

IN THE
SUPREME COURT OF THE UNITED STATES

No.

JON HALL
Petitioner,

v.

TONY MAYS, Warden,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI
VOLUME 2

CAPITAL CASE

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

JON DOUGLAS HALL,)	
)	
Petitioner,)	
)	
vs.)	No. 05-01199-JDT
)	
RICKY BELL, Warden, Riverbend)	
Maximum Security Institution,)	
)	
Respondent.)	

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. During their six years of marriage, Billie Hall regularly kicked Petitioner Jon Hall in the groin, bit him, and berated him in front of family and friends. Despite this mistreatment, Mr. Hall remained devoted to Billie Hall and their four children, the youngest of which has special needs.

2. In July 1994, after a fight with Billie Hall, Mr. Hall was ordered to leave the house and to remain away from the house for one year. Because Mr. Hall was unemployed and had no money, he spent nights in the bed of a neighbor's truck and on a couch in an acquaintance's rundown trailer.

3. On July 29, 1994, after working an early shift at a chain factory, Mr. Hall began drinking. After consuming multiple beers, smoking marijuana, and ingesting Stay Alert pills, Mr. Hall drove to Billie Hall's house, arriving there late at night. Mr. Hall wanted a chance to talk with Billie Hall about reconciling. Before knocking on Billie Hall's door, Mr. Hall

disconnected the telephone lines so Billie Hall would not call the police and alert them that Mr. Hall was violating the court's order.

4. When Mr. Hall knocked, Billie Hall answered and allowed him inside. After visiting for approximately one hour, Billie Hall told the Hall children to go to bed. Mr. Hall and Billie Hall began arguing. Mr. Hall was drunk, stoned, and tired. In Mr. Hall's words, he "just lost it." Mr. Hall hit Billie Hall and threw her into a baby pool outside the house. Billie Hall died, and Mr. Hall was apprehended the next day.

5. The State indicted Mr. Hall for intentional, deliberate, premeditated murder. Everyone recognized the central guilt-stage issue: Did Mr. Hall deliberately act according to a premeditated plan, or did he simply lose it? To establish the former, the State presented at Mr. Hall's trial false testimony (1) from a jailhouse snitch that Mr. Hall said he went to Billie Hall's house intending to hurt her and make her feel helpless; and (2) from Mr. Hall's children that when Mr. Hall knocked on the door the night of the homicide, Mr. Hall was told he could not come in, and he responded by forcing his way inside and barricading himself and Billie Hall in a room where he started hitting her.

6. The jury credited the State's evidence, convicted Mr. Hall of intentional, deliberate, premeditated, first-degree murder, and sentenced him to death.

II. JURISDICTION/VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 2241(a), and 2254(a).

8. Venue is proper in the Western District of Tennessee. 28 U.S.C. § 2241(d).

III. PARTIES

9. Petitioner Jon Douglas Hall is a inmate of the Tennessee Department of Correction

(TDOC), currently confined under a death sentence. Mr. Hall's TDOC Number is 238941. The TDOC currently houses Mr. Hall in Unit 2, Riverbend Maximum Security Institution (RMSI), 7475 Cockrill Bend Industrial Road, Nashville, Tennessee 37209.

10. Respondent Ricky Bell is the RMSI Warden and an agent of the State. Warden Bell's address is Riverbend Maximum Security Institution, 7475 Cockrill Bend Industrial Road, Nashville, Tennessee 37209.

IV. PROCEDURAL HISTORY

11. This petition challenges the conviction and sentence of the Criminal Court of Madison County, Tennessee, rendered under indictment number 94-342.

12. Counsel pleaded Mr. Hall not guilty and a jury trial ensued.

13. Mr. Hall was initially represented by court-appointed attorneys Jack Hinson and Frank Stanfill. Court-appointed attorneys George Googe and Steven Spracher replaced attorneys Hinson and Stanfill. Court-appointed attorneys Carthel Smith and Mike Mosier replaced attorneys Googe and Spracher. Court-appointed attorneys Jesse Ford and Clayton Mayo replaced attorneys Smith and Spracher and represented Mr. Hall at his trial.

14. Mr. Hall believed that a Flag Of War exhibited in the courtroom precluded him from testifying at his trial, and he did not do so.

15. Mr. Hall's jury convicted him of intentional, deliberate, premeditated first-degree murder and sentenced him to death.

16. Mr. Hall appealed his first-degree murder conviction and death sentence to the Tennessee Court of Criminal Appeals. In the Statement of Issues section of Mr. Hall's brief, the following issues are presented:

16.1 The evidence was insufficient to support Mr. Hall's conviction of intentional, deliberate, premeditated, first-degree murder;

16.2. The trial court erred when it failed to allow Mr. Hall's sister to testify at the guilt stage about Mr. Hall's mental state prior to the homicide;

16.3. The trial court erred when it allowed into evidence at the sentencing stage autopsy photographs of the decedent;

16.4. The evidence was insufficient to support application of the heinous, atrocious, or cruel aggravating circumstance;

16.5. Imposition of the death penalty was disproportionate to the punishment resulting from similar convictions; and

16.6. The heinous, atrocious, or cruel aggravating circumstance was vague, overbroad, and incapable of proper application.

17. On April 28, 1998, the Tennessee Court of Criminal Appeals affirmed Mr. Hall's conviction and death sentence.

18. Mr. Hall appealed the Tennessee Court of Criminal Appeals's decision to the Tennessee Supreme Court. That court appointed attorney C. Mark Donahoe to represent Mr. Hall. In the Statement of Issues Section of Mr. Hall's initial brief to the Tennessee Supreme Court, and in a supplemental brief Mr. Hall filed in that Court, the following issues are presented:

18.1. The evidence was insufficient to support Mr. Hall's conviction of intentional deliberate, premeditated first-degree murder;

18.2. The trial court erred when it allowed into evidence at the sentencing stage

autopsy photographs of the decedent;

18.3. The evidence was insufficient to support application of the heinous, atrocious, or cruel aggravating circumstance;

18.4. The statutorily mandated proportionality review was conducted unconstitutionally, and Mr. Hall's death sentence is disproportionate to the sentence imposed in similar cases;

18.5. The trial court's sentencing instructions improperly required a unanimous verdict;

18.6. The trial court erred when it failed to allow Mr. Hall's sister to testify at the guilt stage about Mr. Hall's mental state prior to the homicide;

18.7. The trial court erred when it refused to honor Mr. Hall's request that it remove a Flag of War so he could testify on his own behalf.

19. On November 15, 1999, the Tennessee Supreme Court affirmed the Tennessee Court of Criminal Appeals's decision affirming Mr. Hall's first-degree murder conviction and death sentence.

20. On October 2, 2000, the United States Supreme Court denied certiorari to the Tennessee Supreme Court.

21. On December 7, 2000, Mr. Hall filed a pro se post-conviction petition in the Madison County, Tennessee, criminal court. That petition raised the following issues:

21.1. Counsel rendered ineffective assistance;

21.2. The trial court committed judicial fraud and did not have jurisdiction over Mr. Hall.

22. The Madison County criminal court appointed attorneys Paul Buchanan and Danny Ellis to represent Mr. Hall.

23. On November 1, 2001, attorneys Buchanan and Ellis filed an amended post-conviction petition in the Madison County, Tennessee, criminal court. That petition raised the following issues:

23.1. Counsel rendered ineffective assistance at the guilt and sentencing stages and on appeal;

23.2. The evidence was insufficient to support Mr. Hall's conviction of first-degree, premeditated, deliberate murder and death sentence;

23.3. The statutorily mandated proportionality review was conducted unconstitutionally;

23.4. The jury that convicted Mr. Hall of first-degree murder and sentenced him death was unconstitutionally assembled;

23.5. Death by electrocution and lethal injection are unconstitutional;

23.6. Jurors were subjected to prejudicial extra-trial information;

23.7. Tennessee's first-degree murder statute and death penalty sentencing statute are unconstitutional;

23.8. The trial court unconstitutionally instructed the jury at the guilt and sentencing stages;

23.9. During voir dire proceedings the trial court improperly struck prospective jurors and improperly failed to strike others;

23.10. Application of the heinous, atrocious, or cruel aggravating circumstance

was unconstitutional;

23.11. The death penalty is arbitrary because the jury has unlimited discretion in sentencing the defendant;

23.12. The death penalty violates the defendant's fundamental right to life because there are less restrictive means of effectuating the State's interests.

24. On February 20, 2003, the Madison County, Tennessee, criminal court denied Mr. Hall post-conviction relief.

25. Mr Hall appealed the Madison County, Tennessee, criminal court's denial of post-conviction relief to the Tennessee Court of Criminal Appeals. The Statement of Issues section of Mr. Hall's brief to the Tennessee Court of Criminal Appeals presents the following issues:

25.1. The trial court erred in ruling that Mr. Hall received the effective assistance of counsel;

25.2. Application of the heinous, atrocious, or cruel aggravating circumstance was unconstitutional;

25.3. Mr. Hall's death sentence is unconstitutional; and

25.4. The death sentence violates Mr. Hall's fundamental right to life.

26. On January 5, 2005, the Tennessee Court of Criminal Appeals affirmed the Madison County, Tennessee, criminal court's denial of post-conviction relief.

27. On June 20, 2005, the Tennessee Supreme Court denied Mr. Hall's application for permission to appeal the decision of the Tennessee Court of Criminal Appeals.

V. FACTS

28. Mr. Hall's grandfather was an alcoholic who regularly beat his wife, children, and

grandchildren and threatened them with physical harm. For example, one night in a drunken rage, Mr. Hall's grandfather shredded his grandmother's clothes with a knife and stuck the knife in a door frame.

29. Mr. Hall's mother married Mr. Hall's father when she was fifteen-years-old.

30. During her pregnancy with Mr. Hall, Mr. Hall's mother chain-smoked cigarettes, drank alcohol, and was beaten by her husband.

31. Mr. Hall was born on August 5, 1964.

32. Mr. Hall was the last of seven children born to his mother and father. His siblings are Kathy Hugo, Debbie Davis, Jay Hall, Jeff Hall, Sheryl Arbogast, and Joel Hall

33. Mr. Hall's sister Kathy is an alcoholic who has been diagnosed as suffering clinical depression. Sister Kathy admits to considering killing her children and committing suicide.

34. Mr. Hall's sister Debbie has been diagnosed as suffering clinical depression.

35. Mr. Hall's brother Jay has been diagnosed as suffering from Bipolar Disorder, has been committed to a mental institution, and has attempted suicide at least four times.

36. Mr. Hall's sister Sheryl has been diagnosed as suffering clinical depression.

37. Mr. Hall's brother Joel has been diagnosed as suffering alcohol and drug dependence.

38. The Hall family was impoverished. The Hall children often had neither a lunch nor lunch money for school.

39. Mr. Hall was born seven weeks premature, was born with the umbilical cord wrapped around his neck four times - which caused him to appear blue at birth, and was born with a malfunctioning liver.

40. Mr. Hall's mother's blood type was O+. Mr. Hall was his mother's fourth child with

a blood type of O-.

41. After his birth, Mr. Hall spent several months in the hospital before he was allowed to go home.

42. Shortly after being discharged, Mr. Hall was re-admitted to the hospital. Mr. Hall was allergic to the formula he was being fed and had become dangerously dehydrated.

43. When Mr. Hall was approximately two years old, he swallowed a nickel and was unable to breathe for a significant period of time.

44. During Mr. Hall's childhood, Mr. Hall's father got drunk every day.

45. During Mr. Hall's childhood, Mr. Hall's father sexually abused Mr. Hall's sisters.

46. During Mr. Hall's childhood, his father beat the Hall children.

47. During Mr. Hall's childhood, Mr. Hall's mother would not allow her children to eat dinner until Mr. Hall's father came home from work. Often Mr. Hall's father would come home late from work drunk, Mr. Hall's mother and father would get into a fight, and the children would miss dinner.

48. During Mr. Hall's childhood, Mr. Hall's mother and father often fought verbally and physically. The physical fights were, at times, exceedingly violent, leading to broken bones, blood stained floors and walls, and hair ripped out by the roots. For example

48.1. One night Mr. Hall's father came home late from work, drunk, tore the glasses off of the face of Mr. Hall's mother, repeatedly punched Mr. Hall's mother in the face, repeatedly pounded the head of Mr. Hall's mother into the floor, and ripped out clumps of her hair. Mr. Hall's mother could not hear for several days after this beating;

48.2. One day Mr. Hall's mother put her children in an automobile to drive them

away from the house and Mr. Hall's father. Mr. Hall's father stopped Mr. Hall's mother from driving away by throwing a rock through the windshield of the automobile Mr. Hall's mother was driving;

48.3. One day Mr. Hall's father attempted to run over Mr. Hall's mother by driving the family automobile onto the Hall's front yard;

48.4. On repeated occasions, Mr. Hall's parents would chase each other around the house brandishing kitchen knives.

49. During Mr. Hall's childhood, the Hall children hid guns owned by their parents in an attempt to prevent their parents from killing each other.

50. During Mr. Hall's childhood, the family dog gave birth to a litter of puppies. Upon the instruction of Mr. Hall's mother, brother Jay Hall took the puppies into the woods and shot them.

51. During Mr. Hall's childhood, Mr. Hall spent one month at a campsite away from his home.

52. During Mr. Hall's childhood, Mr. Hall regularly put his fists and knees through walls and doors.

53. Mr. Hall's father disowned Mr. Hall, believing that Mr. Hall was the product of an affair Mr. Hall's mother had. As a result, Mr. Hall's father made it a point of treating his other children well while saying to Mr. Hall, "Get away from me - you're not mine", or words to that effect.

54. During Mr. Hall's childhood, Mr. Hall received repeated blows to his head from baseballs, bats, and other objects.

55. During Mr. Hall's childhood, his older brothers regularly beat him until he saw stars and would torture him by, among other things, holding his head under water in a pool until Mr. Hall almost drowned.

56. On April 17, 1974, Mr. Hall's father died of a heart attack. Mr. Hall sat at his father's bedside as he died, watching him gasp for oxygen.

57. Approximately three months after Mr. Hall's father died, Mr. Hall's mother married Ed Alexander.

58. Mr. Alexander verbally and physically abused Mr. Hall's mother and sexually abused Mr. Hall's sisters.

59. In 1978, Mr. Hall's mother confronted Mr. Alexander about sexually abusing Mr. Hall's sisters. Mr. Alexander responded by beating Mr. Hall's mother, sending her to the hospital.

60. When Mr. Hall was approximately thirteen years old, he went on a trip to North Carolina with his brothers Jeff and Joel. Jeff and Joel forced Mr. Hall to smoke marijuana with them so Mr. Hall would not report to his parents that Jeff and Joel smoked marijuana. Mr. Hall soon began smoking marijuana regularly and developed cannabis dependence.

61. Starting at age fifteen, Mr. Hall's parents stopped supervising him, and Mr. Hall began drinking alcohol. Mr. Hall soon began drinking every day, developed alcohol dependence, and had regular unexcused absences from school.

62. During one teenage drinking episode, Mr. Hall got drunk and began choking on food that lodged in his windpipe. Mr. Hall lost consciousness, and was saved by a man who performed CPR on him.

63. When Mr. Hall was approximately fifteen years old, Mr. Hall crashed a car he was driving into a tree.

64. When Mr. Hall was approximately fifteen years old, Mr. Hall drove a motorcycle into the front of a stopped bus.

65. While in high school, Mr. Hall attempted suicide.

66. On April 21, 1982, Mr. Hall enrolled in Vale Tech vocational school. Mr. Hall took courses in automobile repair.

67. Throughout Mr. Hall's life, Mr. Hall has exhibited a quick temper, depression, and emotional instability.

68. Mr. Hall's has a low level of serotonin, a brain chemical that helps persons control their impulsive behavior. Mr. Hall's serotonin level is at the bottom five percent of the population. A low serotonin level is a biological marker for mental illness.

