)

PCR: PCR Petition filed 07-02-85. Amended PCR filed 02-27-86, 03-06-86.
State's Answer to PCR Petition filed 07-29-85.
PCR Hearing 03-18-86, 03-19-86, 03-21-86.
Allen County Superior Court Judge Alfred W. Moellering
For Defendant: Teresa D. Harper, Linda R. Torrent, Deputy Public Defenders (Carpenter)
For State: Gregory L. Fumarolo, James P. Posey
07-31-87PCR Petition denied.

Smith v. State, 547 N.E.2d 817 (Ind. December 13, 1989) (02S00-8805-PC-489)
(Appeal of PCR denial by Allen County Superior Court Judge Alfred W. Moellering)
Conviction Reversed 5-0 DP Vacated 5-0
Givan Opinion; Shepard, Debruler, Pivarnik, Dickson concur.
(Ineffective trial counsel in failing to investigate and pursue alibi defense, failing to pursue impeachment of key witness, failure to object to polygraph reference, and failure to investigate and present any mitigation.)
For Defendant: Teresa D. Harper, Rhonda Long-Sharp, Linda R. Torrent, Deputy Pubic Defenders
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

Smith v. State, 547 N.E.2d 822 (Ind. December 13, 1989) (On Rehearing; Habitual Offender finding reversed on sufficiency grounds due to no proof of proper sequence, Givan Opinion 5-0)

On Remand: Amended Information to Add Robbery (A Felony) (05-24-90); Application for Death Sentence Withdrawn (05-24-90); Jury Selection in Marion County (04-29-91, 04-30-91); Jury Trial in Allen County (5-01-91, 05-02-91, 05-03-91, 05-04-91, 05-06-91, 05-07-91, 05-08-91, 05-09-91); Deliberations 8 hours, 50 minutes; Verdict (05-09-91).

On remand, the State withdrew its Application for Death Sentence, and added a count of Robbery (Class A Felony). A jury was selected in Marion County for retrial in Allen County. After 8 days of trial and 9 hours of deliberations, the jury found Charles Smith NOT GUILTY of all charges (Murder, Felony-Murder, Robbery).
Allen County Superior Court, Judge John F. Surbeck, Jr.
For Defendant: Richard Kammen
For State: Stephen M. Sims

SMITH, ROBERT ALLAN # 86

EXECUTED BY LETHAL INJECTION 01-29-98 AT 12:27 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 03-03-1950 DOC#: 30636 White Male

Sullivan County Circuit Court Judge P. J. Pierson
Trial Cause #: 77CO1-9507-CF-0030

Prosecutor: Robert E. Springer

Defense: William G. Smock, Joseph K. Etling



Date of Murder: June 30, 1995

Victim(s): Michael Wedmore W / M / 33 (Fellow DOC inmate)

Method of Murder: stabbing with homemade knife 37 times

Summary: Smith, serving a 38 year sentence for Battery, was an inmate at the Indiana DOC, Wabash Correctional Institution in Sullivan County. Along with inmate Lunsford, Smith stabbed inmate Michael Wedmore 37 times with a sharpened putty knife. The attack was witnessed by correctional officers. Both Smith and Lunsford surrendered immediately, turning over the murder weapons. Smith proceeded pro-se, pled guilty, and agreed to a Death Sentence. The Court nevertheless appointed standby counsel who raised competency as an issue. At the guilty plea hearing, Smith stated, "I'm telling the court that the next person I go at won't be a baby killer, it will be a state employee and I will butcher him." (Wedmore was serving a 60 year sentence for the murder of his girlfriend's 2 year old child in Hamilton County) Smith continued pro-se on appeal, continuing to assert a desire to be executed. The Indiana Supreme Court appointed standby counsel as Amicus.

Trial: Information filed/PC Hearing for Murder (06-31-95); Amended Information for DP filed (07-28-95); Motion for speedy Trial (11-07-95); Plea Hearing (03-06-95); Competency Hearing (05-15-95); Defendant Demand to Proceed Pro Se (05-20-96, 06-04-96, 06-26-96); Plea Agreement filed (06-26-96); Defense Attorneys file Motion to Reject Plea (07-12-96); Plea Accepted/Sentencing (07-12-96).

Conviction: Pled guilty to Murder by a Plea Agreement requiring Death Sentence

Sentencing: July 12, 1996 (Death Sentence)

Aggravating Circumstances: b (9) In Custody of DOC

Mitigating Circumstances: None

Guilty Plea

Also Serving Time For: Battery, sentenced to 38 years imprisonment on 10-13-89. (Madison County)
Robbery, sentenced to 20 years imprisonment on 04-09-84. (Elkhart County)

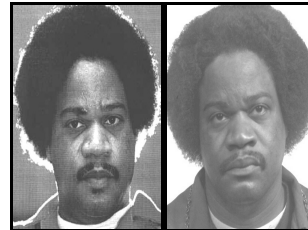
Direct Appeal: Smith v. State, 686 N.E.2d 1264 (Ind. October 23, 1997) (77S00-9508-DP-950)
Conviction Affirmed 5-0 DP Affirmed 5-0
Shepard Opinion; Dickson, Sullivan, Selby, Boehm concur.
For Defendant: William G. Smock, Joseph K. Etling, Terre Haute, Amicus Curiae
For State: Arthur Thaddeus Perry, Deputy Attorney General (Modisett)

SMITH PLED GUILTY, WAIVED ALL APPEALS, AND WAS EXECUTED BY LETHAL INJECTION ON 01-29-98 AT 12:27 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 77TH CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900 AND THE 7TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

SMITH, TOMMIE JOE # 10

EXECUTED BY LETHAL INJECTION 07-18-96 1:23 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 02-06-1954 DOC#: 4330 Black Male



Marion County Superior Court Judge Jeffrey V. Boles
(Originally venued to Hendricks County; by agreement, returned
to Marion, with Hendricks Circuit Judge Jeffrey V. Boles presiding)

Trail Cause #: CR-80-442A

Prosecutor: J. Gregory Garrison, David E. Cook (Stephen Goldsmith)

Defense: Richard R. Plath

Date of Murder: December 11, 1980

Victim(s): Jack Ohrberg W / M / 44 (Indianapolis Police Officer - No relationship to Smith)

Method of Murder: shooting with AR-15 rifle

Summary: On December 11, 1980 at 5:30 a.m., Indianapolis Police Sergeant Jack Ohrberg and other officers went to 3544 North Oxford in Indianapolis attempting to serve papers on persons believed to be at that location. Ohrberg banged on the door several times and identified himself as a police officer. Two other officers on the front porch were in uniform. After the next door neighbor told officers that there was noise from inside the apartment, Ohrberg crouched and pounded with his shoulder on the door, which began to open. Officers saw furniture blocking the door, and saw 2 or 3 muzzle flashes from two different locations inside. Ohrberg was shot and collapsed on the porch. Officers took cover and saw a man come out onto the porch, point a rifle, and fire at least 2 additional shots into Ohrberg. Officers took cover and returned fire. Shots continued to come from inside the house. After a few minutes, Gregory Resnover came out, threw down an AR-15 rifle and surrendered. Earl Resnover followed, laying down an AR-15 and a pistol. Ohrberg's business card was found in Earl's wallet. Two women then came out, leaving wounded Smith inside. An AR-15 which was recovered next to Smith was found to be the murder weapon. An arsenal of weapons and ammunition was recovered inside the apartment.

Tommie Smith, Gregory Resnover, and Earl Resnover were also convicted of the 1980 murder and robbery of Brink's guard William Sieg in Marion County, and were sentenced to consecutive terms of 60 years and 20 years imprisonment on 10-22-81. (See Smith v. State, 474 N.E.2d 973 (1985) (CR80-473A))

Trial: Information/PC for Murder and Death Penalty Filed (12-11-80); Death Sentence Request Filed (12-11-80); Jury Trial (06-23-81, 06-24-81, 06-25-81, 06-26-81, 06-29-81); Verdict (06-29-81); DP Trial (06-30-81); DP Verdict (06-30-81); Court Sentencing (07-23-81).

Conviction: Murder, Conspiracy to Commit Murder (Class A Felony)

Sentencing: July 23, 1981 (Death Sentence, 50 years imprisonment)

Aggravating Circumstances: b (6) Victim was law enforcement officer

Mitigating Circumstances: None

Victim Webpage: <http://www.indy.gov/eGov/City/DPS/IMP/About/Memoriam/Pages/johrberg.aspx>
<http://www.odmp.org/officer/10144-detective-sergeant-jack-r-ohrberg>

Direct Appeal: Smith v. State, 465 N.E.2d 1105 (Ind. July 24, 1984) (182-S-19)
Conviction Affirmed 5-0 DP Affirmed 5-0
Pivarnik Opinion; Hunter, Debruler, Givan, Prentice concur.
For Defendant: Stephen P. Wolfe, Marion
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Smith v. Indiana, 116 S.Ct. 2581 (1996) (Cert. denied)

PCR: Smith v. State, 516 N.E.2d 1055 (Ind. December 16, 1987) (49S00-8610-PC918)
(Appeal of PCR denial by Judge Patricia J. Gifford)
Conviction and Sentence Affirmed 5-0
Pivarnik Opinion; Shepard, Debruler, Givan, Dickson concur.
For Defendant: F. Thomas Schornhorst, Bloomington, Deputy Public Defender
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

Smith v. State, 613 N.E.2d 412 (Ind. May 12, 1993) (49S00-9008-PD-538)
(Appeal of 2nd PCR summary dismissal by Judge Patricia J. Gifford)
Conviction Affirmed 5-0 DP Affirmed 5-0
Krahulik Opinion; Shepard, Givan, Dickson, Debruler concur.
For Defendant: Judith G. Menadue, Elkhart, Public Defender
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Smith v. Indiana, 114 S.Ct. 1634 (1994) (Cert. denied)

Habeas: 11-25-88 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Tommie J. Smith v. Robert A. Farley, Superintendent (3:88-CV-00685-AS)
Judge Allen Sharp
For Defendant: Michael P. Rehak, South Bend, F. Thomas Schornhorst, Bloomington
For State: David A. Arthur, Deputy Attorney General (P. Carter)

02-21-89 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
06-28-94 Amended Petition for Writ of Habeas Corpus filed.
10-14-94 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
10-31-94 Writ of Habeas Corpus denied.
11-30-94 Certificate of Probable Cause to Appeal granted.

Smith v. Farley, 873 F.Supp. 1199 (N.D.Ind. October 31, 1994) (88-CV-685)
(Habeas Writ denied by Judge Allen Sharp, U.S. District Court, Northern District of Indiana)

Smith v. Farley, 59 F.3d 659 (7th Cir. July 5, 1995) (94-3818)
(Appeal of Denial of Habeas Writ)
Affirmed 3-0; Judge Richard A. Posner, Judge William J. Bauer, Judge Joel M. Flaum.
For Defendant: Michael P. Rehak, South Bend, F. Thomas Schornhorst, Bloomington
For State: Arend J. Abel, Deputy Attorney General (P. Carter)
Smith v. Indiana, 116 S.Ct. 935 (1995) (Cert. denied)

Smith v. Parke, 116 S.Ct. 2518 (1996) (Stay of execution granted until disposition of Writ of Certiorari)
Smith v. Parke, 116 S.Ct. 2581 (1996) (Petition for Writ of Certiorari dismissed; Habeas Corpus denied)
Smith v. Indiana, 117 S.Ct. 1 (1996) (Application for stay denied)

Smith v. Farley, 949 F.Supp. 680 (N.D.Ind. 1996) (Approval of \$32,316.91 claim at \$125 per hour for attorneys fees in habeas action to Professor F. Thomas Schornhorst of Indiana University School of Law.)

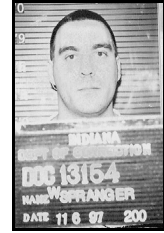
SMITH WAS EXECUTED BY LETHAL INJECTION ON 07-19-96 AT 1:23 AM EST AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 74TH CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900, AND THE 4TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977. HE WAS THE FIRST CONVICTED MURDERER EXECUTED IN INDIANA BY LETHAL INJECTION.

SPRANGER, WILLIAM J. # 24

OFF DEATH ROW SINCE 12-14-93

DOB: 09-26-1964 DOC#: 13154 White Male

Wayne County Circuit Court Judge Wayne C. Puckett
Venued from Noble County



Trial Cause #: SCR-83-23 (Noble County), C-83-1189-CR (Wayne County)

Prosecutor: G. David Laur

Defense: Terrance W. Richmond, Robert C. Way

Date of Murder: May 28, 1983

Victim(s): William Miner W/M/31 (Aliva Town Marshall - No relationship to Spranger)

Method of Murder: shooting with handgun

Summary: Avila Town Marshall, William Miner, was called by a resident who reported that two men, later identified as Spranger and Allen Snyder, were vandalizing a car. Miner responded to the scene and arrested both men. A struggle ensued between Snyder and Miner, and Miner's service revolver was knocked away into the highway. Spranger crossed the highway, retrieved the gun, and shot Miner in the back from some distance away. Following his arrest, Spranger made several admissions to shooting the officer, and led police to a lake where the gun was recovered. Snyder was allowed to plead guilty to involuntary manslaughter, received a prison term, and testified at trial. Spranger claimed at trial that Snyder killed the officer.

Trial: Information/PC for Murder filed (05-31-83); Snyder Guilty Plea (09-29-83); Snyder Sentencing (12-08-83); Voir Dire/ Jury Trial (11-01-83, 11-02-83, 11-03-83, 11-04-83, 11-05-83, 11-08-83); Verdict (11-08-83); DP Trial (11-09-83, 11-10-83); Verdict (11-10-83); Court Sentencing (12-08-83).

Conviction: Murder

Sentencing: December 8, 1983 (Death Sentence)

Aggravating Circumstances: b (6) Victim was law enforcement officer

Mitigating Circumstances: no advance plan or scheme to murder
18 years old at the time of the murder
capable of rehabilitation
poor social controls
impulsive and extremely susceptible to influence of others
no prior criminal record
intoxication and stress on day of murder
accomplice received a disproportionate easy plea
cooperation with law enforcement

Direct Appeal: Spranger v. State, 498 N.E.2d 931 (Ind. October 15, 1986) (684-S-216)

Conviction Affirmed 5-0 DP Affirmed 4-1

Dickson Opinion; Givan, Pivarnik, Shepard concur; Debruler dissents.

For Defendant: Terrance W. Richmond, Milan

For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

Spranger v. State, 500 N.E.2d 1170 (Ind. December 3, 1986) (Rehearing Denied 4-1)

Dickson Opinion; Givan, Pivarnik, Shepard concur; Debruler dissents.

Spranger v. Indiana, 107 S.Ct. 1965 (1987) (Cert. denied)

PCR: PCR Petition filed 10-07-87. Amended PCR Petition filed 04-01-91.
State's Answer to PCR Petition filed 10-26-87, 02-26-90.
PCR Hearing 09-20-93, 09-21-93, 09-22-93, 09-23-93.
Special Judge Douglas H. Van Middlesworth
For Defendant: Joseph M. Cleary, J. Jeffreys Merryman, Deputy Public Defenders (Carpenter)
For State: G. David Laur
12-14-93 PCR Petition granted as to death sentence, denied as to conviction.

Spranger v. State, 650 N.E.2d 1117 (Ind. May 22, 1995) (89S00-9008-PD-540)
(Appeal by State of the granting of PCR as to death penalty)
(Appeal by Spranger of the denial of PCR as to convictions)
Conviction Affirmed 5-0 DP Vacated 5-0
Dickson Opinion; Shepard, Debruler, Sullivan, Selby concur.
For Defendant: Terrance W. Richmond, Milan
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

On Remand: 06-30-97 Joint Motion to Waive Jury Sentencing
11-03-07, 11-04-97 Sentencing Hearing held without jury
11-06-97 Spranger sentenced to 60 years imprisonment.
Special Judge Douglas H. Van Middlesworth
For Defendant: Jodie English, Terry Lockwood
For State: G. David Laur, Robert L. Collins, Deputy Attorney General

STEPHENSON, JOHN MATTHEW # 88

ON DEATH ROW SINCE 06-17-97
DOB: 07-31-63 DOC#: White Male

Warrick County Superior Court
Judge Edward A. Campbell

Trial Cause #: 87DO1-9604-CF-23
Prosecutor: Todd A. Corne, Keith A. Meyer
Defense: S. Anthony Long, Dennis A. Vowels

Date of Murder: March 28, 1996

Victim(s): Brandy Southard W / F / 21; John Jay Tyler W / M / 29;
Kathy Tyler W / F / 29 (No relationship to Stephenson)

Method of Murder: shooting with SKS Assault rifle

Summary: Jay and Kathy Tyler picked up Brandy Southard from her work in Evansville and were chased by Stephenson to an intersection in rural Warrick County, where he emptied a 30 round SKS Assault Rifle into the pickup truck and their bodies. Each were then stabbed repeatedly. Stephenson was also convicted of an earlier Burglary and Theft from Southard's residence.

(Believed to be the longest and most expensive trial in Indiana history. Jury selection began on September 23, 1996; Opening Statements began on December 30; Found Guilty on May 8; Jury recommended death on May 20; 140 total trial days. The defense was allowed 2 attorneys, 2 investigators, a paralegal, a professional photographer, a civil engineer, a forensic scientist, a jury



consultant, a neuropsychologist, and a mitigation expert. Sister Helen Prejean was flown in to testify at the sentencing hearing. Claims paid for two attorneys fees were \$334,156, paralegal fees were \$57,788, expert fees were \$79,193, investigator fees were \$74,493, miscellaneous expenses were over \$10,000) (The Record on appeal totaled 132 volumes, 33,000 pages.)

Trial: Information/PC for Murder filed (04-02-96); Amended Information for DP filed (05-10-96); Defendant Motion for Speedy Trial (05-15-96); Amended Information filed (05-28-96, 06-11-96, 07-18-96); Voir Dire (09-23-96, 09-24-96, 09-25-96, 09-26-96, 09-27-96, 09-30-96, 10-01-96, 10-02-96, 10-03-96, 10-04-96, 10-07-96, 10-08-96, 10-09-96, 10-10-96, 10-11-96, 10-15-96, 10-16-96, 10-17-96, 10-18-96, 10-21-96, 10-22-96, 10-23-96, 10-24-96, 10-25-96, 10-28-96, 10-29-96, 10-30-96, 10-31-96, 11-01-96, 11-04-96, 11-06-96, 11-07-96, 11-08-96, 11-11-96, 11-12-96, 11-13-96, 11-14-96, 11-15-96, 11-18-96, 11-19-96, 11-20-96, 11-21-96, 11-22-96, 11-25-96, 11-26-96, 11-27-96, 12-02-96, 12-23-96); Motions to Suppress (12-03-96, 12-04-96, 12-05-96, 12-06-96, 12-09-96, 12-10-96, 12-11-96, 12-12-96, 12-13-96, 12-16-96, 12-17-96, 12-19-96, 12-20-96, 12-23-96); Jury Trial (12-30-96, 12-31-96, 01-02-97, 01-03-97, 01-06-97, 01-07-97, 01-08-97, 01-09-97, 01-10-97, 01-14-97, 01-15-97, 01-16-97, 01-17-97, 01-21-97, 01-22-97, 01-23-97, 01-24-97, 01-27-97, 01-28-97, 01-29-97, 01-30-97, 01-31-97, 02-02-97, 02-03-97, 02-04-97, 02-05-97, 02-06-97, 02-07-97, 02-10-97, 02-11-97, 02-12-97, 02-13-97, 02-14-97, 02-18-97, 02-19-97, 02-20-97, 02-21-97, 02-22-97, 02-24-97, 02-25-97, 02-26-97, 02-27-97, 02-28-97, 03-03-97, 03-04-97, 03-06-97, 03-07-97, 03-10-97, 03-11-97, 03-12-97, 03-13-97, 03-14-97, 03-17-97, 03-18-97, 03-19-97, 03-20-97, 03-24-97, 03-25-97, 03-26-97, 03-27-97, 03-31-97, 04-01-97, 04-02-97, 04-03-97, 04-07-97, 04-08-97, 04-10-97, 04-11-97) – Defense Case – (04-11-97, 04-14-97, 04-15-97, 04-10-97, 04-11-97, 04-14-97, 04-15-97, 04-10-97, 04-11-97, 04-14-97, 04-15-97, 04-16-97, 04-17-97, 04-18-97, 04-21-97, 04-22-97, 04-23-97, 04-24-97, 04-25-97 – Rebuttal – 04-25-97, 04-28-97, 04-29-97, 04-30-97)– Surrebuttal – (04-30-97, 05-01-97, 05-05-97, 05-06-97, 05-07-97); Verdict (05-08-97); DP Trial (05-19-97); Verdict (05-19-97); Court Sentencing (06-16-97, 06-17-97).

Conviction: Murder (3 counts), Burglary (B Felony), Theft (D Felony)

Sentencing: June 17, 1997
(Death Sentence, Death Sentence, Death Sentence, 10 years, 1 1/2 years concurrent)

Aggravating Circumstances: b (8) 3 murders, (lying in wait, drive-by shooting rejected)

Mitigating Circumstances: shown he could be safely imprisoned for LWOP
some multiple murderers are in DOC and not on Death Row

Direct Appeal: Stephenson v. State, 742 N.E.2d 463 (Ind. January 25, 2001) (87S00-9605-DP-398)
Conviction Affirmed 5-0 DP Affirmed 5-0
Sullivan Opinion; Shepard, Dickson, Boehm, Rucker concur.
For Defendant: Brent L. Westerfield, Indianapolis, Janet S. Dowling, Albuquerque, NM
For State: Michael A. Hurst, Deputy Attorney General (Modisett)
Stephenson v. Indiana, 122 S.Ct. 905 (2002) (Cert. denied)

PCR: 06-15-01 Notice of Intent to file PCR Petition.
01-31-02 PCR Petition filed. Amended PCR filed 11-14-02.
State's Answer to PCR Petition filed 03-04-02, 12-06-02.
PCR Hearing 01-13-03, 01-14-03, 01-15-03, 01-16-03, 01-17-03
Warrick Superior Court Judge Robert R. Aylsworth
Cause # 87D02-0210-PC-118
For Defendant: Jenna Murphy, Thomas C. Hinesley, Steven Schutte,
Deputy Public Defenders (Carpenter)
For State: Thomas D. Perkins, Stephen R. Creason, Scott A. Kreider, James B. Martin,
Deputy Attorneys General (S. Carter)
05-12-03 PCR Petition denied.

Stephenson v. State, 864 N.E.2d 1022 (Ind. April 26, 2007) (87S00-0106-PD-285)
(Appeal of PCR denial by Warrick County Superior Court Judge Robert W. Aylsworth)
Conviction and Death Sentence Affirmed 5-0
Opinion by Boehm; Shepard; Dickson, Sullivan, Rucker concur.
For Defendant: Thomas C. Hinesley, Steven H. Shutte, Deputy Public Defenders (Carpenter)
For State: James B. Martin, Deputy Attorney General (S. Carter)
Stephenson v. Indiana, 128 S.Ct. 1871 (2008) (Cert. denied)

As expected, PCR counsel alleged ineffective assistance of trial counsel despite the extraordinary and unprecedented resources allowed. Chief Justice Shepard noted this irony in a concurring opinion affirming the denial of postconviction relief at “Stephenson v. State, 864 N.E.2d 1022, 1057-1058 (Ind. April 26, 2007):

“A few words about the rhetoric of modern death penalty litigation as regards the most common single issue - effective assistance of trial counsel.

Stephenson's two lawyers at trial were practitioners well known to the bench and bar. Lead counsel Anthony Long had thirty-five years experience in civil and criminal trial work, including four terms as Prosecuting Attorney for Warrick County, one of Indiana's fastest-growing jurisdictions and the site of the murders at issue. Co-counsel Dennis Vowels of Evansville had more than a decade of criminal law experience at the time of Stephenson's trial and had built a respectable reputation in the field of criminal defense. Both had received specialized training in the defense of capital cases.

