

Case No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

MICHAEL TISIUS, Petitioner,

v.

DAVID VANDERGRIFF,
Warden, Potosi Correctional Center, Respondent.

On Petition for Writ of Certiorari
to the Missouri Supreme Court

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

****THIS IS A CAPITAL CASE****
EXECUTION SCHEDULED FOR JUNE 6, 2023

ELIZABETH UNGER CARLYLE*
Carlyle Parish LLC
6320 Brookside Plaza #516
Kansas City, Missouri 64113
elizabeth@carlyleparishlaw.com

KEITH O'CONNOR
Keith O'Connor, LLC
PO Box 22728
Kansas City, MO 64113
Mo Bar No. 63134
Phone: 816-225-7771
Keith@keithoc.com

LAURENCE E. KOMP
Capital Habeas Unit, Chief
Federal Public Defender,
Western District of Missouri
1000 Walnut St., Ste. 600
Kansas City, MO 64106
(816) 471-8282
laurence_komp@fd.org

*Counsel of Record, Member of the Bar of the Supreme Court

COUNSEL FOR PETITIONER

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Supreme Court of Missouri
en banc

SC99938

State ex rel. Michael Tisius, Petitioner,
vs.
David Vandergriff, Warden, Potosi Correctional Center, Respondent.

- ☐ Sustained
- ☐ Overruled
- ☐ Denied
- ☐ Taken with Case
- ☐ Sustained Until
- ☒ Other

Order issued: Petition for writ of habeas corpus denied.

By: _____

A handwritten signature in cursive script, appearing to read "Paul M. Gribble", is written over a horizontal line.

Chief Justice

March 1, 2023

Date

IN THE SUPREME COURT OF MISSOURI

In re MICHAEL ANDREW TISIUS

Petitioner,

v.

DAVID VANDERGRIFF,
Warden, Potosi Correctional
Center,

Respondent

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No. _____

THIS IS A CAPITAL CASE

PETITION FOR WRIT OF HABEAS CORPUS AND SUGGESTIONS IN
SUPPORT

INTRODUCTORY STATEMENT

The execution of Michael Tisius—who committed two murders when he was 19 years old—violates the Eighth Amendment¹ as applied to him and because he is categorically exempt from such a punishment. At such a young age, Mr. Tisius lacked an adult capacity to make reasonable judgments. His personal characteristics further impaired his cognitive functioning at the time of the offense. These factors significantly reduced his moral culpability for the conduct, and under the Eighth Amendment, this Court should vacate his death sentences and commute them to life without parole. *State ex rel. Simmons v. Roper*, 112 S.W.3d 397 (Mo. banc 2003); *Roper v. Simmons*, 543 U.S. 551 (2005).

¹ U.S. Const. Amend. VIII.

The reasons supporting this Court's decision in *Simmons* should similarly impel this Court to find that Mr. Tisius's sentences of death are unconstitutional. The significant gaps this Court and the United States Supreme Court identified between juveniles and adults with respect to juveniles' lack of maturity, vulnerability, and unformed character continue to distinguish juveniles from adults, and the Supreme Court has continued to rely on these gaps to treat juveniles less harshly than adults. Furthermore, emerging scientific evidence, much post-dating Mr. Tisius's second trial in 2010 and his post-conviction proceeding in 2012, supports the conclusion that the human brain does not fully mature before a person reaches the age of 21. Thus, the same reasons supporting this Court's decision in *Simmons* and the United States Supreme Court's opinion affirming in *Roper* similarly support extending the prohibition against the death penalty for juveniles to age 21. There is no meaningful difference between a 17-year-old brain and a 19-year-old brain and the behavior that is a product of both immature brains; therefore, no legitimate societal justification exists for prohibiting the death penalty for 17-year-olds but not 19-year-olds.²

² This claim has not previously been presented to any court. When this Court set aside the death sentence of Christopher Simmons, it rejected the state's argument that Mr. Simmons had waived his right to raise his claim that his age rendered him ineligible for the death penalty by not urging it at trial or on appeal. This Court determined that because this ground for relief

These same reasons support the prohibition of the death penalty for Michael Tisius individually. The Eighth Amendment has as much force when applied to the unique circumstances of an individual as when applied to an entire category of offenders, as the same “Substantive rule of law” governs both claims. *Bucklew v. Precythe*, 139 S. Ct. 1112, 1127 (2019). An as-applied claim differs only in the remedy, resulting in relief to the litigant rather than an entire category of offenders. *Id.* Evidence concerning Mr. Tisius’s own brain, dating from shortly after the offense, supports the conclusion that his brain was not fully formed at the age of 19. Furthermore, nearly 20 years of psychiatric observation of Mr. Tisius shows that his juvenile “character deficiencies [have been] reformed.” *Roper*, 543 U.S. at 569; Ex. 2 (Peterson Report), p. 21.

As in *Simmons v. Roper*, this Court is squarely presented with a death penalty case involving a valid constitutional claim that has not yet been ruled upon in state court. Because of the nature of the claim, “the usual waiver rules [do] not apply[.]” *Simmons*, 112 S.W.3d at 401, and this Court has jurisdiction to hear this claim. *Id.* at 397; Laura Denvir Stith, *A Contrast of State and Federal Court Authority to Grant Habeas Relief*, 38 Val. U. L. Rev.

had the effect of making Mr. Simmons ineligible for the death penalty, this Eighth Amendment prohibition was retroactive to cases on collateral review. *Simmons*, 112 S.W.3d at 401.

421, 442 (2004) (explaining that this Court has broad authority to apply federal constitutional rights).

Furthermore, this Court *should* hear this case. In *State ex rel. Amrine v. Roper*, 102 S.W.3d 541 (Mo. banc 2003), this Court found that, (1) as the highest Court in Missouri, the Court may enforce substantial rights, and (2) it is particularly important to do so in a death penalty case. *See id.* at 547.

I. FACTS UNDERLYING CLAIM

A. OFFENSE FACTS



Mr. Tisius met Roy Vance while he was incarcerated at Randolph County Jail for a probation violation on a misdemeanor stealing charge. Mr. Tisius was 19; Vance was 27.

Vance was in Randolph County Jail because he had recently escaped from another small, rural Missouri jail. Mr. Vance told all his

fellow inmates that he expected to spend the next 50 years in prison.

Vance provided attention and direction to Mr. Tisius, much like a father would. Interviews completed by federal habeas counsel of the inmates housed in the same jail pod as the two described Mr. Tisius as idolizing Vance and Vance as “grooming” Mr. Tisius to do his bidding.

When Mr. Tisius was released after his first appearance on his probation violation, Vance gave him instructions to return and help him escape. Vance continued to apply pressure to Mr. Tisius, and ultimately, Mr. Tisius, with the assistance of Vance's girlfriend, Tracie Bulington, returned to the jail late at night to attempt to assist the escape.

In these intensely emotional circumstances, Mr. Tisius panicked and shot two jailers. Although the state argued that circumstantial evidence supported deliberation, there was no evidence any of the co-conspirators discussed killing anyone during the planning of the escape; a gun was to be used to scare the jailers only. Dr. Stephen M. Peterson, the psychiatrist who first evaluated Mr. Tisius in 2003, noted at that time that

Michael Tisius yearned for a father figure he never had (Roy Vance was 8 years his senior and used that to manipulate Michael. . . . Roy Vance planned the breakout and introduced the idea of bringing a gun. . . . Michael saw Roy Vance as his only male friend). Michael Tisius looked up to Roy Vance in way he never looked to any other man, was so needful/naïve that he didn't perceive is being used. . . . Michael Tisius had a history of severe physical abuse by his older brother which rendered him very vulnerable to manipulation by an idealized figure such as Roy Vance (along lines of identifying with an aggressor for identity and protection).

Ex. 2, p. 3.

The combination of Vance's peer pressure and the volatile, fear-inducing, anxious and emotional circumstances surrounding the jail break/murder are critical facts for this Court to consider as it evaluates

whether the 19-year-old Mr. Tisius's death sentence is constitutional as applied.