69. Mr. Hall's substance abuse history includes abuse of alcohol, marijuana, LSD, cocaine, crack cocaine, and speed.

70. In or around 1987, Mr. Hall moved to North Carolina to live with his sister Debbie Davis and her husband.

71. While in North Carolina, Mr. Hall was baptized at Ms. Davis's church.

72. After living with sister Debbie Davis and her husband, Mr. Hall moved into a North Carolina apartment complex where he met Billie Hall.

73. At the time Mr. Hall met Billie Hall, she was separated from her husband, Robert O'Connor, and had two daughters, Jennifer and Cynthia. Nonetheless, Mr. Hall and Billie Hall began having an affair.

74. In February 1988, Billie Hall divorced Mr. O'Connor.

75. On May 15, 1988, Mr. Hall married Billie Hall.

76. Billie Hall physically abused Mr. Hall by hitting him, biting him, and kicking him in the groin.

77. Billie Hall verbally abused Mr. Hall

77.1. By making sarcastic comments about his intellectual abilities such as calling him "stupid";

77.2. By telling Mr. Hall that he wasn't carrying his share of household obligations.

78. In the words of Darlene Brittain, a woman who acknowledges that she does not like Mr. Hall, Billie Hall treated Mr. Hall "like shit She was extremely commanding and demanding and abusive to him. (She hit him and kicked him). She was constantly bitching at him She would downgrade him, like he wasn't worth anything, that he couldn't do anything right."

79. On September 17, 1988, Stephanie Hall was born to Mr. Hall and Billie Hall.

80. In 1989, Mr. Hall and Billie Hall moved to Hollow Rock, Tennessee, and stayed with Billie Hall's parents. One month later, they rented a house in Mansfield, Tennessee.

81. On February 5, 1990, Billie Hall began work as a dispatcher for the Jackson Madison County General EMT.

82. In the early 1990s, Jeff Hall told Mr. Hall that he was dying of AIDS.

83. In or around December 1990, Billie Hall became pregnant.

84. In early 1991, Mr. Hall moved to Delaware and moved in with his brother Joel.

85. In Delaware, Mr. Hall expressed his desire to end his relationship with Billie Hall. Billie Hall, however, called him constantly, asking him to come back to Tennessee.

86. In Delaware, Mr. Hall drank alcohol and smoked marijuana virtually every night. On one occasion, Mr. Hall got drunk, got into a bar fight, was chased by the police, drove his car onto a beach where it got stuck in the sand, ran from the police on foot, and was captured when he stopped to eat grass.

87. On June 21, 1991, at her work, Billie Hall attempted to transfer an obese paraplegic man to a Gurney when a co-worker let go of the Gurney and it rolled into Billie Hall's stomach. Two hours later Billie Hall's water broke.

88. On June 21, 1991, Billie Hall called Mr. Hall in Delaware, informing him of her accident. Mr. Hall immediately returned to Tennessee.

89. On June 22, 1991, Jessica Hall was born, twenty-nine weeks after conception.
Jessica Hall

89.1. Weighed two pounds, one ounce, at birth;

89.2. Suffered a Grade IV intraventricular hemorrhage;

89.3. Suffered respiratory complications;

89.4. Suffered seizures;

89.5. Suffered two collapsed lungs;

89.6. Suffered spinal meningitis.

90. Jessica Hall spent approximately three months in intensive care at the Med in Memphis, Tennessee, and Jackson-General Hospital in Jackson, Tennessee.

91. Shortly after being discharged from Jackson-General Hospital, Jessica Hall was

admitted to LeBonheur Children's Hospital in Memphis, Tennessee, with pneumonia. Medical imaging revealed that Jessica Hall had suffered brain damage and was afflicted with Cerebral Palsy.

92. During her infancy, Jessica Hall suffered repeated ear infections which resulted in Jessica Hall suffering a 70% loss of hearing.

93. In 1992, Mr. Hall and Billie Hall purchased a house at 525 Pleasant Hill Road, Henderson County, Tennessee. At the closing, Billie Hall secretly arranged for the title to the house to be placed in her name only.

94. Mr. Hall quit his job so he could stay at home and tend to daughter Jessica's special needs and the needs of his other daughters. Jessica Hall's special needs included administering nebulizer breathing treatments four times a day and physical therapy sessions exercising Jessica's limbs.

95. Mr. Hall tended to the four daughters while Billie Hall worked and went to school. Mr. Hall had a good relationship with all his daughters, those born to Billie Hall's previous marriage, and those born from his marriage to Billie Hall.

96. Mr. Hall regularly fixed his friend's and neighbor's automobiles without charging for his services and performed other favors for them. For example, when Jackie and Darlene Brittain's automobile broke down late one night, Mr. Hall picked them up, took them home, and the next morning went back to the broken down automobile, fixed it, and drove it the Brittain's home.

97. On April 8, 1992, Jessica Hall had surgery to insert breathing tubes.

98. On April 30, 1992, the Center for Child Development reported that Jessica Hall

exhibited significant delays in developmental areas.

99. On June 15, 1993, the Center for Child Development reported that while Jessica Hall had a chronological age of nearly three years, her fine motor skills were at the level of a fifteen-month-old child for her right side and a four-month-old child for her left side.

100. On June 15, 1993, the Center for Child Development noted that “Jessica (Hall) seems to have good family support, as her father stays home with her.” (SD 238).

101. In 1993, due to mounting financial obligations, Mr. Hall applied for a job at Helms Motor Company. While the owner, Randy Helms, did not need any help, he nonetheless hired Mr. Hall because Mr. Hall said he needed work. At the start of his employment, Mr. Hall was a good employee.

102. Because Billie Hall was often away from the home, Mr. Hall would get the children up in the morning, feed them, take them to school or daycare, work a full day at the Helms Motor Company, pick up the children, take them home, cook for them, and put them to bed.

103. Billie Hall regularly went to the Helms Motor Company and swapped automobiles with Mr. Hall, taking an automobile with a full tank of gas and leaving Mr. Hall with an automobile that had an empty gas tank. One time that Billie Hall did so, Mr. Hall ran out of gas after picking up his daughter Jessica, and had to carry Jessica home in the rain.

104. In December 1993, child care workers noticed that Jessica Hall had a rash around her anus and, suspecting that Jessica had been the victim of sexual abuse, reported the rash to the Department of Human Services. Billie Hall accused Mr. Hall of sexually abusing Jessica, but the investigation found no sexual abuse.

105. On March 5, 1994, Jackson Madison County General EMT fired Billie Hall from

her dispatcher job.

106. On March 7, 1994, Billie Hall filed for unemployment benefits.

107. On March 9, 1994, the Department of Employment Security denied Billie Hall unemployment benefits.

108. In March 1994, Billie Hall bit Mr. Hall in the abdomen.

109. On March 10, 1994, Mr. Hall learned that when Billie Hall and he purchased 525 Pleasant Hill Road, Henderson County, Tennessee, Billie Hall had secretly arranged for only her name to be placed on the deed. Billie Hall told him everything they owned was in her name and if he did not like it, he could “get the hell out of the house.”

110. On March 10, 1994, Billie Hall filed for an order of protection against Mr. Hall. While Mr. Hall was ordered to leave Billie Hall’s house, Billie Hall and he reconciled and he continued living in Billie Hall’s house.

111. The marital problems between Mr. Hall and Billie Hall affected Mr. Hall’s work at the Helms Motor Company. Mr. Hall was despondent, and projects that used to take an hour or so to complete now took days to complete. In or around the end of May 1994, Mr. Hall quit his job at the Helms Motor Company so that Randy Helms would not have to fire him.

112. In the spring of 1994, Mr. Hall began attending church, taking Billie Hall and their daughters with him. At one service Mr. Hall walked down the aisle and made a commitment to the Lord. Billie Hall responded by calling Mr. Hall “church boy”, laughing at him, telling him he was weak, and suggesting that he commit suicide.

113. On June 19, 1994, Mr. Hall drove a Lebaron automobile to Bell County, Texas, to visit his brother Jeff. During the visit, Mr. Hall appeared very depressed about his family and

money problems, and brother Jeff believed Mr. Hall was suicidal. During his stay with Jeff Hall, Mr. Hall could not speak without crying.

114. On June 26, 1994, Billie Hall called Mr. Hall at brother Jeff's home in Bell County, Texas. After that telephone call, Mr. Hall hurried back to Tennessee, damaging the Lebaron automobile he drove.

115. During July 1994, Mr. Hall did not have a job; he did not have any money; and because he damaged the Lebaron automobile driving from Texas to Tennessee, he did not have an automobile.

116. During July 1994, Mr. Hall and Billie Hall had the following approximate financial commitments:

116.1. House payment-	\$340.00;
116.2. Electric bill -	\$100.00;
116.3. Telephone bill -	\$100.00;
116.4. Car payments -	\$580.00;
116.5. Car insurance -	\$ 50.00;
116.6 Furniture payment -	\$105.00;
116.7. Billie Hall school payment -	\$105.00;
116.8. Groceries -	\$400.00;
116.9. Babysitter -	\$200.00.

117. In July 1994, the air conditioning at Billie Hall's house stopped working. Mr. Hall could not repair the air conditioning, nor could he afford to pay to have it fixed.

118. In July 1994, Billie Hall repeatedly made condescending remarks to Mr. Hall about

his inability to support his family.

119. On July 2, 1994, Mr. Hall and Billie Hall got into a fight at Billie Hall's house. During the fight, Billie Hall broke a screen door, broke a stereo, and broke out the back window of a car that Mr. Hall was working on in the driveway.

120. On July 5, 1994, Billie Hall filed for an order of protection against Mr. Hall. Mr. Hall was ordered to leave Billie Hall's house. Mr. Hall spent that night in the back of a neighbor's truck.

121. On July 6, 1994, Mr. Hall spent the night in the back of a neighbor's truck.

122. On July 7, 1994, Mr. Hall attempted to pick up mail addressed to him that had been delivered to Billie Hall's house. Billie Hall drew a gun and pointed it at Mr. Hall.

123. On July 10, 1994, Mr. Hall attended church with Billie Hall's mother. Mr. Hall told her that he wanted to work things out with Billie Hall.

124. On July 12, 1994, the Henderson County court granted Billie Hall's request for a protection order, ordering Mr. Hall to move out of Billie Hall's house and to give Billie Hall \$50.00 per week in child support.

125. On or around July 12, 1994, Mr. Hall began staying with Jackie and Darlene Brittain in their trailer located the Chumney's Trailer Court. Mr. Hall slept on a couch. Mr. Hall was unable to sleep well in the Brittain's trailer because the couch was uncomfortable and persons drove into, out of, and around the trailer court at all hours of the night, often making loud noise.

126. Although Billie Hall had obtained an order of protection against Mr. Hall, she would regularly go the Brittain's trailer and verbally abuse Mr. Hall.

127. During the last two weeks of July 1994, Mr. Hall visited with his former employer, Randy Helms.

127.1. During one visit, Mr. Helms offered to give Mr. Hall money so that Mr. Hall could leave Tennessee and stay with his mother in Pennsylvania. When Billie Hall learned of Mr. Helms's offer, she told Mr. Helms that Mr. Hall was not going anywhere - she would make sure that he stayed in the area to take care of her children and to help pay the bills;

127.2. Mr. Helms described Mr. Hall as appearing severely depressed and "beaten down" during the last two weeks of June 1994.

128. On July 23, 1994, Mr. Hall got a job working at a chain factory. Mr. Hall thought he was going to make \$14.00 an hour, and he so told Billie Hall. Billie Hall allowed Mr. Hall to watch the children and work on the LeBaron parked in her driveway, and she told Mr. Hall that they could talk about patching things up.

129. On July 24, 1994, Mr. Hall went back to Billie Hall's house to watch the children and work on the LeBaron. Mr. Hall's daughter Cynthia told Mr. Hall that she saw Billie Hall hugging and kissing a man named Troy.

130. On July 25, 1994, Mr. Hall told the Department of Human Services that Billie Hall was leaving her children unattended. A case worker went to Billie Hall's house to investigate Mr. Hall's claim.

131. On July 27, 1994, Mr. Hall began work at the chain factory. He learned that he was going to make \$6.00 an hour instead of \$14.00 an hour as he had told Billie Hall. After working his shift at the factory, Mr. Hall went to Billie Hall's house, and worked on the LeBaron. Billie Hall expressed anger when Mr. Hall told her he was only making \$6.00 an hour at the chain

factory.

132. On July 28, 1994, Billie Hall told the Department of Human Services that Mr. Hall had sexually molested his daughters and had raped her.

133. During the evening of July 29, 1994, Mr. Hall's brother, Jeff Hall, spoke on the telephone to Mr. Hall's sister, Sheryl Arbogast. Jeff Hall told Ms. Arbogast that he had spoken to Mr. Hall on the telephone, and based on that conversation and Mr. Hall's recent visit to Jeff's home in Texas

133.1. Mr. Hall appeared distraught because Jeff Hall was dying;

133.2. Mr. Hall appeared distraught because he and Billie Hall were having trouble in their marriage;

133.3. When talking, Mr. Hall would jump from one topic to another and end up speaking incoherently;

133.4. Mr. Hall was suicidal.

134. After speaking to Jeff Hall on the telephone, Ms. Arbogast attempted to contact Mr. Hall and persons who knew him in order to secure for Mr. Hall psychiatric counseling on an urgent basis. Ms. Arbogast believed that Mr. Hall should be immediately committed to a psychiatric hospital.

135. On July 29, 1994,

135.1. Mr. Hall worked at the chain factory from 7:30 a.m. to 3:30 p.m.;

135.2. After finishing his shift, Mr. Hall went to a convenience store, bought a six-pack of beer and obtained a \$25.00 money order to give Billie Hall for partial payment of the child support he had been ordered to provide;

135.3. Mr. Hall drove to Billie Hall's house to work on the LeBaron, but Billie Hall and her daughters were not home;

135.4. Mr. Hall waited at Billie Hall's house, drank a beer or two, and thereafter drove to the Brittain's trailer, drinking beer as he drove there;

135.5. At the Brittain's trailer, Mr. Hall drank the remaining beer he bought, drank three or four beers in the Brittain's refrigerator, ingested some Stay Alert pills, and took a shower;

135.6. At approximately 6:00 p.m., Mr. Hall left the Brittain's trailer. He told Darlene Brittain that he was going out to find a girl and have a good time, and she allowed him to borrow her automobile;

135.7. Mr. Hall drove to a convenience store, bought another six-pack of beer, and drove to a bar called the Pub, drinking the beer he bought as he drove;

135.8. Between 7:00 p.m. and 8:00 p.m., Mr. Hall talked to Diana Pearson while sitting on a car parked on the Pub parking lot. Mr. Hall did not say to Ms. Pearson or anyone else that he intended to kill Billie Hall or any words to that effect;

135.9. At the Pub, Mr. Hall drank multiple beers and smoked marijuana;

135.10. Mr. Hall left the Pub and drove to the Lucky Lady Lounge, drinking beer as he drove;

135.11. At the Lucky Lady Lounge, Mr. Hall drank three or four beers and smoked marijuana;

135.12. Mr. Hall left the Lucky Lady Lounge with a man and a woman, and traveled to the Blockhouse Bar in the woman's automobile, drinking beer along the way;

135.13. At the Blockhouse, Mr. Hall drank two or three beers;

135.13. At the Blockhouse, Mr. Hall called Billie Hall and told her he was coming to her house to discuss the Department of Human Services investigation mentioned in ¶¶ 130, 132, above;

135.14. Mr Hall left the Block House with the woman and man he had met, and they traveled back to the Lucky Lady Lounge so Mr. Hall could retrieve Darlene Brittain's car. Along the way, Mr. Hall drank beer and cried;

135.15. Mr. Hall retrieved Darlene Brittain's car at the Lucky Lady Lounge, and drove to Billie Hall's house;

135.16. Upon arriving at Billie Hall's house, Mr. Hall disconnected the telephone lines to the house. Mr. Hall did so because he knew he was violating the protection order Billie Hall had obtained against him, he wanted to talk to Billie Hall, and he did not want Billie Hall to cut off his conversation with her by calling the police to report that Mr. Hall was violating the protection order;