The defense team went well beyond the lawyers, eventually consisting of six or seven altogether, including a variety of experts, a fact investigator, a mitigation specialist, and paralegals. The year that this team spent defending Stephenson was an intensive one in which the defense enjoyed essentially unlimited resources: a third of a million dollars in lawyer time, \$65,000 worth of expert time, and mitigation and paralegal efforts that brought the defense bill to \$558,000. The post-conviction record has provided the details of this collective effort at some length.

The contention now before us is that the foregoing defense was ‘perfunctory.’ It is declared ‘woefully short,’ ‘laughable,’ a defense conducted by lawyers who were ‘willfully uninformed.’

The facts establish otherwise: a seasoned defense team of respected practitioners, aided by a collection of experts and investigators, mounting a defense with the benefit of vast financial resources. Well beyond any notion of what the Sixth Amendment guarantees.”

Habeas: 11-02-07 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
02-04-08 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
John M. Stephenson v. Ed Buss, Superintendent (3:07-CV-00539-TLS)
Judge Theresa L. Springmann
For Defendant: Alan M. Freedman, Midwest Center for Justice, Marie F. Donnelly, Chicago, IL
For State: Kelly A. Miklos, Deputy Attorney General (S. Carter)
08-08-08 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
09-02-08 Petitioner's Motion for Summary Judgment filed.
12-03-08 Response in Opposition to Motion for Summary Judgment filed.
03-05-09 Oral Arguments on Summary Judgment Motion; Taken Under Advisement.

Stephenson v. Levenhagen, 2009 WL 1886081 (N.D. Ind. July 01, 2009) (3:07-CV-539-TS)
U.S. District Judge Theresa L. Springmann, Northern District of Indiana, granted Writ of Habeas Corpus as to conviction and death sentence (Ineffective assistance of trial counsel by failing to object when Stephenson was required to wear stun belt under shirt during trial, which created bulge under shirt which four jurors thought to be a stun belt based upon their post appeal affidavits solicited by Habeas counsel. The State of Indiana is free to re-try John M. Stephenson, providing that it files appropriate documents in the State Trial Court seeking such relief within 120 days of this Order.)

For Defendant: Mary F. Donnelly, Chicago, IL and Alan M. Freedman, Evanston, IL
For State: Kelly A. Miklos, Stephen R. Creason, Deputy Attorneys General (Zoeller)

Stephenson v. Wilson, 619 F.3d 664 (7th Cir. August 26, 2010) (09-2924)
DP Affirmed 3-0; Reversed conditional granting of Writ of Habeas Corpus by U.S. District Court Judge Theresa L. Springmann, and remanded to U.S. District Court for consideration of all issues raised, including residual doubt and stun belt as to sentence.
Opinion by Circuit Judge Richard A. Posner; Judge William J. Bauer and Judge John D. Tinder.
For Defendant: Mary F. Donnelly, Chicago, IL and Alan M. Freedman, Evanston, IL
For State: Kelly A. Miklos, Stephen R. Creason, Deputy Attorneys General (Zoeller)

Stephenson v. Wilson, 132 S.Ct. 124 (October 3, 2011) (Cert. denied)

Stephenson v. Wilson, 629 F.3d 732 (7th Cir. January 14, 2011) (09-2924)
(Rehearing denied 3-0) William J. Bauer, Richard A. Posner, John Daniel Tinder.
(Rehearing *en banc* denied; Opinion by Judge Ilana Diamond Rovner dissenting, joined by Judge Ann Claire Williams and Judge David F. Hamilton)
For Defendant: Mary F. Donnelly, Chicago, IL and Alan M. Freedman, Evanston, IL
For State: Kelly A. Miklos, Stephen R. Creason, Deputy Attorneys General (Zoeller)

01-24-11 Remanded to U.S. District Court, Northern District of Indiana
John M. Stephenson v. Mark Levenhagen, Superintendent (3:07-CV-00539-TLS)
04-03-12 Petitioner's Traverse and Memorandum filed in support of Writ of Habeas Corpus.
07-06-12 Respondent's Brief in opposition to Writ of Habeas Corpus.
09-07-12 Petitioner's Surreply Brief filed in support of Writ of Habeas Corpus.

PENDING IN U.S. DISTRICT COURT, NORTHERN DISTRICT OF INDIANA.
FULLY BRIEFED AND AWAITING DECISION.

STEVENS, CHRISTOPHER M. # 81

OFF DEATH ROW SINCE 06-18-07
DOB: 09/2/1972 DOC#: 952131 White Male

Tippecanoe County Superior Court
Judge George J. Heid
Venued from Putnam County

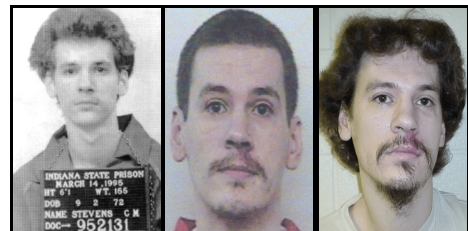
Trial Cause #: 67C01-9307-CF-52 (Putnam County)
79DO2-9402-CF-24 (Tippecanoe County)

Prosecutor: Robert J. Lowe, Anne M. Flannelly, Delbert H. Brewer
Defense: Robert V. Clutter, Jeffrey A. Baldwin

Date of Murder: July 15, 1993
Victim(s): Zachary Snider W / M / 10 (Neighbor of Stevens)

Method of Murder: strangling, smothering

Summary: Stevens was convicted of Child Molesting in Marion County in February 1993 and received a 4 year sentence with 3 years suspended and probated. His probation was transferred to Cloverdale, where he returned to live with his father. Apparently, none of his new neighbors were aware of



his criminal past. Zachary Snider, age 10, lived in the same subdivision and was often seen in the company of the 20 year old Stevens. Stevens attended and videotaped one of Zachary's little league baseball games. Zachary's father eventually warned Stevens to stay away from his son when he learned that Stevens had taken the boy fishing. A month later, Zachary turned up missing one afternoon. He was last seen at a young friend's home, who was told by Zachary that he was going to Stevens' home. In the midst of a massive local search for Zachary, Stevens' brother reported to police that Stevens had confessed to him that he murdered Zachary. He then directed police to a remote location near a bridge, where Zachary's body and bicycle were recovered. Stevens was arrested and gave a complete confession. He claimed that he had been having sex with Zachary for 2 or 3 months. When Zachary came over to his house, they performed oral sex in Stevens' room. Zachary threatened to tell his parents about having sex and Stevens decided he did not want to go through what he went through in Marion County. Stevens smothered Zachary with a pillow, then strangled him with an electrical cord around his neck. When Zachary continued to gasp, Stevens got a plastic garbage bag and wrapped it over his head. He then put Zachary and his bicycle in the car, drove to a bridge in a remote area, and threw them both over. He returned the next morning, fearing that police would connect him to the trash bag, removed it from Zachary's head, and threw it out along the highway on the way home. A similar bag was recovered by police in the area described by Stevens. Stevens later admitted to psychologists that he had molested 25-30 children, and had ejaculated on Zachary when he killed him. The psychologists concluded that he was a benign pedophile and was a serious danger to society. (This case later resulted in Zachary's Law, IC 5-2-12, establishing Sex Offender Registry)

Trial: Information/PC for Murder and Death Penalty Filed (07-22-93); Death Sentence Request Filed (07-30-93); Venued to Tippecanoe Superior Court II (02-14-94); Voir Dire (01-30-95, 01-31-95, 02-01-95, 02-03-95); Jury Trial (02-06-95, 02-07-95, 02-08-95, 02-09-95); Verdict (02-09-95); DP Trial (02-09-95, 02-10-95, 02-13-95, 02-14-95, 02-15-95); DP Verdict (02-15-95); Court Sentencing (03-14-95).

Conviction: Murder

Sentencing: March 14, 1995 (Death Sentence)

Aggravating Circumstances: b (1) Child Molesting
b (12) Victim less than 12
b (9) On Probation

Mitigating Circumstances: confession to Police
20 years old at murder
parents divorced when he was a child
father jailed for molesting his stepsister
mother jailed for drug dealing
mental health treatment for depression in 1992
average intelligence with good insight
manipulative, shallow, poor impulse control

Direct Appeal: Stevens v. State, 691 N.E.2d 412 (Ind. December 31, 1997) (79S00-9507-DP-828)
Conviction Affirmed 5-0 DP Affirmed 5-0
Shepard Opinion; Dickson, Sullivan, Selby, Boehm concur.
For Defendant: Brent L. Westerfeld, Jeffrey A. Baldwin, Indianapolis
For State: Geoff Davis, Deputy Attorney General (Modisett)
Stevens v. Indiana, 119 S.Ct. 550 (1998) (Cert. denied)

PCR: PCR Petition filed 12-02-98. Amended PCR Petition filed 04-16-99, 07-22-99)
Answer filed 02-04-99.
PCR Hearing held 08-30-99; PCR denied 09-14-99.

Stevens v. State, 770 N.E.2d 739 (Ind. June 26, 2002) (79S00-9804-PD-00250)
(Appeal of PCR denial by Tippecanoe County Superior Court Judge George J. Heid)
Conviction and Sentence Affirmed 5-0
Dickson Opinion; Shepard, Sullivan, Boehm, Rucker concur.
For Defendant: Thomas C. Hinesley, Barbara S. Blackman, Deputy Public Defender (Carpenter)
For State: Andrew L. Hedges, Deputy Attorney General (Freeman-Wilson)
Stevens v. Indiana, 124 S.Ct. 69 (2003) (Cert. denied)

Habeas: 01-17-03 Notice of Intent to File Petition for Writ of Habeas Corpus; Motion for Stay
11-03-88 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Christopher M. Stevens v. Daniel McBride, Superintendent (4:03-CV-00005-AS)
Judge Allen Sharp
For Defendant: Alan Rossman, Cleveland, OH, Kathy Lea Stinton-Glen, Zionsville, IN
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

06-15-04 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
09-17-04 Motion to Dismiss by Stevens
01-13-05 Writ of Habeas Corpus denied.
02-18-05 Certificate of Appealability granted.

Stevens v. McBride, ___ F.Supp.2d ___ (N.D. Ind. January 13, 2005)
U.S. District Judge Allen Sharp, Northern District of Indiana, denied the Petition for Writ of Habeas Corpus, rejecting claims of ineffective assistance of trial and appellate counsel.

Stevens v. McBride, 489 F.3d 883 (7th Cir. June 18, 2007) (05-1442)
Opinion by Judge Kenneth F. Ripple Granting Writ of Habeas Corpus as to Death Sentence only, holding that investigation and presentation of expert psychological testimony at his penalty trial amounted to ineffective assistance of counsel; Judge Diane P. Wood concurs and would grant Writ as to both conviction and sentence; Judge Daniel A. Manion dissents and would grant Writ on neither.
For Defendant: Kathy Lea Stinton-Glen, Zionsville, IN
For State: James B. Martin, Deputy Attorney General (S. Carter)
("The case is remanded with instructions to issue a conditional writ of habeas corpus that sets aside the sentence of capital punishment unless, within 120 days, the State affords Stevens another penalty hearing.")

Stevens v. Buss, 128 S.Ct. 2423 (May 12, 2008) (Cert. Denied).
Buss v. Stevens, 128 S.Ct. 2429 (May 12, 2008) (Cert. Denied).

Retrial: On December 14, 2009 , Stevens entered a guilty plea and pursuant to a plea agreement was sentenced by Tippecanoe County Superior Court #2 Judge Thomas H. Busch to Life Without Parole.
For State: Tim Bookwalter, For Defense: Jessie Cook.

STROUD, PHILLIP A. # 97

OFF DEATH ROW SINCE 05-25-04
DOB: 12-30-78 DOC#: 932249 Black Male

St. Joseph County Superior Court Judge William T. Means

Trial Cause #: 71D04-0009-CF-00434

Prosecutor: John M. Maciejczyk, Michael J. Tuszynski

Defense: Philip Skodinski, James F. Korpai

Date of Murder: September 14, 2000



Victim(s): Wayne Shumaker W / M / 59; Corby Myers W / M / 30;
Lynn Ganger W / M / 54 (No relationship to Stroud)

Method of Murder: shooting with .9 mm handgun

Summary: Wayne Shumaker, Corby Myers, and Lynn Ganger were building a loft in a pole barn at an upscale home Lakeville, Indiana when Stroud and 3 men from Detroit (Wade, Carter and Seabrooks) came to burglarize the house. After one of the workers came out of the barn, Stroud decided they needed to be killed because he may have seen the license plate on their car. Instead of fleeing the scene, they went to the barn, where Stroud ordered the men tied up and robbed. Stroud then shot each victim in the head with a Tech .9 mm semiautomatic handgun. Stroud and accomplices then returned to the home to finish the burglary. In statements later given to police, Stroud claimed that his only role was as a lookout and that he was not involved in the killings. Another accomplice, Ronald Carter of Detroit, has testified that Stroud was the shooter, as did 2 friends of Stroud who said Stroud admitted to them he shot the workmen. The men were told about the house, the valuables in it, and how to bypass the burglar alarm in order to get in, by 18 year old Charity Lynn Payne, who had once dated a member of the family. Payne cooperated by testifying at trial and later received 151 years imprisonment. Wade received 55 years and Carter 45 years. DNA from dog feces found outside the house matched the DNA in feces on the Nike athletic shoes police took from the apartment of Stroud's girlfriend. At the time of the murders, Stroud was released on bail for charges of Dealing in Cocaine, for which he was later convicted on 01-16-02 in the St. Joseph Superior Court and sentenced to terms of 50 years imprisonment in Cause # 71D08-9907-CF-0414, and 20 years imprisonment in Cause # 71D08-9907-CF-0410.

Trial: Information/PC for Murder filed (09-18-00); Motion for Speedy Trial (10-02-00); Amended Information for DP filed (11-09-00); Voir Dire (02-20-02, 02-21-02, 02-22-02, 02-26-02, 02-27-02, 02-28-02, 03-01-02, 06-24-02, 06-25-02, 06-26-02, 07-01-02, 07-02-02, 07-03-02, 07-05-02, 07-09-02, 07-10-02); Jury Trial (07-11-02, 07-12-02, 07-13-02, 07-15-02, 07-16-02, 07-17-02, 07-18-02, 07-19-02); Deliberations over 2 days; Verdict (07-20-02); DP Trial (07-22-02, 07-23-02, 07-24-02); Verdict (07-24-02); Court Sentencing (09-04-02).

Conviction: Murder (3 counts), Felony-Murder (3 counts) Burglary (A Felony), Robbery (A Felony) (2 counts), Attempted Robbery (A Felony)

Sentencing: September 4, 2002 (Death Sentence, Death Sentence, Death Sentence, 20 years, 20 years, 20 years, 20 years - Consecutive to each other and consecutive to sentences in other cases: Cause # 71D08-9907-CF-0414 (50 years), Cause # 71D08-9907-CF-0410 (20 years). Felony Murder counts merged. Class A Felony Burglary and Robbery counts reduced to Class B Felony.

In sentencing order, Judge Means stated that he believed Indiana's amended death penalty statute required him to follow the jury's recommendation. If he were not so constrained, however, he said he would "be inclined to judicially override the jury recommendation for death."

Aggravating Circumstances: b (1) Burglary, Robbery
b (8) 3 Murders

Mitigating Circumstances: 21 years of age
Disadvantaged childhood; Rarely saw father
Mistreated by Mother's boyfriends
Abandoned by Mother
Caring towards younger half-brother
Emotional hardship on family and friends

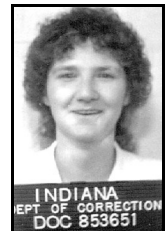
Direct Appeal: Stroud v. State, 809 N.E.2d 274 (Ind. May 25, 2004) (71S00-0011-DP-00642)
Convictions Affirmed 5-0 DP Vacated 5-0
Sullivan Opinion; Shepard, Dickson, Rucker and Boehm concur.
For Defendant: Eric K. Koselke, Brent L. Westerfeld, Indianapolis, IN
For State: James B. Martin, Deputy Attorney General (S. Carter)
(DP vacated on grounds that jury was improperly instructed that verdict was only a "recommendation." Remanded for new penalty and sentencing phases. Rucker and Boehm concurred with separate opinion, noting that "accordingly" in new statute does not compel Judge to follow jury recommendation for death)

On Remand: 05-24-05 Citing a severe breakdown in the attorney-client relationship, lead defense attorney James F. Korpall allowed to withdraw.
For State: Frank Schaffer, James Fox, Deputy Prosecutors
07-11-05 Stroud entered a guilty plea pursuant to a Plea Agreement and was sentenced by St. Joseph County Superior Court Judge William T. Means to Life Without Parole, and consecutive sentences of 20 years (Burglary), 20 years (Robbery), 20 years (Robbery), 20 years (Attempted Robbery).

THACKER, LOIS ANN # 37

OFF DEATH ROW SINCE 07-23-90
DOB: 01-27-1958 DOC#: 853651 White Female

Dubois County Circuit Court Judge Hugo C. Songer
Venued from Orange County



Trial Cause #: 84-CR-15 (Orange County); CR-85-4(V) (Dubois County)

Prosecutor: Darrell F. Ellis

Defense: Alphonso Manns, Steven E. Ripstra

Date of Murder: November 2, 1984

Victim(s): John E. Thacker W / M / 31 (Husband to Thacker)

Method of Murder: shooting with shotgun

Summary: Lois Thacker was the beneficiary on the life insurance policy covering her husband, John Thacker. Lois solicited three men, Buchanan, Music and Hart to kill her husband, and formulated a plan for him to be shot on a certain isolated road where her husband drove. She insisted that a shotgun with deer slugs be used, and directed that his wallet be returned to her. One night the three men joined Lois in her trailer while her husband was gone and insisted that he be killed that night. The men left, assuring her that it would be done. The plan was executed by placing a log in the road which forced Mr. Thacker to stop. When he got out of his truck, he was shot by Music. Buchanan removed the wallet which was returned to Lois that night. During her efforts to induce the men to kill Mr. Thacker, Lois told them that she wanted him killed just like she and Mr. Thacker had killed her first husband, Phillip Huff. Buchanan, Music and Hart all testified against Lois at trial after entering into plea agreements.

Trial: Information filed/PC Hearing for Murder and DP (11-05-84); Venued to Dubois County (01-02-85); Voir Dire (05-01-85, 05-02-85, 05-03-85, 05-06-85, 05-07-85, 05-08-85, 05-09-85); Jury Trial (05-10-85, 05-11-85, 05-13-85, 05-14-85, 05-15-85, 05-16-85, 05-17-85); Verdict (05-17-85); DP Trial (05-18-85); Verdict (05-18-85); Court Sentencing (06-27-85).

Conviction: Murder

Sentencing: June 27, 1985 (Death Sentence)

Aggravating Circumstances: b (3) Lying In wait
b (5) Hiring another to kill

Mitigating Circumstances: None

Direct Appeal: Thacker v. State, 556 N.E.2d 1315 (Ind. July 23, 1990) (1285-S-506)
Conviction Affirmed 5-0
DP Vacated 3-2 with instructions to impose a sentence of 60 years imprisonment
(Proof of lying in wait insufficient since Thacker not at scene; proof of hiring to kill insufficient since no evidence that triggerman was offered or received compensation)
Debruler Opinion; Shepard, Dickson concur; Givan, Pivarnik dissent.
For Defendant: Alphonso Manns, Bloomington
For State: Cheryl L. Greiner, Deputy Attorney General (Pearson)

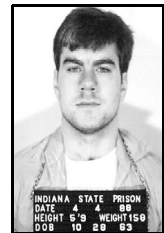
On Remand: On October 4, 1990 Dubois County Circuit Court Judge Hugo C. Songer resentenced Thacker to 60 years imprisonment in accordance with Indiana Supreme Court Opinion.

Thacker v. State, 578 N.E.2d 351 (Ind. September 19, 1991)
(Direct Appeal of 60 year sentence - Affirmed)

THOMPSON, JAY R. # 18

OFF DEATH ROW SINCE 04-25-86
DOB: 10-28-1963 DOC#: 13149 White Male

Harrison County Circuit Court Judge Scott T. Miller
Venued from Pike County



Trial Cause #: 81-CR-26 (Pike County)
81-S-62 (Harrison County)

Prosecutor: Jerry J. McGaughey
Defense: Timothy R. Dodd

Date of Murder: March 8, 1981
Victim(s): William Hilborn W / M / 72; Mary Hilborn W / F / 65 (No relationship to Thompson)

Method of Murder: stabbing with knife

Summary: William and Mary Hilborn were found stabbed to death in their home in Petersburg. Richard Dillon was identified by a Deputy Sheriff as near the property at the time of the murders. When questioned, Dillon said he was not in Petersburg, but was in Princeton at the home of a friend, Jay R. Thompson. The murder weapon, a knife, was later found at Thompson's car. Dillon later gave a complete confession admitting that he and Thompson had committed the Burglary and that he (Dillon) stabbed both victims. They gained entry by requesting to use the telephone. Dillon was armed with a buck knife and stabbed both Hilborns. Both men then forced Mrs. Hilborn, by holding a knife under her chin, to obtain money for them. Dillon then stabbed her again and when she fell to the floor, cut her throat. Thompson then stabbed both victims with a folding knife to insure that both were dead. The pathologist testified that the fatal wound to both Hilborns was made with a knife similar to the folding knife. Dillon testified for the State. Thompson was waived from Juvenile Court to be tried as an adult.

Trial: Juvenile Jurisdiction Waiver filed (09-01-81); Information/PC for Murder Filed (09-02-81); Death Sentence Request Filed (09-21-81); Jury Trial (02-26-82, 02-27-82); Verdict (02-27-82); DP Trial (03-05-82); DP Verdict Against Death (03-05-82); Court Sentencing (03-18-82).

Conviction: Murder, Murder

Sentencing: March 18, 1982 (Death Sentence)

Aggravating Circumstances: b (1) Burglary, Robbery
b (7) Prior Murder Conviction

Mitigating Circumstances: 17 years old at the time of the crime

Judge Overrides Jury Recommendation against death penalty
Companion Case to Dillon

Direct Appeal: Thompson v. State, 492 N.E.2d 264 (Ind. April 25, 1986) (882-S-303)
65 ALR4th 805 Conviction Affirmed 5-0
DP Vacated 3-2 with instructions to conduct new DP hearing
(Prior murder conviction was improper aggravator relied on by Judge where it was not charged and did not accrue until after trial - aggravator of committing another murder was not charged or instructed upon)
Dickson Opinion; Debruler, Shepard concur; Givan, Pivarnik dissent.
For Defendant: Timothy R. Dodd, Evansville
For State: Michael Gene Worden, Deputy Attorney General (Pearson)

On Remand: Thompson resentenced to 120 years imprisonment by Special Judge Henry N. Leist in Harrison County.

Thompson v. State, 552 N.E.2d 472 (Ind. 1990) (31S00-8902-PC-167)
(Direct Appeal of 120 year sentence - Affirmed)

THOMPSON, JERRY K. # 85 & # 95

KILLED ON DEATH ROW 10-27-02

DOB: 03-17-1961 DOC#: 860214 White Male

Marion County Superior Court Judge John R. Barney, Jr.

Trial Cause #: 49GO3-9204-CF-060651

Prosecutor: John V. Commons, Lawrence O. Sells

Defense: Robert V. Clutter, Jeffrey A. Baldwin

Date of Murder: March 14, 1991

Victim(s): Melvin Hillis W / M / 68; Robert Beeler W / M / 47 (No relationship to Thompson)

Method of Murder: shooting with handgun



Summary: Melvin Hillis and his employee, Robert Beeler, were shot to death during a robbery at Hillis Auto Sales in Indianapolis. Three months later, Thompson and Douglas Percy were stopped in Illinois for a traffic violation and a .9 mm handgun was recovered from the vehicle. Ballistics tests later confirmed this gun to be the murder weapon. Percy came forward a year after the murder, and in exchange for dismissal of relatively minor charges, testified that he and Thompson had gone to Hillis Auto Sales and Thompson had shot and robbed Hillis and Beeler. Percy also testified that the gun used had been stolen from Wesley Crandall in New Castle one month earlier. Percy testified that he and Thompson had gone there to buy marijuana, and that Thompson had killed Crandall with a shotgun, then stole his guns, marijuana, and money. Thompson was later convicted of Crandall's murder. Details of the Crandall murder in New Castle, as well as the subsequent murder conviction, were admitted as evidence during the guilt phase here.