B. PROCEDURAL HISTORY

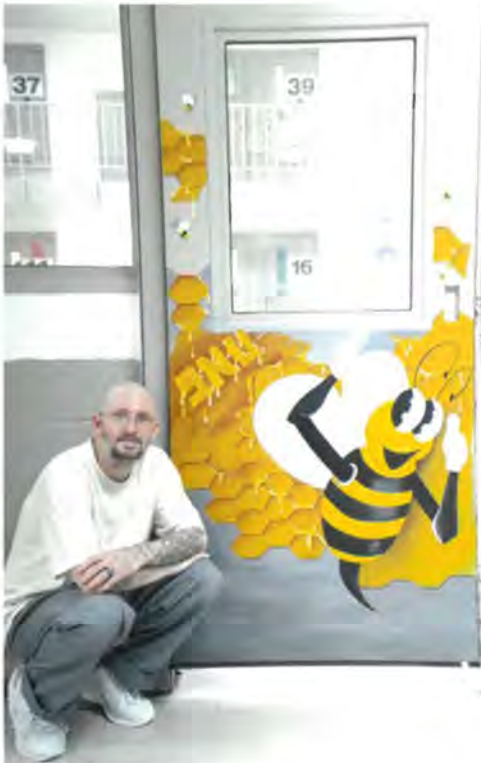
Mr. Tisius was sentenced to death on September 27, 2010.³ A copy of the judgment and sentence is attached as Exhibit 1.

Mr. Tisius's sentences were affirmed on direct appeal, and post-conviction relief was denied. *State v. Tisius*, 362 S.W.3d 398 (Mo. banc 2012); *Tisius v. State*, 519 S.W.3d 413 (Mo. banc 2017). Mr. Tisius then sought federal habeas corpus relief under 28 U.S.C. § 2254. Relief was denied by the district court, the court of appeals denied a certificate of appealability, and on October 3, 2022, the U.S. Supreme Court denied certiorari. *Tisius v. Jennings*, No. 4:17-CV-00426-SRB, 2020 WL 6386874 (W.D. Mo. Oct. 30, 2020); *Tisius v. Blair*, No. 21-1682 (8th Cir. Nov. 9, 2021); *Tisius v. Blair*, 143 S. Ct. 177 (2022).

On October 3, 2022, the State of Missouri moved this Court to set an execution date.

³ The sentence entered in an earlier proceeding was reversed by this Court because of prosecutorial misconduct. *Tisius v. State*, 183 S.W.3d 307 (Mo. banc 2006).

C. CURRENT INCARCERATION STATUS



Mr. Tisius has been incarcerated since arrest the morning of the homicide, June 22, 2000. He was 19 that day and will be 42 in February of this year. Prison adjustment expert James Aiken prepared a report in 2018 as part of the federal habeas litigation identifying Mr. Tisius as an exemplary prisoner.⁴ Ex. 3. Mr. Tisius paints murals within the Potosi Correctional

Center to this day, including the Special Needs Unit (“SNU”) for inmates with developmental disabilities. Mo. Dept. of Corr., Therapy & Treatment,

⁴ Mr. Tisius was convicted of possessing contraband, specifically an unmodified boot shank, prior to his second sentencing. With respect to this infraction, prison expert James Aiken stated, “Assessment of this violation, which is conducted in a prison operational context, reveals that Mr. Tisius has not attempted or inflicted bodily harm to another inmate or staff member with or without a weapon, he has not demonstrated a chronic history of violent behavior while in lawful confinement. . . . It is also noteworthy from a correctional assessment perspective that the piece of metal from the boot is not reported to have been sharpened on either end or manipulated in some way to be used as a weapon. In my experience incidents of this kind are largely resolved without adjudication in court. That is to say an incident of this sort in my experience would most likely not be prosecuted criminally.” Ex. 3, p. 12. .

available at: <https://doc.mo.gov/programs/education/therapy-treatment> (last visited Jan. 10, 2023).

In August 2022, Dr. Peterson evaluated Mr. Tisius again. This was Dr. Peterson's third evaluation. He first met Mr. Tisius in 2003, when Mr. Tisius was 22 years old. At that time, he believed that Mr. Tisius, at the time of the offense, "was suffering from untreated mental disease, was experiencing diminished mental capacity, and was substantially under the manipulated influence of Roy Vance." Ex. 2, p. 3. Dr. Peterson evaluated Mr. Tisius again in 2013, when he was 32 years old. At that point he "still demonstrated immature thinking as his abstract reasoning was concrete rather than abstract, suggesting though he was in his early 30s his maturity of reasoning plateaued in mid adolescence." Ex. 2, p. 4. In August of 2022, when Dr. Peterson evaluated Mr. Tisius most recently, he explained that "Socially, Michael Tisius experienced delayed maturation of adolescent brain functioning as a consequence of untreated childhood physical abuse/neglect." *Id.* at 19. However, over the course of his time in confinement,

Michael Tisius has made a successful transition to nonviolent living within the Missouri DOC. Michael Tisius demonstrates no current psychiatric or psychological data to suggest he has underlying fulminate or unexpressed violent tendencies. All psychological evaluations from 2003 forward to 2022 demonstrate the opposite of any antisocial mindset. He has had no conduct violations for at least 10 years.

Michael Tisius has made an excellent institutional adjustment. His psychiatric/psychological functioning is stable. Though Michael Tisius doesn't feel mature, he has matured, and continues to show promise for ongoing personal growth.

This maturing process over time for Michael Tisius was evident during three evaluations by this writer, spanning 20 years of assessments (2003, 2012, 2022). In addition, during 2018, bracketed by this evaluator's assessments, independent psychologists Love and Watson as well as psychiatrist Woods came to the same conclusions.

Michael Tisius has come to grips with the gravity of his offense and is living a peaceful life. He has learned self-control, has empathy for others, shows empathy for the men he killed, is no longer impulsive, and is seeking to make the best life he can in his current situation.

Id. at 23. Dr. Peterson concurred with Mr. Aiken that "Michael Tisius could be safely maintained in the Missouri prison system while properly confined in a secure environment the rest of his life." *Id.*

II. MR. TISIUS S SENTENCES VIOLATED THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION BECAUSE HE WAS SENTENCED TO DEATH FOR AN OFFENSE COMMITTED WHEN HE WAS 19 YEARS OLD

Mr. Tisius s brain had not fully matured at the time he committed this offense. Current scientific evidence supports the view that the human brain does not mature fully until a human is in his early twenties. The brain functions that this lack of maturity principally affects are those governing decision-making, judgment, and impulse control. Because of this change in

the scientific landscape and other legislative action extending the juvenile age to 21, there is no meaningful difference between a 17-year-old brain and a 19-year-old brain. Thus, under the evolving standards of decency, there is no legitimate justification exists for prohibiting the death penalty for 17-year-olds but not 19-year-olds, and Mr. Tisius's death sentence for conduct committed at age 19 is unconstitutional. Additionally, Mr. Tisius's individual characteristics—including his brain defects and dysfunction, particularly in the areas of frontal-striatal and temporal lobe functioning, and his reformed character—preclude his execution under the Eighth Amendment.

A. LEGAL STANDARD FOR MR. TISIUS'S CATEGORICAL EXEMPTION FROM THE DEATH PENALTY

Imposition of the death penalty is subject to the Eighth Amendment protection, (via the Fourteenth Amendment), from a state's imposition of cruel and unusual punishments. *Roper*, 543 U.S. at 560. “While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards *Trop v. Dulles*, 356 U.S. 86, 100 (1958). The Eighth Amendment's prohibition of cruel and unusual punishments “reaffirms the duty of the government to respect the dignity of all persons.” *Roper*, 543 U.S. at 560. Because the Eighth Amendment “is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice,” *Weems v. United States*, 217 U.S. 349, 378

(1910), the United States Supreme Court has adopted “evolving standards of decency that mark the progress of a maturing society” as a measure to enforce the Constitution’s protection of human dignity and to determine which punishments are so disproportionate as to be cruel and unusual. *Trop*, 356 U.S. at 100-01.