135.17. Mr. Hall went to the side porch door and knocked. Billie Hall opened the door, and allowed Mr. Hall to come inside;

135.18. Upon entering Billie Hall's house, Mr. Hall's daughter Jennifer said, "You're drunk.";

135.19. Prior to any fighting, Mr. Hall and Billie Hall visited in the kitchen for approximately one hour. As they visited, Mr. Hall drank two or three beers;

135.20. Billie Hall accused Mr. Hall of molesting his daughters, and Mr. Hall accused Billie Hall of infidelity;

135.21. Billie Hall told the children to go to bed;

135.22. Mr. Hall left Billie Hall's house, went to Darlene Brittain's automobile, got the \$25.00 money order he had purchased earlier, went back into Billie Hall's house, took off his shoes, and laid down on a couch in the living area;

135.23. Billie Hall yelled from her bedroom, "You're not going to spend the night on the couch", or words to that effect;

135.24. Mr. Hall got up off of the couch and went into Billie Hall's bedroom;

135.25. Billie Hall picked up the telephone;

135.26. Mr. Hall said, "Don't call the cops", or words to that effect;

135.27. Billie Hall said, "What are you going to do? Beat me like you did the last time?";

135.28. Upon hearing Billie Hall's words, Mr. Hall became enraged because he had never beat Billie Hall;

135.29. Mr. Hall hit Billie Hall, chased her outside, caught her, and put her in a children's pool;

135.30. Mr. Hall drove away in a van Billie Hall and he owned. As Mr. Hall drove away, he drove ran over bicycles parked in the driveway to Billie Hall's house and drove into and out of a ditch several times;

135.31. Mr. Hall wrecked the van he was driving in a single-car accident;

135.32. When passers by stopped their automobile to inspect the crash site, Mr. Hall got into their stopped vehicle and drove away;

135.33. Unbeknownst to Mr. Hall, a twelve-year-old child was in the backseat of

the automobile he drove from the crash site. Upon discovering the child after driving approximately one mile, Mr. Hall stopped the car, let the child out of the car, and drove away;

136. On July 30, 1994, at or about 1:15 a.m., Tennessee Bureau of Investigation Agent Brian Byrd was notified to assist Henderson County Tennessee Sheriff Charles Woods and District Attorney Investigator Brian Booth with a homicide at 525 Pleasant Hill Road, Henderson County, Tennessee.

137. Upon receiving the above notification, Agent Byrd went to Methodist Hospital in Lexington, Tennessee, where Investigator Booth informed him that Mr. Hall talked his way into Billie Hall's house, and after a period of time passed, and argument between Mr. Hall and Billie Hall occurred.

138. After speaking to Investigator Booth at Methodist Hospital, Agent Byrd traveled to 525 Pleasant Hill Road, Henderson County, Tennessee, where Agent Byrd conducted a crime scene search.

139. Agent Byrd's crime scene search discovered that

139.1. The telephone wires for 525 Pleasant Hill Road, Henderson County, Tennessee, had been disconnected from a telephone junction box outside that house;

139.2. There was an empty beer bottle inside Darlene Brittain's automobile;

139.3. Outside 525 Pleasant Hill Road, Henderson County, Tennessee, there were two empty beer bottles;

139.4. Inside 525 Pleasant Hill Road, Henderson County, Tennessee, there were numerous empty beer bottles and a grocery bag containing full beer bottles.

140. On July 30, 1994, Mr. Hall's daughter Cynthia told Agent Byrd that

140.1. The night before, Billie Hall let Mr. Hall into her house;

140.2. When Mr. Hall entered the house he had a grocery bag which Cynthia believed contained beer;

140.3. Mr. Hall and Billie Hall visited for a while before any fighting occurred (SD 167)

141. On July 30, 1994, Mr. Hall's daughter Jennifer told Agent Byrd that the night before, Billie Hall let Mr. Hall into her house.

142. On July 30, 1994, Mr. Hall arrived at his brother Jeff's home in Bell County, Texas. Upon arriving, Mr. Hall told brother Jeff that he had made a mistake.

143. On July 30, 1994, Bell County, Texas, authorities arrested Mr. Hall. Mr. Hall was placed on suicide watch at the Bell County, Texas, jail. During his incarceration, Mr. Hall's entire body shook uncontrollably.

144. On August 4, 1994, the State of Tennessee transported Mr. Hall from the Bell County, Texas, jail, to the Henderson County, Tennessee, jail

145. Upon his arrival at the Henderson County, Tennessee, jail, Mr. Hall was placed on suicide watch.

146. On or around September 19, 1994, Mr. Hall was transferred to the RMSI.

147. At the RMSI, the TDOC placed Mr. Hall on suicide watch.

148. In September 1994, psychiatric nurses at the RMSI wrote that

148.1. Mr. Hall said he did not mean to kill Billie Hall;

148.2. Mr. Hall was "expressing remorse, concern about his children, doesn't understand how he could have hit his wife so hard it killed her. Tearful, depressed";

148.3. Mr. Hall was “very tearful and guilt ridden”;

148.4. Billie Hall “teed him off and he went off ... Was intoxicated.”

149. On October 3, 1994, the State indicted Mr. Hall for (1) premeditated and deliberate murder for the Billie Hall homicide; (2) theft of property for the 1993 Dodge Caravan Mr. Hall drove away from the scene of the Billie Hall homicide; (3) theft of property for the 1993 Oldsmobile Cutlass Mr. Hall drove away from the scene of the accident involving the 1993 Dodge Caravan; and (4) kidnaping because unbeknownst to Mr. Hall, Clinton E. Smith was in the backseat of the 1993 Oldsmobile Cutlass when he began driving it.

150. On October 4, 1994, TDOC psychiatry personnel wrote that Mr. Hall was involved in a grieving process over the death of Billie Hall.

151. On November 7, 1994, the TBI created a report that Michelle Johnson claimed that during the evening of July 29, 1994, Mr. Hall said to Diane Pearson, “I’m going to kill that bitch.”

152. On December 19, 1994, the State filed its notice of intent to seek the death penalty. The State specified the following aggravating circumstances as the basis for its intention: (1) the murder of Billie Hall was heinous, atrocious, or cruel; (2) the murder was committed to interfere with or to avoid a lawful arrest; and (3) the murder of Billie Hall occurred in perpetration of an unspecified felony.

153. Shortly after the State filed its notice of intent to seek the death penalty, the trial court replaced attorneys that had been appointed to represent Mr. Hall with the Public Defender’s Office for Tennessee’s then-26th Judicial District.

154. Mr. Hall told attorneys with the Public Defender’s Office for Tennessee’s then-26th

Judicial District that his brother Jeff Hall had information about Mr. Hall's behavior during the weeks and days preceding the Billie Hall killing, but that brother Jeff Hall was dying.

155. On February 23, 1995, Mr. Hall was committed to the Middle Tennessee Mental Health Institution (MTMHI) for evaluation of his mental state.

156. On March 2, 1995, Baptist Hospital issued a report on medical imaging performed on Jon Hall's head. The report concluded, "CT head within the limits of normal." The report Baptist Hospital issued, however, was for a man named Jon Hall who is different from Mr. Hall.

157. On March 28, 1995, Larry Southard, Director of Forensic Services at MTMHI, wrote Judge LaFon that: (1) Mr. Hall understands the charges pending against him; (2) the consequences which might follow; (3) Mr. Hall is capable to advise counsel and participate in his own defense; (4) an insanity defense cannot be supported; (5) Mr. Hall has an alcohol and drug dependence which affects his behavior; and (6) Mr. Hall has low-average intellectual functioning.

158. Director Southard sent a copy of his March 28, 1995, letter to the District Attorney's and Public Defender's Offices for Tennessee's then 26th Judicial District.

160. In or around April 1995, Mr. Hall's sister Sheryl Arbogast traveled to Bell County, Texas, to have Jeff Hall execute an affidavit respecting Mr. Hall's behavior in the weeks and days prior to the Billie Hall homicide. Ms. Arbogast did so because Jeff Hall was dying, Jeff Hall had pertinent information respecting Mr. Hall's compromised mental state during that period, and Mr. Hall's attorneys had done nothing to preserve Jeff Hall's testimony.

161. On April 20, 1995, Mr. Hall told a psychiatric attendant at the RMSI that when he killed Billie Hall he was drunk and did not mean to do it.

162. On May 22, 1995, Judge LaFon allowed the Public Defender's Office for Tennessee's then-26th Judicial District to withdraw and appointed in its place attorney Carthel Smith.

163. On May 23, 1995, Mr. Hall filed *pro se* a motion requesting that the prosecution produce any exculpatory evidence in the possession of the State.

164. On May 25, 1995, RMSI psychological examiner Joe Mount wrote that Mr. Hall "expresses tremendous remorse regarding the death of his wife. My overall impression is that the incident may have occurred as a result of psychosocial stresses in his life, his deteriorating relationship with his wife ... exacerbated by the fact he was intoxicated at the time."

165. On June 1, 1995, Mr. Hall filed *pro se* a motion requesting that the State be precluded from displaying photographs of the victim Billie Hall.

166. On June 27, 1995, District Attorney Woodall received a discovery request from Mr. Hall's defense attorneys.

167. On June 28, 1995, District Attorney Woodall wrote defense attorney Smith that "our files are open for your inspection any time during regular business hours We hope you will take advantage of our 'open file policy'"

168. On June 28, 1995, defense attorney Mosier wrote defense attorney Smith that Mr. Hall could not get a fair trial anywhere in Tennessee's then-26th Judicial District.

169. On July 4, 1995, Jeff Hall died. Prior to his death, no attorney representing Mr. Hall preserved Jeff Hall's testimony respecting Mr. Hall's state of mind in the weeks and days before and after Billie Hall was killed.

170. On September 19, 1995, Mr. Hall wrote defense attorneys Smith and Mosier and

inventoried the financial obligations listed in ¶ 116, above.

171. On October 13, 1995, TDOC inmate Latasha Marie Whittington-Barrett gave the Tennessee Bureau of Investigation a statement in which he claimed that during Mr. Hall's incarceration at the RMSI

171.1. Mr. Hall told him that on July 29, 1994, while drinking in a bar, he told another person that he was going to "kill that bitch";

171.2. Mr. Hall said he carried out a premeditated plan to kill Billie Hall in order to obtain sole possession of money Mr. Hall expected to be awarded to Billie Hall from a lawsuit respecting the accident that caused Jessica Hall's premature birth and resulting physical and mental disabilities.

172. On October 16, 1995, defense Investigator Tammy Askew wrote that she interviewed Michelle Hays Elliott who claimed that she overheard Mr. Hall say, "I'm going to kill that bitch", when Mr. Hall was talking to Diana Pearson on the Pub parking lot the evening of July 29, 1994.

173. On October 20, 1995, Mr. Hall wrote Judge LaFon to inform him that he had asked his lawyers to obtain information needed to show the jury, among other things, Billie Hall's maltreatment of him.

174. On November 8, 1995, Judge LaFon held a hearing on various motions Mr. Hall's attorneys had filed.

174.1. Responding to Mr. Hall's request that the State disclose any potential favors it might perform for any of its witnesses, District Attorney Woodall represented that, "There are none, but if there are any developed, we will comply with that";

174.2. Responding to Mr. Hall's various requests for the production of exculpatory evidence, District Attorney Woodall represented that, "Well, of course, I don't have to have an open file, but I do, and I'll make available and continue to make available our entire file and that of the law enforcement agencies involved If we've got it, they're going to be able to look at it."

175. In or around December 1995, Mr. Hall wrote his children that, "Y'all were there when I had an emotional breakdown"; "I'm sorry I never meant this to happen"; "I'm extremely sorry I still don't know why"; "I'm sorry about what happened to mom, I lost control and done things I wish never happened I didn't mean to take your mom away from y'all."

176. At RMSI, the TDOC housed Chris Dutton in a cell in the same pod as the pod in which Mr. Hall was housed, but that cell was not adjacent to Mr. Hall's cell.

177. On January 25, 1996, the State filed a motion requesting that Judge LaFon permit a grandparent of Mr. Hall's children to accompany each child to the witness stand when the child testifies against Mr. Hall.

178. In or around February 1996, Judge LaFon replaced attorneys Mosier and Smith with attorneys Ford and Mayo.

179. In or around February 1996, Chris Dutton wrote a letter addressed to the Nashville Attorney General's Office in which Dutton claimed that he had a conversation with Mr. Hall and that he could assist the State with Mr. Hall's prosecution.

180. On February 10, 1996, TDOC inmate Chris Dutton wrote District Attorney Woodall a letter replying to a letter Woodall sent him.

181. On February 16, 1996, Assistant District Attorney Al Earls wrote defense attorney Ford that “the State will call Latasha Marie Whittington-Barrett as a witness at trial”, and transmitted to Ford a statement from Whittington-Barrett. .

182. On March 5, 1996, TDOC inmate Chris Dutton wrote District Attorney Woodall, “I could be of great use within the prison system as a reliable informant. (I hope) to become an informant for the F.B.I.!”

183. On March 7, 1996, attorneys Ford and Mayo requested that Judge LaFon order the transfer of Mr. Hall from RMSI to the Madison County Penal Farm so that they could meet with Mr. Hall to prepare for Mr. Hall’s trial. The attorneys noted that such a move was necessary for them to represent competently Mr. Hall.

184. On May 14, 1996, District Attorney Woodall wrote defense attorney Mayo that “our files are open for your inspection any time during regular business hours We hope you will take advantage of our ‘open file policy’”

185. On June 1, 1996, Judge LaFon authorized Mr. Hall’s attorneys to hire mitigation specialist Glori Shettles for 100 to 200 hours of work.

186. On August 28, 1996, Assistant District Attorney Al Earls wrote defense attorney Ford that Chris Dutton may be called to testify against Mr. Hall.

187. On August 28, 1996, in a separate letter from the letter described in ¶ 186, above, Assistant District Attorney Earls wrote defense attorney Ford that an inmate might testify against Mr. Hall as to alleged admissions made by Mr. Hall about the killing; the details of that statement are not available at the D.A.’s office, but TBI Agent Byrd will give you any information you request about that inmate. “The name of the inmate has not been confirmed to

this office but we intend to meet with Agent Byrd soon and obtain a written copy of the statement. You are more than welcome to a copy of that statement.”

188. On August 29, 1996, attorneys Ford and Mayo again asked Judge LaFon to order Mr. Hall’s transfer from RMSI to the Madison County Penal Farm or Jail. Attorneys Ford and Mayo again stated that they could not adequately prepare for Mr. Hall’s trial with Mr. Hall being housed in Nashville.

189. On August 31, 1996, Assistant District Attorney Al Earls wrote defense attorney Mayo that he was welcome to copy any part of the State’s file.

190. On September 4, 1996, Assistant District Attorney Al Earls wrote defense attorney Ford that the State intended to call Michelle Johnson as a witness at Mr. Hall’s trial.

191. On September 5, 1996, the State provided defense attorney Ford a statement given by Chris Dutton.

192. On September 11, 1996, TBI Agent Byrd wrote that the night of July 29, 1994, Mr. Hall talked his way inside Billie Hall’s house.

193. On September 12, 1996, attorneys Ford and Mayo requested that Judge LaFon change venue for Mr. Hall’s trial from Henderson County, Tennessee, to “another county within this judicial district.” Ford and Mayo’s motion for change of venue was not accompanied by affidavits as Tenn.R.Crim.P. 21(b) requires.

194. Attorneys Ford and Mayo filed the September 1996 change of venue motion without Mr. Hall’s consent. Mr. Hall wanted venue changed outside the then-26th Judicial District, and if that was not accomplished, then Mr. Hall wanted his trial to occur in Henderson County, Tennessee. Mr. Hall never consented to being tried in any court in Tennessee’s then-

26th Judicial District other than the Henderson County Court.