Trial: Information/PC for Murder filed (04-28-92); Amended Information for DP filed (03-02-94); Voir Dire (03-04-96, 03-05-96, 03-06-96); Jury Trial (03-07-96, 03-08-96, 03-09-96, 03-11-96); Verdict (03-12-96); DP Trial (03-12-96); Verdict (03-13-96); Court Sentencing (05-24-96).

Conviction: Murder (2 counts), Robbery (B Felony), (2 counts), Carrying Handgun Without License (A Misd)
Sentencing: May 24, 1996 (Death Sentence, Death Sentence, 20 years, 20 years, 1 year)

Aggravating Circumstances: b (1) Robbery
b (8) 2 murders
b (7) Convicted of another murder

Mitigating Circumstances: dysfunctional family
difficult family upbringing

Direct Appeal: Thompson v. State, 690 N.E.2d 224 (Ind. December 23, 1997) (49S00-9507-DP-869)
Conviction Reversed 5-0 DP Vacated 5-0
Boehm Opinion; Shepard, Dickson, Sullivan, Selby, concur
(Details of prior murder, and Thompson's conviction of that murder, should not have been admitted, even though murder weapon was stolen from prior murder victim)
For Defendant: Joseph M. Cleary, Robert V. Clutter, Indianapolis
For State: Arthur Thaddeus Perry, Deputy Attorney General (Modisett)

On Remand: Voir Dire (04-24-00, 04-25-00, 04-26-00; Jury Trial (04-26-00, 04-27-00, 04-28-00, 04-29-00); Verdict (04-29-00); DP Trial (05-01-00, 05-02-00, 05-03-00); DP Verdict (05-03-00; Court Sentencing (09-29-00).

A Marion Superior Court jury again found Thompson guilty of two counts of Murder, two counts of Felony-Murder, two counts of Robbery and Carrying a Handgun Without a License, and again recommended a death sentence on May 3, 2000. Thompson was again sentenced to death on September 29, 2000.

Marion County Superior Court Judge Tonya Walton Pratt
For Defendant: David Hennessy, Joseph M. Cleary
For State: Lawrence O. Sells, Mark S. Massa

Thompson v. State, 671 N.E.2d 1165 (Ind. 1996) (Direct appeal of 90 year sentence and conviction for unrelated murder/habitual offender in Henry County Cause #33D01-9207-CF-027; Affirmed)

ON OCTOBER 27, 2002, THOMPSON WAS FOUND DEAD IN THE RECREATION AREA OF A CELLBLOCK ON "X ROW" AT THE INDIANA STATE PRISON IN MICHIGAN CITY, INDIANA. THOMPSON SUFFERED SEVERAL FATAL STAB WOUNDS. AT THE TIME, THOMPSON WAS ON DIRECT APPEAL FROM HIS DEATH SENTENCE FOLLOWING A RETRIAL IN MARION COUNTY.

TIMBERLAKE, NORMAN H. # 83

DIED OF NATURAL CAUSES ON DEATH ROW 11-10-07
DOB: 08-14-1947 DOC#: 873051 White Male

Marion County Superior Court
Special Judge Alfred W. Moellering

Trial Cause #: 49G02-9302-CF-014191
Prosecutor: Scott C. Newman, John V. Commons
Defense: Ellen O'Connor, Arnold P. Baratz

Date of Murder: February 5, 1993
Victim(s): Michael Greene W / M / 43
(Indiana State Police Officer - No relationship to Timberlake)



Victim Website: <http://www.in.gov/isp/2336.htm>
<http://www.odmp.org/officer/reflections/452-master-trooper-michael-earl-greene>

Method of Murder: shooting with .25 handgun

Summary: An ISP Dispatcher was requested via radio by Trooper Greene to run a records check on Tommy L. McElroy and Norman Timberlake. She responded that Timberlake was not wanted, but there was an outstanding warrant for McElroy. Trooper Greene advised that he would be outside the car securing the subject. Two minutes later a female voice came over the radio stating, "Help. An officer's been hurt." A number of passersby along I-65 gave various eyewitness accounts. Most had seen the officer attempting to put handcuffs on a heavyset man while a skinny man with stringy hair watched nearby. Two witnesses observed the skinny man lunge toward the officer, sticking his right hand up, and the officer fell. McElroy is a heavyset man, Timberlake is very thin. Officer Greene was found to have died from a single gunshot wound to the chest. A muzzle burn was noted on his chest. Later the same afternoon, an Ameritech operator received a call from a Norman Timberlake requesting to make a collect call from a pay phone. The operator was aware of the shooting, and aware that police were looking for Timberlake. She called the police, who responded to the scene of the pay phone. The man in the booth was asked his name. He responded that he had no name, and reached with his right arm. The officers grabbed him and recovered a .25 automatic handgun from his right pocket. This gun was tested and confirmed to be the murder weapon. The man was Timberlake. McElroy testified at trial that Timberlake shot the trooper while he was being taken into custody, then both of them jumped in the car and Timberlake said, "drive." Another man, who was earlier with Timberlake and McElroy for a few days, testified the gun was his and Timberlake had taken the gun from him.

Trial: Information/PC for Murder filed (02-08-93); Amended Information for DP filed (02-18-93); Voir Dire (07-10-95, 07-12-95); Jury Trial (07-13-95, 07-14-95, 07-15-95, 07-17-95, 07-18-95, 07-19-95, 07-20-95); Verdict (07-20-95); DP Trial (07-21-95); Verdict (07-21-95); Court Sentencing (08-11-95).

Conviction: Murder, Carrying a Handgun (A Misd); Escape (B Felony) dismissed on State's request at trial.

Sentencing: August 11, 1995 (Death Sentence; Carrying a Handgun (A Misd) merged; Carrying a Handgun enhancement dismissed on State's request at sentencing)

Aggravating Circumstances: b (6) Victim was law enforcement officer

Mitigating Circumstances: None

Direct Appeal: Timberlake v. State, 690 N.E.2d 243 (Ind. December 30, 1997) (49S00-9305-DP-577)
Conviction Affirmed 5-0 DP Affirmed 5-0
Selby Opinion; Shepard, Dickson, Sullivan, Boehm concur.
For Defendant: Judith G. Menadue, Norman
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Timberlake v. Indiana, 119 S.Ct. 808 (1999) (Cert. denied)

PCR: PCR Petition filed 06-02-98. Amended PCR filed 12-07-98, 10-28-99.
State's Answer to PCR Petition filed 07-02-98, 11-04-99.
09-15-99, 10-04-99, 10-05-99 Hearings held to determine competency and/or whether Timberlake has had a mind-control device surreptitiously implanted by the U.S. Marines.
11-04-99 Request for Interlocutory Appeal denied.
PCR Hearing 11-08-99, 11-09-99, 11-10-99, 11-12-99, 11-15-99, 05-04-95.
Special Judge Steven R. Nation
For Defendant: Eric K. Koselke, Ann M. Skinner, Public Defenders (Carpenter)
For State: Priscilla J. Fossum, John M. Chavis, James B. Martin, Deputy Attorneys General
12-27-99 PCR Petition denied.

Timberlake v. State, 753 N.E.2d 591 (Ind. August 20, 2001) (49S00-9804-PD-252)
(Appeal of PCR denial by Special Judge Steven R. Nation)
Conviction and Death Sentence Affirmed 5-0
Boehm Opinion; Shepard, Dickson, Sullivan, Rucker concur.
For Defendant: Eric K. Koselke, Ann M. Sutton, Deputy Public Defenders (Carpenter)
For State: Priscilla J. Fossum, James B. Martin, Deputy Attorneys General (Freeman-Wilson)
Timberlake v. Indiana, 123 S.Ct. 162 (October 7, 2002) (Cert. denied)

Timberlake v. State, 858 N.E.2d 625 (Ind. December 15, 2006) (49S00-0606-SD-235)
(Motion for Leave to file Successive PCR denied 3-2)
(Shepard, Dickson, Sullivan concur; Boehm, Rucker dissent on grounds that Timberlake should have hearing on his competency to be executed)

Habeas: 01-08-02 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
11-18-02 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Norman Timberlake v. Cecil Davis, Superintendent (IP 02-C- 0036-Y/S)
Judge Richard L. Young
For Defendant: Brent L. Westerfield, Indianapolis, Linda Meier Youngcourt, Huron
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

02-14-03 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
02-25-03 Petition for Guardian Ad Litem denied.
12-10-03 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
03-24-04 Writ of Habeas Corpus denied.
06-18-04 Certificate of Appealability denied.

Timberlake v. Davis, 409 F.3d 819 (7th Cir. May 27, 2005) (04-2315).
(Appeal of habeas denial; Affirmed 3-0)
Frank H. Easterbrook Opinion; Kenneth F. Ripple, Daniel A. Manion concur.
For Defendant: Brent L. Westerfeld, Indianapolis, Lorinda Meier Youngcourt, Huron, IN
For State: James B. Martin, Deputy Attorney General (S. Carter)
Timberlake v. Davis, 418 F.3d 702 (7th Cir. August 1, 2005) (Reh. denied).
Timberlake v. Buss, 126 S.Ct. 1910 (2006) (Cert. denied)
Timberlake v. Donahue, ____ F.Supp. ____, 2007 WL 141950 (1:06-CV-01859-RLY-WTL)
(S.D. Ind. January 16, 2007) (Judge Richard L. Young memo on issues for trial on requested injunction challenging lethal injection method of execution)

For Timberlake: Brent L. Westerfield, Richard A. Waples, Indianapolis, Lorinda Meier Youngcourt, Huron
For Lambert: Alan M. Freedman, Carol R. Heise, Evanston, IL; Laurence E. Komp, Manchester, MO.
For Donahue: Thomas D. Quigley, Betsy M. Isenberg, Deputy Attorneys General (S.Carter)
Timberlake v. Buss, ___ F.Supp. ___ (S.D. Ind. May 1, 2007) (1:06-CV-01859-RLY-WTL)
(Judge Richard L. Young denying State's Motion for Summary Judgment)
Timberlake v. Buss, ___ F.Supp. ___ (S.D. Ind. May 1, 2007) (1:06-CV-01859-RLY-WTL)
(Judge Richard L. Young denying Stay / Injunction)

Stay: Timberlake v. State, 859 N.E.2d 1209 (Ind. January 17, 2007) (49S00-0606-SD-235)
(Stay of Execution granted until U.S. Supreme Court decision in Panetti v. Quarterman, relating to competency for execution, is handed down 3-2; (Dickson, Boehm, Rucker concur; Shepard, Sullivan dissent on grounds that it is very unlikely Panetti will have any affect on this case)

Timberlake v. State, 679 N.E.2d 1337 (Ind. May 15, 1997) (Direct appeal of 111 year sentence and convictions for unrelated Robbery, Confinement, Carrying a Handgun and Habitual Offender finding, committed the day before murder. - Convictions affirmed, but remanded for resentencing.)

WHILE AWAITING THE SETTING OF AN EXECUTION DATE, TIMBERLAKE DIED OF NATURAL CAUSES ON DEATH ROW, INDIANA STATE PRISON, MICHIGAN CITY, INDIANA ON NOVEMBER 10, 2007.

TOWNSEND, JOHNNY, JR. # 32

OFF DEATH ROW SINCE 04-29-99
DOB: 12-27-1963 DOC#: 850551 Black Male

Lake County Superior Court Judge Richard W. Maroc

Trial Cause #: 1CR-227-1283-898

Prosecutor: Thomas L. Jackson, Kathleen M. O'Halloran

Defense: Cornell Collins, Daniel L. Toomey, Hamilton Carmouche

Date of Murder: November 28, 1983

Victim(s): Hal Fuller B / M / 65; Margaret Fuller B / F / 63 (Acquaintances of Townsend)

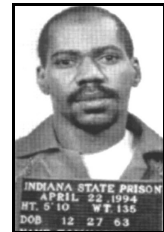
Method of Murder: stabbing with a steak knife 10 times (Hal) and 9 times (Margaret)

Summary: The bodies of Hal and Margaret Fuller were discovered in their home with multiple stab wounds. Mr. Fuller's open wallet was found at his feet and a serrated steak knife with blood was found in the driveway. The Fuller's car was found abandoned two days later. The girlfriends of Townsend and Phillip McCollum gave statements that they had driven in a similar car with McCollum and Townsend, picked up a radio to sell, and that Townsend had a cut hand. Bloody clothing was later recovered from their residence. Both Townsend and McCollum gave remarkably similar statements to police. They said they went to the Fuller home and talked for awhile. When Mr. Fuller started to use the phone, Townsend stabbed him in the back. McCollum then started stabbing Mrs. Fuller, who cried out "Please don't kill me." McCollum told her to shut up and kept on stabbing her. McCollum stabbed Mr. Fuller in the chest to finish him off. They found no money, took a radio, stole the Fuller's car, and fled.

Conviction: Murder, Felony-Murder

Sentencing: March 8, 1985 Death Sentence (McCollum); Death Sentence (Townsend)

Aggravating Circumstances: b (1) Robbery
b (8) 2 murders



Mitigating Circumstances: 18 years old and single at the time of the murder
no prior criminal record

Joint Trial and Appeal (Both McCollum and Townsend received death sentences)

Direct Appeal: Townsend v. State, 533 N.E.2d 1215 (Ind. February 14, 1989) (885-S-339)
Conviction Affirmed 5-0 DP Affirmed 5-0
Pivarnik Opinion; Shepard, Debruler, Givan, Dickson concur.
For Defendant: Ellen S. Podgor, David H. Nicholls, Crown Point Public Defenders
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Townsend v. Indiana, 110 S.Ct. 1327 (1990) (Cert. denied)
McCollum v. Indiana, 110 S.Ct. 2633 (1990) (Cert. denied)
McCollum v. Indiana, 111 S.Ct. 9 (1990) (Rehearing denied)

PCR: 11-13-90 Townsend PCR filed; Denied by Special Judge Richard Conroy 04-10-95.
07-08-91 McCollum PCR filed; Denied by Special Judge Richard Conroy 04-10-95.

(04-29-99 While appeal pending, parties entered into agreement. Judge Richard W. Maroc modified sentence of both McCollum and Townsend to 60 years consecutive on each count, for a total sentence of 120 years imprisonment for each.)

TRUEBLOOD, JOSEPH L. # 64

EXECUTED BY LETHAL INJECTION 06-13-03 12:24 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 12-26-1956 DOC#: 902302 White Male

Tippecanoe County Circuit Court Judge Ronald E. Melichar



Trial Cause #: 79C01-8904-CF-12

Prosecutor: Jerry J. Bean, John H. Meyers, IV

Defense: George G. Wilder, Thomas J. O'Brien, Michael J. O'Reilly

Date of Murder: August 15, 1988

Victim(s): Susan Bowsher W / F / 23 (ex-girlfriend);
Ashlyn Bowsher W / F / 2 and William Bowsher W / M / 17 months (children of Susan)

Method of Murder: shooting with handgun

Summary: Trueblood was upset with his former girlfriend, Susan Bowsher, because she expressed her intention of going back with her ex-husband. Trueblood picked up Susan and her two small children one day and while they were in the car he shot Susan 3 times in the head, and shot each child once in the head. He then drove to the home of his twin brother, admitted to him what he had done, borrowed a shovel, then drove to a secluded area and buried all three in a shallow grave. After 4 witnesses had testified at trial, Trueblood indicated a desire to plead guilty and did so. When interviewed by the Probation Officer for the Presentence Report, Trueblood claimed that Susan had shot the kids, then killed herself. He then sought to withdraw his guilty plea, which was denied.

Trial: Information/PC for Murder Filed (08-22-88); Death Sentence Request Filed (09-02-88); Guilty Plea Count III (10-04-88); Judgment Entered (10-06-88); Voir dire (02-13-90, 02-14-90, 02-15-90, 02-16-90, 02-20-90); Jury Trial (02-21-90, 02-22-90, 02-23-90); Guilty Plea Count I & II (02-23-90); Judgment Entered (03-02-90); Defense Counsel Motion to Withdraw denied (03-02-90); Defendant Motion to Withdraw Guilty Plea denied (03-02-90); DP Sentencing Hearing (03-02-90, 03-06-90, 03-07-90, 03-08-90); Court Sentencing (04-12-90).

Conviction: Pled Guilty during trial without a Plea Agreement to Murder (3 counts)
Motion to withdraw guilty plea before sentencing was denied

Sentencing: April 12, 1990 (Death Sentence)

Aggravating Circumstances: b (12) 2 victims less than 12 years of age; b (8) 3 murders

Mitigating Circumstances: extreme emotional disturbance
good conduct while in jail awaiting trial
mixed personality disorder
he was kind to children
he was hero for pulling woman from burning building

Guilty Plea

Direct Appeal: Trueblood v. State, 587 N.E.2d 105 (Ind. February 28, 1992) (79S00-9004-DP-00304)
Conviction Affirmed 5-0 DP Affirmed 5-0
Shepard Opinion; Debruler, Givan, Dickson, Krahulik concur.
For Defendant: Thomas J. O'Brien, Michael J. O' Reilly, Lafayette Public Defenders
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Trueblood v. Indiana, 113 S.Ct. 278 (1992) (Cert. denied)

PCR: 10-28-92 Notice of Intent to file PCR.
05-09-94 PCR filed; Amended PCR filed 01-16-96, 04-15-96.
06-09-94 Answer filed.
01-19-96 Trial Court certifies for Interlocutory Appeal, denied by Indiana Supreme Court 02-13-96.
06-11-96 Defense Motion for Summary Judgment denied.
06-11-96 State's Motion for Summary Judgment granted in part.
06-25-96, 06-26-96, 07-16-96, 07-17-96, 07-19-96 PCR Hearing
For Defendant: John S. Sommer, Kathleen Littell, Chris Hitz-Bradley, Deputy Public Defenders
For State: Jerry J. Bean, John H. Meyers IV
Special Judge Thomas K. Milligan
08-12-96 PCR Denied.

Trueblood v. State, 715 N.E. 2d 1242 (Ind. September 9, 1999) (79S00-9211-PD-887)
(Appeal of PCR denial by Special Judge Thomas K. Milligan)
Affirmed 5-0; Boehm Opinion; Shepard, Dickson, Sullivan, Selby concur.
For Defendant: John S. Sommer, Kathleen Cleary, Chris Hitz-Bradley, Deputy Public Defenders
For State: Arthur Thaddeus Perry, Deputy Attorney General (Modisett)
Trueblood v. Indiana, 121 S.Ct. 143 (2000) (Cert. denied)

Habeas: 02-28-00 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
08-28-00 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Joseph L. Trueblood v. Rondle Anderson, Superintendent (3:00-CV-125-AS)
Judge Allen Sharp
For Defendant: F. Thomas Schornhorst, Orange Beach, AL
For State: Suzannah B. Wilson, Thomas D. Perkins, Michael A. Hurst, Deputy Attys. Gen. (S. Carter)

01-23-01 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
03-23-01 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.

11-07-02 Writ of Habeas Corpus granted.
09-13-01 Certificate of Appealability granted.

Trueblood v. Anderson, 156 F.Supp.2d 1056 (N.D. Ind. July 30, 2001) (3:00-CV-125-AS)
(Order of U.S. District Court Judge Allen Sharp, Northern District of Indiana, granting habeas relief as to the murder of Susan Bowsher in that the guilty plea was involuntary because the trial court failed to advise Trueblood that by pleading guilty, he would be admitting an aggravator on child murders; also granting habeas relief because the trial court found as an aggravating circumstance that the murders were "cold blooded, premeditated killings of three helpless and defenseless persons." Order of release or retrial within 120 days.)
For Defendant: F. Thomas Schornhorst, Orange Beach, AL
For State: Suzannah B. Wilson, Thomas D. Perkins, Michael A. Hurst, Deputy Attys. Gen. (S. Carter)

Trueblood v. Davis, 301 F.3d 784 (7th Cir. August 20, 2002) (01-3281, 3282)
(The United States Court of Appeals, Seventh Circuit, reversed the judgment of Judge Allen Sharp of the U.S. District Court, Northern District of Indiana, which granted habeas corpus. In reinstating the death sentences against Trueblood, the Seventh Circuit summarily dismissed the grounds used by Judge Sharp to grant habeas, including the characterizations by the trial Judge describing the murders as "cold-blooded" and "premeditated.")
Opinion by Circuit Judge Richard A. Posner, Judge Kenneth F. Ripple, Judge Terrance T. Evans.
For Defendant: F. Thomas Schornhorst, Orange Beach, AL
For State: Thomas D. Perkins, Deputy Attorney General (S. Carter)
Trueblood v. Davis, 123 S.Ct. 1650 (March 31, 2003) (Cert. denied)

Trueblood v. Indiana Parole Bd., 123 S.Ct. 2295 (June 12, 2003) (Application for stay denied)
Trueblood v. Indiana, 123 S.Ct. 2295 (June 10, 2003) (Application for stay denied)
Trueblood v. State, 790 N.E.2d 97 (Ind. June 12, 2003) (79S00-0304-SD-172)
(Successive motion for stay of execution of death sentence)
Denied 5-0; Opinion by Shepard; Dickson, Sullivan Boehm, Rucker concur.
Governor's decision concerning clemency petition was not subject to judicial review.

TRUEBLOOD WAS EXECUTED BY LETHAL INJECTION 06-13-03 12:24 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 81ST CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900, AND THE 11TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

UNDERWOOD, HERBERT A. # 38

OFF DEATH ROW SINCE 04-21-95
DOB: 07-11-1960 DOC#: 853860 White Male

Marion County Superior Court Judge Thomas E. Alsip

Trial Cause #: CR84-106C

Prosecutor: Robert P. Thomas, David E. Cook
Defense: Craig O. Wellnitz, Eugene C. Hollander

Date of Murder: June 5, 1984
Victim(s): Kerry Golden W / M / 29 (Acquaintance of Huffman, met on night of murder)

Method of Murder: beating with tire iron; stomping; manual strangulation



Summary: Kerry Golden was introduced to Huffman while at the 50 Yard Line Bar in Indianapolis. They sat together and Golden displayed a large amount of money and marijuana. They met Huffman's longtime friends, Herb Underwood and Rick Asbury and closed down the bar. They smoked marijuana in the parking lot together and left in a car with Huffman driving, Underwood in the front, and Asbury and Golden in the back. The car was stopped in a remote area. Underwood got out and pulled Golden from the car. Huffman and Underwood told Golden to "give up the pot," then attacked him, both punching and kicking him. They stripped off his clothing and Underwood grabbed his penis and lifted him off the ground as Golden screamed. Underwood then took money from Golden's pants. Asbury got out and kicked Golden and gave his knife to Huffman. Huffman threatened to kill Golden if he told. Underwood stated that he had to kill him because he did not want to go to prison. Huffman got a tire iron from the trunk and both he and Underwood beat Golden. Underwood then told Asbury he had to hit Golden. Asbury "tapped" Golden twice with the tire iron. Asbury testified for the State at trial, pled guilty, and received a 25 year sentence for his role in the killing.

Trial: Information/PC for Murder and Death Penalty Filed (06-07-84); Death Sentence Request Filed (07-30-84); Jury Trial (07-15-85 through 07-24-85); Verdict (07-25-85); DP Trial (07-25-85); DP Verdict (07-25-85); Court Sentencing (08-23-85).