In 2003 and 2005, this Court and the United States Supreme Court respectively held that the lack of maturity of persons under age 18 prohibits the imposition of the death penalty for crimes committed before age 18 because acts committed by immature persons have less moral culpability than acts committed by adults. *Simmons*, 112 S.W.3d 397; *Roper*, 543 U.S. 551.⁵ *Roper* recognized that although in 2005, society drew the line between childhood and adulthood at 18 “[t]he that distinguish juveniles from adults do not disappear when an individual turns 18.” 543 U.S. at 574. The *Roper* Court further acknowledged that when an opinion setting a categorical age has not been challenged, and when society has for many purposes increased the age distinguishing a juvenile from an adult, the logic underpinning the setting of the original juvenile age extends to the new age. *See id.*; *see also Simmons*, 112 S.W.3d at 407-13 (employing same analysis). This Court

⁵ For similar reasons, the U.S. Supreme Court has held that persons with intellectual disability cannot be sentenced to death. *Atkins v. Virginia*, 536 S. Ct. 304 (2002).

similarly emphasized that *current* standards of decency, not those that existed more than a decade ago, provide the appropriate measure of the Eighth Amendment's protection. *Simmons*, 112 S.W.3d at 407.

The Supreme Court has continued to recognize that “[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18.” *Roper*, 543 U.S. at 574. For example, the Court has held that life without parole sentences cannot be imposed for offenses committed before age 18. *Graham v. Florida*, 560 U.S. 48 (2010). In *Miller v. Alabama*, 567 U.S. 460 (2012) (holding that mandatory life without parole sentences for juvenile offenders under 18 are unconstitutional), the Court recognized that its precedents emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Id.* at 472. The Court relied on its prior precedent, including *Roper*, establishing the existence of significant gaps between juveniles and adults with respect to juveniles’ lack of maturity, vulnerability, and unformed character. *Id.* at 471. The Court also relied on current common sense, science, and social science showing that “only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior” and the fundamental differences between juvenile and adult minds—for example, in parts of the brain involved in behavior control.” *Id.* at 471-72 (internal

quotations omitted). The Court concluded that “children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, . . . ‘they are less deserving of the most severe punishments.’” 567 U.S. at 471 (quoting *Graham*, 560 U.S. at 68).

In addition to the Supreme Court’s continued reliance on and enforcement of the logic underpinning *Roper*, (as well as this Court’s opinion in *Simmons*), since Mr. Tisius was sentenced in 2010, both scientific evidence about brain maturity and legal approaches to criminal offenses committed by persons under 21 have changed. Society now has for many purposes increased the age distinguishing a juvenile from an adult from 18 to 21 (or older). Thus, contemporary standards of decency prohibit the imposition of the death penalty for 19-year-old offenders, and Mr. Tisius’s death sentences are unconstitutional.

B. SCIENTIFIC EVIDENCE ABOUT JUVENILE BRAINS

Dr. Laurence Steinberg, “a developmental psychologist specializing in adolescence, broadly defined as the second decade of life,” has conducted extensive research concerning the level of maturity of the brains in 19-year-olds. Ex. 4 (Steinberg Declaration). Dr. Steinberg has applied this research to the circumstances of Mr. Tisius’s case. *Id.*

Dr. Steinberg's declaration explains that research from the last decade shows that, particularly under *highly emotional circumstances*, late adolescents "are more like individuals in early and middle adolescence in their behavior, psychological functioning, and brain development" and less like adults. *Id.* at pp. 4, 11; *see also* John H. Blume et al., *Death by Numbers: Why Evolving Standards Compel Extending Roper's Categorical Ban Against Executing Juveniles from Eighteen to Twenty-One*, 98 Tex. L. Rev. 921, 930-31 (2020). In other words, under emotionally arousing conditions, "the brain of a 18- to 21-year-old functions in ways that are similar to that of a 16- or 17-year-old." Ex. 4, p. 16. This propensity for immature brain function is exacerbated when an individual has endured repeated trauma and abuse. *See, e.g., id.* at 19; Ex. 5 (Love Report) at p. 38 ("Traumatic experience produces such a strong and overwhelming fight-or-flight response that it compromises certain regulatory effects of the brain which have negative long-term biological consequences."). Anxiety further exacerbates immature brain dysfunction. Ex. 5, pp. 39-40.

In the last ten years, studies of brain maturation have revealed that several processes of brain development regarding judgment and decision-making continue until at least age 21. Ex. 4, p. 6. By 2015, neuroscientists agreed that brain maturation continues well into late adolescence, the period from ages 18 to 21. *Id.* at 4, 6. Further evidence elaborating on this finding

continues to accumulate today. *Id.* at 6. Furthermore, the brain regions that have the most influence on character formation are the last to mature, so late adolescents' characters are not yet fully formed. *Id.* at 7. New evidence also shows that late adolescents, like younger teenagers, remain amenable to change and can profit from rehabilitation. *Id.* All this medical science shows that the brains of individuals between ages 18 and 21 are more neurobiologically like those of younger teenagers than previously had been thought. *Id.*

Recent neurobiological and psychological research also shows that individuals in their late teenage years and early twenties are less emotionally mature than adults. *Id.* at 8. This psychological immaturity is caused by a "maturational imbalance" between the brain's limbic system and the prefrontal cortex. *Id.* at 13-14. While the limbic system is responsible for sensation and reward-seeking, the prefrontal cortex regulates self-control, impulse-control, advance planning, cost-benefit analysis, and resisting peer pressure. *Id.* at 14. However, they develop and mature at different times; the limbic system undergoes dramatic changes around puberty (usually in early adolescence) whereas the prefrontal cortex continues to undergo significant development into the mid-twenties. *Id.*

This imbalance can have several effects. First, adolescents are more likely to underestimate the risks involved in a situation. *Id.* at 9. Adolescents

are less likely to appreciate the number, severity, and likelihood of risks and have greater difficulty weighing the costs and benefits of each option. *Id.*

Second, adolescents from ages 18 to 21 are more likely than adults to engage in “sensation-seeking” behaviors, or behaviors that are exciting or novel. *Id.*

As such, adolescents tend to focus more on the potential rewards of a given situation, such as admiration from their peers, than on potential costs. *Id.*

Third, late adolescents have reduced impulse-control. *Id.* at 10. They are less likely to consider potential consequences and subsequently are less likely to plan in advance. *Id.*

Fourth, developments in basic cognitive abilities, including logical reasoning and memory, occur before developments in emotional maturity, which includes self-control, the ability to adequately consider the risks and rewards of various options, and the ability to resist coercive pressure from others. *Id.*; see also Arthur MacNeill Horton and Cecil R. Reynolds, *Trajectory of the Development of Executive Functioning: Implications for Death as a Penalty as Applied to the Late Adolescent Class*, 7 J. of Pediatric Neuropsychol. 66 (2021). “Heightened susceptibility to emotionally laden and socially charged situations renders adolescents more vulnerable to others’ influence, and in such situations young people are even less able to consider and weigh the risks and consequences of a chosen course of action.” Ex. 4, p. 20. This means that while an adolescent may have the capability to reason

logically and understand the difference between right and wrong, he may nevertheless not be able to conduct himself in an accordingly appropriate manner due to his lack of emotional maturity and susceptibility to the influence of others. *Id.* at 10-11.

The effect of this gap in cognitive abilities and emotional maturity is magnified when in situations with heightened emotions such as fear or anxiety. *Id.* at 11. Relative to adults, adolescents' thinking deficiencies related to judgment and self-control are greater in these circumstances. *Id.*

The effects of juvenile brain immaturity wane as individuals become adults. As brain structures develop and mature, a majority of adolescent offenders "age out of crime" by their mid-twenties. *Id.* at 17. Likewise, most adolescent criminal behavior is a result of "transient developmental immaturity," not permanent bad character. *Id.* at 18.

In 2022, the American Psychological Association (APA)⁶ passed a resolution recognizing that developmental science conducted since *Roper v. Simmons* shows that significant maturation of the brain continues through at least age 20,

⁶ The APA includes "more than 133,000 researchers, educators, clinicians, consultants, at all stages of their careers, as well as students among its members." APA, *APA Resolution on the Imposition of Death as a Penalty for Persons Aged 18 Through 20, Also Known as the Late Adolescent Class*, 1 (Aug. 2022) (available at <https://www.apa.org/about/policy/resolution-death-penalty.pdf>) (last visited Jan. 11, 2023) ("APA Resolution").

especially in the key brain systems implicated in a person's capacity to evaluate behavioral options, make rational decisions about behavior, meaningfully consider the consequences of acting and not acting in a particular way, and to act deliberately in stressful or highly charged emotional environments, as well as continued development of personality traits (e.g., emotional stability and conscientiousness) and what is popularly known as character[.]”