195. On September 23, 1996, Judge LaFon granted attorney Ford and Mayo's September 12, 1996, motion for change of venue and moved Mr. Hall's trial to Madison County, Tennessee. Judge LaFon ordered the change of venue without holding a hearing.

196. On October 2, 1996, attorneys Ford and Mayo again asked Judge LaFon to order Mr. Hall's transfer from RMSI to the Madison County Penal Farm or Jail. Attorneys Ford and Mayo again stated that they could not adequately prepare for Mr. Hall's trial with Mr. Hall being housed in Nashville.

197. On October 16, 1996, Judge LaFon set Mr. Hall's trial for February 3, 1997.

198. On December 6, 1996, Mr. Hall was transferred from the RMSI to the Madison County Jail.

199. On December 17, 1996, defense investigator Glori Shettles wrote that, "Clearly, developing a defense strategy should be discussed as soon as possible."

200. Prior to Mr. Hall's trial, the State offered Mr. Hall a sentence of life with the possibility of parole if Mr. Hall would plead guilty to first-degree murder. Mr. Hall declined the State's offer because he did not intend to kill Billie Hall. In Mr. Hall's words, he "just lost it."

201. During the first week of January 1997, the State reclassified Mr. Dutton to Minimum Security.

202. Prior to Mr. Hall's trial, Billie Hall's parents, District Attorney Woodall, and/or Georgia Bond, the State's Victim/Witness coordinator, provided Mr. Hall's daughters the following information:

202.1. Mr. Hall pushed his way into Billie Hall's house the night Billie Hall was

killed;

202.2. Mr. Hall blocked the door to the bedroom in which he and Billie Hall were fighting with a sewing machine, vacuum cleaner, and/or other object(s);

202.3. Mr. Hall told Billie Hall during the incident that she would never live to graduate;

202.4. Mr. Hall said during the incident that if his children went for help he would kill Billie Hall.

203. During the night of February 2, 1997, Mr. Hall's attorneys contacted Sheryl Arbogast, Mr. Hall's sister, for the first time.

204. Prior to Mr. Hall's trial, defense attorney Ford had not tried a capital case, and he had not attended any seminars on representing persons accused of capital murder.

205. Prior to Mr. Hall's trial, defense attorney Mayo did not think that voluntary intoxication was a defense to a first-degree murder charge.

206. Prior to trial, defense attorney Ford decided to present a voluntary intoxication defense at the guilt stage. Ford believed that Mr. Hall had five or six beers before the incident. .

207. Prior to trial, Mr. Hall had informed defense attorney Ford that Billie Hall abused him. Defense attorney Ford was unaware of any other person who could testify that Billie Hall abused Jon Hall.

208. On February 3, 1997, Mr. Hall's trial began in Madison County, Tennessee.

208.1. Prior to jury selection, Mr. Hall informed Judge LaFon that he did not consent to his trial being held in Madison County, Tennessee, and that he objected to being tried in Madison County, Tennessee. Judge LaFon overruled Mr. Hall's objection;

208.2. Prior to jury selection, Mr. Hall stated that the State offered him a life sentence in exchange for his guilty plea to the first-degree murder charge. Mr. Hall stated that he rejected the State's offer because there was no premeditation involved in the killing;

208.3. During jury selection, District Attorney Woodall stated, "[I]f it's the law in the State of Tennessee that if an individual is found guilty of murder in the first degree that he's to receive the death penalty, can you follow the law and instructions given to you by the Court?";

208.4. During jury selection, Judge LaFon said that the jury's sentencing verdict would be an advisory verdict;

208.5. During jury selection, Judge LaFon said, "As I said out here, the only purpose of this criminal trial is to determine whether the prosecution has established the guilt of the accused.";

208.6. During jury selection, prospective juror Bozza stated that she would consider the death penalty if that was what the law required. Attorney Ford agreed that prospective juror Bozza should be struck for cause, and Judge LaFon did so;

208.7. During jury selection, Billie Hall's parents sat with the prospective jurors;

208.8. During jury selection, a prospective juror who was a former co-worker of Billie Hall's sat with Billie Hall's family and offered them hugs and consolation;

208.9. During jury selection, Mr. Hall wore shackles in front of prospective jurors;

208.10. The jury seated to hear the evidence in Mr. Hall's trial consisted of nine white women, two African-American women, and one African-American man;

208.11. During opening statement, District Attorney Woodall stated that evidence

that Mr. Hall committed intentional, deliberate, premeditated murder will be evidence

208.11.1. that Mr. Hall was not invited into Billie Hall's house, but he pushed his way inside;

208.11.2. that Mr. Hall pushed objects of furniture against a bedroom door to prevent, or make it difficult for, any person to come into the bedroom where Mr. Hall and Billie Hall fought;

208.11.3. that Mr. Hall told his children during the incident that if they tried to use the telephone or otherwise try to get help, he'll kill Billie Hall; and

208.11.4. that Mr. Hall made statements to other persons demonstrating his deliberation and premeditation.

208.12. During opening statement, attorney Ford stated that the proof will show that the killing of Billie Hall was not a planned, deliberate, premeditated murder.

208.13. At the conclusion of opening statements, the trial recessed for the day.

209. On February 4, 1997, Mr. Hall's trial resumed.

209.1. At Mr. Hall's trial, the State introduced into evidence crime scene photographs which depicted the interior of Billie Hall's house. These photographs did not depict empty beer bottles inside the home and they did not depict a bag of full beer bottles inside the home;

209.2. At Mr. Hall's trial, Chris Dutton testified on behalf of the State that:

209.2.1. He was an inmate of the TDOC who had been incarcerated at the RMSI;

209.2.2. During his incarceration at the RMSI, he was housed in a cell

next to a cell in which Mr. Hall was housed;

209.2.3. Mr. Hall confided to him that he had killed his wife;

209.2.4. Mr. Hall told him that before he went to Billie Hall's house the night Billie Hall died, he decided that he wanted to make Billie Hall suffer, feel helpless, and to hurt her the way she had hurt him;

209.2.5. Prior to speaking with Mr. Hall, he had no idea why Mr. Hall was incarcerated;

209.2.6. After he had the above conversations with Mr. Hall, he wrote a letter to the Nashville Attorney General's Office offering to assist the State with Mr. Hall's prosecution;

209.2.7. After writing the letter to the Nashville Attorney General's Office, he was not contacted by anyone until the end of January/beginning of February 1997. Mr. Dutton testified that at that time, District Attorney Woodall contacted him;

209.2.8. The only offer of assistance made to him was that Mr. Woodall agreed to speak on behalf of Mr. Dutton at a parole hearing if Mr. Dutton testified at Mr. Hall's trial;

209.2.9. As of the time of his testimony, he had not received any benefit for providing the State information on Mr. Hall;

209.2.10. He did not know what an informant in a prison system would be;

209.2.11. It was not his role to inform authorities of information he learned inside the prison system;

209.2.12. Obtaining favorable treatment from the State had nothing to do with his decision to provide the State information on Mr. Hall.

209.3. During Mr. Dutton's testimony, Judge LaFon remarked that, "They've given this guy something";

209.4. At Mr. Hall's trial, Stephanie Lambert testified on behalf of the State that:

209.4.1. She was one of Mr. Hall's daughters who was with Billie Hall inside Billie Hall's house the night Billie Hall was killed;

209.4.2. When Mr. Hall arrived at Billie Hall's house, he pushed his way into the house;

209.4.3. She and her sisters could not get into the bedroom where Mr. Hall and Billie Hall were fighting because Mr. Hall had blocked the bedroom door with a sewing machine;

209.4.4. During the incident, Mr. Hall told Billie Hall, "You'll never live to graduate."

209.5. At Mr. Hall's trial, Cynthia Lambert testified on behalf of the State that:

209.5.1. She was one of Mr. Hall's daughters who was with Billie Hall inside Billie Hall's house the night Billie Hall was killed;

209.5.2. When Mr. Hall arrived at Billie Hall's house he pushed his way into the house;

209.5.3. She and her sisters found it difficult to get into the bedroom where Mr. Hall and Billie Hall were fighting because there was stuff blocking the door;

209.5.4. During the incident, Mr. Hall said that he would kill Billie Hall if

the children went to get help for her;

209.5.5. Mr. Hall never took care his children.

209.6. At Mr. Hall's trial, Jennifer Lambert testified on behalf of the State that:

209.6.1. She was one of Mr. Hall's daughters who was with Billie Hall inside Billie Hall's house the night Billie Hall was killed;

209.6.2. She and her sisters found it difficult to get into the bedroom where Mr. Hall and Billie Hall were fighting because a sewing machine and vacuum cleaner were blocking the bedroom door;

209.6.3. During the incident, Mr. Hall said that he would kill Billie Hall if the children went to get help for her.

209.7. After Jennifer Lambert's testimony, Judge LaFon remarked, "This ought to have been a plea for second-degree murder About three years."

209.8. At Mr. Hall's trial, Dr. O. C. Smith testified on behalf of the State that:

209.8.1. He was involved in performing the autopsy on Billie Hall's body;

209.8.2. Mr. Hall struck Billie Hall eighty-three separate times;

209.8.3. Billie Hall's injuries were consistent with the infliction of extreme pain in an effort at control;

209.8.4 Billie Hall died a painful death.

209.9. After Dr. Smith testified, the State rested;

209.10. During a break in Mr. Hall's trial, a juror hugged either Billie Hall's sister or her mother;

209.11. At Mr. Hall's trial, defense Attorney Mayo called Mr. Hall's sister,

Sheryl Arbogast, to testify. In a jury-out hearing, defense attorney Mayo proffered Ms. Arbogast's testimony that during the evening of July 29, 1994, Mr. Hall's brother, Jeff Hall, spoke to her on the telephone. Jeff Hall told Ms. Arbogast that

209.11.1. Mr. Hall was distraught because Jeff Hall was dying;

209.11.2. Mr. Hall was distraught because he and Billie Hall were having trouble in their marriage;

209.11.3. When talking, Mr. Hall would jump from one topic to another and end up speaking incoherently;

209.11.4. Mr. Hall was suicidal.

209.12. Defense attorney Mayo conceded that because Ms. Arbogast's testimony was hearsay, it was inadmissible. The trial court ruled Ms. Arbogast's testimony inadmissible;

209.13. At Mr. Hall's trial, Dr. Lynn Donna Zager testified on behalf of Mr. Hall. Dr. Zager testified that

209.13.1. She was a clinical psychologist;

209.13.2. Mr. Hall had, among other things, an alcohol dependence problem;

209.13.3. Mr. Hall was depressed and intoxicated at the time of the incident;

209.13.4. She was somewhat concerned that the only evidence of Mr. Hall's intoxication the night of the incident was Mr. Hall's self-report

209.14. At Mr. Hall's trial, Randy Helms testified on behalf of Mr. Hall that Mr. Hall was depressed two days before the incident.

209.15. After Randy Helms testified, the defense rested.

209.16. In a jury-out hearing prior to closing arguments, defense attorney Ford stated that Mr. Hall understood that he could testify on his own behalf and he freely chose not to testify. Mr. Hall responded by saying, "I'll testify if you take down the flag or war or sign that judicial contract."

209.17. During closing argument, District Attorney Woodall

209.17.1. Told the jury that Chris Dutton had testified that Mr. Hall went to Billie Hall's house hoping to reconcile with Billie Hall, but if there was no reconciliation then Mr. Hall would make Billie Hall suffer like she had made him suffer;

209.17.2. Told the jury that when Mr. Hall knocked on the door of Billie Hall's house his children said he could not come in, and Mr. Hall responded by forcing his way inside the home;

209.17.3. Told the jury that Mr. Hall barricaded the door to the bedroom in which he and Billie Hall were fighting, and this act demonstrated that Mr. Hall acted with deliberation, premeditation, and a cool purpose;

209.17.4. Told the jury that Mr. Hall struck Billie Hall eighty-three separate times, and this fact demonstrates that Mr. Hall acted deliberately and with premeditation when he killed Billie Hall;

209.17.5. Told the jury that during the incident Mr. Hall told his daughters that if they went across the street to get help he would kill Billie Hall;

209.17.6 Told the jury that during the incident Mr. Hall told Billie Hall that she would never live to graduate;

209.17.7. Told the jury that Mr. Hall's expert, Dr. Zager, was never apprised of Mr. Hall exhibiting symptoms of intoxication the night Billie Hall died.

209.18. During District Attorney Woodall's closing argument, Billie Hall's mother began wailing uncontrollably and was removed from the courtroom. While she was taken outside the courtroom, her wailing could still be heard inside the courtroom.

209.19. Judge LaFon instructed Mr. Hall's jury

209.19.1. Reasonable doubt is that doubt engendered by an investigation of all the proof in the case and an inability after such an investigation to let the mind rest easily as to the certainty of guilt. Reasonable doubt does not mean a capricious, possible or imaginary doubt. Absolute certainty of guilt is not demanded by the law to convict of any criminal charge, but moral certainty is required, and this certainty is required as to every proposition of proof requisite to constitute the offense;

209.19.2. A person acts intentionally with respect to the nature of his conduct or the result of his conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result;

209.19.3. Intoxication itself is generally not a defense to prosecution for an offense. If a person voluntarily becomes intoxicated and while in that condition commits an act which would be a crime if he or she were sober, he or she is fully responsible for his or her conduct. It is the duty of persons to refrain from placing themselves in a condition which poses a danger to others Intoxication is irrelevant to the issue of the essential element of the Defendant's culpable mental state. Judge LaFon said the last sentence of this quote twice.

209.20 The jury retired and after preliminary deliberations Mr. Hall's trial was

recessed for the day.

210. On February 4, 1997, at or around 11:00 p.m., trial counsel contacted Kathy Hugo, Mr. Hall's sister, for the first time.

211. On February 4, 1997, at or around 11:30 p.m., trial counsel contacted Debbie Davis, Mr. Hall's sister, for the first time.

212. On February 5, 1997, Mr. Hall's trial resumed.

212.1. Mr. Hall's jury reported that it found him guilty of first-degree, premeditated, deliberate murder;

212.2. Prior to the sentencing hearing, District Attorney Woodall remarked, "Thank goodness (Judge LaFon will) do what I tell him to do";

212.3. At the sentencing hearing, the State introduced seventeen color autopsy photographs of Billie Hall's body. As the pictures were passed to the jury, a recess was called because one juror became physically ill and could not continue;

212.4. At the sentencing hearing, Dr. O. C. Smith testified on behalf of the State that

212.4.1. Billie Hall's body had "targeting injuries" which indicate torture was present in the killing;

212.4.2. Billie Hall suffered serious physical abuse beyond that necessary to produce death.

212.5. After Dr. Smith testified, the State rested.

212.6. At the sentencing hearing, Mr. Hall's defense attorneys presented testimony that

212.6.1. Mr. Hall's father had an alcohol dependence problem and denied that Mr. Hall was his son;

212.6.2. Mr. Hall's parents fought verbally and physically;

212.6.3. Mr. Hall exhibits symptoms of depression and alcohol dependence;

212.6.4. Mr. Hall's depression and alcohol dependence compromised his judgment;

212.6.5. Mr. Hall was diagnosed with Adjustment Disorder;

212.6.6. Mr. Hall exhibited remorse for his actions;

212.6.7. Mr Hall took good care of his daughters;

212.7. After presenting the above evidence, the defense rested; (TR 433)

212.8. In a jury-out hearing, defense attorney Ford stated that Mr. Hall understood that he had a right to testify at the sentencing hearing. Defense attorney Mayo informed Judge LaFon that Mr. Hall would testify during the sentencing stage if Judge LaFon would remove from the courtroom a United States flag that Mr. Hall considered a flag of war. Judge LaFon refused to remove the flag, and Mr. Hall therefore did not to testify;

212.9. During closing argument, defense attorney Ford stated that when Jesus Christ was being crucified, He thought about two other persons who were also being crucified and, as to those two others persons, He said forgive them for they do not know what they do;

212.10. Judge LaFon instructed Mr. Hall's jury

212.10.1. That Tennessee law provided for application of an aggravating circumstance when the murder was especially heinous, atrocious or cruel in that it involved

torture or serious physical abuse beyond that necessary to produce death. Heinous means grossly wicked or reprehensible, abominable, odious or vile. Atrocious means extremely evil or cruel, monstrous, exceptionally bad, abominable. Cruel means disposed to inflict pain or suffering, causing suffering, painful. Torture means the infliction of severe physical or mental pain upon the victim while he or she remains alive and conscious. Serious physical abuse means or alludes to a matter or degree. The abuse must be physical as opposed to mental, and it must be beyond that or more than what is necessary to produce death. Abuse is defined as an act that is excessive or which makes improper use of a thing, or which uses a thing in a manner contrary to the natural or legal rules for its use;

212.10.2. In determining whether to sentence Mr. Hall to death, the jury should consider only aggravating circumstance evidence;

212.10.3. A life verdict required juror unanimity.

212.11. The jury sentenced Mr. Hall to death specifying on the Jury Verdict Form the heinous, atrocious, or cruel aggravating circumstance as the only aggravating circumstance found.