Conviction: Murder, Felony-Murder, Conspiracy to Commit Murder (A Felony), Robbery (A Felony), Conspiracy to Commit Robbery (A Felony)

Sentencing: August 23, 1985
(Death Sentence, 50 years, 50 years, 50 years; Murder and Felony-Murder merged)

Aggravating Circumstances: b (1) Robbery

Mitigating Circumstances: intoxication

Joint Trial with Richard Huffman

Direct Appeal: Underwood v. State, 535 N.E.2d 507 (Ind. March 10, 1989) (49S00-8602-CR-206)
Conviction Affirmed 5-0 DP Affirmed 4-1
Givan Opinion; Shepard, Debruler, Pivarnik concur; Dickson dissents.
For Defendant: Allen N. Smith, Jr., Indianapolis
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Underwood v. Indiana, 110 S.Ct. 257 (1989)(Cert. denied)
Underwood v. Indiana, 110 S.Ct. 524 (1989)(Rehearing denied)

PCR: PCR Petition filed 06-01-90. Amended PCR filed 07-02-92.
State's Answer to PCR Petition filed 06-28-90.
07-10-92 Defendant's Motion for Summary Judgment, denied 12-04-92.
02-01-93 Order granting Certification for Interlocutory Appeal.
02-27-95 Renewed Motion for Summary Judgment
Special Judge Ora A. Kincaid, III
For Defendant: Jeffrey Evans, Lorinda Youngcourt
For State: John V. Commons, Marc E. Lundy, Frank A. Gleaves
04-24-95 Defendant's Motion for Summary Judgment granted, vacating conviction and sentence.

On Remand: Motion for Speedy Trial (06-22-95); Voir dire (08-19-96, 08-20-96, 08-21-96); Jury Trial (08-22-96, 08-23-96, 08-24-96, 08-25-96, 08-26-96, 08-27-96); Deliberations over 4 days; Verdict (08-30-96).
Retrial on 08-19-96 to 08-27-96.
Marion Superior Court Special Judge Paula E. Lopossa
For Defendant: Brent L. Westerfield, Lorinda Youngcourt
For State: Barbara Crawford, James Nave

Verdict: Hung Jury on Murder, Conspiracy to Murder;
Found Not Guilty of Felony-Murder, Robbery, and Conspiracy to Robbery.

State's Motion to Dismiss Death Sentence due to jury verdict of not guilty on Robbery (10-11-96); Voir Dire (02-03-97); Jury Trial (02-03-97, 02-04-97, 02-05-97, 02-06-97, 02-07-97); Verdict (02-07-97); Court Sentencing (02-21-97).

Second Retrial on 02-03-97 to 02-07-97.

Marion Superior Court Special Judge Paula E. Lopossa
For Defendant: Brent L. Westerfield, Lorinda Youngcourt
For State: Barbara Crawford

Verdict: Guilty of Murder and Conspiracy to Murder.
Sentence: 60 years imprisonment for Murder. (Conspiracy to Murder vacated)

Underwood v. State, 722 N.E.2d 828 (Ind. January 31, 2000) (Affirmed 5-0) (49S00-9707-CR-419)
Underwood v. Indiana, 122 S.Ct. 560 (2001)(Cert. denied)

VAN CLEAVE, GREGORY # 20

OFF DEATH ROW SINCE 11-22-94
DOB: 06-01-1962 DOC#: 21486 Black Male

Marion County Superior Court Judge Patricia J. Gifford

Trial Cause #: CR82-153D

Prosecutor: David E. Cook

Defense: Grant Hawkins

Date of Murder: October 19, 1982

Victim(s): Robert Falkner W / M / 41 (No relationship to Van Cleave)

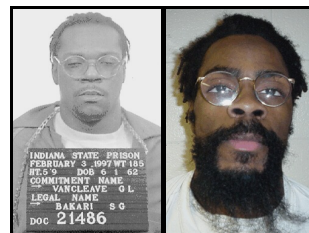
Method of Murder: shooting with shotgun

Summary: Robert Falkner was outside his home one night working by floodlight caulking a window while watching the World Series on television. He was shot in the chest with a shotgun. Van Cleave, Brazleton, Coleman and Sims were driving around getting high with liquor and marijuana looking for someone to rob when they came upon Falkner. Sims and Van Cleave got out, with Van Cleave carrying a shotgun. Van Cleave confronted Falkner and a neighbor overhead Falkner say "What do you mean, 'shut up.'" Van Cleave then shot Falkner in the chest and fled. Van Cleave admitted shooting Falkner, but claimed that "the gun just went off," and that the shooting was accidental. Brazleton and Coleman testified after reaching plea agreements with the State. Ballistics experts confirmed that the shot was fired from a distance from 6-8 feet.

Trial: Information/PC for Murder Filed (10-23-82); Death Sentence Request Filed (10-26-82); Guilty Plea (04-13-83); DP Sentencing Hearing (05-12-83); Court Sentencing (05-27-83).

Conviction: Pled Guilty to Felony-Murder (Conspiracy to Commit Robbery dismissed as part of Plea agreement. The agreement allowed both sides to present evidence and arguments on a death sentence and intent, but commanded 60 years imprisonment if death sentence not imposed)

Sentencing: May 27, 1983 (Death Sentence)



Aggravating Circumstances: b (1) Robbery

Mitigating Circumstances: 20 years old at the time of the murder
intoxication
bad home life
failed stint in the Army, Honorable Discharge
could not find a job after Army

Guilty Plea

Direct Appeal: Van Cleave v. State, 517 N.E.2d 356 (Ind. December 30, 1987) (384-S-109)
Conviction Affirmed 5-0 DP Affirmed 5-0
Shepard Opinion; Debruler, Givan, Pivarnik, Dickson concur.
For Defendant: Richard Kammen, Indianapolis, Daniel Dovenbarger, IU School of Law
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Van Cleave v. Indiana, 109 S.Ct. 819 (1989) (Cert. denied)
Van Cleave v. Indiana, 110 S.Ct. 271 (1989) (Rehearing denied)

PCR: PCR Petition filed 08-24-89. Amended PCR filed 03-01-90, 05-07-90, 05-24-90, 11-21-90, 04-15-91.
State's Answer to PCR Petition filed 09-22-89.
PCR Hearing 05-13-91, 05-14-91, 05-15-91, 05-16-91, 05-17-91, 05-23-91, 05-24-91, 08-26-91, 08-28-91.
Summary Judgment Hearing 10-13-92.
Marion County Superior Court Special Judge John W. Tranberg
Marion County Superior Court Special Judge Paula E. Lopoosa
For Defendant: John V. Commons, Frank Gleaves
For State: Thomas C. Hinesley, Joseph M. Cleary, Kenneth L. Bird, Deputy Public Defenders
11-23-94 PCR Petition granted.

State v. Van Cleave, 674 N.E.2d 1293 (Ind. December 19, 1996) (49S00-9008-PD-541)
(State's appeal of Judge Paula E. Lopoosa granting PCR vacating guilty plea, conviction and death sentence on grounds of ineffective assistance of counsel)
Reversed and remanded 5-0 for new sentencing hearing only and conviction reinstated; Vacating death sentence not challenged by State on appeal.
Boehm Opinion; Shepard, Dickson, Sullivan, Selby concur.
For Defendant: Thomas C. Hinesley, Joseph M. Cleary, Kenneth L. Bird, Deputy Public Defenders
For State: Geoff Davis, Deputy Attorney General (P. Carter)
State v. Van Cleave, 681 N.E.2d 181 (Ind. May 28, 1997) (On Rehearing) (49S00-9008-PD-541)
Remanded 5-0, Boehm Opinion; Shepard, Dickson, Sullivan, Selby concur.
(Ordering PCR court to determine if any additional evidence is necessary on remaining PCR issues, and if denied, then to conduct resentencing before appeal. Supreme Court strongly disapproves of PCR court severing ineffective assistance claims and entering a ruling only on that claim, causing unnecessary additional proceedings.)
Van Cleave v. Indiana, 118 S.Ct. 1060 (1998) (Cert. denied)

On Remand: 02-23-95 G. Thomas Gray appointed Special Judge
07-25-97 Amended PCR Petition filed
08-25-97 State's Answer filed
06-01-98 PCR Hearing
06-05-98 Guilty Plea/Sentencing

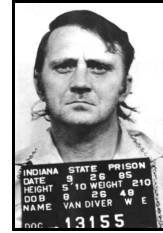
Special Judge Thomas Gray denied PCR relief. Following a new sentencing hearing, on 06-05-98 Special Judge Thomas Gray ruled that State has not satisfied burden of proof and a death sentence was removed from consideration. Van Cleave sentenced to 60 years imprisonment.

VANDIVER, WILLIAM C. # 26

EXECUTED BY ELECTRIC CHAIR 10-16-85 12:20 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 08-26-1948 DOC#: 13155 White Male

Lake County Superior Court Judge James E. Letsinger



Trial Cause #: 45G02-8306-CR-00117

Prosecutor: Thomas W. Vanes

Defense: Herbert I. Shaps

Date of Murder: March 20, 1983

Victim(s): Paul Komyatti, Sr. W / M / 62 (Father-In-Law of Vandiver)

Method of Murder: stabbed with fish filet knife over 100 times

Summary: Paul Komyatti, Sr. on occasion drank to excess and became loud and violent. He was disliked by members of his immediate family, which included his wife, Rosemary, his son Paul Jr., and his daughter, Mariann. Paul Sr. had demanded that Mariann divorce Vandiver because of his criminal past, and threatened to inform the police on him. Vandiver joined with the family in a conspiracy to kill Paul Sr. Pursuant to their agreement, several attempts to poison him were made without success. Finally, they decided to put him under with ether and inject air into his veins. One evening, Vandiver and Mariann waited outside the home for a signal from Paul Jr. that Paul Sr. was asleep. Upon seeing the signal, they entered the house and changed the plan at the last moment for lack of ether. Instead they entered the bedroom intending to smother Paul Sr., and sprang on him in his bed. Paul Sr. fought hard for his life and yet another attempt at murder was bungled. Vandiver, however, terminated the resistance by stabbing him in the back with a fish filet knife "at least 100 times." 34 deep knife wounds were later discovered on the body. He hit him in the head 5 or 6 times with his gun, but he was still breathing. By Vandiver's own admission, decapitation was the immediate cause of death. Vandiver and the other family members then sectioned up the body while making jokes. Evidence was also presented that Vandiver had gotten a "loan" of \$5000 from Paul Jr., as well as \$1700 and Paul Sr.'s truck from Rosemary. At trial, Vandiver recanted his prior confessions and placed the entire blame on Paul Jr. for the murder and dissection.

Trial: Indictment for Murder filed (06-24-83); Amended Indictment for DP filed (06-30-83); Notice of Insanity Defense filed (07-29-83); Motion to Change Venue (08-08-83); Motion for Change of Judge (11-04-83); Insanity Plea Withdrawn (12-05-83); Voir Dire (12-12-83, 12-13-83, 12-14-83); Jury Trial (12-14-83, 12-15-83, 12-16-83, 12-16-83, 12-17-83, 12-18-83, 12-19-83); Habitual Offender filed (12-19-83); Verdict (12-19-83); DP Trial (12-19-83, 12-20-83); Verdict (12-21-83); Court Sentencing (01-20-84). Habitual Offender Dismissed (04-13-84).

Conviction: Murder

Sentencing: January 20, 1984 (Death Sentence)

Aggravating Circumstances: b (3) Lying in wait
b (4) Hired to kill

Mitigating Circumstances: None

Direct Appeal: Vandiver v. State, 480 N.E.2d 910 (Ind. July 29, 1985) (984-S-341)
Conviction Affirmed 4-0 DP Affirmed 4-0
Pivarnik Opinion; Givan, Debruler, Prentice concur. Hunter did not participate.
For Defendant: David P. Freund, Deputy Public Defender (Carpenter)
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

VANDIVER WAIVED APPEALS AND WAS EXECUTED BY ELECTRIC CHAIR ON 10-16-85 AT 12:20 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 72ND CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900, AND THE SECOND SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

WALLACE, DONALD RAY, JR. # 16

EXECUTED BY LETHAL INJECTION 03-10-05 12:23 AM
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 09-03-1957 DOC#: 7114 White Male

Vigo County Circuit Court Judge Hugh D. McQuillan
Venued from Vanderburgh County



Trial Cause #: C-CR80-9 (Vigo County)
Prosecutor: Stanley M. Levco, Robert J. Pigman
Defense: William G. Smock

Date of Murder: January 14, 1980

Victim(s): Patrick Gilligan W / M / 30; Teresa Gilligan W / F / 30; Lisa Gilligan W/F/5;
Gregory Gilligan W / M / 4 (No relationship to Wallace)

Method of Murder: shooting with handgun

Summary: As attested by the admission of Wallace to friends after the fact, after burglarizing the home of Ralph Hendricks, he “got greedy” and decided to break into the house next door. However, when he did so, he was surprised to find the family inside. Patrick and Teresa Gilligan and their two children, aged 4 and 5, were confronted by Wallace with a gun. All four were tied up and shot in the head. Wallace would say to friends later that he shot Mr. Gilligan because he was “giving him trouble”; he shot Mrs. Gilligan because she was screaming and he “had to shut her up”; and he shot the children because he “could not let the children grow up with the trauma of not having parents.” Wallace then took guns, a CB, a scanner, and other property, all of which was later recovered from or traced to Wallace.

Trial: Venued to Vigo County (01-24-80); Found Incompetent (05-19-80); Found Competent (09-02-80); Found Incompetent (01-16-81); Competency Hearing (06-10-82, 06-11-82, 06-14-82, 06-16-82, 06-18-82); Found Competent (06-28-82); Insanity Defense filed (07-02-82); Insanity Defense Withdrawn (08-12-82); Voir dire (08-31-82, 09-01-82, 09-02-82, 09-03-82, 09-07-82, 09-08-82, 09-09-82); Jury Trial (09-09-82, 09-10-82, 09-11-82, 09-13-82, 09-14-82, 09-15-82, 09-16-82, 09-17-82, 09-18-82, 09-20-82, 09-21-82, 09-22-82); Verdict (09-22-82); DP Trial (09-23-82); Verdict (09-23-82); Court Sentencing (10-21-82).

Conviction: Murder (4 counts)

Sentencing: October 21, 1982 (Death Sentence)

Aggravating Circumstances: b (1) Burglary
b (8) 4 murders

Mitigating Circumstances: extreme emotional disturbance
loveless childhood
insecure childhood

Direct Appeal: Wallace v. State, 486 N.E.2d 445 (Ind. December 6, 1985) (583-S-190)
Conviction Affirmed 5-0 DP Affirmed 3-2
Pivarnik Opinion; Givan, Shepard concur; Debruler and Prentice dissent.
For Defendant: William G. Smock, Terre Haute
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Wallace v. Indiana, 106 S.Ct. 3311 (1986) (Cert. denied)

PCR: PCR Petition filed 12-03-86. Amended PCR filed 03-18-87.
State's Answer to PCR Petition filed 12-18-86, 03-23-87.
PCR Hearing 04-08-87.
Special Judge Robert Brown
For Defendant: Pro Se, JoAnn Farnsworth, Margaret Hills, Deputy Public Defenders (Carpenter)
For State: Stanley M. Levco, Robert J. Pigman
09-04-87 PCR Petition denied.

Wallace v. State, 553 N.E.2d 456 (Ind. April 17, 1990) (84S00-8803-PC-00298)
(Appeal of PCR denial by Judge Robert Brown)
Affirmed 3-2; Pivarnik Opinion; Givan, Shepard concur; Debruler, Dickson dissent.
For Defendant: Margaret Hills, Deputy Public Defender (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Wallace v. Indiana, 111 S.Ct. 2250 (1991) (Cert. denied)

09-01-92 2nd PCR Petition filed.
09-21-92 State's Answer to PCR Petition filed.
09-24-92 State files Motion for Summary Judgment.
01-04-93 State's Motion for Summary Judgment granted, PCR dismissed.

Wallace v. State, 640 N.E.2d 374 (Ind. September 28, 1994) (84S00-9305-DP-527)
(Appeal of 2nd PCR denial by Judge Dexter Bolin, Jr., summary judgment to State)
Affirmed 5-0; Givan Opinion; Shepard, Dickson, Debruler, Sullivan concur.
For Defendant: Judith G. Menadue, Elkhart, John J. Ray, Indianapolis, Public Defenders
For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)
Wallace v. Indiana, 115 S.Ct. 1972 (1995) (Cert. denied)

Wallace v. State, 820 N.E.2d 1261 (Ind., Jan 13, 2005) (84S00-0412-SD-502)
Leave to file Successive Petition for Postconviction Relief denied.
(Claims barred by res judicata.)
(All justices concur - Dickson, Shepard, Sullivan, Boehm Rucker)

Habeas: 02-21-95 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
09-06-95 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Donald Ray Wallace, Jr. v. Cecil Davis, Superintendent (IP 95-0215-C-B/S)
Judge Sarah Evans Barker
For Defendant: Sarah L. Nagy, Indianapolis
For State: Michael A. Hurst, Thomas D. Perkins, Deputy Attorneys General (S. Carter)

11-02-95 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
12-14-95 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.

11-14-02 Writ of Habeas Corpus denied.
03-26-03 Certificate of Appealability granted in part.

Wallace v. Davis, WL 31572002 (S.D. Ind. November 14, 2002) (Not Reported in F.Supp) (IP 95-0215-C-B/S) (Order of Judge Sarah Evans Barker of the U.S. District Court for the Southern District of Indiana denying the Habeas Corpus Petition of Donald Ray Wallace, which had been pending for more than 7 years, an unconscionable delay that is left unexplained by the Court.)
For Defendant: Ann M. Pfarr, Juliet M. Yackel, Deputy Public Defenders (Carpenter)
For State: Arthur Thaddeus Perry, Deputy Attorney General (Modisett)

Wallace v. Davis, 362 F.3d 914 (7th Cir. March 26, 2004) (02-4262)
(Appeal of denial of Habeas Writ by Judge Sarah Evans Barker)
Affirmed 3-0; Circuit Judge Frank H. Easterbrook, Judge Joel M. Flaum, Judge Anne Claire Williams.
For Defendant: Alan M. Freedman, Evanston, IL
For State: Stephen R. Creason Deputy Attorney General (S. Carter)
Wallace v. Davis, 125 S.Ct. 617 (November 29, 2004) (Cert. denied)

Wallace v. Davis, 373 F.3d 844 (7th Cir. June 28, 2004) (02-4262).
Petition for Rehearing and Rehearing En Banc denied by 8-3 majority of active Judges of 7th Circuit.
For Defendant: Alan M. Freedman, Evanston, IL
For State: Stephen R. Creason Deputy Attorney General (S. Carter)

WALLACE WAS EXECUTED BY LETHAL INJECTION 03-10-05 12:23 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 82ND CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900, AND THE 12TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

WARD, ROY LEE # 99 & # 103

ON DEATH ROW SINCE 06-08-07
DOB: 07-20-1972 DOC#: 914976 White Male

Spencer County Circuit Court Judge Wayne Roell

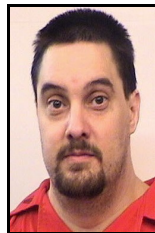
Trial Cause #: 74C01-0107-CF-0158

Prosecutor: Jon A. Dartt, Jack R. Robinson
Defense: Barbara Coyle Williams, Scott A. Blazey

Date of Murder: July 11, 2001

Victim(s): Stacy Payne W / F / 15 (No relationship to Ward)

Method of Murder: stabbing with knife



Last Name

First Name

WARD

ROY

Summary: 15-year old Stacy Payne and her 14-year old sister, Melissa, were home alone in their rural Dale, Indiana home when Ward entered and attacked Stacy with a knife. Melissa had taken a nap upstairs and was awakened by Stacy's screams. From the top of the stairs Melissa saw Ward on top of Stacy. She called 9-1-1 and heard Stacy pleading, "Stop!" while Ward said, "You better be quiet." Ward was still at the scene, covered with blood and pocket knife in hand, when police arrived. Stacy Payne's torso was nearly sliced in two, her throat was cut to her windpipe and her wrist was slashed to the bone. She was nevertheless alive for a short time. Vaginal bruising and Stacy's DNA on Ward's genitals supported the Rape and Criminal Deviate Conduct charges. Ward was on probation for a Burglary in Missouri at the time of the crime and had a dozen prior convictions for Public Indecency/Indecent Exposure.

Trial: Information/PC for Murder and Death Sentence filed (07-16-01); Motion to Change Venue (02-08-02); Motion to Change Venue Withdrawn (03-01-02); Amended PC and DP Request filed (03-01-02); Motion to Change Venue (04-11-02); Voir Dire (10-07-02, 10-08-02, 10-09-02, 10-10-02, 10-11-02); Jury Trial (10-14-02, 10-15-02, 10-16-02, 10-17-02, 10-18-02, 10-19-02); Deliberations and Verdict (10-19-02); DP Trial (10-21-02, 10-22-02, 10-23-02); (Deliberations and Verdict (10-23-02); Court Sentencing (12-18-02).

Conviction: Murder, Rape and Criminal Deviate Conduct

Sentencing: December 18, 2002 (Death Sentence, 50 years, 50 years)

Aggravating Circumstances: b (1) Rape/Criminal Deviate Conduct
b (9) On probation or parole
b (11) Mutilation / Torture

Mitigating Circumstances: dysfunctional family, education, and social environment
parents separated and divorced
mental retardation, low intelligence, mental illness and instability
exhibitionism disorder

Direct Appeal: Ward v. State, 810 N.E.2d 1042 (Ind. June 30, 2004) (74S00-0108-DP-00361)
Convictions Reversed 5-0 DP Vacated 5-0
Rucker Opinion; Shepard, Dickson, Sullivan and Boehm concur.
For Defendant: Steven E. Ripstra, Jasper, IN, Lorinda Meier Youngcourt, Huron, IN
For State: James B. Martin, Deputy Attorney General (S. Carter)
(Reversal on the grounds of failure to change venue or to obtain jurors from another county pursuant to IC 35-36-6-11, in the face of extensive pretrial publicity and community bias in a small county. It is thought to be the only such reversal in the state's history.)
Indiana v. Ward, 126 S.Ct. 395 (2005) (Cert. denied)

On Remand: Venued to Clay County.
05-03-07 Entered Guilty Plea to Murder, Rape.
Charge of Criminal Deviate Conduct dismissed by State; Aggravating Circumstance alleging intentional murder during course of Criminal Deviate Conduct dismissed by State.
06-08-07 Sentenced to death, based upon Aggravating Circumstances of b (1) Rape; b (9) On probation or parole; b (11) Mutilation / Torture.
Special Judge Robert J. Pigman, Vanderburgh County Circuit Court
Prosecutor: Jon A. Dartt
Defense: Steven Ripstra, Lorinda Meier Youngcourt

Retrial: Jury Selection in Clay County (05-09-07); DP Sentencing Hearing in Vanderburgh County, State's Case (05-14-07, 05-15-07); Defendant's Case (05-16-07, 05-17-07); Jury Verdict after 45 minutes deliberations (05-18-07); Court Sentencing (06-08-07).

Direct Appeal: Ward v. State, 903 N.E.2d 946 (Ind. April 07, 2009) (74S00-0707-DP-263)
DP Affirmed 5-0
Dickson Opinion; Shepard, Sullivan, Boehm, Rucker concur.
For Defendant: Steven E. Ripstra, Jasper, IN, Lorinda Meier Youngcourt, Huron, IN
For State: James B. Martin, Deputy Attorney General (G. Zoeller)

Ward v. State, 908 N.E.2d 595 (Ind. June 26, 2009) (74S00-0707-DP-263) (On Rehearing)
DP Affirmed 5-0
Dickson Opinion; Shepard, Sullivan, Boehm, Rucker concur.

For Defendant: Steven E. Ripstra, Jasper, IN, Lorinda Meier Youngcourt, Huron, IN
For State: James B. Martin, Deputy Attorney General (Zoeller)
Ward v. Indiana, 130 S.Ct. 2060 (March 29, 2010) (Cert. denied)

PCR: Ward v. State, 969 N.E.2d 46 (June 21, 2012) (74S00-0907-PD-320)
(Appeal of PCR denial by Special Judge Robert J. Pigman, Spencer County)
Affirmed 5-0; Sullivan Opinion; Dickson, Rucker, David, Massa concur.
For Defendant: Thomas C. Hinesley, Laura L. Volk, Deputy Public Defenders (Owens)
For State: James B. Martin, Deputy Attorney General (Zoeller)

Habeas: 12-03-12 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
03-04-13 Petition for Writ of Habeas Corpus filed in U.S. District Court, Southern District of Indiana.
Roy Lee Ward v. Bill Wilson, Superintendent (3:12-cv-00192-RLY-WGH)
Judge Richard L. Young, Referred to Magistrate Judge William G. Hussmann, Jr.
For Defendant: Marie F. Donnelly, Chicago, IL, Laurence E. Komp, Manchester, MO
For State: Andrew A. Kobe, James B. Martin, Deputy Attorneys General (Zoeller)

PENDING IN BRIEFING IN THE U.S. DISTRICT COURT, SOUTHERN DISTRICT OF INDIANA,
JUDGE RICHARD L. YOUNG.