APA Resolution at 2. The resolution further recognizes that significant development of the brain regions referred to as executive control systems, including but not limited to the prefrontal cortex and its connections throughout the brain, “continues beyond the age of 20.” *Id.* Accordingly, “the same youthful and immature characteristics that apply to categorically exempt 16- and 17-year-olds [from the death penalty] are similarly present in 18- to 20-year olds, rendering them less culpable and less susceptible to any deterrent value of the death penalty.” *Id.*⁷

Widely accepted medical science shows that mental capacities of juveniles, especially those relevant for criminal culpability such as executive

⁷ The American Bar Association (ABA) similarly has recognized that since *Roper v. Simmons*, “a wide body of research has . . . provided us with an expanded understanding of behavioral and psychological tendencies of 18 to 21 year olds . . . including that 18 to 21 year olds have a diminished capacity to anticipate the consequences of their actions and control their behavior in ways similar to youth under 18.” ABA, *Resolution 7* (2018). These studies show that “[l]ate adolescents, like juveniles, are more prone to risk-taking[,] . . . act more impulsively than older adults[,] . . . and are not fully mature enough to anticipate future consequences.” *Id.*

functions, are not fully mature by age 18.⁸ Furthermore, the specific findings of Drs. Steinberg, Love, Woods, Watson, Nadkarni, and Peterson in this case show that in addition to not being fully mature, Mr. Tisius's brain was further compromised at the time of the offense. Given this evidence, it is unfair to assign an adult level of culpability to Mr. Tisius instead of a juvenile one.

C. ATTITUDES CONCERNING MATURITY OF 19-YEAR-OLD OFFENDERS HAVE SHIFTED

In addition to the medical and scientific communities, legal institutions and society recognize that the brains in those under 21 years old are—like those under 18—sufficiently immature such that all individuals under 21 are undeserving of death sentences. State laws as well as court and gubernatorial decisions are relevant to the evolving standards of decency analysis. *See Roper*, 543 U.S. at 563-65; *Atkins v. Virginia*, 536 U.S. 304, 313-17 (2002).

⁸ This science also provides the basis for changes to behavioral diagnostic criteria formerly linked to age 18. “As of 2013, the Diagnostic and Statistical Manual of Mental Disorders (5th ed.; DSM-5; American Psychiatric Association, 2013) eliminated the age-18 cutoff for the expression and diagnosis of some developmental disorders, recognizing that the developmental period extends to age 18 and beyond.” APA Resolution at 1. Similarly, “consistent with this recognition of the extended nature of the developmental period, in 2021, the 12th edition of the American Association of Intellectual and Developmental Disabilities (AAIDD) Manual increased the age of onset criterion for the diagnosis of intellectual disability (a neurodevelopmental disorder) from age 18 to age 22 (AAIDD, 2021).” *Id.* at 1-2.

“Statistics about the number of executions” are also relevant. *Kennedy v. Louisiana*, 554 U.S. 407, 433 (2008). These sources establish a strong trend away from executing defendants younger than 21.

With respect to the death penalty specifically, no such individual would be executed for any offense in 26 states and the District of Columbia, as all those jurisdictions have either abolished the death penalty or have suspended executions through moratoria.⁹ Thus, in a majority of states, a defendant who was 19 at the time of the offense would not be executed.

In six more states, although the death penalty remains on the books, the states have effectively abandoned the practice of executing persons for offenses committed before they were 21 years of age (“under-21 defendants”).¹⁰ Three of those states do not have a single under-21 defendant

⁹ The 23 states that have abolished the death penalty are Alaska, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, Virginia, West Virginia, Washington, and Wisconsin. The three states with moratoria are California, Oregon, and Pennsylvania. Death Penalty Information Center, *State by State*, available at <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state> (last visited Jan. 12, 2023). The governor of Oregon recently commuted all outstanding death sentences to life without parole sentences. State of Oregon Newsroom, Governor Kate Brown Commutes Oregon’s Death Row (available at <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=76509>) (last visited Jan. 11, 2023).

¹⁰ These states are Wyoming, Utah, Montana, Nevada, North Carolina and Kentucky. John Gramlich, *California is One of 11 States that have the*

in their death-sentenced population.¹¹ Of those three states, only one has executed an under-21 defendant in the modern era. That execution, in Utah, took place 30 years ago.¹²

Four other states currently have death-sentenced, under-21 defendants but have not actually sentenced or executed any under-21 defendants in a long time. Kansas has one death-sentenced, under-21 defendant. He was sentenced in 2000. (Kansas has not executed anyone since 1965.) In Nebraska, there have not been any executions since 1997, there has not been an under-21 defendant executed since 1996, and the only current death-sentenced, under-21 defendant was sentenced in 2002. Idaho has also moved away from under-21 defendant death sentences. Of Kentucky's 35 death-sentenced inmates, only two are under-21 defendants, and the more recent of those to receive his sentence was sentenced over 30 years ago in 1989. A circuit court in Kentucky recently held the death penalty was disproportionate punishment for offenders under the age of 21.

Death Penalty but haven't used it in More than a Decade, Pew Research Center (March 14, 2019) (available at <https://www.pewresearch.org/fact-tank/2019/03/14/11-states-that-have-the-death-penalty-havent-used-it-in-more-than-a-decade/>) (last visited Jan. 12, 2023).

¹¹ These states include Wyoming, Montana, and Utah.

¹² Willam Andrews was sentenced to death for a crime he committed at 19 and was executed in 1992. *Hi-Fi Murders*, Wikipedia, available at https://en.wikipedia.org/wiki/Hi-Fi_murders (last visited Jan. 12, 2023).

Commonwealth v. Bredhold, No. 14-CR-161, 2017 WL 8792559 (Fayette Cir. Aug. 1, 2017).¹³

Since *Simmons* there has been a marked decline in death sentences and executions in the 18-20 age group across the country. For example, in 2006 (one year post-*Simmons*), 18 new death sentences were adjudged against offenders between the ages of 18 and 20. Ex. 6 (Baumgartner Declaration), p. 4. In the last several years, there have been few or none. Specifically, there were:

- seven in 2017;
- one in 2018;
- two in 2019;
- zero in 2020; and
- zero in 2021.

Id.

¹³ The Kentucky Supreme Court did not find to the contrary; rather, the court held this issue was not justiciable because the defendants had not yet been sentenced. *Commonwealth v. Bredhold*, 599 S.W.3d 409, 423 (Ky. 2020). The court explained that should one of the defendants be sentenced to death, the court anticipates that the “the psychological and neurobiological characteristics of offenders under twenty-one (21) years old generally, as well as of the [defendants] specifically, will be fully developed by all parties and both the trial court and this Court will have the scientific evidence necessary to address a truly justiciable constitutional issue.” *Id.*

Executions have followed a similar decline. The years of 2006-2011 averaged just under 11 executions of late-adolescent offenders per year. *Id.* In recent years, that average has dropped to just under three per year. *Id.*

Since *Simmons* was decided by this Court in 2003, Missouri has executed only two offenders in the 18-20 age group. Among Missouri's 17 current death-sentenced prisoners, only Terrance Anderson and Michael Tisius are in the late-adolescent age group.

Nationwide, the trend continues, with 24 states providing that older adolescents should not be treated as adults once they are in the juvenile court system. Alabama, California, Connecticut, Delaware, Florida, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Virginia, and Washington have all extended juvenile court jurisdiction to age 21. (The individual statutes vary in how the jurisdiction is exercised, but all recognize the issue raised here.)¹⁴ In Illinois,

¹⁴ In 2014, the United States Department of Justice recommended that the age for criminal courts in the United States be raised to at least age 21. Phil Bulman, Nat'l Inst. Of Justice, NCJ No. 242653, *Young Offenders: What Happens and What Should Happen* 2 (2014). This recommendation was based on neuroscientific research suggesting that individuals ages 18 to 24 are more similar to younger teenager in regard to brain development than to adults. *Id.* These age limits indicate recognition that brain development and psychological maturity continues well past age 18 and into an individual's twenties. *See* Blume et al., *supra* at 936.

the state appellate court held imposing a mandatory life sentence on a 19-year-old violated the disproportionate penalties clause of the Illinois Constitution. *People v. House*, 142 N.E. 756, 764 (Ill. App. 2019). The Supreme Court of Illinois later remanded this case for factual development in the circuit court regarding the evolving science on juvenile maturity and brain development. *People v. House*, 185 N.E.3d 1234, 1240-41 (Ill. 2021).