213. On March 5, 1997, Mr. Hall filed *pro se* a motion for new trial asserting, among other things, that (1) the State shackled him during voir dire proceedings; (2) Billie Hall's parents sat with prospective jurors during voir dire and interacted with jurors; (3) the jury improperly consisted of eleven women and one man; and (4) venue was changed from Henderson County, Tennessee, to Madison County, Tennessee, over Mr. Hall's objection.

214. On April 21, 1997, Judge LaFon filed the Report of Trial Judge in First-Degree Murder Cases.

214.1. Contrary to Judge LaFon's stated belief that Mr. Hall was guilty of no more than second-degree murder, in question A.5 of the Report, a box is checked indicating that as the "thirteenth juror", Judge LaFon found that Mr. Hall was guilty beyond a doubt of first-degree murder;

214.2. There is no answer to question A.7(b) of the Report, asking whether the State gave notice that it was seeking a sentence of life without the possibility of parole;

214.3. The response to question A.8(b) of the Report provides that the jury found two aggravating circumstances, the heinous, atrocious, or cruel aggravating circumstance and the avoiding arrest or prosecution circumstance;

214.4. The response to question A.12 of the Report indicates that Judge LaFon believed that the evidence fully supported imposition of the death penalty;

214.5. There is no answer to question B.8 of the Report, asking for the identification of the highest grade Mr. Hall completed in his education;

214.6. The word "omitted" is written in response to question B.11(b) of the Report, asking for a summary of any psychiatric or psychological evaluation of Mr. Hall;

214.7. The response to question E.2 of the Report provides that Mr. Hall's jury consisted of eleven Caucasian persons.

215. On August 14, 1998, Assistant Attorney General Al Earls wrote Tennessee Board of Pardons and Parole Chairman Charles Trauber that Chris Dutton gave testimony against Mr. Hall and "played a significant role in bringing about a conviction"

V. CLAIMS FOR RELIEF

CLAIM 1: MR. HALL'S CONVICTION AND DEATH SENTENCE VIOLATE THE

SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BECAUSE THEY ARE VOID

216. Mr. Hall incorporates the preceding paragraphs.

217. The Billie Hall homicide occurred in Henderson County, Tennessee.

218. Mr. Hall never consented to a change of venue from Henderson County, Tennessee, to another county in Tennessee's then-26th Judicial District.

219. Mr. Hall was tried in Madison County, Tennessee, which was in Tennessee's then-26th Judicial District.

220. Because the Billie Hall homicide occurred in Henderson County, Tennessee, and because Mr. Hall never consented to being tried in Madison County, Tennessee, the Madison County, Tennessee, court lacked jurisdiction and Mr. Hall's first-degree murder conviction and death sentence are void.

CLAIM 2: BECAUSE NO STANDARD GUIDED THE PROSECUTION'S DECISION TO SEEK THE DEATH PENALTY, MR. HALL'S DEATH SENTENCE VIOLATES THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

221. Mr. Hall incorporates the preceding paragraphs.

222. The Fourteenth Amendment's Equal Protection Clause of the United States Constitution precludes subjecting fundamental rights to differing, arbitrary, standards throughout a state.

223. Prosecuting agencies in the State of Tennessee, including the District Attorney General's Office for Tennessee's then-26th Judicial District, do not have or follow a State-wide objective standard in determining whether to seek the death penalty against persons accused of homicide.

CLAIM 3: MR. HALL WAS TRIED IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BECAUSE HE WAS INCOMPETENT TO STAND TRIAL

224. Mr. Hall incorporates the preceding paragraphs.

225. Mr. Hall believed that he could not testify on his own behalf because a Flag of War was placed in the Madison County, Tennessee, courtroom.

226. Mr. Hall refused to testify on his own behalf because of his belief that a Flag of War was placed in the Madison County, Tennessee, courtroom.

CLAIM 4: THE STATE VIOLATED MR. HALL'S RIGHTS UNDER THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BY WITHHOLDING MATERIAL, EXCULPATORY EVIDENCE

227. Mr. Hall incorporates the preceding paragraphs.

228. The State withheld evidence that Chris Dutton had been convicted of providing law enforcement authorities false information.

229. The State withheld information that the investigation into Billie Hall's homicide was characterized by misconduct, including the creation of

229.1. Michelle Hays Elliott (Johnson)'s story that the evening of July 29, 1994, Mr. Hall said "I'm going to kill that bitch";

229.2. Latasha Whittington-Barrett's story that Mr. Hall said he killed Billie Hall for money that Mr. Hall hoped would be awarded from a lawsuit;

229.2. Darlene Brittain's story that Mr. Hall said he wanted to turn his wife into hamburger meat.

230. The State withheld evidence that the testimony described in the Perjured Testimony Claim, Claim 5, below, was false.

231. Had the State not withheld the above evidence, individually and combined, there is a reasonable probability that Mr. Hall's jury would not have convicted Mr. Hall of intentional, premeditated, deliberate, first-degree murder.

232. Had the State not withheld the above evidence, individually and combined, there is a reasonable probability that Mr. Hall's jury would not have sentenced Mr. Hall to death.

CLAIM 5: MR. HALL'S CONVICTION VIOLATES THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BECAUSE THE PROSECUTION KNOWINGLY PRESENTED PERJURED TESTIMONY AND FALSE EVIDENCE AT MR. HALL'S TRIAL AND RELIED ON THAT TESTIMONY AND EVIDENCE IN CLOSING ARGUMENT

233. Mr. Hall incorporates the preceding paragraphs.

234. The State knowingly presented Chris Dutton's perjured testimony that

234.1.1. Mr. Hall was celled next to Mr. Dutton at RMSI;

234.1.2. Mr. Dutton had no idea why Mr. Hall was being incarcerated;

234.1.3. Mr. Hall told Mr. Dutton that he wanted his wife to suffer as he did;

234.1.4. After writing a letter to the State, Mr. Dutton did not hear from anyone

until District Attorney Woodall contacted him shortly before Mr. Hall's trial;

234.1.5. The only consideration provided Mr. Dutton for his testimony was

District Attorney Woodall's agreement to speak at Mr. Dutton's parole board hearing;

234.1.6. As of the time Mr. Dutton testified at Mr. Hall's trial, he had not received anything of benefit for agreeing to testify against Mr. Hall;

234.1.7. Mr. Dutton did not know what an informant was;

234.1.8. Mr. Dutton did not perform the role of a person who informs authorities of things he has heard;

234.1.9. Favorable treatment had nothing to do with Mr. Dutton's decision to provide information to authorities and to testify against Mr. Hall.

235. The State knowingly presented the false testimony of Mr. Hall's children that

235.1. Mr. Hall pushed his way into the house the night of the incident;

235.2. Mr. Hall blocked access to the bedroom where Billie Hall and he fought with a sewing machine, vacuum cleaner, and/or other object(s);

235.3. Mr. Hall did not take care for his children while Billie Hall worked and went to school;

235.4. Mr. Hall said he would kill Billie Hall if the children went to call the police;

235.5. During the incident Mr. Hall said Billie Hall would never live to graduate.

236. The State provided the jury crime scene photographs knowing that those photographs misrepresented the crime scene. Specifically, the photographs misrepresented that

236.1. The interior of Billie Hall's house did not contain empty and full beer bottles;

236.2. The telephone lines had been pulled from the telephone box as opposed to being disconnected from that box; and

236.3. Mr. Hall stripped off Billie Hall's shirt during the homicide.

237. The State knowingly presented Dr. O. C. Smith's false testimony that

237.1. Billie Hall received eighty-three separate blows;

237.2. Billie Hall could have died as a result of strangulation.

238. In closing arguments, the State relied upon the testimonies of Chris Dutton, Mr.

Hall's children, and Dr. O. C. Smith, and upon the inaccurate crime scene photographs, to argue that Mr. Hall was guilty of intentional, deliberate, premeditated, first-degree murder and should be sentenced to death.

239. There is a likelihood that the above perjured testimonies, false evidence, and/or closing arguments could have affected the jury verdict that Mr. Hall was guilty of first-degree, premeditated, deliberate, murder.

240. There is a likelihood that the above perjured testimonies, false evidence, and/or closing arguments could have affected the jury decision to sentence Mr. Hall to death.

CLAIM 6: IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, THE TRIAL COURT DID NOT RECEIVE FROM MR. HALL A KNOWING AND VOLUNTARY WAIVER OF HIS RIGHT TO TESTIFY

241. Mr. Hall incorporates the preceding paragraphs.

242. Mr. Hall believed that he could not testify on his own behalf because a Flag of War was placed in the Madison County, Tennessee, courtroom.

243. Mr. Hall informed Judge LaFon that he was not going to testify on his own behalf because of his belief that a Flag of War was placed in the Madison County, Tennessee, courtroom, and Mr. Hall requested that Judge LaFon remove the Flag of War so he could testify.

244. Judge LaFon refused to remove the flag that Mr. Hall considered a Flag of War, and, as a result, Mr. Hall did not testify on his own behalf.

CLAIM 7: IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, THE JURY WAS PREJUDICED AGAINST MR. HALL BY IMPROPER EXTRANEIOUS INFLUENCES

245. Mr. Hall incorporates the preceding paragraphs.

246. Mr. Hall's jury was subjected to the following improper extraneous influences

246.1. Family members of Billie Hall sat among prospective jurors during jury selection, resulting in an incident of a prospective juror hugging one of Billie Hall's family members;

246.2. During voir dire, prospective jurors were repeatedly told that should they find Mr. Hall guilty of first-degree murder, he had to receive a death sentence;

246.3. During voir dire, Judge LaFon told prospective jurors that the jury's verdict would be advisory;

246.4. During voir dire, prospective jurors were told that Mr. Hall's children will testify and the jury should presume that their testimony is truthful;

246.5. A co-worker of Billie Hall's gave hugs to fellow jurors;

246.6. During a break in the trial, Billie Hall family member(s) embraced Mr. Hall's juror(s);

246.7. During the State's closing argument at the guilt stage, Billie Hall's mother started wailing, was removed from the courtroom, yet her cries were still heard from outside the courtroom as the State continued its closing argument;

246.8. The jury saw Mr. Hall in shackles;

246.9. At the sentencing stage, the State presented to the jury excessive autopsy photographs (in number, size, and subject-matter), causing one juror to become physically ill.

CLAIM 8: IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, MR. HALL'S CONVICTION AND DEATH SENTENCE ARE BASED ON FALSE EVIDENCE

247. Mr. Hall incorporates the preceding paragraphs.

248. The jury's finding that Mr. Hall committed intentional, deliberate, premeditated murder is based on the testimonies of Chris Dutton, Mr. Hall's children, and Dr. O. C. Smith, and crime scene photographs as discussed in Claim 5, above. That evidence is false.

CLAIM 9: IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, JUDGE LAFON GAVE THE JURY UNCONSTITUTIONAL INSTRUCTIONS

249. Mr. Hall incorporates the preceding paragraphs.

250. At the guilt stage, Judge LaFon

250.1. Gave the jury an unconstitutional reasonable doubt instruction, see ¶ 209.19.1, above;

250.2. Gave a jury instruction on intent that allowed the jury to find Mr. Hall intentionally killed Billie Hall when Mr. Hall merely intended to strike her, see ¶ 209.19.2, above;

250.3. Gave an intoxication instruction that nullified Mr. Hall's intoxication defense. See ¶ 209.19.3, above.

251. At the sentencing stage, Judge LaFon

251.1. Gave the jury unconstitutionally vague instructions respecting the heinous, atrocious, or cruel aggravating circumstance; see ¶ 212.10.1, above;

251.2. Instructed the jury that in deciding whether the death penalty was an appropriate punishment, the jury should consider only aggravating circumstances; see ¶ 212.10.2, above;

251.3. Instructed the jury that a life verdict required a unanimous decision. See ¶ 212.10.3, above.

CLAIM 10: APPLICATION OF THE HEINOUS, ATROCIOUS, OR CRUEL AGGRAVATING CIRCUMSTANCE VIOLATED THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

252. Mr. Hall incorporates the preceding paragraphs.

253. The heinous, atrocious, or cruel aggravating circumstance did not fulfill its constitutionally-mandated function of directing the jury's sentencing discretion.

CLAIM 11: IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, JUDGE LAFON DID NOT EXERCISE IMPARTIAL, INDEPENDENT JUDGMENT RESPECTING THE PROCEEDINGS AGAINST MR. HALL

254. Mr. Hall incorporates the preceding paragraphs.

255. In the proceedings against Mr. Hall, Judge LaFon did not exercise impartial independent judgment; rather, he did whatever District Attorney Woodall told him to do.

CLAIM 12: IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, THE EVIDENCE IS INSUFFICIENT TO SUPPORT MR. HALL'S CONVICTION OF INTENTIONAL, DELIBERATE, PREMEDITATED, FIRST-DEGREE MURDER

256. Mr. Hall incorporates the preceding paragraphs.

257. The evidence against Mr. Hall does exclude the reasonable hypothesis that Mr. Hall did not commit premeditated and deliberate murder, but, rather, Mr. Hall killed Billie Hall upon being overcome with emotion.