DANIEL RAY WILKES # 104

OFF DEATH ROW SINCE 08-12-11
DOB: 07-30-1968 DOC#: 108002 White Male

Clark County Circuit Court
Venued from Vanderburgh Circuit Court

Vanderburgh Circuit Court Judge Carl A. Heldt



Trial Cause #: 82C01-0605-MR-438 (Vanderburgh), 10C01-0705-MR-158 (Clark)

Prosecutors: Stanley M. Levco, Donita F.M. Farr

Defense: Barbara Williams, Kurt Schnepfer

Date of Murder: April 23, 2006

Victim(s): Donna Lee Joy Claspell, W/F/38 (Friend and roommate); Avery Pike, W/F/13 (Donna's daughter);
Sydney Claspell W/F/8 (Donna's daughter).

Method of Murder: Beaten with a hammer and level, knife to cut throat (Donna); Beaten with a hammer and level (Sydney); Strangulation with a sports bra (Avery).

Summary: Wilkes met and befriended Donna Claspell while they were enrolled in an in-patient drug rehabilitation facility in Evansville. After completing treatment, Wilkes moved in with Donna and her two daughters, Avery (13) and Sydney (8). Shortly thereafter, Wilkes began molesting Avery. While intoxicated, Wilkes murdered Donna in her bed, beating her with a hammer and wooden level which resulted in multiple skull fractures. He also cut her throat with a knife. Wilkes also attacked Sydney in Donna's bedroom, beating her with the hammer and level, causing massive skull fractures. Wilkes then went to Avery's bedroom, strangling her with a sports bra and leaving her naked on her bed with her hands tied behind her back and one of her legs tied to the footboard of the bed. Wilkes confessed to the crimes, but claimed at trial with the aid of an expert, that it was a false confession.

Trial: PC Affidavit for Murder filed (04-27-06); Information for Murder filed (05-01-06); Initial Hearing (05-03-06); DP Request filed (06-19-06); Change of Venue Ordered (04-17-07); Voir Dire (12-04-07, 12-05-07); Jury Trial (12-06-07, 12-07-07, 12-10-07, 12-11-07, 12-12-07); Verdict (02-12-07) (2 Hour deliberation); DP Trial (12-13-07, 12-14-07); Hung Jury 11-1 Verdict (12-14-07); Court Sentencing (01-25-08).

Hung Jury on Death Sentence. (But found existence of Aggravating Circumstances in special verdict)

Conviction: Murder, Murder, Murder

Sentencing: January 25, 2008 (Death Sentence)

Aggravating Circumstances: b (12) 2 victims less than 12 years of age
b (8) 3 murders

Mitigating Circumstances: no significant history of prior criminal conduct
alcohol/Drug intoxication and dependence
mixed personality disorder and psychosocial stressors
under influence of extreme mental or emotional disturbance
depression
victim was a participant in or consented to conduct
defendant was merely an accomplice
acted under the substantial domination of another person
mental disease or defect
childhood was unstable, abusive and neglectful
defendant can be safely incarcerated at DOC.

Direct Appeal: Wilkes v. State, 917 N.E.2d 675 (Ind. December 10, 2009) (10S00-0808-DP-453)
Clark Circuit Court Cause #10C01-0705-MR-158 (Venued from Vanderburgh County)
Conviction 5-0 DP Affirmed 5-0
Boehm Opinion; Dickson, Shepard, Sullivan, Rucker concur.
For Defendant: John Andrew Goodridge (Evansville), William Wayne Gooden (Mt. Vernon)
For State: Stephen R. Creason, Deputy Attorney General (Zoeller)
Wilkes v. Indiana, 131 S.Ct. 414 October 18, 2010) (Cert. denied)

PCR: On August 12, 2011, Special Judge Carl D. Heldt granted PCR on the Death Penalty, but denied all other claims, and reduced the sentence to Life Without Parole. Judge Heldt based his ruling upon consideration of the jury's indecision in failing to reach a verdict. The Court did not do so in the original sentencing. The State did not appeal this ruling.

Wilkes v. State, 984 N.E.2d 1236 (Ind. April 4, 2013) (10S00-1004-PD-185)
Conviction Affirmed 5-0
Dickson Opinion; Rucker, David, Massa, and Rush concur.
For Defendant: Joanna Green, Steven H. Shutte, Kathleen Cleary, Deputy Public Defenders (Owens)
For State: Stephen R. Creason, Kelly A. Miklos, Deputy Attorneys General (Zoeller)

WILLIAMS, DARNELL # 51

OFF DEATH ROW SINCE 07-02-04
DOB: 07-31-1966 DOC#: 872037 Black Male

Lake County Superior Court
Judge James E. Letsinger



Trial Cause #: 2CR-133-886-531

Prosecutor: Thomas W. Vanes, Kathleen Burns

Defense: Nathaniel Ruff

Date of Murder: August 12, 1986

Victim(s): John Rease B / M / 74; Henrietta Rease B / F / 59 (Ex-Foster Parents of Rouster)

Method of Murder: shooting with .32 and .22 handgun

Summary: John and Henrietta Rease were elderly foster parents, regularly taking into their home children who were often incorrigible and unwanted. One such child was Gregory Rouster, who was placed in the Rease home by the Welfare Dept. in November 1985 and stayed through February 1986. The Rease's operated a small candy store out of the first floor of their home in Gary. On August 12, 1986 both were shot to death in their home. John Rease was shot once in the shoulder area with a .32 handgun. Henrietta Rease was shot once in the back with the same .32 handgun and twice in the head at close range with a .22 handgun. .30 caliber ammunition was found on the floor. Numerous witnesses placed Rouster and his companion, Darnell Williams, going into the home with guns on the day of the murder. A foster child of the Rease's, 17 year old Derrick Bryant, testified that he was hiding in the house as Rouster and Williams entered, heard Rouster arguing with Henrietta over money they owed him, heard Henrietta say "Greg, why are you doing this?," then heard two more shots as he ran out the back door. Other witnesses testified that Rouster was outside when the last shots were fired. Rouster had bumped into his Welfare caseworker at the drugstore earlier the same day and asked if the Rease's received a clothing allowance for him while he was in foster care. When he was told that they did, Rouster declared that they owed him money and he was going to get it. Williams was later in possession of the same .30 caliber ammunition found at the scene, as well as cash and a wristwatch that Bryant identified as a gift to Henrietta. Accomplice Edwin Garland Taylor pled guilty to Robbery (C Felony) and testified for the prosecution.

Trial: Information/PC for Murder filed (08-14-86); Amended Information for DP filed (09-16-86); Voir Dire (02-09-87, 02-10-87); Jury Trial (02-11-87, 02-12-87, 02-13-87, 02-14-87, 02-16-87); Verdict (02-17-87); DP Trial (02-17-87, 02-18-87); Verdict (02-19-87); Court Sentencing (03-23-87).

Conviction: Felony-Murder (John Rease), Felony-Murder (Henrietta Rease).
(Williams was tried jointly with Gregory Rouster and Teresa Newsome, Rouster's girlfriend and Williams' sister, who was found not guilty.)

Sentencing: March 23, 1987 Death Sentence (Rouster); Death Sentence (Williams)

Aggravating Circumstances: b (1) Robbery
b (8) 2 murders

Mitigating Circumstances: no prior criminal conduct
aid and kindness to members of his family
regular employment
high school graduate

Joint Trial and Direct Appeal with Gregory Rouster

Direct Appeal: Rouster v. State, 600 N.E.2d 1342 (Ind. October 16, 1992) (45S00-8710-CR-914)

Conviction Affirmed 5-0 DP Affirmed 4-1

Shepard Opinion; Givan, Dickson, Krahulik concur; Debruler dissents.

For Defendant: Scott L. King, Daniel L. Bella, Crown Point Public Defenders

For State: Arthur Thaddeus Perry, Deputy Attorney General (Pearson)

PCR: PCR Petition filed 08-26-93. Amended PCR filed 04-28-95, 06-05-95.

State's Answer to PCR Petition filed 02-17-94.

PCR Hearing 09-18-95, 09-25-95, 09-26-95, 09-27-95, 09-28-95, 09-29-95, 10-02-95, 10-04-95.

Special Judge Richard J. Conroy

For Defendant: Ann M. Pfarr, Juliet M. Yackel, Jeffreys Merryman, Deputy Public Defenders (Carpenter)

For State: Natalie Bokota, Taylor

02-28-96 PCR Petition denied.

Williams v. State, 706 N.E.2d 149 (Ind. 1999) (45S00-9303-PD-397)

(Appeal of PCR denial by Special Judge Richard J. Conroy)

Affirmed 5-0; Shepard Opinion; Dickson, Sullivan, Selby, Boehm concur.

For Defendant: Ann M. Pfarr, Juliet M. Yackel, Deputy Public Defenders (Carpenter)

For State: Arthur Thaddeus Perry, Deputy Attorney General (Modisett)

Williams v. Indiana, 120 S.Ct. 1970 (2000) (Cert. denied)

Williams v. State, 718 N.E.2d 737 (Ind. September 28, 1999)

(Petition for Rehearing denied, execution date set for November 17, 1999)

Williams v. State, 791 N.E.2d 193 (Ind. June 27, 2003) (45S00-0306-SD-248)

(Successive PCR in the form of DNA testing of blood on his shorts and co-defendant's pants)

Authorization Declined 5-0; Opinion by Shepard; Dickson, Sullivan Boehm, Rucker concur.

(The testing would not be probative of the perpetrator or exculpatory, would not indicate an unlawful or inappropriate death sentence.)

Williams v. Indiana, 124 N.E.2d 300 (October 6, 2003) (Cert. denied)

Williams v. State, 792 N.E.2d 22 (Ind. July 22, 2003) (45S00-0306-SD-248)

Order directing State to respond to Defendant's "Petition For The Consideration Of New Evidence Pursuant To Indiana Code 35-50-2-9(k)."

Williams v. State, 793 N.E.2d 1019 (Ind. July 25, 2003) (45S00-0306-SD-248)

(Successive PCR for consideration of new evidence pursuant to IC 35-50-2-9(k).

Authorization Declined 3-2; Opinion by Sullivan, Shepard, Dickson concur. Boehm and Rucker dissent, concluding that execution should be delayed while new DNA testing is performed.

Williams v. State, 808 N.E.2d 652 (Ind. May 21, 2004) (45S00-0306-SD-248)

(Rehearing denied. Opinion by Shepard; Dickson, Sullivan, Rucker, Boehm concur.)

Habeas: 10-04-99 Notice of Intent to File Petition for Writ of Habeas Corpus filed.

05-12-00 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.

Darnell Williams v. Ron Anderson, Superintendent (3:99-CV-0570-AS)

Judge Allen Sharp

For Defendant: Juliet Marie Yackel, Chicago, IL, Stephen E. Eberhardt, Crestwood, IL

For State: Michael A. Hurst, Deputy Attorney General (S. Carter)

11-03-00 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.

04-02-01 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.

11-19-01 Writ of Habeas Corpus denied.

12-20-01 Certificate of Appealability granted.

Williams v. Anderson, 174 F.Supp. 843 (N.D. Ind. November 19, 2001) (3:99-CV-0570-AS)
(Habeas Corpus denied by Judge Allen Sharp, U.S. District Court, Northern District of Indiana)

Williams v. Davis, 301 F.3d 625 (7th Cir. August 29, (2002) (01-4225)
(Appeal of denial of Habeas Corpus)

Affirmed 3-0; Opinion by Judge Michael S. Kanne, Judge John L. Coffey Judge Harlington Wood, Jr.
For Defendant: Juliet M. Yackel, Chicago, IL, Stephen E. Eberhardt, Crestwood, IL
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)
Williams v. Indiana, 123 S.Ct. 1904 (April 28, 2003) (Cert. denied)

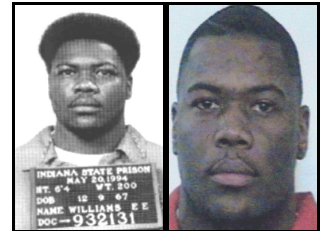
Clemency: In July 2003 Governor Frank O'Bannon granted a stay of execution for Darnell Williams in order that DNA testing could be performed on clothing he was wearing when arrested. However, the testing proved inconclusive at best, and the Indiana Supreme Court set a July 9, 2004 execution date.

On July 2, 2004 Governor Joe Kernan issued an Executive Order commuting the death sentence of Darnell Williams to Life Imprisonment Without Parole. Noting that Gregory Rouster was more culpable in the murders, but had been spared the death penalty after he was declared mentally retarded, Governor Kernan said "Because Rouster cannot be executed for the crime, it is unjust for Williams to be executed." The commutation followed a recommendation for commutation from the State Parole Board. This was the first time since the reinstatement of the Death Penalty in Indiana in 1977 that the Parole Board recommended commutation of a death sentence, or that the Governor commuted a death sentence.

WILLIAMS, EDWARD EARL # 77
(Akeem Aki-Khuam)

OFF DEATH ROW SINCE 03-25-02
DOB: 12-09-1967 DOC#: 932131 Black Male

Lake County Superior Court Judge James E. Letsinger



Trial Cause #: 45G02-9207-CF-00182
Prosecutor: John J. Burke
Defense: David R. Schneider, Darnail Lyles

Date of Murder: June 19, 1992

Victim(s): Robert Hollins B / M / 26; Debra Rice B / F / 42; Michael Richardson B / M / 41
(No relationship to Williams)

Method of Murder: shooting with handgun

Summary: Williams, Jemelle Joshua and three others went to the home of school teacher Michael Richardson, intent on stealing the audio and video equipment from his basement. Williams and Joshua were admitted to the home and let the three accomplices in. Williams held a handgun to Richardson's head and Joshua held a shotgun on Richardson's sister, Debra Rice, while the other three men went to the basement. Robert Hollins, a guest in the home, struggled with one of the men and was shot in the back by Williams. Debra Rice tried to escape and Joshua shot her in the chest. The equipment proved too difficult to remove from the basement, and as the invaders were leaving the home, Williams shot Richardson, Rice, and Hollins once in the head. A few hours later, he would tell his sister that he did so in order not to leave any witnesses.

Trial: Information/PC for Murder filed (07-18-92); Jury Trial (01-25-93, 01-26-93, 01-27-93, 01-28-93, 01-29-93); Verdict (01-29-93); DP Trial (01-30-93, 01-30-93); Jury Hung (01-31-93); Court Sentencing (03-02-93).

Conviction: Murder (3 counts), Felony-Murder (3 counts)

Sentencing: March 2, 1993 (Death Sentence)

Aggravating Circumstances: b (1) Robbery (3 counts)
b (8) 3 murders

Mitigating Circumstances: low IQ
father convicted of abusing Williams as a child

Hung Jury on Death Sentence

Direct Appeal: Edward Williams v. State, 669 N.E.2d 1372 (Ind. August 7, 1996) (45S00-9210-DP-770)
Conviction Affirmed 5-0 DP Affirmed 5-0
Sullivan Opinion; Shepard, Debruler, Dickson, Selby concur.
For Defendant: Charles E. Stewart, Jr., Darnail Lyles, Crown Point
For State: Arthur Thaddeus Perry, Deputy Attorney General (P. Carter)
Williams v. Indiana, 117 S.Ct. 1828 (1997) (Cert. denied)

PCR: 01-22-97 Notice of Intent to file PCR Petition.
PCR Hearing 12-16-97, 12-17-97, 12-18-97, 12-19-97, 12-22-97, 01-26-98.
Special Judge Richard W. Maroc
For Defendant: Ann M. Pfarr, Robert E. Lancaster, Danielle L. Gregory, Deputy Public Defenders.
For State: Natalie Bokota, Robert L. Collins, Christopher L. Lafuse, Deputy Attorneys General
02-19-97 PCR Petition denied.

Edward Williams v. State, 724 N.E.2d 1070 (Ind. February 23, 2000) (45S00-9701-PD-45)
(Appeal of PCR denial by Special Judge Richard W. Maroc)
Affirmed 5-0; Shepard Opinion, Dickson, Sullivan, Boehm, Rucker concur.
For Defendant: Danielle L. Gregory, Ann M. Skinner, Robert E. Lancaster, Public Defenders
For State: Rosemary L. Borek, Deputy Attorney General (Modisett)
Williams v. Indiana, 121 S.Ct. 886 (2001) (Cert. denied)

Habeas: 06-23-00 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
12-14-00 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Akeem Aki-Khuam a/k/a Edward Earl Williams v. Rondle Anderson, Superintendent (IP 01-C- 864-M/S)
Judge Allen Sharp
For Defendant: Brent L. Westerfield, Eric Koselke, Indianapolis
For State: Thomas D. Perkins, Stephen R. Creason, Deputy Attorneys General (S. Carter)

02-12-01 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
08-16-01 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
11-07-02 Writ of Habeas Corpus granted.

Aki-Khuam v. Davis, 203 F. Supp.2d 1001 (N.D. Ind. March 25, 2002) (3:00-CV-386-AS)
(Order of U.S. District Court Judge Allen Sharp, Northern District of Indiana, granting Writ of Habeas Corpus as to conviction and sentence on grounds that the trial judge improperly denied peremptory challenges of white jurors by the defense.)
For Defendant: Brent L. Westerfield, Eric Koselke, Indianapolis
For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

Aki-Khuam v. Davis, 328 F.3d 366 (7th Cir. May 8, 2003) (02-1945)
(This opinion vacated and replaced by opinion dated August 5, 2003)

Aki-Khuam v. Davis, 339 F.3d 521 (7th Cir. August 5, 2003) (02-1945)
(Appeal of grant of Habeas Corpus by Judge Allen Sharp)

Affirmed 3-0, Conviction Reversed, DP Vacated.

Opinion by Circuit Judge William J. Bauer, Judge Ilana Diamond Rovner, Judge Diane P. Wood.
Vacating Opinion dated May 8, 2003.

(Trial court's modification of Batson procedure, by not requiring initial challenge by prosecution and by rejecting race-neutral reasons at step two of Batson analysis, was contrary to clearly established federal law.)

For Defendant: Eric Koselke, Brent L. Westerfeld, Indianapolis

For State: Stephen R. Creason, Deputy Attorney General (S. Carter)

On Remand: Aki-Khuam pled guilty to three counts of murder in exchange for (1) dismissal of felony murder counts, (2) withdrawal of the death penalty request, and (3) recommendation that the sentence for one of the murder convictions run concurrently with the others. In May 2007, the trial court sentenced Aki-Khuam to 50 years for each count of murder, with two of the sentences to run consecutively, for a total sentence of 100 years.

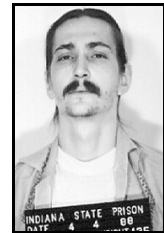
Aki-Khuam v. State, 883 N.E.2d 228 (Ind. App. March 20, 2008) (45A05-0706-CR-348)
(Direct Appeal of 100 year sentence - Affirmed)

WILLIAMS, LARRY C. # 6

OFF DEATH ROW SINCE 07-08-88

DOB: 03-28-1958 DOC#: 10213 White Male

LaPorte County Circuit Court Judge Robert S. Gettinger
Venued from Marshall County



Trial Cause #: 7515 (Marshall Circuit)

SCR80-9 (Marshall County), 4807-C (LaPorte County)

Prosecutor: Ralph R. Huff, James P. Hayes, Fred R. Jones

Defense: Jere L. Humphrey

Date of Murder: April 12, 1979

Victim(s): Jesse Hubbard W / M / 45 (Acquaintance of Williams)

Method of Murder: stabbing with butcher knife

Summary: Williams and Larry Perkins agreed on a scheme to blackmail Jesse Hubbard and went to his house for that purpose. They drank beer, smoked pot, and watched TV for awhile, when they decided to rob him instead. Perkins hit Hubbard on the head with his pistol and Williams stabbed him several times in the chest with a butcher knife. He then hit him with a whiskey bottle and a piece of pipe. The men attempted to wipe off their fingerprints, took Hubbard's billfold, and went to Williams' mother's house to split the money. Accomplice Redman pled guilty to Assisting a Criminal and was sentenced to 8 years imprisonment on June 17, 1980. Accomplice Perkins testified for the State at trial, then entered a guilty plea to Felony Murder and Conspiracy to Robbery, and sentenced to 54 years and 20 years concurrent on September 19, 1980.

Williams was also convicted of the 1979 murder and robbery of Claude Yarian in Fulton County on 05-28-80. A jury recommended against death and Williams was sentenced to 130 years imprisonment. (See Williams v. State, 426 N.E.2d 662 (1981) (S-79-53))

Trial: Indictment for Murder and Death Sentence transferred from Circuit to Superior Court in Marshall County (02-04-80); Motion for Change of Venue (02-12-80); Arraignment in LaPorte County (04-21-80); Motion for Speedy Trial (04-21-80); Amended DP Information (06-06-80); Voir Dire (07-08-80, 07-09-80, 07-10-80); Jury Trial (07-14-80, 07-15-80, 07-16-80, 07-17-80); Verdict 07-17-80; DP Trial (07-17-80); Verdict 07-17-80; Habitual Offender Sentencing Hearing (07-17-80); Verdict (07-17-80); Court Sentencing (08-25-80).

Conviction: Murder, Felony-Murder, Robbery (A Felony), Conspiracy to Commit Robbery (A Felony), Habitual Offender

Sentencing: August 25, 1980 (Death Sentence, 90 years, 30 years 30 years, consecutive)

Aggravating Circumstances: b (1) Robbery
b (7) Convicted of another murder on 05-09-80

Mitigating Circumstances: 21 years old at the time of the murder
beer and marijuana intoxication
stealing, dealing drugs all his life
abandoned by his father at age 11
lived in poverty
his younger brothers are also in trouble with the law

Direct Appeal: Larry Williams v. State, 430 N.E.2d 759 (Ind. January 19, 1982) (1280-S-443)
Conviction Affirmed 5-0 DP Affirmed 3-2
Hunter Opinion; Givan, Pivarnik concur; Debruler, Prentice dissent.
For Defendant: Jere I. Humphrey, Plymouth
For State: Palmer K. Ward, Deputy Attorney General (Pearson)
Williams v. Indiana, 103 S.Ct. 33 (1982) (Appeal dismissed)
Williams v. Indiana, 103 S.Ct. 479 (1982) (Rehearing denied)

PCR: PCR Petition filed 03-25-83.
State's Answer to PCR Petition filed.
PCR Hearing 09-12-84.
Special Judge Donald D. Martin
For Defendant: Paul Levy, Deputy Public Defender (Carpenter)
For State: Ralph R. Huff
04-08-85 PCR Petition denied.

Williams v. State, 525 N.E.2d 1238 (Ind. July 8, 1988) (985-S-372)
(Appeal of PCR denial by Special Judge Donald D. Martin)
Conviction Affirmed 5-0 DP Vacated 4-1
(Remanded due to jury instructions using "should" instead of "may" recommend death; Habitual Offender sentence also vacated)
Shepard Opinion; Debruler, Givan, Dickson concur; Pivarnik dissents.
For Defendant: Paul Levy, Deputy Public Defender (Carpenter)
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)

On Remand: DP Jury Sentencing Hearing - Voir Dire (08-19-91, 08-20-91, 08-21-91, 08-22-91)
Jury Trial (08-22-91) Mistrial declared by agreement based on juror "misconduct."
01-27-92 State withdraws DP request
02-28-92 Guilty Plea, Sentencing.

New DP Sentencing Hearing conducted and aborted by mistrial on grounds of juror misconduct. State withdrew request for death sentence. LaPorte County Circuit Court Judge Robert S. Gettinger sentenced Williams to consecutive terms of 60 years (Murder), 30 years (Robbery), and 30 years (Conspiracy to Robbery) totaling 120 years imprisonment.