Many state and federal laws contain categorical restrictions for individuals under age 21, meaning that even if an individual under the age restriction can show that he specifically is as mature as an adult, he nonetheless will still be barred from the prohibited activity. Blume et al., *supra* at 935-36. All 50 states and the District of Columbia have adopted 21 as the minimum-age restriction for the purchase, possession, or consumption of alcohol. *Id.* (citing *Highlight on Underage Drinking*, Nat'l Inst. On Alcohol Abuse and Alcoholism) (available at <https://alcoholpolicy.niaaa.nih.gov/underage-drinking>) (last visited Jan. 11, 2023). Many states (including Missouri) have adopted the same age for the purchase, possession, or consumption of marijuana. *Id.* (citing *State Medical Marijuana Laws*, Nat'l Conf. of St. Legislatures (Oct. 16, 2019) (available at <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>) (last visited Jan. 11, 2023)); Mo. Const. Art. XIV § 2. Licensed gun dealers are prohibited under United States federal law from selling handguns and

ammunition to individuals under 21. 18 U.S.C. § 922(b)(1) (2012); 27 C.F.R. § 478.99(b) (2012).

“In the years since *Roper*, new and amended laws have increasingly reflected the country’s recognition of the differences in the development between those under and over 21. There are over 3000 laws across the USA that limit a person’s privileges or abilities based on not achieving the age of 21.” Alex Meggitt, *Trends in Laws Governing the Behavior of Late Adolescents up to Age 21*, 7 J. of Pediatric Neuropsychol. 74 (2021). Much of this restrictive legislation recognizes a limited capacity of those under 21 for

decision-making in highly stressful and extremely arousing circumstances (sometimes referred to as issues of decision-making during hot-versus-cold cognition) but other laws appropriately grant increasing rights to this age group when evaluating the maturity required to make careful/considered choices such as about personal health care, voting, and other matters that need not to be made, and typically are not made, rashly in emotionally volatile circumstances as are the criminal actions that make such youth currently eligible for death as a penalty.

APA Resolution, at 2-3.

For example, in 2019, Congress raised the minimum age to purchase tobacco products from 18 to 21. 21 USC § 387f(d)(3). Before this legislation, 19 states and the District of Columbia had enacted provisions raising the age to purchase tobacco products to 21, and in 2019, an additional 13 states did

so. Since 2009, federal law has prohibited anyone under 21 from obtaining a credit card without a co-signer. 15 U.S.C. § 1637(c)(8).

The recognition of the lack of responsible decision making among persons from 18 to 21 also is reflected in the fact that 41 states require a person to be 21 to operate a fireworks display. Four of these states raised the age after *Roper*, and seven more established an age requirement for the first time since *Roper*.

A 2020 article in the *Annual Review of Law and Social Science* documents change in the legal community's response to 18-21-year-olds, including the “emergence of young adult courts and correctional programs” as well as specialized training of court personnel in developmental science.¹⁵

¹⁵ In 2016, a report was prepared for the Department of Justice “to identify those programs addressing the developmental needs of young adults involved in the criminal justice system.” Connie Hayek, *Environmental Scan of Developmentally Appropriate Criminal Case Justice Responses to Justice-Involved Young Adults*, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, June 2016 at 1. In the report, young adults were identified as “persons between the ages of 18 to 25 years.” *Id.* at 2. The report identifies a variety of initiatives and innovations nationwide, designed to protect late adolescents—for example, Young Adult Courts in San Francisco, California (begun in 2015 for ages 18-25), Omaha, Nebraska (begun in 2004 for up to age 25), Kalamazoo County, Michigan (begun in 2013 for ages 17-20), Lockport City, New York, and New York, New York (begun in 2016 for ages 18-20). *Id.* at 25-29. The report also details probation/parole programs, programs led by prosecutors, community-based programs, hybrid programs, and prison programs. *Id.* at 30-40. The report is exhaustive and demonstrates a nationwide, growing, and nonpartisan recognition of the need to protect late adolescents from the full brunt of criminal penalties.

The end result is a growing recognition of young adulthood as a distinct and special developmental phase of life that may require differential treatment in the justice system.” B.J. Casey et al, *Healthy Development as a Human Right: Insights from Developmental Neuroscience for Youth Justice*, 16 Annu. Rev. Law Soc. Sci. 9.1, 9.14 (2020) (available at [http://fablab.yale.edu/sites/default/files/publications/Casey et al 2020AnnRevLS16CH09.pdf](http://fablab.yale.edu/sites/default/files/publications/Casey%20et%20al%2020AnnRevLS16CH09.pdf)) (last visited Jan. 11, 2023).

To be sure, under current Missouri juvenile law, only defendants under the age of 18 are treated as juveniles instead of adults. However, by recently raising this age from 17 to 18, Missouri recognized that there is no legitimate reason to protect and treat 16-year-olds as juveniles but not 17-year-olds. Mo. Rev. Stat. § 211.021(1), (2) (Jul. 1, 2021). In other areas, Missouri has recognized that due to the immaturity of everyone under age 21, certain categorical restrictions are appropriate. Mo. Const. Art. 14, § 2 (adopted at general election Nov. 8, 2022, Amendment 3, eff. Dec. 8, 2022) (restricting the

Other specialized approaches for individuals who commit their crimes before they have reached their early to mid-twenties are rapidly developing. The Brooklyn District Attorney’s Office, in partnership with the Center for Court Innovation, is piloting a separate court system, with a variety of alternatives to incarceration for persons who commit misdemeanors between the ages of 16 and 24. See <http://www.brooklynnda.org/young-adult-bureau/>. In 2015, California expanded the requirement of a parole hearing for prisoners who were under age 23 at the time of committing specified offenses (up from age 18 under previous law). S.Bill 261, Chapter 471, codified at Cal. Penal Code § 3051 (eff. Jan. 1, 2016).

use of marijuana for anyone under 21);¹⁶ *see also* Mo. Rev. Stat. § 311.325.1 (prohibiting the purchase or use of intoxicating liquor for anyone under 21).

Most importantly, however, the Eighth Amendment inquiry is not limited to Missouri only; rather, the “evolving standards of decency” inquiry considers society as the appropriate measure for the enforcement of the Constitution’s protection of human dignity and the determination of which punishments are cruel and unusual for a class of persons. *Trop*, 356 U.S. at 100-01; *Simmons*, 112 S.W.3d at 406 (Courts should be guided by the conceptions of decency of “modern American society as a whole”) (quoting *Stanford v. Kentucky*, 492 U.S. 361, 369 (1989)).

Neither does the specific age limit this Court identified in *Simmons v. Roper* and the Supreme Court adopted in *Roper v. Simmons* prohibit this Court from recognizing that the Eighth Amendment provides the same protections to 19-year-olds it provides to other juveniles, particularly when *Roper* itself recognized that “[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18.” 543 U.S. at 574. And both this Court and the Supreme Court in *Roper* further acknowledged that when the scientific and societal bases supporting the setting of specific

¹⁶ This constitutional provision adopted by Missouri citizens also specifically classifies only individuals 21 or older as “adults.” Mo. Const. Art. 14, § 2.

categorical age no longer support that same age cutoff, then it is appropriate for courts to revisit and extend that age cutoff. *See id.* *Simmons*, 112 S.W.3d at 407 (explaining that this Court “has the authority and the obligation to determine the case before it based on current . . . standards of decency[,], not those that existed 14 years ago when the last categorical age restriction against the death penalty was enacted.”).¹⁷

Medical science, legal institutions, and society recognize that due to the immaturity of people under age 21, there is no distinction between the culpability and responsibility of a 17-year-old versus a 19- or 20-year-old, and the logic underpinning the setting of an original juvenile age at 17 therefore extends to the new age of 20. *See Roper*, 543 U.S. at 574; *Simmons*, 112 S.W.3d at 407-13. These sources show that under contemporary standards of decency, for the purposes of whether Mr. Tisius is eligible to receive the most severe punishment available (which also is irrevocable) for acts committed when he was 19, this Court should treat Mr. Tisius as a juvenile, not an adult.