CLAIM 13: IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, MR. HALL RECEIVED THE INEFFECTIVE ASSISTANCE OF COUNSEL

258. Mr. Hall incorporates the preceding paragraphs.

259. Mr. Hall's defense attorneys failed to obtain and present evidence from Mr. Hall's family and other sources (including Carol Alexander, Kathy Hugo, Debbie Davis, Jay Hall, Jeff

Hall, Sheryl Arbogast, Joel Hall, Beth Hall, Carla Ulery, Scott Smith, school records) respecting Mr. Hall's social history. This evidence includes evidence that:

259.1. Mr. Hall's family exhibits a genetic history of mental illness and substance abuse/dependence, see ¶¶ 28, 32-37, 44-45, 47-48, 50,68;

259.2. Mr. Hall's family members were physically, mentally, and sexually abusive to one another, see ¶¶ 28, 45-48, 50, 53, 55, 58-59;

259.3. Mr. Hall was subjected to in utero insults, suffered birth complications, and failed to thrive as an infant, see ¶¶ 30, 39. 40-42;

259.4. Mr. Hall grew up in an impoverished environment, see ¶ 38;

259.5. Mr. Hall's childhood was defined by chaos, anger, and physical, mental, and sexual abuse, see ¶¶38, 44-51, 53, 55-56, 58-59;

259.6. Mr. Hall suffered reoccurring incidents where his brain was deprived of oxygen for significant periods of time, see ¶¶ 39, 43, 55, 62;

259.7. Mr. Hall suffered multiple incidents of head trauma, see ¶¶ 46, 54-55, 63-64;

259.8. Mr. Hall was unable to control his emotions throughout his childhood, see ¶¶ 52, 67;

259.9. Due to his older brothers' encouragement and his parents' neglect, Mr. Hall began abusing alcohol, marijuana, and other substances at an early age, and developed alcohol and cannabis dependence, see ¶¶ 60-61, 69, 86;

259.10. Mr. Hall attempted suicide, see ¶ 65.

260. Mr. Hall's defense attorneys failed to obtain and present evidence from Mr. Hall's

family, Mr. Hall's friends, Mr. Hall's acquaintances, doctors for Mr. Hall and his family, prison and jail personnel (including Carol Alexander, Kathy Hugo, Debbie Davis, Jay Hall, Jeff Hall, Sheryl Arbogast, Joel Hall, Beth Hall, Carla Ulery, Scott Smith, Jackie Brittain, Darlene Brittain, Tim Dennison, Tom Hollingsworth, Gary Johnson, Randy Helms, Diana Pearson, Alice Pearson, Brian Lautenschlager, Herman McKinney, Valene McKinney Foreman, Vic Stanfield, Brenda Pugh, Lisa LNU, Larry Southard, Dr. Joe Mount, Lisa Garner, police reports, TDOC prison records, MTMHI records, Jessica Hall medical records, letters Mr. Hall wrote) providing an explanation for the Billie Hall homicide. This evidence includes evidence that

260.1. Throughout their marriage, Billie Hall physically, verbally, and mentally abused Mr. Hall, see ¶¶ 76-78, 93, 103, 108-09, 112, 118, 122, 126, 131-32;

260.2. Any time Mr. Hall made an effort to leave Billie Hall, she interfered to ensure that she maintained control over Mr. Hall, see ¶¶ 85, 88, 114, 126-27;

260.3. Prior to the Billie Hall homicide, Mr. Hall was experiencing the following stressors in his life

260.3.1. Mr. Hall's brother Jeff was dying, see ¶¶ 82, 113, 133;

260.3.2. Mr. Hall had to tend to the needs of his four children, including the special needs of his daughter Jessica, see ¶¶ 89-92, 94-95, 97-100, 102;

260.3.3. Mr. Hall and Billie Hall were experiencing severe financial strain, see ¶¶ 101, 105-07, 113, 116, 128;

260.3.4. The deterioration of his relationship with Billie Hall, see ¶¶ 93, 108-09, 111, 113, 119-20, 122, 124, 129, 133;

260.3.5. Mr. Hall had no automobile, job, or home, see ¶¶ 93, 113, 115,

120-21;

260.4. In the weeks preceding the Billie Hall homicide, Mr. Hall experienced sleep deprivation, see ¶¶ 120, 125, 135;

260.5. In the days preceding the Billie Hall homicide, Mr. Hall suffered a mental breakdown, see ¶¶ 133, 135;

260.6. Prior to the Billie Hall homicide Mr. Hall consumed numerous beers, smoked marijuana, and ingested Stay Alert pills. See ¶ 135. Mr. Hall's behavior immediately prior to and after the Billie Hall homicide demonstrate the severity of his intoxication the night of the incident, see ¶¶ 135, 143.

260.7. Prior to the Billie Hall homicide, Billie Hall falsely accused Mr. Hall of molesting his daughter(s), raping and beating her, see ¶¶ 104, 132, 135;

260.8. In the days, weeks, months, and years after the Billie Hall homicide, Mr. Hall has consistently insisted that he did not intend to kill Billie Hall, but started hitting her because he was drunk, tired, angry, and "lost it", see ¶¶ 142, 148, 161, 164, 175;

260.9. In the days, weeks, months, and years after the Billie Hall homicide, Mr. Hall consistently exhibited sincere remorse for the Billie Hall homicide, see ¶¶ 148, 150, 164, 175;

260.10. Upon his incarceration, Mr. Hall was placed on suicide watch. See ¶¶ 143, 145, 147.

261. Mr. Hall's defense attorneys failed to obtain and present evidence that at the time of the offense, a biologically driven deficit, including but limited to brain damage, interfered with Mr. Hall's ability to exercise reflection and judgment for his actions. See ¶¶ 68, 259, 260.

Indeed, Mr. Hall's attorneys relied on an inaccurate medical image of Mr. Hall's head to discount the need for a thorough investigation. See ¶ 156.

262. In addition, Mr. Hall's defense attorneys

262.1. Failed to get a change of venue out of district;

262.2. Failed to keep Mr. Hall's trial in Henderson County;

262.3. Selected a jury consisting of eleven women and one man;

262.4. Failed to correct District Attorney Woodall's voir dire intimation that a first-degree murder conviction required a death sentence;

262.5. Failed to correct Judge LaFon's statement that the jury sentence would be advisory;

262.6. Failed to correct Judge LaFon's statement that the only purpose of the trial would be to ascertain guilt;

262.7. Agreed to the striking for cause of juror Bozza for cause;

262.8. Failed to object to Billie Hall's family members sitting with prospective jurors during voir dire;

262.9. Failed to establish that Mr. Hall disconnected telephone lines to Billie Hall's house so Billie Hall wouldn't call the police and inform them that Mr. Hall was violating a protection order;

262.10. Failed to establish that Chris Dutton's testimony was a lie;

262.11. Failed to establish that the testimonies of Mr. Hall's daughters were not accurate;

262.12. Failed to demonstrate that crime scene photographs presented to the jury

were inaccurate;

262.13. Failed to establish that Dr. O. C. Smith's testimony was inaccurate and unfounded;

262.14. Failed to preserve Jeff Hall's testimony about Mr. Hall's mental state in the days and weeks prior to the Billie Hall homicide;

262.15. Failed to present at the sentencing stage the testimony of Mr. Hall's sister Sheryl Arbogast about what Jeff Hall told her about Mr. Hall's mental state in the days and weeks prior to the Billie Hall homicide;

262.16. Failed to establish that Mr. Hall was not capable of assisting his defense;

262.17. Told Judge LaFon that Mr. Hall had knowingly and voluntarily waived his right to testify;

262.18. Failed to recognize the difference between premeditation and deliberation under Tennessee law;

262.19. Inaccurately referred to a Bible passage respecting the crucifixion of Jesus Christ;

262.20. Failed to challenge proportionality review.

263. Trial counsel were rendered ineffective by the State's pre-trial manufactured evidence that

263.1. Michelle Hays Elliott said prior to the Billie Hall homicide, Mr. Hall said, "I'm going to kill that bitch";

263.2. Mr. Hall told Latasha Whittington-Barrett that he killed Billie Hall to have sole possession of money he expected to accrue from a lawsuit;

263.3. Mr. Hall told Darlene Brittain that he intended to grind Billie Hall into hamburger meat.

264. Trial counsel failed to raise at trial and/or on appeal any claim that this Court rules is procedurally defaulted.

265. Had counsel not performed deficiently, a reasonable probability exists that Mr. Hall would not have been found guilty of first-degree murder, and/or would not have been sentenced to death, and/or would have had his conviction and/or sentence vacated on appeal.

CLAIM 14: BECAUSE MR. HALL IS ACTUALLY INNOCENT OF INTENTIONAL, DELIBERATE, PREMEDITATED, FIRST-DEGREE MURDER, MR. HALL'S CONVICTION AND DEATH SENTENCE VIOLATE THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

266. Mr. Hall incorporates the preceding paragraphs.

267. Mr. Hall lacked the requisite mental state to commit intentional, deliberate, premeditated, first-degree murder, and he is therefore actually innocent of that crime.

CLAIM 15: MR. HALL'S CONVICTION AND DEATH SENTENCE VIOLATE ARTICLE VI, CLAUSE 2, OF THE UNITED STATES CONSTITUTION BECAUSE THE STATE DISREGARDED RIGHTS ACCORDED MR. HALL BY INTERNATIONAL LAW

268. Mr. Hall incorporates the preceding paragraphs.

269. Mr. Hall possesses rights under international law, including, but not limited to:

269.1. His rights under treaties ratified by the United States. As such, these treaties are the supreme law of the land, and the rights guaranteed under them preempt any contradictory state laws. U. S. Const., art. VI, cl.2; *see, e.g., Breard v. Greene*, 118 S. Ct. 1352, 1355 (1998). Those treaties include:

269.1.1. International Covenant on Civil and Political Rights, Dec. 19,

1966, G.A. Res. 2200, U.N. GAOR, Supp. No. 16 at 52, U.N. Doc. A/6316 (1967), 999 U.N.T.S. 171, art. 24 [hereinafter ICCPR], which was ratified by the United States on June 8, 1992;

269.1.2. The International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, G.A. Res. 2106A, U.N. GAOR, 20th Sess., Supp. No. 14 at 47, U.N. Doc. A/6014 (1965) [hereinafter Race Convention], which was ratified by the United States on October 21, 1994; and

269.1.3. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. 39/51 (1984) [hereinafter Torture Convention], which was ratified by the United States on October 21, 1994.

269.2. His rights under treaties entered into and signed by the President of the United States. The President's action in the area of foreign relations, including the rights guaranteed under these treaties, preempts any contradictory state law. United States v. Belmont, 301 U.S. 324, 57 S. Ct. 758 (1937). Those treaties include:

269.2.1. The American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S.No. 36, O.A.S. Off. Riec. OEA/Ser. L./V./II.23/Doc. 21 Rev. 6 [hereinafter American Convention] signed on June 1, 1977;

269.2.2. The Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46 at 193, U.N. Doc. A/34/46 (1979) [hereinafter Women's Convention], which was signed on July 17, 1988; and

269.2.3. The International Covenant on Economic, Social and Cultural

Rights, Dec. 15, 1966, 1976, 999 U.N.T.S. 3 [hereinafter Economic Covenant], which was signed on October 5, 1977.

269.3. His rights under customary international law. Customary international law and *jus cogens* norms are binding upon the courts as the law of the land. “The law of nations . . . is part of the law of the land.” The Paquete Habana, 175 U.S. 677, 700, 20 S. Ct. 290 (1900). Evidence of customary international laws can be found, *inter alia*, in other treaties and international proclamations neither signed nor ratified by the United States, including but not limited to:

269.3.1. The American Declaration of the Rights and Duties of Man, May 2, 1948, Res. XXX, at 38, Final Act, Ninth Int'l Conf. of American States, Bogota, Columbia, Mar. 30-May 2, 1948 (Pan-Am 1948), O.A.S. Off. Rec. OEA/Ser. L./V./ II.23/Doc. 21 Rev. 6 (1979), Art. XX [hereinafter American Declaration] and

269.3.2. Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., pt.1, U.N. Doc. A/810 (1948) [hereinafter Universal Declaration].

269.4. Those rights guaranteed to Mr. Hall through treaties and customary international law that counsel failed to raise, include, but are not limited to:

269.4.1. The right to life¹;

269.4.2. The right to be free from racial discrimination²;

¹ICCPR, art. 6(1); American Declaration, art. I; Universal Declaration, art. 3; American Convention, art. 4(1).

²ICCPR, arts. 3, 14(1), 16, and 26; Universal Declaration, arts. 1, 2, 6, and 7; American Declaration, art. II; American Convention, arts. 3 and 24; Race Convention.

269.4.3. The right to be free from gender discrimination³;

269.4.4. The right to be free from discrimination on the basis of economic status⁴;

269.4.5. The right not to be sentenced to death for this crime because it was not sufficiently serious to warrant a sentence of death⁵;

269.4.6. The right not to be put to death by electrocution, because death by electrocution constitutes cruel, inhumane and degrading punishment⁶;

269.4.7. The right to not be executed by lethal injection, because death by lethal injection constitutes cruel, inhumane and degrading punishment⁷;

269.4.8 The right to a fair and impartial trial⁸;

269.4.9 The right to be presumed innocent until proven guilty according to law⁹;

³ICCPR, arts. 3, 14(1), 16, and art. 26; Universal Declaration, arts. 1, 2, 6, and 7; American Declaration, art. II; American Convention, arts. 3 and 24; Women's Convention.

⁴ICCPR art. 26; *see* ICCPR, arts. 3, 14(1), and 16; Universal Declaration, arts. 1, 2, 6, and 7; American Declaration, art. II; American Convention, arts. 3 and 24; Economic Convention.

⁵ICCPR, art. 6(2); American Convention, art.4(2).

⁶ICCPR, arts. 7, 10, and 16; Universal Declaration, art. 5; American Declaration, art. XXV, American Convention, art. 5; Torture Convention.

⁷ICCPR, arts. 7,10, and 16; Universal Declaration, art. 5; American Declaration, art. XXV, American Convention, art. 5; Torture Convention.

⁸ICCPR, art. 14; Universal Declaration, art. 10; American Declaration, art. XV, art. XVII; American Convention, art. 8.

⁹ICCPR, art. 14(2); Universal Declaration, art. 11(1); American Declaration, art. XXVI; American Convention, art. 8(2).

269.4.10. The right to detailed notice of the charges against him/ her¹⁰;

269.4.11. The right to adequate time and resources in which to prepare his defense¹¹;

269.4.12. The right to obtain the attendance of witnesses to testify in his defense¹²;

269.4.13 The right to examine witnesses against him/her¹³;

269.4.14. The right to be free of coercion to confess guilt¹⁴;

269.4.15. The right to refrain from testifying against him/herself¹⁵;

268.4.16. The right to be free from detention while awaiting trial¹⁶;

269.4.17. The right to be tried without undue delay¹⁷;

¹⁰ICCPR, art. 9(2); American Convention, art. 8(2).

¹¹ICCPR, art. 14(3); Universal Declaration art. 11(1); American Convention, art. 8(2); *see also* American Convention, art. 8(2)(“the right . . . to obtain the appearance, as witnesses, of experts of other persons who may throw light on the facts.”).

¹²ICCPR, art. 14(3)(“To examine. . . the witnesses against him and to obtain the attendance and examination of witnesses on this behalf *under the same conditions as witnesses against him.*)(emphasis added); American Convention, art. 8(2); *see also* Universal Declaration, art. 11(1)(The right to “all the guarantees necessary for his defence.”).

¹³ICCPR, art. 14(3)(“To examine. . . the witnesses against him and to obtain the attendance and examination of witnesses on this behalf *under the same conditions as witnesses against him.*)(emphasis added); American Convention, art. 8(2); *see also* Universal Declaration, art. 11(1) (The right to “all the guarantees necessary for his defence.”).

¹⁴ICCPR, art. 14(3); American Convention, art. 8, (2-3).

¹⁵ICCPR, art. 14(3); American Convention, art. 8 (2).

¹⁶ICCPR, art. 9.

¹⁷ICCPR art. 14(3); American Declaration, art. XXV; American Convention, art. 8(1).

269.4.18. The right to be free from arbitrary searches¹⁸;

269.4.19. The right to be free from arbitrary detention¹⁹; and

269.4.20 The right to have his detention review by a court without undue delay²⁰.

CLAIM 16: THE TENNESSEE APPELLATE COURTS' PROPORTIONALITY REVIEW VIOLATED THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

270. Mr. Hall incorporates the preceding paragraphs.

271. At the time of Mr. Hall's trial, Tennessee Supreme Court Rule 12 provided that in capital cases, the trial judge "shall" fill out a report, in its entirety, with accurate information.

272. The Rule 12 Report in Mr. Hall's case contains the omissions and inaccuracies listed in ¶ 214, above.

273. In conducting the statutorily mandated proportionality review, the Tennessee appellate courts relied on the deficient Rule 12 Form.

CLAIM 17: IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION MR. HALL IS INCOMPETENT TO BE EXECUTED

274. Mr. Hall incorporates the preceding paragraphs.

275. At the time of any execution of Mr. Hall, he will not comprehend the punishment he

¹⁸ICCPR, art. 17(1); Universal Declaration, art. 12; American Convention, art. 11(2); American Declaration, arts. IX-X.

¹⁹ICCPR, art. 9(1); Universal Declaration, art.9; American Declaration, art. XXV; American Convention, art. 7(3).

²⁰ICCPR, art. 9(3); Universal Declaration, art.9; American Declaration, art. XXV; American Convention art. 7(3).

is about to receive or the reason for it.