For Defendant: Donald W. Pagos

For State: Ralph R. Huff, Fred R. Jones

Williams v. State, 619 N.E.2d 569 (Ind. 1993) (46S00-9206-CR-503)
(Appeal after remand and imposition of 120 year sentence; Affirmed)

WISEHART, MARK ALLEN # 21

OFF DEATH ROW SINCE 05-10-05

DOB: 11-21-1962 DOC#: 22622 White Male

Madison County Superior Court
Judge Thomas Newman, Jr.

Trial Cause #: 3SCR-82-204

Prosecutor: William F. Lawler, Jr.

Defense: Garry Miracle

Date of Murder: October 9, 1982

Victim(s): Marjorie Johnson W / F / 61 (No relationship to Wisheart)

Method of Murder: stabbing with butter knife

Summary: Anderson Police received an anonymous call to go to a certain apartment where they would find a body. Police did so and found the body of 61 year old Marjorie Johnson. Her clothing was torn and wrapped around her mid-section, her head was beaten and bloody, and there were 13 stab wounds in her chest area. Johnson was a regular visitor to the Christian Center, where Wisheart resided. Another resident testified that Wisheart had sent a letter to Johnson before the murder, talking about going to old people's houses and robbing them. Upon his arrest, Wisheart gave a confession, admitting that he had stabbed Johnson several times with several weapons, punching her with his fist, and striking her in the head with a whiskey bottle. He stated he took \$14 and admitted he was the one who tipped off police.

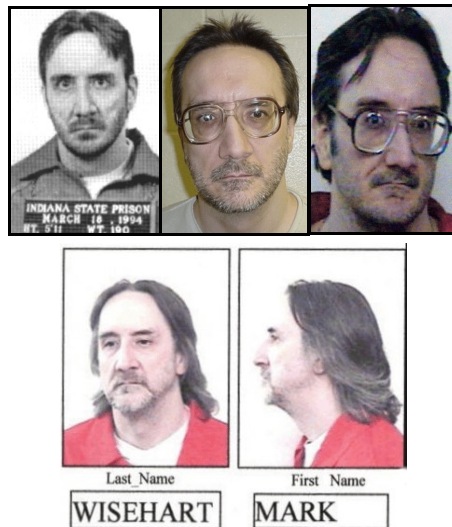
Trial: Information/PC for Murder and DP filed (10-18-82); Insanity Defense filed (11-12-82); Competency Hearing (04-11-83); Motion for Speedy Trial (06-14-83); Voir Dire (08-16-83, 08-17-83, 08-18-83); Jury Trial (08-18-83, 08-19-83, 08-23-83, 08-24-83, 08-25-83, 08-26-83, 08-27-83); Verdict (08-27-83); DP Trial (10-16-98, 10-19-98, 10-20-98); Verdict (10-20-98); Court Sentencing (09-29-83).

Conviction: Murder, Robbery (A Felony), Burglary (B Felony), Theft (D Felony)

Sentencing: September 26, 1983 (Death Sentence)

Aggravating Circumstances: b (1) Burglary, Robbery

Mitigating Circumstances: None



Direct Appeal: Wisheart v. State, 484 N.E.2d 949 (Ind. October 31, 1985) (384-S-89)
Conviction Affirmed 4-1 DP Affirmed 4-1
Pivarnik Opinion; Givan, Prentice, Shepard concur; Debruler dissents.
For Defendant: Garry W. Miracle, Anderson
For State: Joseph N. Stevenson, Deputy Attorney General (Pearson)
Wisheart v. Indiana, 106 S.Ct. 2929 (1986) (Cert. denied)

PCR: PCR Petition filed 05-25-90. Amended PCR filed 02-17-94, 05-12-94.
State's Answer to PCR Petition filed 04-13-94.
PCR Hearing 04-13-94, 04-14-94, 04-15-94, 04-18-94, 04-21-94, 04-22-94, 5-05-94.
Special Judge Thomas G. Wright
For Defendant: Thomas C. Hinesley, Janet S. Downling, J. Jeffreys Merryman, Jr.,
Deputy Public Defenders (Carpenter)
For State: William F. Lawler, Jr.
06-27-94 PCR Petition denied.

Wisheart v. State, 693 N.E.2d 23 (Ind. 1998) (48S00-9005-PD-378)
(Appeal of PCR denial by Special Judge Thomas G. Wright)
Affirmed 5-0; Sullivan Opinion; Shepard, Dickson, Selby, Boehm concur.
For Defendant: Thomas C. Hinesley, Janet S. Downling, J. Jeffreys Merryman, Jr.,
Deputy Public Defenders (Carpenter)
For State: James A. Joven, Deputy Attorney General (P. Carter)
Wisheart v. Indiana, 119 S.Ct. 1338 (1999) (Cert. denied)

Habeas: 07-28-98 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
10-06-98 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Mark A. Wisheart v. Cecil Davis, Superintendent (IP 01-C- 864-M/S)
Judge Larry J. McKinney
For Defendant: Alan M. Freedman, Evanston, IL, Rhonda Long-Sharp, Indianapolis
For State: Michael A. Hurst, Thomas D. Perkins, Deputy Attorneys General (S. Carter)

04-27-99 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
10-15-99 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
12-12-04 Writ of Habeas Corpus denied.
04-08-04 Certificate of Appealability granted in part.

Wisheart v. Davis, 408 F.3d 321 (7th Cir. May 10, 2005) (04-1632).
(Appeal of Habeas Denial; Reversed 3-0)
Judgment vacated by Seventh Circuit "with directions that the State release Wisheart, retry him, or conduct a further postconviction hearing addressed to the issue of jury bias." (10 years after trial, juror gave defense an affidavit stating that during trial he "heard" that trial was delayed so Wisheart could take polygraph. Juror did not know from whom he "heard" it, and did not know results of polygraph).
Opinion by Richard A. Posner; Joel M. Flaum, Diane P. Wood concur.
For Defendant: Alan M. Freedman, Evanston, IL
For State: Steve Carter, Indiana Attorney General
Buss v. Wisheart, 126 S.Ct. 1617 (2006) (Cert. denied)

On Remand: Following granting of Habeas Corpus relief by the Seventh Circuit U.S. Court of Appeals in 2005 remanding the case back for further PCR proceedings on the issue of jury bias relating to polygraph evidence - On September 1, 2010, Wisheart pleaded guilty to Murder, Robbery, Burglary, and Theft, and was sentenced by Madison County Superior Court 1 Judge Dennis Carroll to 60 years, 15 years, 15 years, 3 years consecutive, for a total executed term of 75 years imprisonment. For State: Madison County Prosecutor Tom Broderick, For Defense: Jeff Lockwood.

WOODS, DAVID LEON # 34

EXECUTED BY LETHAL INJECTION 05-05-07 AT 1:35 AM EST.
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 08-07-1964 DOC#: 851765 White Male

Boone County Superior Court Judge Donald R. Peyton
Venued from DeKalb County

Trial Cause #: SCR-84-160 (DeKalb County)
S-7007 (Boone County)

Prosecutor: Paul R. Cherry, Ora A. Kincaid, III

Defense: Allen F. Wharry, Douglas E. Johnston, Charles C. Rhett

Date of Murder: April 7, 1984

Victim(s): Juan Placencia H / M / 77 (Neighbor of Woods)

Method of Murder: stabbing with knife 21 times

Summary: Woods, Greg Sloan, and Pat Sweet went to the home of Juan Placencia in Garrett, Indiana to steal a television. Woods was armed with a knife. Sweet stayed in the yard, while Woods and Sloan rang the doorbell. When Placencia answered Woods immediately jumped in and stabbed him with the knife. When he fell back and asked for help, Woods then stabbed him again repeatedly and took money from his wallet. Woods and Sloan then carried out the television, hid it, and later sold it. They washed their clothes and threw the knife in the creek. When police arrived the next morning in response to a call of a man needing help, Woods was on the porch of Placencia's apartment complex crying and saying that he had gone there to use the telephone and found the body. While questioning Woods, his mother came to the scene and told police that she thought her son was involved in the murder. She consented to a search of her residence, which revealed a knife sheath and a stained towel. Woods was taken to the station and while preparations were being made for a polygraph, Woods broke down and gave a complete confession. Sloan testified at trial after entering a guilty plea to Aiding in Murder and was awaiting sentencing.

Trial: Information/PC for Murder filed (04-09-84); Amended Information for DP filed (04-12-84); Amended DP Information (04-26-84); Motion for Change of Venue (05-09-84, 05-31-84, 07-31-84); Change of Venue Granted (08-06-84); Amended Information filed (08-15-84); Voir Dire (02-19-85, 02-21-85, 02-22-85); Jury Trial (02-22-85, 02-23-85, 02-25-85, 02-26-85, 02-28-85, 03-01-85, 03-02-85); Verdict (03-02-85); DP Trial (03-04-85); Verdict (03-04-85); Court Sentencing (03-28-85).

Conviction: Murder, Robbery (A Felony)

Sentencing: March 28, 1985 (Death Sentence, 50 years)

Aggravating Circumstances: b (1) Robbery

Mitigating Circumstances: no prior criminal record
19 years old at the time of the murder
mistreated as a child
raised in foster homes
personality disorder



Direct Appeal: Woods v. State, 547 N.E.2d 772 (Ind. November 28, 1989) (885-S-343)
Conviction Affirmed 5-0 DP Affirmed 5-0
Debruler Opinion; Shepard, Givan, Pivarnik, Dickson concur.
For Defendant: David P. Freund, Deputy Public Defender (Carpenter)
For State: Cheryl L. Greiner, Deputy Attorney General (Pearson)

Woods v. State, 557 N.E.2d 1325 (Ind. November 23, 1990) (On Rehearing)
Affirmed 5-0; Debruler Opinion; Shepard, Givan, Pivarnik, Dickson concur.
For Defendant: David P. Freund, Deputy Public Defender (Carpenter)
For State: Cheryl L. Greiner, Deputy Attorney General (Pearson)
Woods v. Indiana, 111 S.Ct. 2911 (1991) (Cert. denied)

PCR: PCR Petition filed 05-06-94. Amended PCR filed 06-21-94.
State's Answer to PCR Petition filed 07-25-94.
PCR Hearing 01-06-96, 01-17-96, 01-18-96, 01-19-96.
Special Judge David Ault
For Defendant: David C. Stebbins, Columbus, OH, Joe Keith Lewis, Marion
For State: Eugene Bosworth
04-15-96 PCR Petition denied.

Woods v. State, 701 N.E.2d 1208 (Ind. November 3, 1998) (06S00-9403-PD-224)
(Appeal of PCR denial by Special Judge David Ault)
Affirmed 5-0; Boehm Opinion; Shepard, Dickson, Sullivan, Selby concur.
For Defendant: David C. Stebbins, Columbus, OH, Joe Keith Lewis, Marion
For State: James D. Dimitri, Deputy Attorney General (Modisett)
Woods v. Indiana, 120 S.Ct. 150 (1999) (Cert. denied)

Woods v. State, 863 N.E.2d 301 (Ind. March 26, 2007) (06S00-0612-SD-544)
(Motion for Leave to file Successive PCR on issues of mental retardation and conflict of interest with PCR attorneys)
Denied 5-0; Shepard Opinion; Dickson, Sullivan, Boehm, Rucker concur.
Woods v. Indiana, 127 S.Ct. 2159 (2007) (Cert. / Stay denied)

Habeas: 04-14-99 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
12-02-99 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
David Leon Woods v. Rondale Anderson, Superintendent (IP 99-C- 0520-M/S)
Judge Larry J. McKinney
For Defendant: William Van Der Pol, Jr., Martinsville, Teresa Harper, Bloomington
For State: Michael A. Hurst, Stephen R. Creason, Deputy Attorneys General (S. Carter)

04-27-00 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
03-31-03 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
02-02-04 Writ of Habeas Corpus denied.

Woods v. Anderson, 302 F.Supp.2d 915 (S.D. Ind. February 2, 2004) (IP99-0520-C-M/S)
(Order of U.S. District Court Judge Larry J. McKinney, Southern District of Indiana, denying Writ of Habeas Corpus.)
For Defendant: William Van Der Pol, Jr., Martinsville, Teresa Harper, Bloomington
For State: Thomas D. Perkins, Deputy Attorney General (S. Carter)

Woods v. McBride, 430 F.3d 813 (7th Cir. November 30, 2005) (04-1776)
(Appeal of denial of Writ of Habeas Corpus)
Affirmed 3-0; Opinion by Circuit Judge Michael S. Kanne .
Judge William J. Bauer and Judge Terence T. Evans concur.

For Defendant: William Van Der Pol, Jr., Martinsville, Teresa Harper, Bloomington
For State: Thomas D. Perkins, Deputy Attorney General (S. Carter)
Woods v. Buss, 127 S.Ct. 2160 (2007) (Cert. / Stay denied)

Woods v. Buss, ___ F.3d ___, 2007 WL 1302114 (7th Cir. May 2, 2007) (07-1951)
(Stay / Certificate of Appealability denied)

Woods v. Buss, ___ F.3d ___, 2007 WL 1302119 (7th Cir. May 3, 2007) (07-2001)
(Stay / Injunction denied; Challenge to lethal injection method of execution)

WOODS WAS EXECUTED BY LETHAL INJECTION 05-05-07 AT 1:35 AM EST. AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 88TH CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900 AND 18TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

WRINKLES, MATTHEW E. # 82

EXECUTED BY LETHAL INJECTION 12-11-09 AT 12:39 AM CST
AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA.

DOB: 01-03-1960 DOC#: 952132 White Male

Vanderburgh County Circuit Court
Judge Richard L. Young

Trial Cause #: 82CO1-9407-CF00447

Date of Murder: July 21, 1994

Method of Murder: shooting with .357 handgun

Defense: Michael J. Danks, Dennis A. Vowels

Prosecutor: Stanley M. Levco, Mary Margaret Lloyd

Victim(s): Debbie Wrinkles W / F / 31 (Wife)
Tony Fulkerson W / M / 28 (Brother of Debbie);
Natalie Fulkerson W / F / 26 (Wife of Tony)

Summary: After continuous marital problems with her husband Matthew Wrinkles, Debbie moved out of the house with their two children, going to live with Debbie's brother, Tony, and his wife, Natalie, on Tremont Drive in Evansville. Twice in the past Wrinkles had threatened Debbie with a gun. Soon after, Wrinkles filed for divorce. His mother was concerned about his behavior and had him committed. After three days of evaluation, he was released. In the next two weeks, despite a Protective Order in effect, Wrinkles went looking for Debbie. He showed up at her place of employment, and at the homes of two of her friends, dressed up in camouflage demanding to see her. He was unsuccessful each time. On July 20, 1994 Wrinkles, Debbie and their attorneys met for a provisional hearing in their divorce proceeding. They reached an agreement to set aside the Protective Order, and for Wrinkles to have visitation. They also agreed for Debbie to meet Wrinkles with the kids at a restaurant later that day. Debbie decided not to show up for the meeting. Later that night, Wrinkles again dressed up in camouflage and drove to the home of Tony Fulkerson, where Debbie and the kids were staying. He parked a block away, cut the telephone wires, and kicked in the back door. He was armed with a .357 handgun and a knife. When he was finished, Natalie was dead on the front porch with a gunshot wound to her face; Tony was dead in the bedroom with four gunshot wounds; Debbie was dead in the hallway with a gunshot wound to her chest/shoulder area. One of the children (Lindsay) saw her father shoot her mother, then attempt CPR. Lindsay told him she was going to call police, and he fled from the house. Wrinkles was later arrested at the home of his cousin, where the .357 murder weapon was recovered.



Trial: Information/PC for Murder filed (07-21-94); Amended Information for DP filed (07-28-94); Voir Dire (05-11-95, 05-12-95, 05-13-95); Jury Trial (05-15-95, 05-17-95, 05-18-95, 05-19-95); Verdict (05-19-95); DP Trial (05-20-95); Verdict (05-20-95); Court Sentencing (06-14-95).

Conviction: Murder, Murder, Murder

Sentencing: June 14, 1995 (Death Sentence)

Aggravating Circumstances: b (8) 3 murders

Mitigating Circumstances: no significant history of criminal conduct
methamphetamine intoxication at time of murders
extreme emotional disturbance
grew up in dysfunctional family causing emotional instability

Direct Appeal: Wrinkles v. State, 690 N.E.2d 1156 (Ind. December 31, 1997) (82S00-9408-DP-741)
Conviction Affirmed 5-0 DP Affirmed 5-0
Sullivan Opinion; Shepard, Dickson, Selby, Boehm concur.
For Defendant: Michael C. Keating, Michael J. Danks, Evansville
For State: James D. Dimitri, Deputy Attorney General (P. Carter)
Wrinkles v. Indiana, 119 S.Ct. 148 (1998) (Cert. denied)

PCR: PCR Petition filed 12-01-98. Amended PCR filed 04-01-99, 07-01-99.
State's Answer to PCR Petition filed 02-26-99, 05-03-99.
PCR Hearing 08-09-99, 08-10-99, 08-11-99.
Vanderburgh Circuit Court Judge Carl A. Heldt
For Defendant: Joanna Green, Laura L. Volk, Linda Hughes, Deputy Public Defenders (Carpenter)
For State: Rosemary Boreck, Thomas D. Perkins, Deputy Attorney General (Freeman-Wilson)
09-03-99 PCR Petition denied.

Wrinkles v. State, 749 N.E.2d 1179 (Ind. June 29, 2001) (82S00-9803-PD-170)
(Appeal of denial of PCR by Vanderburgh Circuit Court Judge Carl A. Heldt)
Affirmed 5-0; Rucker Opinion; Shepard, Dickson, Sullivan, Boehm concur.
For Defendant: Joanna Green, Laura L. Volk, Linda Hughes, Deputy Public Defenders (Carpenter)
For State: Thomas D. Perkins, Deputy Attorney General (Freeman-Wilson)
Wrinkles v. Indiana, 122 S.Ct. 1610 (2002) (Cert. denied)

Wrinkles v. State, 776 N.E.2d 905 (Ind. October 15, 2002) (82S00-0207-SD-407)
(Indiana Supreme Court Order denying successive PCR)
5-0 Shepard Opinion; Dickson, Sullivan, Boehm, Rucker concur.

Wrinkles v. State, 915 N.E.2d 963 (Ind. November 03, 2009) (82S00-0905-SD-249)
Vanderburgh Circuit Court 82C01-94-7-CF-447.
(Indiana Supreme Court Order denying successive PCR regarding stun belt 4-1)
Shepard Opinion; Dickson, Sullivan, Rucker concur; Boehm Dissents to authorize a Successive PCR hearing on the stun belt issue.

§ 1983: Wrinkles, et al. v. Davis, 311 F.Supp.2d 735 (N.D. Ind. March 17, 2004)
§ 1983 action by Wrinkles, Lambert, Saylor, and Rastafari challenging 79 day lockdown of death row at Michigan City after inmate was killed, seeking damages and injunction for depriving them of access to telephones, hygiene services, hot meals, exercise, visitors. - Held; All claims dismissed except for possible 8th Amendment violation for confinement without exercise.

Habeas: 11-02-01 Notice of Intent to File Petition for Writ of Habeas Corpus filed.
07-25-02 Petition for Writ of Habeas Corpus filed in U.S. District Court, Northern District of Indiana.
Matthew Eric Wrinkles v. Rondle Anderson, Superintendent (IP 01-C- 1668-T/K)
Judge John D. Tinder
For Defendant: Joseph M. Cleary, Rhonda Long-Sharp, Indianapolis
For State: Thomas D. Perkins, Deputy Attorney General (S. Carter)

06-25-03 Respondent's Return and Memorandum filed in opposition to Writ of Habeas Corpus.
09-19-03 Petitioner's Reply and Memorandum filed in support of Writ of Habeas Corpus.
05-18-05 Writ of Habeas Corpus denied by Judge John D. Tinder.

Wrinkles v. Buss, 537 F.3d 804 (7th Cir. August 12, 2008) (05-2747)
(Appeal of denial of Writ of Habeas Corpus)
Affirmed 3-0; Opinion by Judge Michael S. Kanne .
Judge Ilana Diamond Rovner and Judge Joel M. Flaum concur.
For Defendant: Joseph M. Cleary, Rhonda Long-Sharp, Indianapolis
For State: Andrew K. Kobe, Deputy Attorney General (S. Carter)
Wrinkles v. Levenhagen, 129 S.Ct. 2382 (May 18, 2009) (Cert. Denied)

WRINKLES WAS EXECUTED BY LETHAL INJECTION 12-11-09 AT 12:39 AM CST AT THE INDIANA STATE PRISON, MICHIGAN CITY, INDIANA. HE WAS THE 90TH CONVICTED MURDERER EXECUTED IN INDIANA SINCE 1900 AND 20TH SINCE THE DEATH PENALTY WAS REINSTATED IN 1977.

INDIANA DEATH PENALTY CASES (1977 - 2013)

ALLEN, HOWARD A.

Allen v. State, 686 N.E.2d 760 (Ind. 1997)
Allen v. Indiana, 119 S.Ct. 807 (1999) (Cert. denied)
In Matter of Hatfield, 607 N.E.2d 384 (Ind. 1993) (Contempt)
In Matter of Sexton, 666 N.E.2d 402 (Ind. 1996) (Atty discipline)
Allen v. State, 749 N.E.2d 1158 (Ind. 2001) (PCR)
Allen v. Indiana, 122 S.Ct. 1925 (2002) (Cert. denied)
Allen v. Buss, 558 F.3d 657 (7th Cir. 2009) (Habeas)
Allen v. Wilson, 2012 WL 2577492 (S.D. Ind. 2012) (Habeas)

AVERHART, RUFUS (Zolo Agona Azania)

Averhart v. State, 470 N.E.2d 666 (Ind. 1984)
Averhart v. Indiana, 105 S.Ct. 2051 (1985) (Cert. denied)
Averhart v. State, 614 N.E.2d 924 (Ind. 1993) (PCR)
Azania v. Squadrito, 114 F.2d 1191 (7th Cir. 1997) (§1983)
Azania v. Bechert, 172 F.3d 52 (7th Cir. 1999) (§ 1983)
Azania v. State, 730 N.E.2d 646 (Ind. 2000)
Azania v. State, 738 N.E.2d 248 (Ind. 2000) (PCR)
Azania v. State, 778 N.E.2d 1253 (Ind. 2002)
State v. Azania, 865 N.E.2d 994 (Ind. 2007) (Dismissal)
State v. Azania, 875 N.E.2d 701 (Ind. 2007) (Rehearing)

BAER, FREDERICK MICHAEL

Baer v. State, 866 N.E.2d 752 (Ind. 2007)
Baer v. Indiana, 128 S.Ct. 1869 (2008) (Cert denied)
Baer v. State, 942 N.E.2d 80 (Ind. 2011) (PCR)

BAIRD, ARTHUR PAUL, II

Baird v. State, 604 N.E.2d 1170 (Ind. 1992)
Baird v. Indiana, 114 S.Ct. 255 (1993) (Cert. denied)
Baird v. State, 688 N.E.2d 911 (Ind. 1997) (PCR)
Baird v. Indiana, 119 S.Ct. 122 (1998) (Cert. denied)
Baird v. Davis, 388 F.3d 1110 (7th Cir. 2004)
Baird v. Davis, 125 S.Ct. 953 (2005) (Cert. denied)
Baird v. State, 831 N.E.2d 109 (Ind. July 19, 2005) (PCR)
Baird v. State, 833 N.E.2d 28 (Ind. August 25, 2005) (PCR)
Baird v. Indiana, 126 S.Ct. 312 (2005) (Cert. denied)

BARKER, CHARLES E.