D. EVIDENCE ABOUT MR. TISIUS S BRAIN AT THE TIME OF THE OFFENSE

¹⁷ This Court issued its opinion in *Simmons v. Roper* in 2003, nearly 20 years ago, and the Supreme Court issued its decision in *Roper v. Simmons* in 2005, just two years later.

Since the conclusion of Mr. Tisius's state court proceedings, new evidence of his relative immaturity at the time of the offense has emerged. Specifically, this evidence shows that in addition to the impairments of a typical 19-year-old brain, at the time of the offense Mr. Tisius suffered from additional brain impairments and that his juvenile character deficiencies have been reformed.

As noted above, the psychiatrist who evaluated Mr. Tisius three times over the span of nearly twenty years noted both his immaturity—in 2003—and his current adaptation as a more mature adult in 2022: “Michael Tisius is now 41 years old and has made a successful transition to nonviolent living within the Missouri DOC. . . . He has learned self-control, has empathy for others, shows empathy for the men he killed, is no longer impulsive, and is seeking to make the best life he can in his current situation.” Ex. 2, p. 23.

During Mr. Tisius's federal habeas corpus investigation, neuropsychologist Dr. Dale Watson and neuropsychiatrist Dr. George Woods examined Mr. Tisius. Ex. 7 (Watson Report); Ex. 8 (Woods Report). This investigation showed that Mr. Tisius suffers from brain defects and dysfunction, particularly in the areas of frontal-striatal and temporal lobe functioning. Ex. 7, pp. 36-37; Ex. 8, pp. 27-28. For example, Mr. Tisius has impairments in memory functions, which are part of the brain's limbic

system. Ex. 7, p. 48. Neuropsychological testing shows that Mr. Tisius s brain dysfunction “impacts him in many different ways”:

- “He demonstrated a profound degree of forgetfulness on tasks of verbal memory; marked deficits in motor programming that included motor perseveration in speech (stuttering) and movement, with associated cognitive perseverations; apparent motor impairments; significant signal-detection” deficits across memory, attentional and auditory processing tasks; and a severe degree of microsmia (loss of the sense of smell).” Ex. 7, p. 48.
- “[H]e has trouble responding to stimuli in a controlled manner such that his behavior can be erratic and hindered by impulsivity.” Ex. 7, p. 48.
- “Mr. Tisius also has difficulty accurately discriminating between correct responses and incorrect responses due to a kind of internal noise. Thus, he has significant signal-detection deficits across memory, attentional, and auditory processing tasks . . . Mr. Tisius at times also demonstrates deficits in his capacity to think and problem solve using verbal fluid reasoning skills.” Ex. 7, p. 49.

Mr. Tisius also suffers from seizures. Ex. 8, pp. 27-28; Ex. 9 (Nadkarni Report), pp. 4, 8. A recent neurological evaluation shows that he suffers from the brain disorder of epilepsy, and he suffered from seizures or seizure-like impairments at the time of the offense. Ex. 9, p. 9.

Mr. Tisius also suffers from post-traumatic stress disorder, the symptoms of which include anxiety, extremely poor self-esteem, vulnerability, poor social skills, and depression. Ex. 8, p. 27. Throughout his childhood and adolescence, he also exhibited extreme vulnerability and suggestibility. *Id.* at 28. His

cognitive impairments, difficulty with understanding complex language, poor executive functioning, “getting stuck” mentally, and executive function deficits lead to a vulnerability to rely upon others. This is exacerbated by his complex trauma history, where no one helped him develop coping mechanisms as a child and undermined his independence. Mr. Tisius has an increased vulnerability to being groomed, which was observed throughout his life.

Id.

Mr. Tisius suffered from all these impairments at the time of the offense. Ex. 8, pp, 28-32; Ex. 9, p. 9. As Dr. Woods explained, “[g]iven all of his deficits, Mr. Tisius has been vulnerable to being taken advantage of all his life. His ability to effectively weigh and deliberate, sequence his thinking, understand social cues and recognize social context is impaired. This is especially true in new, novel, and stressful situations.” Ex. 8, p. 3. At the time of the offense, Mr. Tisius brain deficits exacerbated those one would see in a normal adolescent brain . . . and resulted in increasingly poor adaptive functioning.” *Id.* at 32. Brain dysfunction due to epilepsy further impaired Mr. Tisius’s “ability to use appropriate decision-making during that time of intense stress” Ex. 9, p. 9.

New evidence also shows how Roy Vance manipulated Mr. Tisius’s immaturity to serve Vance’s own purposes. Marla Hascall, the former wife of Mr. Tisius’s brother, has described Mr. Tisius’s immaturity at age 19—the same period when Mr. Tisius met Vance. Vance had a prior conviction for

attempted escape, and Vance also masterminded a heist in which he employed false pretenses to coax a younger and vulnerable acquaintance to assist him in stealing from Vance's employer. *See* Ex. 10 (Vance Criminal Records). Richard Lockett—who was Vance's dupe in the prior heist—has explained how Mr. Tisius thought the world of Vance and how Vance used that fact to manipulate Mr. Tisius.

Thomas Antle observed Vance bragging about recent escape attempts and described manipulative Vance was and that Mr. Tisius was “glued” to Vance. Ex. 11 (Kuchar Declaration), p. 2. Derek Freese observed Mr. Vance's prior escape attempt and Mr. Vance's influence over the younger, less sophisticated inmates like Mr. Tisius. *Id.* at 3. James Foote similarly observed Mr. Vance's influence on Mr. Tisius and was “awestruck at by how quickly Vance manipulated Tisius[.]” *Id.* Geraldo Arteaga observed that at the time of the offenses. “Roy programmed Mike . . . Roy was very organized . . . Roy already had him – there wasn't nothing I could do.” *Id.* at 4.

Tracie Bulington explained how Mr. Vance dealt with Mr. Tisius, who “was the type of kid that was looking for acceptance.” Ex. 12 (Bulington Declaration), p. 8. She observed Mr. Tisius to be childlike, immature for his age, looking for love and a father figure, and idolizing Mr. Vance: “Mike went on and on about how Roy was good to him and had been there when he was down or needed something[:]” and “Mike's face used to light up when he was

able to talk to Roy.” *Id.* at 7-8. However, “[t]he way Mike talked about Roy was very different than the way Roy talked about him.” *Id.* at 7.

Ms. Bulington also observed critical post-crime evidence of remorse and of a lack of true deliberative process: “Mike was rubbing his face. He said, Oh my god, what did I do? What just happened?” *Id.* at 9. Mr. Tisius continues to be remorseful today. Ex. 2, pp. 12-13, 23. Furthermore, as *Roper* predicted (“a minor’s character deficiencies will be reformed”) and Dr. Steinberg’s studies show (people “age out of crime” by their mid-twenties), Mr. Tisius character has, in fact, matured from what it was at age 19. *Roper*, 543 U.S. at 570; Ex. 3 at 17; Ex. 2. p. 23.

All the above reflect the immaturity of Mr. Tisius s brain at the time of the offense. As Dr. Woods explains, “Grooming [was] the linchpin behavior in the offenses for which [Mr. Tisius] is currently sentenced to death.” Ex. 9, p. 28. In other words, but for Mr. Tisius s immature brain (with its identical youthful and immature characteristics that categorically exempt 16- and 17-year-olds from the death penalty, such as susceptibility to grooming), he would not have engaged in the conduct for which he is now sentenced to die.

The Eighth Amendment limits the death penalty “to those offenders who commit a narrow category of the most serious crimes and whose **extreme culpability** makes them the most deserving of execution.” *Roper*, 543 U.S. at 568 (emphasis added). The facts of Mr. Tisius s case both (1) support

emerging research that 19-year-olds do not significantly differ from 17-year-olds in maturity and judgment and (2) that at the time of the offense, Mr. Tisius's brain was operating like a juvenile brain, not an adult brain. Under the Eighth Amendment, the death penalty is not appropriate for 19-year-old offenders, especially those who were as impaired as Mr. Tisius and whose immaturity was the principal reason for his conduct at the time of the offense.