CLAIM 18: IN VIOLATION OF THE FIRST, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, DEATH BY LETHAL INJECTION AND/OR ELECTROCUTION CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT

276. Mr. Hall incorporates the preceding paragraphs.

277. As to lethal injection

277.1. The drugs to be used in the lethal injection are identified in the TDOC

Execution Manual:²¹

- (1) Sodium Pentothal [a/k/a Sodium Thiopental]– Yellow (50 cc)
- (2) Saline – Black (50 cc)
- (3) Pancuronium [a/k/a Pavulon] – Blue (50 cc)
- (4) Pancuronium – Blue (50 cc)
- (5) Saline – Black (50 cc)
- (6) Potassium Chloride – Red (50 cc)
- (7) Potassium Chloride – Red (50 cc)

277.2. Significantly, the Execution Manual only identifies the volume of each drug solution (in “cc’s” or cubic centimeters) but fails to identify the solution’s concentration or the dosage (which must be measured by weight or, typically, grams).

Sodium Pentothal

²¹The drugs go by different names. “Pavulon” is the former trade name for “Pancuronium Bromide,” and “Sodium Pentothal” is another name for “Sodium Thiopental.” For the sake of consistency, Mr. Hall refers to these drugs as “Pavulon” and “Sodium Pentothal” respectively. Note that “Sodium Pentothal” is different from, and is not to be confused with, “Sodium Pentobarbital”.

277.3. Sodium Pentothal is an “ultra short-acting” barbiturate with its purpose in the protocol to render the condemned inmate unconscious.

277.4. Sodium Pentothal renders a patient unconscious very quickly, and its effect wears off in a matter of minutes. There are very few drugs that have a shorter duration of action.

277.5. Sodium Pentothal is used as an anesthetic in surgery because it enables the anesthesiologist to quickly awaken the patient if complications should arise.

277.6. Sodium Pentothal is a very unstable and unusual drug. It comes from the manufacturer in powder form and must be mixed by the anesthesiologist into a solution (a fluid form) before use.

277.7. Sodium Pentothal in solution has an extremely short shelf life and will begin to lose its potency within the initial 24 hour period after it is mixed.

277.8. Moreover, if the solution of Sodium Pentothal comes into contact with another chemical, such as Pavulon, the mixture of the two will cause the Sodium Pentothal immediately to precipitate or crystallize.

277.9. Consequently, it is important to maintain the purity of the drug during administration. This explains the need for an injection of saline solution between the Sodium Pentothal and the Pavulon.

277.10. In a lethal injection, Sodium Pentothal might not have its intended effect for a number of reasons, none of which are remote in untrained hands. It may have been stored in powder form beyond its shelf life, it might not be properly mixed into solution form, or it may precipitate and lose its potency.

277.11. The ultimate risk with Sodium Pentothal is that an adequate dose of the drug will not enter the inmate's bloodstream, thereby leaving the inmate conscious to experience suffocation from Pavulon and cardiac arrest from Potassium.

277.12. Under Tennessee's protocol, this risk is present at several stages, as discussed below.

277.13. First, Sodium Pentothal is a Schedule II controlled substance, and its handling is therefore subject to strict regulatory control. Contrary to regulatory requirements, however, the TDOC lethal injection protocol contains no description of how Sodium Pentothal or any of the drugs are to be handled, mixed, administered, stored, or accounted for.

277.14. Second, the protocol does not instruct that the executioner should check or monitor the condemned inmate after the injection of Sodium Pentothal, but before the injection of Pavulon. Instead, the executioner simply injects the chemicals in sequence using seven separate syringes -- one syringe immediately after the other. Consequently, nothing is done to ensure that the Sodium Pentothal has rendered the inmate unconscious before injection of the Pavulon.

277.15. The American Veterinary Medical Association (AVMA) standards for euthanasia make absolutely no provision for the use of Sodium Pentothal for any purpose in the euthanasia of animals.

Pavulon

277.16. Pavulon is a "neuromuscular blocking agent." It causes paralysis of the skeletal muscles.

277.17. Pavulon only acts peripherally: it does not act upon, and therefore does

not affect, the brain or the nerve fibers.

277.18. Pavulon does not block the actual creation of the nerve impulse in the brain, and it does not block the passage of the nerve impulse through the nerve to the endpoint of the nerve fiber.

277.19. Thus, Pavulon does not affect consciousness or the sensation of pain or suffering. A patient still has the ability to think, to be oriented to where he is, to experience fear or terror, to feel pain, or to hear. However, the patient is completely paralyzed.

277.20. While Pavulon does not affect the heart muscle, it does paralyze the diaphragm and the skeletal muscles in the chest. Accordingly, Pavulon causes asphyxiation or suffocation.

277.21. If a person is not properly anesthetized when injected with Pavulon, he will remain conscious while being completely paralyzed. In this state, the person will undergo the terrorizing and excruciating experience of suffocation without the ability to move or to express his pain and suffering.

277.22. Pavulon paralyzes all skeletal muscles including facial muscles and the muscles used to speak and make noises. Thus, Pavulon prevents observers from detecting any signs that the person is experiencing pain and suffering.

277.23. Under the chemical veil caused by the Pavulon, it is impossible for executioners to recognize problems with the lethal injection process.

277.24. It is for these reasons that the use of Pavulon in euthanasia of animals is strictly forbidden by the ethical standards for veterinary medicine. There is no allowance under the AVMA standards for the use of Pavulon in euthanasia under *any* set of circumstances.

277.25. In addition, Tennessee statutory law strictly prohibits the use of Pavulon in euthanasia of nonlivestock animals.

277.26. Moreover, the use of Pavulon is totally arbitrary and serves no state interest whatsoever.

277.27. In *Abdur'Rahman v. Sundquist*, No. 02-2236-III, In the Chancery Court of Davidson County, 20th Judicial District (June 2, 2003), Chancellor Lyle emphasized that there is:

No proof from the State that Pavulon is necessary to the lethal injection process. No proof was provided by the State for the use of Pavulon in its lethal injection process. The State's expert, Dr. Levy, on cross-examination, testified that he did not know of any legitimate purpose for the use of Pavulon in the Tennessee lethal injection process. He agreed that the injection of Pavulon without anesthesia would be a horrifying experience.

277.28. Thus, in *Abdur'Rahman*, Chancellor Lyle thus concluded that "the method's use of Pavulon, a drug outlawed in Tennessee for euthanasia of pets, is arbitrary."

277.29. She likewise concluded that "The State failed to demonstrate any need whatsoever for the injection of Pavulon.

277.30. The Court further pointed out:

The plaintiff's chemical veil argument raises the age-old concern of a society conceived as colonists and schooled during maturing in the abuses of power by government. The chemical veil taps into every citizen's fear that the government manipulates the setting and gilds the lily, whether it be with reporting on the economy or election results, to orchestrate and manipulate public reaction.

Potassium Chloride

277.31. Potassium Chloride is the final drug to be administered in Tennessee's lethal injection protocol. It is to be administered by syringe in a 200 mg dosage. It is intended to

cause death.

277.32. Potassium Chloride can be extremely painful if administered to a patient who is not properly anesthetized. Potassium activates all the nerve fibers inside the vein and the veins have many nerve fibers inside them and would basically deliver the maximum amount of pain the veins can deliver.

277.33. The painful effects of Potassium Chloride can be masked as a result of the chemical veil of the Pavulon.

278. As to electrocution

278.1. On or around November 29, 1989, Fred A. Leutcher, Jr., installed the Fred A. Leutcher Associates, Inc., Modular Electrocution System (Electric Chair) at the Riverbend Maximum Security Institution (RMSI).

278.2. On or around April 16, 2004, Michael S. Morse visited the RMSI and performed tests on the Electric Chair. Morse opined that the Electric Chair did not deliver an adequate current and did not have the capacity to function with a typical load for an execution. Morse made fourteen specific recommendations for modifications to the Electric Chair.

278.3. On or around April 25, 1994, Jay Wiechert visited the RMSI and examined the Electric Chair. Wiechert opined that the Electric Chair did not function properly. Wiechert made seven specific recommendations for modifications to the Electric Chair.

278.4. Prior to May 1, 1994, technical personnel at the RMSI made some, but not all, of the modifications Morse and Wiechert suggested.

278.5. On April 23, 1996, JVM Industries, the successor to Fred A. Leuchter, Associates, Inc., wrote the RMSI Associate Warden for Administration. JVM informed that it

had become aware of the modifications made to the Electric Chair. JVM wrote that the modifications raised the specter of a “brain dead vegetable at the conclusion of the execution procedure”, and said that if the modifications remained in place the Electric Chair was an “instrument of torture.”

CLAIM 19: MR. HALL’S DEATH SENTENCE VIOLATES THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

279. Mr. Hall incorporates the preceding paragraphs.

280. Mr. Hall has a fundamental right to life.

281. By offering Mr. Hall a life sentence, the State demonstrated that means less restrictive than a death sentence exist to effectuate its interests in punishing Mr. Hall for Billie Hall’s death.

282. By seeking a death sentence against Mr. Hall because he chose to go to trial, the State unconstitutionally burdened Mr. Hall’s trial right.

CLAIM 20: THE CUMULATIVE EFFECT OF CONSTITUTIONAL ERRORS RENDERS MR. HALL’S FIRST-DEGREE MURDER CONVICTION AND RESULTING DEATH SENTENCE UNCONSTITUTIONAL

283. To the extent this Court finds two or more constitutional errors, yet determines that those errors are individually harmless, the cumulative effect of those errors renders Mr. Hall’s conviction and or death sentence unconstitutional.

VI. PRAYER FOR RELIEF

284. For the foregoing reasons, Mr. Hall’s conviction and/or sentence are void or voidable because of the abridgment of his rights guaranteed by the United States Constitution, and he therefore respectfully requests that this Court:

- A. Grant Mr. Hall leave to conduct discovery on Mr. Hall's fact-based claims;
- B. Hold an evidentiary hearing on Mr. Hall's fact-based claims;
- C. After holding such a hearing, grant Mr. Hall an unconditional writ of habeas corpus;
- D. After holding an evidentiary hearing, grant Mr. Hall a conditional writ of habeas corpus; and
- E. Grant whatever additional relief this Court deems to be equitable and appropriate.

Respectfully Submitted,

Paul R. Bottei
Christopher M. Minton
Assistant Federal Public Defender

Office of the Federal Public Defender
Middle District of Tennessee
810 Broadway, Suite 200
Nashville, Tennessee 37203
(615) 736-5047

By: /s/ Christopher M. Minton

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was filed electronically. Notice of this Filing will be sent by operation of this Court's electronic filing system to counsel for respondent, Alice Lustre, Esq., 425 Fifth Avenue North, Nashville, Tennessee 37243. on this the 3rd day of April, 2006.

/s/ Christopher M. Minton

EXHIBIT 24

30105
Records

INVOLUNTARY ADMINISTRATIVE SEGREGATION PLACEMENT REPORT

TRANS CODE (2 Char.) D	LOCATION & DOCUMENT NUMBER (7 Char.) []	PLACEMENT or INFRACTION DATE MO DAY YR 6-22-94	INMATE'S NAME: Dutton Chris Last First Middle		
INMATE TDOC # (6 Char.) 142826	Involuntary Maximum Custody 9 8 5	INFRACTION VIOL. TYPE 5	REPORTING OFFICIAL: VANCE Thomas T. Last First Middle		
GUILTY/ NOT GUILTY <input checked="" type="checkbox"/>	COMMITTEE DECISION <input checked="" type="checkbox"/>	DISCIPLINARY ACTION <input checked="" type="checkbox"/>	APPEAL INDICATOR <input checked="" type="checkbox"/>	DISC. ACTION MO DAY YR 6-20-94	CLASS OF INFRACTION <input checked="" type="checkbox"/>
ENTERED BY LT. [Signature]		Date 6-22-94	VERIFIED BY [Signature]		Date 6-28-94

Reasons for Warden/Board recommending Involuntary Administrative Segregation placement:
 Dutton is a close security inmate. ON 5-28-94 Dutton was found to have a 6 inch
 PRISON MADE KNIFE in his possession. Dutton was charged and found guilty of the
 charge of Poss. Deadly Weapon. The purpose for poss. a knife in an Institutional
 setting is to inflict injury or death to another. Due to the unknown fact of how the knife
 was going to be used, or who the intended victim might be, the Board feels A.S. is required.

Inmate has been advised of the above recommendation:
 Inmate's Signature: **[Signature]** Date: **6-20-94**
 Inmate refused to sign: () Reporting staff's signature: **LT. [Signature]**

Reasons for Board/Warden approving/disapproving Involuntary Administrative Segregation:

Based upon the seriousness of the offense and the intent, I feel that Maximum Custody supervision is required for the protection of the staff/inmates.

Board Approves <input checked="" type="checkbox"/>	LT. Jimmy Jones	6-20-94
Board Disapproves <input type="checkbox"/>	Chairperson of Disciplinary Board	Date
Warden Approves <input type="checkbox"/>	Lisa Marie Wade	6/20/94
Warden Disapproves <input type="checkbox"/>	Disciplinary Board Member	Date
	[Signature]	6-20-94
	Disciplinary Board Member	Date
	Michael Dutton	6/22/94
	Warden	Date

cc: MIS - Support Services - Original
 Inmate Institutional File - 1st Copy
 Inmate - 2nd Copy

CR-2123
(Rev. 3/88)

TENNESSEE DEPARTMENT OF CORRECTION
MENTAL HEALTH SCREENING REPORT

RMSI

INMATE NAME Dutton, Chris NUMBER 142826 SEX M
FACILITY RMSI UNIT 3 CELL D107 DATE OF SCREENING 2/3/96

TYPE OF SCREENING: 30 DAY SEGREGATION 90 DAY SEGREGATION OTHER

MENTAL STATUS SCREENING:

- | | | |
|-----|-----|---|
| YES | NO | |
| (X) | () | RESIDENT EXHIBITED APPROPRIATE AFFECT |
| (X) | () | THOUGHT PROCESS WAS ORDERLY AND RELEVANT |
| (X) | () | PERCEPTION PROCESSES WERE INTACT |
| (X) | () | RESIDENT WAS ORIENTED 4X, PERSON, PLACE, TIME, CIRCUMSTANCE |
| (X) | () | MEMORY PROCESSES WERE INTACT |
| (X) | () | JUDGEMENT & INSIGHT WERE WITHIN NORMAL LIMITS FOR THIS POPULATION |

SUBJECTIVE/OBJECTIVE: "in doing OK"

ASSESSMENT: Adequate adjustment to IAS.

PLAN: Review within 90 days.

REFERRAL TO: Continue to be followed by Dr. Swett

SIGNATURE OF MENTAL HEALTH PROFESSIONAL:

Joe W. Smith, M.D.
K. N. Amha, Ph.D.