Barker v. State, 695 N.E.2d 925 (Ind. 1998)
State v. Barker, 768 N.E.2d 425 (Ind. 2002) (Interlocutory)
Barker v. State, 809 N.E.2d 312 (Ind. 2004) (Interlocutory)
State v. Barker, 826 N.E.2d 628 (Ind. 2005) (Rehearing)
Barker v. Indiana, 126 S.Ct. 666 (2005) (Cert. denied)

BELLMORE, LARRY

Bellmore v. State, 602 N.E.2d 111 (Ind. 1992)

BENEFIEL, BILL

Benefiel v. State, 578 N.E.2d 338 (Ind. 1991)
Benefiel v. Indiana, 112 S.Ct. 2971 (1992) (Cert. denied)
Benefiel v. State, 716 N.E. 2d 906 (Ind. 1999) (PCR)
Benefiel v. Indiana, 121 S.Ct. 83 (2000) (Cert. Denied)
Benefiel v. Davis, 357 F.3d 655 (7th Cir. 2004)
Benefiel v. Davis, 125 S.Ct. 481 (2004) (Cert. denied)
Benefiel v. Davis, 125 S.Ct. 953 (2005) (Reh. denied)
Benefiel v. Davis, 125 S.Ct. 1984 (2005) (Stay denied)
Benefiel v. Davis, 403 F.3d 825 (7th Cir. 2005)

BENIRSCHKE, WILLIAM J.

Benirschke v. State, 577 N.E.2d 576 (Ind. 1991)
Benirschke v. State, 582 N.E.2d 355 (Ind. 1991) (Reh)
Benirschke v. Indiana, 112 S.Ct. 3042 (1992) (Cert. denied)

BIEGHLER, MARVIN

Bieghler v. State, 481 N.E.2d 78 (Ind. 1985)
Bieghler v. Indiana, 106 S.Ct. 1241 (1986) (Cert. denied)
Bieghler v. State, 690 N.E.2d 188 (Ind. 1997) (PCR)
Bieghler v. Indiana, 119 S.Ct. 550 (1998) (Cert. denied)
Bieghler v. McBride, 389 F.3d 701 (7th Cir. 2004)
Bieghler v. State, 839 N.E.2d 691 (Ind. 2005) (PCR)
Bieghler v. McBride, 126 S.Ct. 430 (2005) (Cert. denied)
Bieghler v. Indiana, 126 S.Ct. 1190 (2006) (Stay denied)
Bieghler v. Donahue, 163 Fed. Appx. 419 (7th Cir. 2006) (Stay)
Donahue v. Bieghler, 126 S.Ct. 1190 (2006) (Stay denied)

BIVINS, GERALD W.

Bivins v. State, 642 N.E.2d 928 (Ind. 1994)
Bivins v. Indiana, 114 S. Ct. 892 (1994) (Cert. denied)
Bivins v. State, 650 N.E.2d 684 (Ind. 1995)
Bivins v. Indiana, 116 S. Ct. 783 (1996) (Cert. denied)
Bivins v. Indiana, 735 N.E.2d 1116 (Ind. 2000) (PCR)
Bivins v. Indiana, 741 N.E.2d 1196 (Ind. 2001) (Reh)

BOYD, RUSSELL ERNEST

Boyd v. State, 494 N.E.2d 284 (Ind. 1986)
Boyd v. Indiana, 107 S.Ct. 910 (1987) (Cert. denied)

BREWER, JAMES

Brewer v. State, 417 N.E.2d 889 (Ind. 1981)
Brewer v. Indiana, 102 S.Ct. 3510 (1982) (Cert. denied)
Brewer v. Indiana, 103 S.Ct. 18 (1982) (Rehearing denied)
Brewer v. State, 496 N.E.2d 371 (Ind. 1986) (PCR)
Brewer v. Indiana, 107 S.Ct. 1591 (1987) (Cert. denied)
Brewer v. Shettle, 917 F.2d 1306 (7th Cir. 1990)
Brewer v. Aiken, 935 F.2d 850 (7th Cir. 1991)

BROWN, DEBRA DENISE

Brown v. State, 577 N.E.2d 221 (Ind. 1991)
Brown v. State, 583 N.E.2d 125 (Ind. 1991) (Rehearing)
Brown v. Indiana, 113 S.Ct. 101 (1992) (Cert. denied)
Brown v. Indiana, 113 S.Ct. 639 (1992) (Reh. denied)
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PETERSON, CHRISTOPHER D. (Obadyah Ben-Yisrayl)

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SCHIRO, THOMAS N.

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Schiro v. Indiana, 104 S.Ct. 510 (1983) (Cert. denied)
Schiro v. State, 479 N.E.2d 556 (Ind. 1985) (PCR)
Schiro v. Indiana, 106 S.Ct. 1247 (1986) (Cert. denied)
Schiro v. State, 533 N.E.2d 1201 (Ind. 1989) (PCR)
Schiro v. Indiana, 110 S.Ct. 268 (1989) (Cert. denied)
Schiro v. Clark, 754 F.Supp. 646 (N.D.Ind. 1990)
Schiro v. Clark, 963 F.2d 962 (7th Cir. 1992)
Schiro v. Farley, 114 S.Ct. 783 (1994)
Schiro v. Farley, 114 S.Ct. 1341 (1994) (Reh. denied)
Schiro v. State, 669 N.E.2d 1357 (Ind. 1996) (PCR)
Schiro v. State, 888 N.E.2d 828 (Ind. App.2008) (Rape)

SMITH, CHARLES

Smith v. State, 475 N.E.2d 1139 (Ind. 1985)
Smith v. State, 547 N.E.2d 817 (Ind. 1990) (PCR)
Smith v. State, 547 N.E.2d 822 (Ind. 1990) (Reh. denied)

SMITH, ROBERT A.

Smith v. State, 686 N.E.2d 1264 (Ind. 1997)

SMITH, TOMMIE J.

Smith v. State, 465 N.E.2d 1105 (Ind. 1984)
Smith v. State, 516 N.E.2d 1055 (Ind. 1987) (PCR)
Smith v. State, 613 N.E.2d 412 (Ind. 1993) (PCR)
Smith v. Indiana, 114 S.Ct. 1664 (1994)(Cert. den)
Smith v. Farley, 873 F.Supp. 1199 (N.D.Ind. 1994)
Smith v. Farley, 59 F.3d 659 (7th Cir. 1995)
Smith v. Indiana, 116 S.Ct. 935 (1995) (Cert.denied)
Smith v. Parke, 116 S. Ct. 2518 (1996) (Stay granted)
Smith v. Indiana, 116 S. Ct. 2581 (1996) (Cert. denied)
Smith v. Indiana, 117 S. Ct. 1 (1996) (Stay denied)
Smith v. Farley, 949 F.Supp. 680 (N.D.Ind. 1996)

SPRANGER, WILLIAM J.

Spranger v. State, 498 N.E.2d 931 (Ind. 1986)
Spranger v. State, 500 N.E.2d 1170 (Ind. 1986) (Rehearing)
Spranger v. Indiana, 107 S.Ct. 1965 (1987) (Cert. denied)
Spranger v. State, 650 N.E.2d 1117 (Ind. 1995)

STEPHENSON, JOHN W.

Stephenson v. Indiana, 742 N.E.2d 463 (Ind. 2001)
Stephenson v. Indiana, 122 S. Ct. 905 (2002) (Cert. denied)
Stephenson v. State, 864 N.E.2d 1022 (Ind. 2007) (PCR)
Stephenson v. Indiana, 128 S.Ct. 1871 (2008) (Cert. denied)
Stephenson v. Levenhagen, (N.D. Ind. 2009) (Habeas)
Stephenson v. Wilson, 619 F.3d 664 (7th Cir. 2010) (Habeas)
Stephenson v. Wilson, 132 S.Ct. 124 (2011) (Cert. denied)
Stephenson v. Wilson, 629 F.3d 732 (7th Cir. 2011) (Habeas)

STEVENS, CHRISTOPHER M.

Stevens v. State, 691 N.E.2d 412 (Ind. 1997)
Stevens v. Indiana, 119 S.Ct. 550 (1998) (Cert. denied)
Stevens v. State, 770 N.E.2d 739 (Ind. 2002)
Stevens v. Indiana, 124 S.Ct. 69 (2003) (Cert. denied)
Stevens v. McBride, ___ F.Supp.2d ___ (N.D. Ind. 2005)
Stevens v. McBride, 489 F.3d 883, (7th Cir. 2007) (Habeas)
Stevens v. Buss, 128 S.Ct. 2423 (2008) (Cert. Denied)
Buss v. Stevens, 128 S.Ct. 2429 (2008) (Cert. Denied)

STROUD, PHILLIP A.

Stroud v. State, 809 N.E.2d 274 (Ind. 2004)

THACKER, LOIS ANN

Thacker v. State, 556 N.E.2d 1315 (Ind. 1990)
Thacker v. State, 578 N.E.2d 351 (Ind. 1991) (On remand)

THOMPSON, JAY R.

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THOMPSON, JERRY K.

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TIMBERLAKE, NORMAN H.

Timberlake v. State, 690 N.E.2d 243 (Ind. 1997)
Timberlake v. Indiana, 119 S.Ct. 808 (2002) (Cert. denied)
Timberlake v. State, 753 N.E.2d 591 (Ind. 2001) (PCR)
Timberlake v. Indiana, 123 S.Ct. 162 (2002) (Cert. denied)
Timberlake v. Davis, 409 F.3d 819 (7th Cir. 2005) (Habeas)

Timberlake v. Davis, 418 F.3d 702 (7th Cir. 2005) (Reh. denied)
Timberlake v. Buss, 126 F.3d 1910 (Cert. denied)
Timberlake v. Buss, ___ F.Supp. ___ (S.D. Ind. 2007) (Injunction)
Timberlake v. State, 858 N.E.2d 625 (Ind. 2006) (Succ PCR)
Timberlake v. State, 859 N.E.2d 1209 (Ind. 2007) (Stay)

TOWNSEND, JOHNNY, JR.

Townsend v. State, 533 N.E.2d 1215 (Ind. 1989)
Townsend v. Indiana, 110 S.Ct. 1327 (1990) (Cert. denied)

TRUEBLOOD, JOSEPH L.

Trueblood v. State, 587 N.E.2d 105 (Ind. 1992)
Trueblood v. Davis, 301 F.3d 784 (7th Cir. 2002)
Trueblood v. Davis, 123 S.Ct. 1650 (2003) (Cert. denied)
Trueblood v. Indiana, 123 S.Ct. 2295 (2003) (Stay denied)
Trueblood v. Ind. Parole Bd., 123 S.Ct. 2295(2003)(Stay denied)
Trueblood v. Indiana, 113 S.Ct. 278 (1992) (Cert. denied)
Trueblood v. State, 715 N.E. 2d 1242 (Ind. 1999) (PCR)
Trueblood v. Indiana, 121 S.Ct. 143 (2000) (Cert. denied)
Trueblood v. Anderson, 156 F.Supp. 1056 (N.D. Ind. 2001)
Trueblood v. State, 790 N.E.2d 97 (Ind. 2003)

UNDERWOOD, HERBERT A.

Underwood v. State, 535 N.E.2d 507 (Ind. 1989)
Underwood v. Indiana, 110 S.Ct. 257 (1989) (Cert. denied)
Underwood v. Indiana, 110 S.Ct. 524 (1989) (Reh. denied)

VAN CLEAVE, GREGORY

Van Cleave v. State, 517 N.E.2d 356 (Ind. 1987)
Van Cleave v. Indiana, 109 S.Ct. 819 (1989) (Cert. denied)
Van Cleave v. Indiana, 110 S.Ct. 271 (1989) (Reh. denied)
State v. Van Cleave, 674 N.E.2d 1293 (Ind. 1996) (PCR)
State v. Van Cleave, 681 N.E.2d 181 (Ind. 1997) (Reh. den.)
Van Cleave v. Indiana, 118 S.Ct. 1060 (1998) (Cert. denied)

VANDIVER, WILLIAM C.

Vandiver v. State, 480 N.E.2d 910 (Ind. 1985)

WALLACE, DONALD RAY, JR.

Wallace v. State, 486 N.E.2d 445 (Ind. 1985)
Wallace v. Indiana, 106 S.Ct. 3311 (Ind. 1986) (Cert. denied)
Wallace v. State, 553 N.E.2d 456 (Ind. 1990) (PCR)
Wallace v. Indiana, 111 S.Ct. 2250 (1991) (Cert. denied)
Wallace v. State, 640 N.E.2d 374 (Ind. 1994) (PCR)
Wallace v. Indiana, 115 S.Ct. 1972 (1995) (Cert. denied)
Wallace v. Davis, ___ F.Supp.2d ___ (S.D. Ind. 2002)
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Wallace v. Davis, 125 S.Ct. 617 (2004) (Cert. denied)
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WARD, ROY LEE

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Indiana v. Ward, 126 S.Ct. 395 (2005) (Cert. denied)
Ward v. State, 903 N.E.2d 946 (Ind. 2009)
Ward v. State, 908 N.E.2d 595 (Ind. 2009) (Rehearing)
Ward v. Indiana, 130 S.Ct. 2060 (2010) (Cert. denied)
Ward v. State, 969 N.E.2d 46 (June 21, 2012)

DANIEL RAY WILKES

Wilkes v. State, 917 N.E.2d 675 (Ind. 2009)
Wilkes v. Indiana, 131 S.Ct. 414 (2010) (Cert. denied)
Wilkes v. State, 984 N.E.2d 1236 (Ind. April 4, 2013) (PCR)

WILLIAMS, DARNELL

Rouster v. State, 600 N.E.2d 1342 (Ind. 1992)
Williams v. State, 706 N.E.2d 149 (Ind. 1999) (PCR)
Williams v. State, 718 N.E.2d 737 (Ind. 1999) (Reh. denied)
Williams v. Anderson, 174 F.Supp. 843 (N.D. Ind. 2001)
Williams v. Indiana, 120 S.Ct. 1970 (2000) (Cert. denied)
Williams v. Davis, 301 F.3d 625 (7th Cir. 2002)
Williams v. Indiana, 123 S.Ct. 1904 (2003) (Cert. denied)
Williams v. State, 791 N.E.2d 193 (Ind. 2003)
Williams v. Indiana, 124 N.E.2d 300 (2003) (Cert. denied)
Williams v. State, 792 N.E.2d 22 (Ind. 2003)
Williams v. State, 793 N.E.2d 1019 (Ind. 2003)
Williams v. State, 808 N.E.2d 652 (Ind. 2004)

WILLIAMS, EDWARD EARL (Akeem Aki-Khuam)

Williams v. State, 669 N.E.2d 1372 (Ind. 1996)
Williams v. Indiana, 117 S.Ct. 1828 (1997) (Cert. Denied)
Williams v. State, 724 N.E.2d 1070 (Ind. 2000) (PCR)
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Aki-Khuam v. Davis, 203 F.Supp. 100 (N.D. Ind. 2002)
Aki-Khuam v. Davis, 328 F.3d 366 (7th Cir. 2003)
Aki-Khuam v. Davis, 339 F.3d 521 (7th Cir. 2003)
Aki-Khuam v. State, 883 N.E.2d 228 (Ind.App. 2008)
Aki-Khuam v. Indiana, 129 S.Ct. 1372 (2009) (Cert. Denied)

WILLIAMS, LARRY C.

Williams v. State, 430 N.E.2d 759 (Ind. 1982)
Williams v. Indiana, 103 S.Ct. 33 (1982) (dismissed)
Williams v. Indiana, 103 S.Ct. 479 (1982) (Reh. denied)
Williams v. State, 525 N.E.2d 1238 (Ind. 1988) (PCR)
Williams v. State, 619 N.E.2d 569 (Ind. 1993)

WISEHART, MARK ALLEN

Wisehart v. State, 484 N.E.2d 949 (Ind. 1985)
Wisehart v. Indiana, 106 S.Ct. 2929 (1986) (Cert. denied)
Wisehart v. State, 693 N.E.2d 23 (Ind. 1998) (PCR)
Wisehart v. Indiana, 119 S.Ct. 1338 (1999) (Cert. denied)
Wisehart v. Davis, 408 F.3d 321 (7th Cir. 2005) (Habeas)
Buss v. Wisehart, 126 S.Ct. 1617 (2006) (Cert. Denied)

WOODS, DAVID LEON

Woods v. State, 547 N.E.2d 772 (Ind. 1989)
Woods v. State, 557 N.E.2d 1325 (Ind. 1990) (Rehearing)
Woods v. Indiana, 111 S.Ct. 2911 (1991) (Cert. denied)
Woods v. State, 701 N.E.2d 1208 (Ind. 1998) (PCR)
Woods v. Indiana, 120 S.Ct. 150 (1999) (Cert. denied)
Woods v. Anderson, 302 F.Supp.2d 915 (S.D. 2004) (Habeas)
Woods v. McBride, 430 F.3d 813 (7th Cir. 2005) (Habeas)
Woods v. Indiana, 127 S.Ct. 2159 (May 3, 2007) (Cert. denied)
Woods v. Buss, 127 S.Ct. 2160 (May 3, 2007) (Cert. denied)
Woods v. State, 863 N.E.2d 301 (Ind. 2007) (Succ PCR)

WRINKLES, MATTHEW E.

Wrinkles v. State, 690 N.E.2d 1156 (Ind. 1997)
Wrinkles v. Indiana, 119 S.Ct. 148 (1998) (Cert. Denied)
Wrinkles v. State, 749 N.E.2d 1179 (Ind. 2001) (PCR)
Wrinkles v. Indiana, 122 S.Ct. 1610 (2002) (Cert. Denied)
Wrinkles v. State, 776 N.E.2d 905 (Ind. 2002)
Wrinkles v. Buss, 537 F.3d 804 (7th Cir. 2008) (Habeas)
Wrinkles v. Levenhagen, ___ S.Ct. ___ (2009) (Cert. Denied)
Wrinkles v. State, 915 N.E.2d 963 (Ind. 2009) (Successive PCR)

HISTORICAL

Adams v. State, 271 N.E.2d 425 (Ind. 1971)

Grant County (Venued from Huntington County) Judge Guerrero

CONVICTION AFFIRMED (5-0); DP AFFIRMED (3-2); ARTERBURN OPINION; DEBRULER AND PRENTICE DISSENT AND ASSERT DP UNCONSTITUTIONAL PER SE.

(Defendant was convicted of 1st Degree Murder under IC 35-13-4-1 (1971), and sentenced to death pursuant to discretionary provisions of that statute)

Adams v. State, 284 N.E.2d 757 (Ind. 1972) (ON REHEARING, ARTERBURN OPINION; DP VACATED 5-0 WITH INSTRUCTIONS TO IMPOSE LIFE IMPRISONMENT IN LIGHT OF U.S. SUPREME COURT OPINION IN FURMAN)

Adams v. State, 376 N.E.2d 482 (Ind. 1978) (Appeal of PCR denial; remanded)

Adams v. State, 575 N.E.2d 625 (Ind. 1991) (Appeal of PCR denial; affirmed)

French v. State, 362 N.E.2d 834 (Ind. 1977)

Henry County (Venued from Madison County) Judge Ratliff Ron McNabney

CONVICTION AFFIRMED (4-1); ARTERBURN OPINION; DP VACATED (5-0) WITH INSTRUCTIONS TO IMPOSE A SENTENCE OF LIFE IMPRISONMENT.

(Defendant was convicted of 1st Degree Murder under IC 35-13-4-1 (1975), and sentenced to death pursuant to the mandatory provisions included under section (c) of that statute. The U.S. Supreme court struck down a similar mandatory statute in Woodson after sentencing in this case)

French v. State, 547 N.E.2d 1084 (Ind. 1989)

(Appeal of PCR denial; AFFIRMED; Givan Opinion 5-0)

State v. McCormick, 397 N.E.2d 276 (Ind. 1979)

Vigo County (Venued from Vanderburgh County) Judge Miller

INTERLOCUTORY APPEAL BY STATE (Trial court dismissed Death Sentence count alleging prior unrelated murder as aggravating circumstance under IC 35-50-2-9)

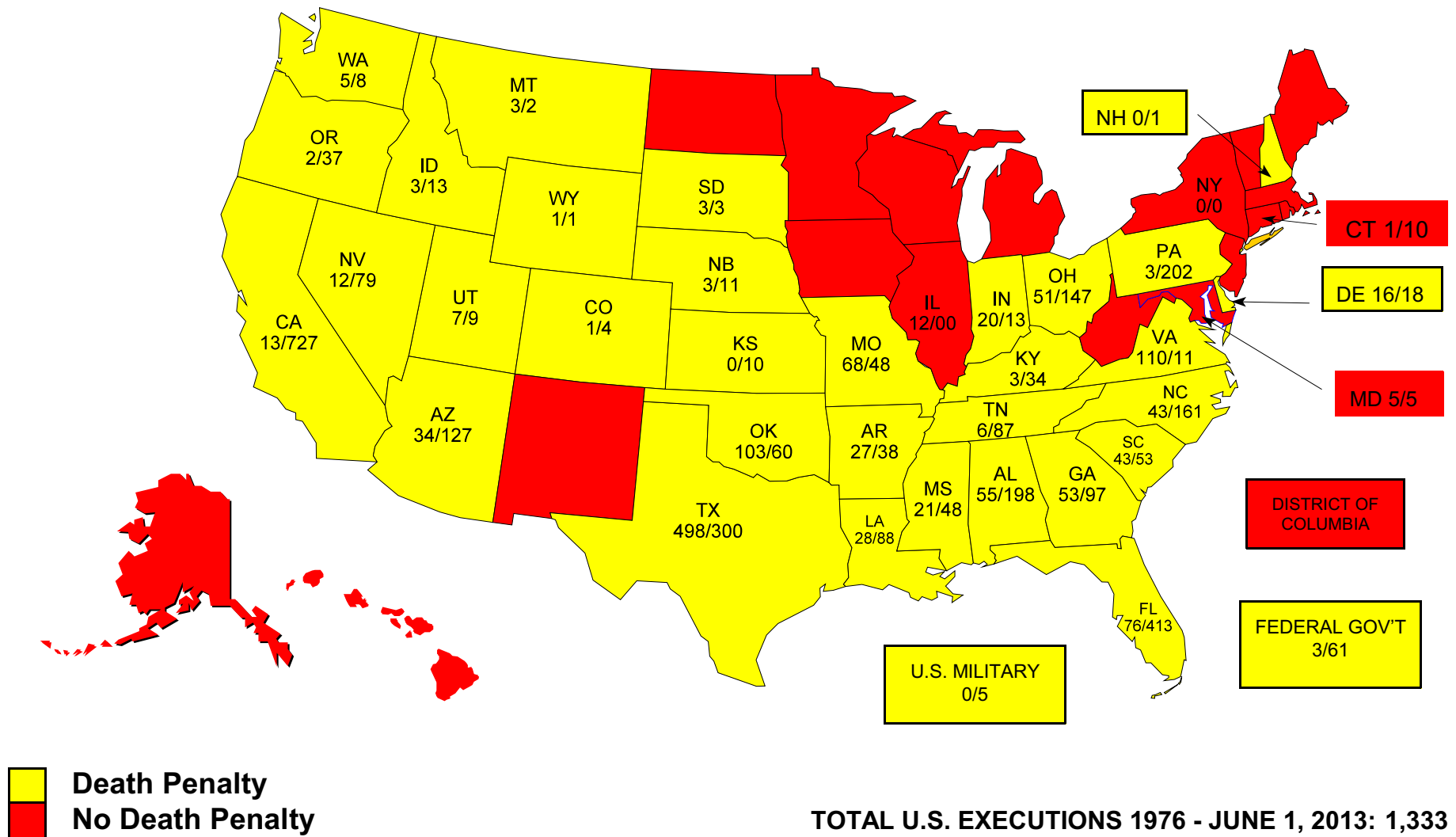
DISMISSAL AFFIRMED (4-1); PIVARNIK OPINION; DEBRULER DISSENT

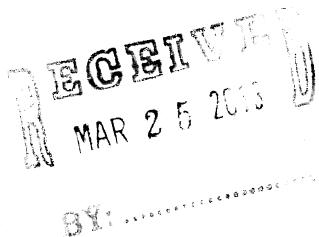
State v. Alcorn, 638 N.E.2d 1242 (Ind. 1994) Marion County Judge Darden

INTERLOCUTORY APPEAL BY STATE (Trial court ruled that July 1, 1993 amendments to IC 35-50-2-9, adding LWOP option, was applicable to all pending cases)

REVERSED (4-1) (Holding that LWOP option is available only to those who commit capital murder after July 1, 1993) GIVAN OPINION; DEBRULER DISSENT (Found Not Guilty November 11, 1994)

U. S. EXECUTIONS SINCE 1976 / DEATH ROW POPULATION 2013





STATE OF INDIANA
IN THE CLARK CIRCUIT COURT #4

FILED

STATE OF INDIANA

Barbara Hooten
CLERK-CLARK CIRCUIT COURT

VS.