CONCLUSION

For the foregoing reasons, Mr. Tisius prays the Court to issue a writ of habeas corpus, vacate his sentences of death, and remand with instructions that Mr. Tisius be sentenced to life imprisonment without possibility of parole. To the extent this Court finds it necessary, Mr. Tisius requests a hearing before a special master to present the evidence discussed in this petition and other evidence supporting it.¹⁸

¹⁸ This Court can order fact-development procedures to afford a habeas applicant an opportunity to present evidence, when the facts, if true, would entitle the applicant to relief. *See, e.g., Woodworth v. Denny*, 396 S.W.3d 330 (Mo. banc 2013) (court-appointed master for fact development under Rule 68.03); *see also* Rules 91.15 and 91.17; Mo. Rev. Stat. § 532.310.

Respectfully submitted,

/s/ Elizabeth Unger Carlyle
ELIZABETH UNGER CARLYLE
Carlyle Parish LLC
6320 Brookside Plaza #516
Kansas City, Missouri 64113
(816) 525-6540
elizabeth@carlyleparishlaw.com
Missouri Bar No. 41930

/s/ Keith O'Connor
KEITH O'CONNOR
Keith O'Connor, LLC
PO Box 22728
Kansas City, MO 64113
Mo Bar No. 63134
816-225-7771
Keith@keithoc.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing pleading electronically with the clerk of the court, and that it was served by e-mail upon Asst. Atty. Gen. Andrew Crane, andrew.crane@ago.mo.gov on January 13, 2023.

/s/ Elizabeth Unger Carlyle

Elizabeth Unger Carlyle



IN THE 13TH JUDICIAL CIRCUIT COURT OF BOONE COUNTY, MISSOURI

Judge or Division : GARY M OXENHANDLER (24379) DIV2		Case Number : 01CR164629 <input checked="" type="checkbox"/> Change of Venue from	
		Offense Cycle No : OCN Not on File	
State Of Missouri vs. Defendant: MICHAEL ANDREW TISIUS (TISMA3947)		Prosecuting Attorney/MO Bar No: MICHAEL DOUGLAS FUSSELMAN (35603)	
DOB : 16-Feb-1981 SSN : 488863947 SEX : M		Defense Attorney/MO Bar No : CHRISTOPHER A SLUSHER (39321)	
Pre-Sentence Ordered		Appeal Bond Set Date : Amount :	
Judgment			

Charge #	Charge Date	Charge Code	Charge Description
Original Charge : 1	22-Jun-2000	1002100	Murder 1st Degree (Felony A RSMo : 565.020)

Disposition : 01-Aug-2001 Jury Verdict-Guilty

Order Date :	01-Oct-2001	Sentence or SIS :	Incarceration DOC
Length :	9999 Years	Start Date :	01-Oct-2001
Text :	DEFT. SENTENCED TO DEATH.		

Order Date :	27-Sep-2010	Sentence or SIS :	Incarceration DOC
Length :	DEATH PENALTY	Start Date :	27-Sep-2010
Text :	DEFT. SENTENCED TO DEATH.		

Charge #	Charge Date	Charge Code	Charge Description
Original Charge : 2	22-Jun-2000	1002100	Murder 1st Degree (Felony A RSMo : 565.020)

Disposition : 01-Aug-2001 Jury Verdict-Guilty

Order Date :	01-Oct-2001	Sentence or SIS :	Incarceration DOC
Length :	9999 Years	Start Date :	01-Oct-2001
Text :	DEFT. SENTENCED TO DEATH.		

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EXHIBIT
1

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Order Date : 27-Sep-2010 **Sentence or SIS :** Incarceration DOC
Length : DEATH PENALTY **Start Date :** 27-Sep-2010
Text : DEFT. SENTENCED TO DEATH.

	Charge #	Charge Date	Charge Code	Charge Description
Original Charge :	3	22-Jun-2000	2810000	Aiding Escape Of Prisoner By Using Deadly Weapon Or Dangerous Instrument (Felony B RSMo : 575.230)
Disposition :	04-Sep-2001	Dismissed by Prosec/Nolle Pros		
	Charge #	Charge Date	Charge Code	Charge Description
Original Charge :	4	22-Jun-2000	1401000	Burglary - 1st Degree (Felony B RSMo : 569.160)
Disposition :	04-Sep-2001	Dismissed by Prosec/Nolle Pros		
	Charge #	Charge Date	Charge Code	Charge Description
Original Charge :	5	22-Jun-2000	3101000	Armed Criminal Action (Felony Unclassified RSMo : 571.015)
Disposition :	04-Sep-2001	Dismissed by Prosec/Nolle Pros		

The court informed the defendant of verdict/finding, asks the defendant whether (s)he has anything to say why judgment should not be pronounced, and finds that no sufficient cause to the contrary has been shown or appears to the court.

Defendant has been advised of his/her rights to file a motion for post conviction relief pursuant to Rule 24.035/29.15 and the court has found **No Probable Cause** to believe that defendant has received ineffective assistance of counsel.

The Court further orders:

The clerk to deliver a certified copy of the judgment and commitment to the sheriff.

The sheriff to authorize one additional officer/guard to transport defendant to division of adult institutions.

Judgment entered in favor of the State of Missouri and against the defendant for the sum of \$68.00 for the Crime Victims Compensation fund. Judgment is **not satisfied**.

Judgment entered in favor of the State of Missouri and against the defendant for the sum of \$12,500.00 for appointed counsel services. Judgment is **not satisfied**.

Costs taxed against defendant.

The Court further orders :

1-Oct-2001 Defendant Sentenced

AUTHORIZE ADDITIONAL OFFICER - Yes; DELIVER CERTIF COPY OF JUDMT - Yes; 24.035/29.15 INEEFFECT COUNSEL - No; ALLOCUTION - Yes; DEATH PENALTY - Yes

1-Oct-2001 Defendant Sentenced

DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL AND/OR MOTION FOR NEW TRIAL SUBMITTED WITHOUT ARGUMENT AND BY COURT OVERRULED. AS TO COUNT I AND COUNT II, PUNISHMENT FIXED AT DEATH. ALLOCUTION, JUDGMENT AND SENTENCES. SHERIFF AUTHORIZED 1 DEPUTY. STATE PUBLIC DEFENDER TO ASSIGN APPELLATE COUNSEL TO PERFECT APPEAL. UPON SAID COUNSEL ENTERING THEIR APPEARANCE TRIAL COUNSEL GIVEN LEAVE TO WITHDRAW. DEFENDANT GRANTED LEAVE TO APPEAL AS A POOR PERSON. FC/DIV II (DB)

29-Jan-2003 Defendant Sentenced

MANDATE FROM SUPREME COURT OF MISSOURI AFFIRMING JUDGEMENT THIS DATE (LP)

27-Sep-2010 Defendant Sentenced

STATE BY ZOELLNER AND FUSSELMAN. DEFT. WITH SLUSHER. AFTER DUE CONSIDERATION, DEFENDANT'S POST TRIAL MOTIONS DENIED. SENTENCE ASSESSMENT REPORT FILED AND CONSIDERED. VICTIM IMPACT STATEMENTS RECEIVED IN OPEN COURT. PUNISHMENT FIXED AS FOLLOWS: CT. I, DEATH; AND ON CT II, DEATH. ALLOCUTION, JUDGMENT AND SENTENCES. SHERIFF AUTHORIZED TO DELIVER DEFT. TO DOC. CVCJ IN ACCORDANCE WITH LAW. DEFT. ADVISED OF RIGHTS UNDER SUPREME COURT RULE 29.15 AND INQUIRY CONDUCTED AS TO ASSISTANCE OF COUNSEL. COURT FINDS NO PROBABLE CAUSE TO BELIEVE THAT THE DEFT. HAS NOT BEEN EFFECTIVELY REPRESENTED BY COUNSEL. DEFT. ADVISED OF APPELLATE RIGHTS. GO/DIV II (DB)

28-Sep-2010 Defendant Sentenced

WARRANT OF EXECUTION DEATH WARRANT SIGNED. GO/DIV II (DB)

So Ordered on: 01CR164629 STATE V MICHAEL ANDREW TISIUS

9/27/10
Date

Gary Oxenhandler, D.V. II
Judge

I certify that the above is a true copy of the original Judgment and Sentence of the court in the above cause, as it appears on record in my office.