TITLE Ph.D. Exam

DATE 2/3/96

ORIGINAL: HEALTH RECORD

OPTIONAL COPY: WARDEN

TENNESSEE DEPARTMENT OF CORRECTION
 PROBLEM ORIENTED - PROGRESS RECORD

RMSI

NAME: Chris Dutton NUMBER 14286

=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
1/9/10	7:30 pm		Psych - RMSI 3640 W/O 2 Doxepin 100mg BID, reports is sleeping a lot but is stuck in his cell, reclassified to lowest security per pt, to go to Pt. Pillow, denies somnolence, drowsy, or alcohol use has little money, mood "mostly good", "delay getting to me a little bit", q/st, feels medication where it needs to be Pt. alert, speech int., q psychosis, affect euthymic A/P Pt. stable - will continue on current dose, for 2 months (Penick, MD)
17/10	3:02 pm		Psych - RMSI Chart reviewed, orders signed (Penick, MD)
22/10	11:35 am		Psych - RMSI Chart reviewed, orders signed (Penick, MD)

TENNESSEE DEPARTMENT OF CORRECTION

MENTAL HEALTH TREATMENT PLAN

Treatment Period 1/17/96 To 7/16/96

PROBLEM	3 MONTH TX GOALS	6 MONTH TX GOALS	MODALITY/FREQUENCY	DATE GOAL MET	PROVIDER
Depressed mood and anxiety	Stabilize mood Mental health screening	Maintain stabilized mood Mental health screening	Doxepin 100 mg p.o. a 4pm and HS. HS snack with med Review monthly every month & quarterly		Pruett Mount, MD

Signatures: Inmate Chris A. Dutton Date: _____

Comment(s): _____

Staff: Dr. Zurnet Date: 1/17/96

Jean Mount, PsyD Date: 1/17/96
Mental Health Professional(s)

Pruett, MD Date: 1/23/96
Psychiatrist/Physician

Receiving Facility Provider: _____ Date: _____

Continue Current Plan: _____ Modification: _____ New Plan Required: _____

Original: Inmate's Health Record
Copy: Programmatic Record
Warden

30107

MISSISSIPPI DEPARTMENT OF CORRECTION

INSTITUTIONAL MENTAL HEALTH SERVICES REFERRAL

DATE: Dutton Chris NUMBER: 142826 INSTITUTION: RMSI
Last First Middle 3D107

SENTING PROBLEMS: Requests to see psych to discuss meds:

REFERRED BY: Wm Casarek DATE: 12/5/95 TIME: 9:30 a.m.
(Signature/Title)

SEND REFERRAL FORM TO INSTITUTIONAL HEALTH ADMINISTRATOR

RECEIVED BY: Jae Mount, Psych Exam DATE: 12/5/95 TIME: _____
Signature/Title Mental Health Professional

REFERRAL DISPOSITION (Course of Action): I/m Dutton is requesting an
increase in his medication (Sinequan) to 100mg
4pm and H.S. It stated that he is now "locked down"
23 hrs. per day. He gave no details as to why he
lost his job will request Sinequan to 100mg @ 4pm & H.S per pt.
request. Powell, MD

DATE: 12/5/95 TIME: _____

Jae Mount, Psych Exam
Signature/Professional Title

Original: Inmate's Health Record

1 A I understand.

2 Q If you just -- whatever your
3 best recollection is.

4 A Yeah, I really don't remember.

5 Q Okay. When we get down to the
6 trial itself, do you remember what your
7 theory was of how you were going to
8 defend this man?

9 A We had -- We were worried about
10 that. There were so many problems with
11 any theory that we tried to develop that
12 it seemed almost impossible to develop a
13 fact defense based upon what occurred
14 there. We had seriously considered the
15 voluntary intoxication defense to
16 nullify the intent on first degree. Mr.
17 Hall I remember wanted us to argue self-
18 defense, but that was -- I think would
19 have definitely alienated the jury and
20 inflamed them, which we didn't want to
21 do. There was again -- The primary
22 theory to be -- as -- from the best of
23 my recollection this long after was that
24 it was at least arguably a second degree

1 murder case. You know, we had the
2 problems I remember, the telephone line
3 being cut prior to Mr. Hall going into
4 the house.

5 Q That was a problem, wasn't it?

6 A Absolutely.

7 Q And that was basically left
8 naked in the record, that he had cut or
9 disconnected those lines.

10 A That's correct. And there were,
11 you know, numerous problems, the
12 multiple wounds, the lack of injury, to
13 the best of my recollection, on Mr.
14 Hall, the evidence that he had dragged
15 her from the house to the swimming pool
16 and then drowned her there. It was a
17 difficult, very difficult, case to
18 defend.

19 Q So as I understand it, your
20 first thought was in trying to drag it
21 down from first degree, --

22 A Absolutely.

23 Q -- and move it down on the --
24 down that road of lesser included.

1 the jury in open court, the
2 following proceedings were had
3 to-wit:)

4 DR. LYNN DONNA ZAGER was called and being
5 first duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. MAYO:

9 Q Would you state your name for the Court,
10 please?

11 A My name is Lynn Donna Zager.

12 Q And, Dr. Zager, what is your occupation?

13 A I'm a clinical psychologist.

14 Q How did you become a clinical psychologist?

15 A I received my Bachelor's Degree from the
16 University of Tennessee in 1976. I received a Masters
17 of Science and a Doctorate from Florida State
18 University in 1978 and 1981. In addition to that I
19 completed an internship under the supervision of other
20 psychologists.

21 Q Have you done any lectures or written any
22 treatises or anything of that nature?

23 A Yes, I have.

24 Q Would you please tell us what they are?

25 A The majority of my research and publications

1 have to do with individuals who have issues with the
2 criminal justice system. I've written a number of
3 articles, especially about a personality inventory, the
4 MMPI.

5 MR. MAYO: Your Honor, I would move to
6 qualify her as an expert at this point.

7 THE COURT: Any objection, General?

8 MR. EARLS: Your Honor, could I ask just one
9 question?

10 THE COURT: If you wish.

11 MR. EARLS: Do you have any training in the
12 field of medicine?

13 THE WITNESS: No, I do not.

14 MR. MAYO: Your Honor, I move her as an
15 expert in the field of psychology, Your Honor.

16 THE COURT: All right, sir.

17 Q Dr. Zager, did you have an opportunity to
18 interview a Jon Hall?

19 A Yes, I did, on a number of occasions.

20 Q This is Jon Hall here; is that correct?

21 A That's correct, sitting at the table.

22 Q Dr. Zager, when did you interview Mr. Hall?

23 A I first saw Mr. Hall in November of 1995.
24 That was November 18th. It was approximately a year
25 later I saw him again on November 1st of 1996, and I

1 most recently interviewed him on January 3rd of this
2 year.

3 Q And have you had the opportunity to review
4 any records regarding Jon Hall?

5 A Yes. Not only did I have my own interview
6 and psychological testing that I completed, in addition
7 I reviewed records from the Middle Tennessee Mental
8 Health Institute, forensic services division, where Mr.
9 Hall was for approximately a month. I also had an
10 opportunity to review records from the Riverbend
11 Institution, mental health records. I had the
12 opportunity to review reports of interviews that were
13 conducted with people who knew Mr. Hall.

14 Q Dr. Zager, based upon your interviews with
15 Mr. Hall, based upon your reviewing those records that
16 you just spoke of and based upon your own record that
17 you made and that you wrote up, were you able to
18 formulate any opinion as to whether Mr. Hall suffered
19 from any emotional or psychological condition?

20 A Yes. My diagnosis or my -- what I thought
21 that Mr. Hall suffers from, basically he suffers from
22 depression, and he meets the criteria for a diagnosis
23 of depression. This was prior to the incident and
24 after the incident. It's not as acute right now as it
25 was before. Evidence of that included things like that

1 he had a depressed mood, he had crying spells, he had
2 thoughts of death and suicide, he had difficulty
3 concentrating, disturbed sleep pattern and was noted
4 psycho-social retardation which means that things that
5 he normally did at a much quicker pace he was doing at
6 a much slower pace.

7 Q Were you able --

8 A In addition, he had an alcohol dependence
9 problem. There is a strong family history of alcohol
10 problems in his family, both his father and paternal
11 grandfather had very significant alcohol problems, and
12 that was true in Mr. Hall's case also. In addition I
13 found some personality characteristics which I think
14 are important in terms of understanding his
15 functioning. These include paranoia and dependency.

16 Q Dr. Zager, based upon what you learned, were
17 you able to formulate any opinion as to what Jon Hall's
18 state of mind was on July 29th, 1994?

19 A It's my opinion that at the time of the
20 incident, that Mr. Hall was suffering from depression.
21 In addition, he was intoxicated on alcohol. When that
22 is put together with the depression and the personality
23 characteristics, when that occurs, and some of the
24 stressors, the psycho-social stressors, that he was
25 under at that time, I feel like his abilities were

1 compromised.

2 Q What were the stressors that you're speaking
3 of?

4 A There were a number of stressors. He had a
5 daughter who was born prematurely and suffers from
6 cerebral palsy. For approximately two years he was her
7 primary caretaker, including doing medical-type things
8 she needed, breathing treatments and other things like
9 that. She had other health-related problems, had been
10 hospitalized, and I believe that was a significant
11 stressor for her that went on over time. He had lost
12 his job. His wife had lost her job. They had
13 financial stressors that were operating. His brother,
14 one of his brothers that he was very close to, Jeff,
15 had been diagnosed with AIDS and he was deteriorating
16 around that time. So those stressors were operating.

17 Q Do you have any opinion as to whether he was
18 able to formulate a plan and carry that plan out on
19 July 29th in regards to a murder?

20 A It's my impression, based on everything that
21 I know about the case, that Mr. Hall was acting in an
22 impulsive manner versus a well-thought out plan.

23 MR. MAYO: Thank you, Dr. Zager.

24 - - - - -

25

1 **CROSS-EXAMINATION**

2 **BY MR. EARLS:**

3 Q Dr. Zager, the first time you interviewed Mr.
4 Hall was November 18th of 1995; is that correct?

5 A Yes, it is.

6 Q And the date of the homicide is July the 29th
7 of 1994; is that correct?

8 A That's correct.

9 Q So your interview was well over a year after
10 the incident; is that correct?

11 A That's correct.

12 Q Doctor, what is the psychiatric definition of
13 malingering?

14 A Malingering, according to the Diagnostic and
15 Statistical Manual of Mental Illness, has to do with a
16 person feigning symptoms, a person attempting to
17 present themselves in a light where they have an
18 illness when they do not have that illness.

19 Q Okay. And, Doctor, did you prepare a report
20 that you mailed or presented to Mr. Mike Mosier on
21 November 19th, 1995?

22 A Yes, I did.

23 Q And in that report did you make the following
24 statement:

25 "I am somewhat concerned at this time that

1 the only information to suggest that he was intoxicated
2 is Mr. Hall's self report."

3 A I made that statement, and then I was given
4 the opportunity to review notes and information from
5 interviews of other people who were there at that time,
6 and that helped support what he had to tell me.

7 Q What other people did you interview, or what
8 notes did you review, of people who were there?

9 A People who were with him around the time.

10 Q People who were at the scene during the
11 homicide?

12 A No, that's not correct. People who were with
13 him shortly before the incident.

14 Q And did any of those people -- were they able
15 to indicate what his manner or actions were?

16 A To some regard, yes, they were.

17 Q When you say "To some regard," what do you
18 mean?

19 A What I mean is there were people who were
20 with him who will say that he was drinking beer, that
21 there was beer missing from the refrigerator, that he
22 was at a pub and he had beer there.

23 Q Is that all they said?

24 A That's what I recall.

25 Q And that's what they said. And based upon

1 that you believed he was intoxicated.

2 A It's more than that. Given the family
3 history of alcohol dependence, it's not unusual that he
4 had that problem.

5 Q But that doesn't necessarily mean he had that
6 problem, does it?

7 A No, but I think he did.

8 Q Okay. Based upon the fact that some people
9 say --

10 THE COURT: Is that your opinion?

11 THE WITNESS: That is my opinion, yes.

12 Q Based on the fact that people said he was
13 drinking beer.

14 A It's more than that. I base that on the
15 information from the family about he started using
16 alcohol at approximately age 15, as I recall, times
17 when the family saw him intoxicated. There was a lot
18 of information to suggest that it's not just something
19 he was making up. He had an alcohol problem.

20 Q Doctor, what is the Diagnostic Statistical
21 Manual for Mental Disorders?

22 A That's a manual that mental health
23 professionals use. It's put out by the American
24 Psychiatric Association, and it's a way that
25 professionals can use specific criteria to go about

1 deciding if someone has a disorder or not.

2 Q And is that a manual that is widely
3 recognized and accepted in the field of psychology?

4 A Yes, it is.

5 Q Doctor, what is the diagnostic criteria for
6 determining alcohol intoxication?

7 A What you would have is alcohol ingestion, and
8 you would have to be drinking in order to have alcohol
9 intoxication. In addition, there needs to be a
10 physiological sign like slurred speech, unsteady gait,
11 things like that, and in addition, there's usually a
12 change in behavior where the person behaves in a way
13 that's different from when they're not intoxicated.

14 Q Isn't it also true that you have to
15 eliminate medical conditions and other mental
16 disorders?

17 A For intoxication?

18 Q Yes, ma'am.

19 Q Sure.

20 Q And you're not trained in the field of
21 medicine, are you?

22 A No, I'm not.

23 Q Okay. Now, in the reports and the statements
24 that you reviewed, what person talked about him having
25 slurred speech?

- 1 A I don't recall that.
- 2 Q What person talked about his incoordination?
- 3 A I don't recall that.
- 4 Q What person talked about his unsteady gait?
- 5 A I don't recall that.
- 6 Q What person talked about him having a
- 7 nystagmus?
- 8 A I don't recall that.
- 9 Q What person talked about an impaired
- 10 attention or memory?
- 11 A I don't recall that, except for him.
- 12 Q He did.
- 13 A Uh-huh.
- 14 Q And what person talked about him being in a
- 15 stupor or coma?
- 16 A That was not said.
- 17 Q And are those the recognized determining
- 18 factors for intoxication as stated in the Diagnostic
- 19 and Statistical Manual?
- 20 A Yes, they are.
- 21 MR. EARLS: That's all.
- 22 - - - - -
- 23 **REDIRECT EXAMINATION**
- 24 **BY MR. MAYO:**
- 25 Q Dr. Zager, Mr. Earls was asking you about the

1 various notes and things that you reviewed to determine
2 whether Mr. Hall was an alcoholic. You mentioned that
3 you had read notes or interviews of people that had
4 been with Mr. Hall prior to this; is that correct?

5 A That is correct.

6 Q And you mentioned that you had read medical
7 records of other facilities also.

8 A That's correct.

9 Q You mentioned Middle Tennessee Health
10 Institute.

11 A Mental Health Institute.

12 Q Would you tell us just a little bit about
13 what that is?

14 A Middle Tennessee Mental Health Institute is
15 one of five regional mental health institutes in the
16 state. It normally serves people in the Davidson
17 County area. They have a unit where people who face
18 very serious charges are oftentimes sent for
19 evaluation.

20 Q And is that something -- Is that a private
21 institute or is that a state-run institute?

22 A That's a state-run institute.

23 Q Is it run by the Department of Corrections or
24 ...

25 A It's run by the Department of Mental Health

1 and Mental Retardation.

2 Q And in those records from Middle Tennessee
3 Mental Health Institute, did you find anything that
4 mentioned Mr. Hall's alcohol problem?

5 A Yes. They agreed with my diagnosis.
6 Actually they made it before, but they diagnosed him as
7 suffering from alcohol dependence.

8 Q Thank you.

9 A Which is different from alcohol intoxication.

10 Q And that's what you're speaking of, is
11 alcohol dependence; is that correct?

12 A Yes.

13 Q You didn't actually make a determination that
14 he was --

15 MR. MAYO: I'll withdraw that question.

16 - - - - -

17 **RE-CROSS-EXAMINATION**

18 **BY MR. EARLS:**

19 Q Did you actually make a determination that he
20 was intoxicated at the time?

21 A I inferred that based on the information I
22 had available to me.

23 Q And that's from Mr. Hall.

24 A That's from Mr. Hall, and in addition, from
25 the other information I had available to me. It was an

1 inference I made.

2 Q An inference.

3 A Uh-huh.

4 (WITNESS EXCUSED.)

5 RANDY HELMS was called and being first duly
6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MAYO:

9 Q Would you state your full name for the Court,
10 please?

11 A Randy Helms.

12 Q Mr. Helms, where do you live?

13 A Lexington, Tennessee.

14 Q How long have you lived in Lexington?

15 A Forty-nine years.

16 Q Mr. Helms, what do you do in Lexington? What
17 is your occupation?

18 A I own Helms Motor Company.

19 Q Mr. Helms, do you know Jon Hall?

20 A Yes, sir.

21 Q Can you point Jon Hall out?

22 A (Pointing)

23 Q Mr. Helms, how do you know Mr. Hall?

24 A He worked for me at one time.

25 Q Mr. Helms, did you personally observe Mr.