CAUSE #: 10C04-1303-MR-000002

RICHARD CARLEY HOOTEN, JR.

STATE'S COMPLIANCE WITH CRIMINAL RULE 24 (A) (CAPITAL CASES)

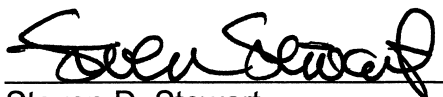
Comes now the State of Indiana, by Steven D. Stewart, Clark County Prosecuting Attorney, 4th Judicial Circuit, and in compliance with Rule 24 (A) of the Indiana Rules of Criminal Procedure hereby notifies the Indiana Supreme Court Administrator that he has filed the attached Amended Information in this cause seeking a Death Sentence pursuant to Indiana Code 35-50-2-9.

Date: March 21, 2013


Steven D. Stewart
Prosecuting Attorney
State of Indiana
4th Judicial Circuit
Attorney #: 2049-10

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a copy of the foregoing pleading upon counsel for the Defendant, Clark County Public Defenders Jeffrey D. Stonebraker and J. Christopher Sturgeon, and upon the Indiana Supreme Court Administrator, 315 State House, Indianapolis, IN 46204, and upon the Indiana Prosecuting Attorneys Council, 302 West Washington Street E-205, Indianapolis, IN 46204, on or before the date of filing, by mailing pursuant to the Indiana Rules of Trial Procedure.


Steven D. Stewart
Prosecuting Attorney
State of Indiana
4th Judicial Circuit
Attorney #: 2049-10

STATE OF INDIANA
IN THE CLARK CIRCUIT COURT #4

FILED

STATE OF INDIANA

Barbara Hooten
CLERK-CLARK CIRCUIT COURT

VS.

CAUSE #: 10C04-1303-MR-000002

RICHARD CARLEY HOOTEN, JR.

DOB: 12-22-63

AMENDED INFORMATION

COUNT I - MURDER IC 35-42-1-1 (1)
COUNT II - RAPE (CLASS B FELONY) IC 35-42-4-1 (a)(1)
COUNT III - CRIMINAL DEVIATE CONDUCT
(CLASS B FELONY) IC 35-42-4-2 (a)(1)
COUNT IV - REQUEST FOR DEATH SENTENCE IC 35-50-2-9
COUNT V - HABITUAL OFFENDER IC 35-50-2-8

COUNT I - MURDER IC 35-42-1-1 (1)

On March 2, 2013 Richard Carley Hooten Jr. did intentionally kill Tara Rose Willenborg, age 17, at her apartment located at 702 Camden Court, #30 in Clarksville, Clark County, Indiana, and did so by strangulation and/or asphyxiation.

COUNT II - RAPE (CLASS B FELONY) IC 35-42-4-1 (a)(1)

On March 2, 2013 in Clark County, Indiana, Richard Carley Hooten Jr. did knowingly or intentionally have sexual intercourse with Tara Rose Willenborg, a member of the opposite sex, when she was compelled by force or imminent threat of force.

FILED

STATE OF INDIANA
IN THE CLARK CIRCUIT COURT #4

STATE OF INDIANA

Barbara Hance
CLERK-CLARK CIRCUIT COURT

VS.

CAUSE #: 10C04-1303-MR-000002

RICHARD CARLEY HOOTEN, JR.

DOB: 12-22-63


**AMENDED
INFORMATION**

**COUNT III - CRIMINAL DEVIATE CONDUCT
(CLASS B FELONY) IC 35-42-4-2 (a)(1)**

On March 2, 2013 in Clark County, Indiana, Richard Carley Hooten Jr. did knowingly or intentionally cause Tara Rose Willenborg to submit to deviate sexual conduct, when she was compelled by force or imminent threat of force.

All of which is contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Indiana.

I AFFIRM, UNDER PENALTIES FOR PERJURY, THAT THE FOREGOING REPRESENTATIONS ARE TRUE.



Steven D. Stewart
Prosecuting Attorney
State of Indiana
4th Judicial Circuit
Attorney #: 2049-10

STATE OF INDIANA
IN THE CLARK CIRCUIT COURT #4

FILED

STATE OF INDIANA

Barbara Hooten
CLERK-CLARK CIRCUIT COURT

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CAUSE #: 10C04-1303-MR-000002

RICHARD CARLEY HOOTEN, JR.

DOB: 12-22-63

AMENDED INFORMATION

COUNT IV - REQUEST FOR DEATH SENTENCE (IC 35-50-2-9)

Richard Carley Hooten, Jr. did commit the crime of Murder, as charged in Count I of the Information, and the following aggravating circumstances exist, which outweigh any mitigating circumstances that exist:

IC 35-50-2-9 (b) (1) (D) - Richard Carley Hooten, Jr. committed the murder, as charged in Count I of the Information, by intentionally killing Tara Rose Willenborg, while committing or attempting to commit Criminal Deviate Conduct, to-wit: On March 2, 2013 in Clark County, Indiana, Richard Carley Hooten Jr. did knowingly or intentionally cause Tara Rose Willenborg to submit to deviate sexual conduct when she was compelled by force or imminent threat of force.

IC 35-50-2-9 (b) (1) (F) - Richard Carley Hooten, Jr. committed the murder, as charged in Count I of the Information, by intentionally killing Tara Rose Willenborg, while committing or attempting to commit Rape, to-wit: On March 2, 2013 in Clark County, Indiana, Richard Carley Hooten Jr. did knowingly or intentionally have sexual intercourse with Tara Rose Willenborg, a member of the opposite sex, when she was compelled by force or imminent threat of force.

STATE OF INDIANA
IN THE CLARK CIRCUIT COURT #4

FILED

STATE OF INDIANA

VS.

CAUSE #: 10C04-1303-MR-000002

RICHARD CARLEY HOOTEN, JR.

DOB: 12-22-63

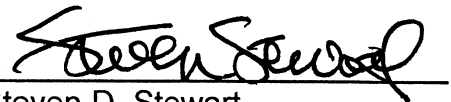
**AMENDED
INFORMATION**

COUNT IV - REQUEST FOR DEATH SENTENCE (IC 35-50-2-9)

IC 35-50-2-9 (b) (9) (C) - Richard Carley Hooten, Jr. committed the murder, as charged in Count I of the Information, and at the time the murder was committed, Richard Carley Hooten, Jr. was on probation after receiving a sentence for the commission of a felony, to-wit: On June 6, 2012 in the Clark Circuit Court #2 (formerly the Clark Superior Court #2) in Jeffersonville, Clark County, Indiana, Richard Carley Hooten Jr. was convicted of a felony in Case #10C02-1107-FB-000114, to-wit: Possession of a Narcotic Drug (Class D Felony), which crime was committed on July 19, 2011; and based upon said conviction, on June 6, 2012 Richard Carley Hooten Jr. was sentenced to a three (3) year fixed term of imprisonment at the Indiana Department of Corrections, with 1 1/2 years suspended and probated.

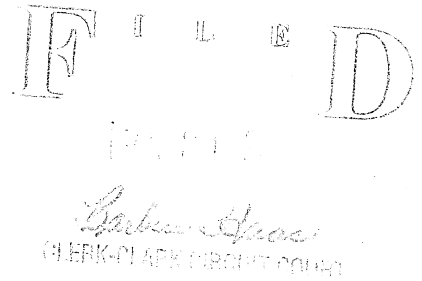
All of which is contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Indiana.

I AFFIRM, UNDER PENALTIES FOR PERJURY, THAT THE FOREGOING REPRESENTATIONS ARE TRUE.



Steven D. Stewart
Prosecuting Attorney
State of Indiana
4th Judicial Circuit
Attorney #: 2049-10

STATE OF INDIANA
IN THE CLARK CIRCUIT COURT #4



STATE OF INDIANA

VS.

CAUSE #: 10C04-1303-MR-000002

RICHARD CARLEY HOOTEN, JR.

DOB: 12-22-63

AMENDED INFORMATION

COUNT V - HABITUAL OFFENDER IC 35-50-2-8

In the County of Clark in the State of Indiana on the 2nd day of March, 2013:

RICHARD CARLEY HOOTEN, JR. is a Habitual Offender in that he has accumulated two (2) prior unrelated felony convictions, to-wit:

(1) On December 6, 1984 in the Jefferson Circuit Court in Louisville, Kentucky, Richard Carley Hooten Jr. was convicted of a felony in Case #84CR1049, to-wit: Assault II Under Extreme Emotional Distress, which crime was committed on July 2, 1984, and based upon said conviction, on January 10, 1985 Richard Carley Hooten Jr. was sentenced to a two (2) year term of imprisonment at the Kentucky Department of Corrections, probated for five (5) years after serving 60 days in jail.

(2) Further, on November 14, 1985 in the Jefferson Circuit Court in Louisville, Kentucky, Richard Carley Hooten Jr. was convicted of a felony in Case #85CR1189, to-wit: Assault II Under Extreme Emotional Disturbance, which crime was committed on May 31, 1985; and based upon said conviction, on November 14, 1985 Richard Carley Hooten Jr. was sentenced to a five (5) year term of imprisonment at the Kentucky Department of Corrections, enhanced to a maximum of ten (10) years to serve as a Persistent Felony Offender.

(3) Further, on November 18, 1987 in the Jefferson Circuit Court in Louisville, Kentucky, Richard Carley Hooten Jr. was convicted of a felony in Case #87CR79, to-wit: Escape, which crime was committed on September 3, 1987; and based upon said conviction, on November 18, 1987 Richard Carley Hooten Jr. was sentenced to a five (5) year term of imprisonment at the Kentucky Department of Corrections.

FILED

John Hoon
CLERK-CLARK CIRCUIT COURT

STATE OF INDIANA
IN THE CLARK CIRCUIT COURT #4

STATE OF INDIANA

VS.

CAUSE #: 10C04-1303-MR-000002

RICHARD CARLEY HOOTEN, JR.

DOB: 12-22-63

INFORMATION

COUNT V - HABITUAL OFFENDER IC 35-50-2-8

(4) Further, on January 8, 1993 in the Spalding County, Georgia Superior Court, Richard Carley Hooten Jr. was convicted of a felony in Case #308239, to-wit: Rape, which crime was committed on May 21, 1992; and based upon said conviction, on January 8, 1993 Richard Carley Hooten Jr. was sentenced to fifteen (15) years imprisonment at the Georgia Department of Corrections.

(4a) Further, on January 8, 1993 in the Spalding County, Georgia Superior Court, Richard Carley Hooten Jr. was convicted of a felony in Case #308239, to-wit: Aggravated Sodomy (2 Counts), which crime was committed on May 21, 1992; and based upon said conviction, on January 8, 1993 Richard Carley Hooten Jr. was sentenced to fifteen (15) years imprisonment at the Georgia Department of Corrections.

(4b) Further, on January 8, 1993 in the Spalding County, Georgia Superior Court, Richard Carley Hooten Jr. was convicted of a felony in Case #308239, to-wit: Aggravated Assault, which crime was committed on May 21, 1992; and based upon said conviction, on January 8, 1993 Richard Carley Hooten Jr. was sentenced to fifteen (15) years imprisonment at the Georgia Department of Corrections.

(5) Further, March 10, 2009 in the Clark Circuit Court #3 (formerly the Clark Superior Court #3) in Jeffersonville, Clark County, Indiana, Richard Carley Hooten Jr. was convicted of a felony in Case #10C03-0901-FD-000023, to-wit: Sexual Battery (Class D Felony), which crime was committed on January 2, 2009; and based upon said conviction, on March 10, 2009 Richard Carley Hooten Jr. was sentenced to a three (3) year fixed term of imprisonment at the Indiana Department of Corrections, suspended and probated.

STATE OF INDIANA
IN THE CLARK CIRCUIT COURT #4

IF ID
CLERK-CLARK CIRCUIT COURT

STATE OF INDIANA
VS.

CAUSE #: 10C04-1303-MR-000002

RICHARD CARLEY HOOTEN, JR.
DOB: 12-22-63

INFORMATION

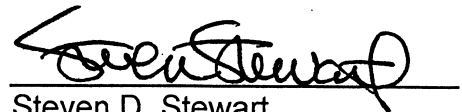
COUNT V - HABITUAL OFFENDER IC 35-50-2-8

(5a) Further, March 10, 2009 in the Clark Circuit Court #3 (formerly the Clark Superior Court #3) in Jeffersonville, Clark County, Indiana, Richard Carley Hooten Jr. was convicted of a felony in Case #10C03-0901-FD-000023, to-wit: Residential Entry (Class D Felony), which crime was committed on January 2, 2009; and based upon said conviction, on March 10, 2009 Richard Carley Hooten Jr. was sentenced to a three (3) year fixed term of imprisonment at the Indiana Department of Corrections, suspended and probated.

(6) Further, on June 6, 2012 in the Clark Circuit Court #2 (formerly the Clark Superior Court #2) in Jeffersonville, Clark County, Indiana, Richard Carley Hooten Jr. was convicted of a felony in Case #10C02-1107-FB-000114, to-wit: Possession of a Narcotic Drug (Class D Felony), which crime was committed on July 19, 2011; and based upon said conviction, on June 6, 2012 Richard Carley Hooten Jr. was sentenced to a three (3) year fixed term of imprisonment at the Indiana Department of Corrections, with 1 1/2 years suspended and probated.

All of which is contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Indiana.

I AFFIRM, UNDER PENALTIES FOR PERJURY, THAT THE FOREGOING REPRESENTATIONS ARE TRUE.



Steven D. Stewart
Prosecuting Attorney
State of Indiana
4th Judicial Circuit
Attorney #: 2049-10

STATE OF INDIANA)
) SS:
COUNTY OF FLOYD)

IN THE FLOYD SUPERIOR COURT 1

CAUSE NO: 22D01-1205-MR- 001145

STATE OF INDIANA

VS.

WILLIAM C. GIBSON III

Count 3 – Death Penalty I.C. 35-50-2-9

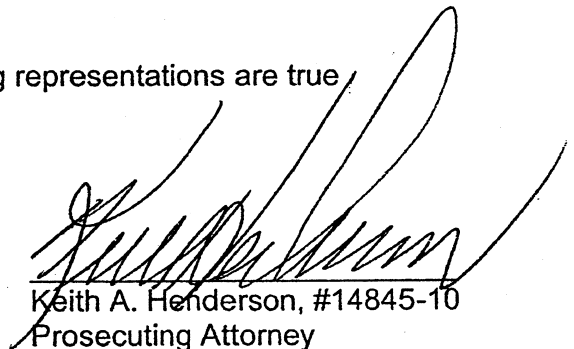
Comes Now the State of Indiana, by its Prosecuting Attorney for the 52nd Judicial Circuit, Keith A. Henderson, and does now seek a death sentence against the defendant, William C. Gibson III, for the murder of Stephanie Kirk, as alleged in Count 1 of this charging information. Pursuant to I.C. 35-50-2-9, and in support thereof, the State alleges the following aggravating circumstances:

1. The defendant committed the murder by intentionally killing the victim, Stephanie Kirk, while committing or attempting to commit the crime of Criminal Deviate Conduct (I.C. 35-50-2-9(b)(1)(D)), to-wit: the defendant knowingly or intentionally performed an act involving his mouth and the sex organ of the victim, and the victim was compelled to do so by force or the threat of force.
2. The defendant committed the murder by intentionally killing the victim, Stephanie Kirk, while committing or attempting to commit the crime of Criminal Deviate Conduct (I.C. 35-50-2-9(b)(1)(D)), to-wit: the defendant knowingly or intentionally performed an act involving the penetration of the sex organ of the victim by an object, his fingers and or fist, and the victim was compelled to do so by force or the threat of force.
3. The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder (I.C. 35-50-2-9(b)(8)), to-wit: the defendant murdered Christine Whitis on or about April 19, 2012.

4. The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder (I.C. 35-50-2-9(b)(8)), to-wit: the defendant murdered Karen Hodella on or about October 10, 2002.
5. The defendant was on probation after receiving a sentence for the commission of a felony at the time the murder was committed (I.C. 35-50-2-9(b)(9)(B)), to-wit: the defendant was on probation in Floyd County, Indiana in cause number 22D01-0603-FD-00162 for the crime of Theft, a Class D felony, when he murdered Stephanie Kirk.

WHEREFORE, based upon the aggravating factors present in this case, the State of Indiana requests that William C. Gibson III be sentenced to death.

I affirm, under penalties of perjury, that the foregoing representations are true



Keith A. Henderson, #14845-10
Prosecuting Attorney
52nd Judicial Circuit
Room # 249 City-County Bldg
New Albany, IN 47150
812-948-5422

STATE OF INDIANA

)

) ss:

COUNTY OF LAKE

)

SUPERIOR COURT OF LAKE COUNTY

CRIMINAL DIVISION

CROWN POINT, INDIANA

STATE OF INDIANA

)

)

v.

)

)

KEVIN CHARLES ISOM

)

CAUSE: 45G04-0708-MR-00008

AMENDED INFORMATION

COUNT VIII

[DEATH SENTENCE REQUEST FOR THE DEATH OF CASSANDRA ISOM]

The State of Indiana, BERNARD A. CARTER, Prosecuting Attorney for the 31st Judicial Circuit, pursuant to I.C. 35-50-2-9(b)(8), now seeks a Death Sentence for KEVIN CHARLES ISOM for the death of Cassandra Isom, based upon the existence of the following aggravating circumstance and in support thereof, the State would show the Court that:

On August 6, 2007, KEVIN CHARLES ISOM committed the murder of Cassandra Isom, and KEVIN CHARLES ISOM has committed the murders of Michael Moore and Ci'Andria Cole.

I swear, under the penalty for perjury as specified by I.C. 35-44-2-1 that the foregoing is true to the best of my information and belief.

RESPECTFULLY SUBMITTED,
STATE OF INDIANA

BERNARD A. CARTER
PROSECUTING ATTORNEY

STATE OF INDIANA)	
)	SS: IN THE VANDERBURGH CIRCUIT COURT
COUNTY OF VANDERBURGH)	2010 TERM
STATE OF INDIANA)	
)	
VS.)	CAUSE NO: 82Co1-1004-MR-449
)	COUNT IV
)	DEATH PENALTY
JEFFREY ALAN WEISHEIT)	I.C. 35-50-2-9

FILED
VANDERBURGH CIRCUIT COURT
APR 26 2010
Susan K. K...
VANDERBURGH COUNTY CLERK

The undersigned, being duly sworn upon his/her oath, says that the crimes of Murder, as charged in Counts I and II of the Information filed herein, were committed by the Defendant, Jeffrey Alan Weisheit, and the following aggravating circumstances exist, which outweigh any mitigating circumstances that may exist, and justify the imposition of the death sentence:

1) The Defendant, Jeffrey Alan Weisheit, committed another Murder, to wit:

- A) The Defendant, Jeffrey Alan Weisheit, committed another Murder at any time other than the Murder alleged in Count I of said information, regardless of whether he has been convicted of that other Murder, to-wit: the Murder of Caleb Lynch, which constitutes an aggravating circumstance justifying imposition of the Death Penalty as set forth in I. C. 35-50-2-9(b)(8).
- B) The Defendant, Jeffrey Alan Weisheit, committed another Murder at any time other than the Murder alleged in Count II of said information, regardless of whether he has been convicted of that Murder, to-wit: the Murder of Alyssa Lynch, which constitutes an aggravating circumstance justifying imposition of the Death Penalty as set forth in I. C. 35-50-2-9(b)(8).

2) The Victim of the Murder was less than twelve (12) years of age, to-wit:

The Defendant, Jeffrey Alan Weisheit, committed the crime of Murder as alleged in Count I of said information and the victim of that Murder, Alyssa Lynch, was less than twelve (12) years of age, which constitutes an aggravating circumstance justifying imposition of the Death Penalty as set forth in I. C. 35-50-2-9(b)(12).


3) The Victim of the Murder was less than twelve (12) years of age, to-wit:

The Defendant, Jeffrey Alan Weisheit, committed the crime of Murder as alleged in Count II of said information and the victim of

that Murder, Caleb Lynch, was less than twelve (12) years of age, which constitutes an aggravating circumstance justifying imposition of the Death Penalty as set forth in I.C. 35-50-2-9(b)(12).

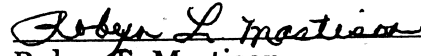
WHEREFORE, the State of Indiana prays that the penalty of Death be imposed on the Defendant, Jeffrey Alan Weisheit.

I further affirm, under penalties of perjury, that the foregoing representations are true.

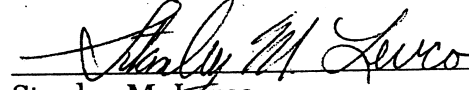

AFFIANT

Subscribed and sworn to before me this 26th day of April, 2010.

My commission expires:
May 10, 2015


Robyn L. Mastison
Notary Public
A Resident of Vanderburgh County

APPROVED BY ME


Stanley M. Levco,
Prosecuting Attorney

STATE OF INDIANA)
) SS:
COUNTY OF FULTON)

IN THE FULTON SUPERIOR COURT

CAUSE NO. 25D01-1111-MR-755

STATE OF INDIANA

VS.

ROY E. BELL

FILED
IN OPEN COURT
MAR 14 2012

Atty McKee
CLERK, FULTON SUPERIOR COURT

REQUEST FOR SENTENCE OF DEATH

Comes now Richard A. Brown, Prosecuting Attorney of Fulton County, Indiana, being first duly sworn, upon his oath says the following:

1. That on or about November 22, 2011, Roy E. Bell did commit the crime of murder by knowingly or intentionally killing Wilma Upsall.

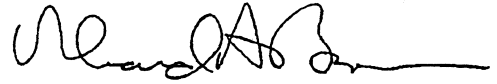
2. In the commission of the crime of murder as alleged, the following three aggravating circumstances exist:

A. That Roy E. Bell committed the murder by intentionally killing Wilma Upsall while committing or attempting to commit the crime of Burglary, pursuant to the aggravating circumstance as set out in I.C. 35-50-2-9(b)(1)(B) .

B. That Roy E. Bell committed the murder by intentionally killing Wilma Upsall while committing or attempting to commit the crime of Robbery, pursuant to the aggravating circumstance as set out in I.C. 35-50-2-9(b)(1)(G) .

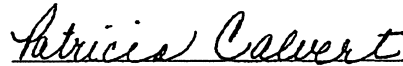
C. The victim, Wilma Upsall, was the victim of the offense of Criminal Confinement committed by the Defendant, this circumstance being conditioned upon the Defendant being convicted of that offense in the underlying case.

Wherefore, the State of Indiana requests that the Defendant, Roy E. Bell, be sentenced to death.



Richard A. Brown, Prosecuting Attorney
Fulton County, Indiana

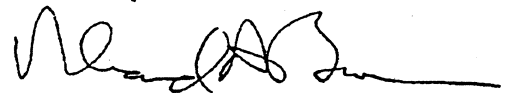
Subscribed and sworn to before me this 14th day of March, 2012.



Patricia Calvert, Notary Public
Fulton County, Indiana

My Commission Expires: May 9, 2017

Approved by me this 14th day of March, 2012.

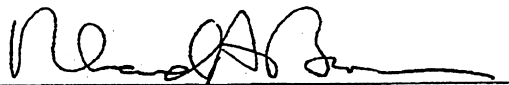


Richard A. Brown, Prosecuting Attorney
Fulton County, Indiana

My Commission Expires: December 31, 2014

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was personally delivered to Edward R. Ruiz, counsel for the Defendant, at 401 North Center Street, Plymouth, IN 46563, this 14th day of March, 2012.



Richard A. Brown