(Seal of Circuit Court)

Issued on:

9/27/10
Date

Deputy Clerk

cc: Sheriff, P&P, Potosi, Warden Dan Roper
Governor, Supreme Court Clerk 224

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STEPHEN E. PETERSON, MD, LLC
FORENSIC, GENERAL, AND ADOLESCENT PSYCHIATRY

231 S. Bemiston; Suite 800
Clayton, MO 63105
Telephone: 314 236-4914
Fax: 314 727-1559

435 Nichols Road, Suite 200
Kansas City, MO 64112
Telephone: 816 304-4455

DIAGNOSTIC INTERVIEW REPORT**Michael Tisius****INTRODUCTION AND PURPOSE:**

On August 17, 2022, Larry Komp, Esq., Assistant Federal Public Defender of the Federal Public Defender Capital Habeas Unit requested a psychiatric evaluation of 41-year-old Michael Tisius (DOB: [REDACTED]). The purpose of the evaluation was to reevaluate his psychological maturity at the time of the offense and his adjustment to incarceration. Factors to be addressed included discussion of Mr. Tisius's actions during the crime considering adolescent brain development, factors noted in *Roper v. Simmons*, his emotional growth over time, and his current maturity level.

Mr. Tisius was convicted and sentenced to death for the June 22, 2000 first-degree murder of Randolph County Jail officers Leon Egley and Jason Acton. Michael Tisius shot them with a .22 caliber pistol that had been obtained by Tracie Bullington in the effort to assist Roy Vance's plan to escape from the Randolph County Jail.

Extensive records were available, including an electronic version of the discovery file. The defense discovery file included prior psychiatric evaluations by this writer on May 29, 2003-July 24, 2003 and August 31-October 11, 2012. The evaluation in 2003 addressed relevant mental disease and mitigation of penalty on appeal of a Missouri Capital Punishment sentence. The 2013 evaluation addressed ineffective assistance of counsel during a 2010 sentencing hearing and current dangerousness.

The May-July, 2003 psychiatric assessment occurred when Mr. Tisius was 22 years old. Detailed psychiatric evaluation included 5.0 hours of face-to-face interview and two paper-and-pencil self-report objectively scored psychological tests. These were the PAI-2 (Personality Assessment Inventory-2) and MMPI-2 (Minnesota Multiphasic Personality Inventory-2). In addition, Patty Lambert, Mr. Tisius' biological mother, was interviewed on July 18, 2003. The assessment findings were presented in a hearing on February 10, 2004 in connection with post-conviction proceedings.

The August-October 2012 psychiatric assessment occurred when Mr. Tisius was 31 years old. Detailed psychiatric evaluation included 6.17 hours of face-to-face interview and three paper-and-pencil self-report objectively scored psychological tests. The tests were the Shipley-2, Personality Assessment Inventory-2, and MMPI-2. Respectively this was a rapid IQ test and two general personality assessments. The assessment findings were presented during post-conviction proceedings on June 25, 2014.

DESCRIPTION OF THE EVALUATION:

Michael Tisius was psychiatrically evaluated for the third time at Potosi Correctional Center (PCC) on November 5, 2022. Total face-to-face psychiatric interview time was 2.0 hours. In addition, he completed two paper-and-pencil self-report objectively scored psychological tests, the Shipley-2 and PAI Plus. The Shipley-2 is a rapid IQ instrument. The PAI Plus is a general personality assessment with validity scales and proposed DSM-5 diagnoses.

EXHIBIT
2

At the beginning of the interview, federal mitigation specialist Cindy Malone, was present. She introduced Mr. Tisius then left the private attorney contact room.

At the beginning of the assessment, Mr. Tisius understood the usual doctor-patient confidentiality did not apply to this psychiatric evaluation during his federal criminal appeal. He understood that nothing learned during the assessment was private, there would be no effort to trick/confuse/angry/upset him, his questions were welcome any time, and information generated could be reported to Mr. Komp, his "voice in court." He understood that if a report were generated, it could be reviewed by his attorney, the prosecution, and the court. He understood that he could decline to answer any or all questions without penalty.

Elements of the current psychiatric assessment included review of prior opinions provided by this writer, consideration of other expert consultant opinions, survey of prior records, current mental status examination, updated serial psychological testing (which had also taken place in 2003 and 2012), and discussion of his current functioning.

All prior psychiatric evaluation notes by this writer were surveyed. Additional forensic assessments that occurred in June 2018 were reviewed in detail. A detailed record review can be provided if necessary.

INDEX OF MATERIAL:

A. Discovery File –

1. 3_Outline of Testimony 2022 (MAT_011197-011220)
2. Peterson Box 1 Complete file 2022 (HAB-005794-008305; 2512 pages))
3. Peterson Box 2 Complete file 2022 (HAB-008938-012103; 3166 pages)
4. February 3, 2004 Peterson letter to Mermelstein
5. PC questions for Dr. Peterson from Mermelstein
6. February 3, 2004 Peterson testimony outline (MAT_011197-011220)
7. October 11, 2012 Peterson Testimony Outline
8. 2003-2004 Diagnostic Interview Report (records list)
9. June 26, 2014 MSPD bill
10. February 2, 2004 Testimony Outline
11. January 14, 2013 Testimony Outline

B. New Forensic Assessments –

1. June 26, 2018 Paula K. Lundberg-Love, PhD Report (adverse childhood experiences)
2. June 26, 2018 Dale G. Watson, PhD Neuropsychological Report
3. June 26, 2018 George W. Woods, Jr., MD Report (neuropsychiatric evaluation)
4. June 25, 2018 James E. Aiken Report (prison management and adjustment matters)

REVIEW OF MATERIAL:

Summary of Stephen E. Peterson, MD testimony notes for 2004 noted a primary DSM-IV-TR diagnosis for 22-year-old Michael Tisius of childhood onset posttraumatic stress disorder, early onset dysthymia, severe major depression without psychotic features, alcohol and marijuana abuse by history, and passive-dependent personality (personality disorder NOS) with compulsive features (tattooing) (MAT_011219).

In 2004, mitigation included that Michael Tisius was suffering from untreated mental disease, was experiencing diminished mental capacity, and was substantially under the manipulated influence of Roy Vance.

Elements of that mitigation included that at the time of the offense:

- Michael Tisius suffered from untreated severe posttraumatic stress disorder and untreated major depression
- Michael Tisius was 19 years old (naïve, frightened, prone to panic since he was 12 years old, and without any other violent crimes)
- Michael Tisius yearned for a father figure he never had (Roy Vance was 8 years his senior and used that to manipulate Michael; Michael tended to boast then regret his promises)
- Roy Vance planned the breakout and introduced the idea of bringing a gun (encouraged Michael to get a better gun, and Michael saw Roy Vance as his only male friend)
- Michael Tisius looked up to Roy Vance in way he never looked to any other man, was so needful/naïve that he didn't perceive his being used
- Michael was under the influence of marijuana that impaired his thinking, increased suggestibility, and impaired judgment
- Roy Vance use Tracie Bullington to get access to a gun (a .22 caliber revolver that Michael had never handled before)
- Michael Tisius had a history of severe physical abuse by his older brother Joey which rendered him very vulnerable to manipulation by an idealized figure such as Roy Vance (along lines of Stockholm Syndrome identifying with an aggressor for identity and protection)
- Michael Tisius had a panic response during the shooting (suggesting no antisocial mindset)
- Michael Tisius had a history of rapid mood swings suggestive of low self-esteem and immaturity that would render him easily led by motivated others
- Michael didn't enter the jail intending to kill either officer, went in to help his "only buddy" and intended to corral the officers to make an escape
- Michael wanted to help Roy Vance who had promised a job and shelter
- Michael consistently suffered beatings by his older brother, had no family protector, and was a follower
- Michael Tisius continued to evidence substantial untreated mental disease (PTSD, major depression, dependent personality)
- Psychological testing confirmed considerable anxiety, Michael's need to be built up by others, and he was very likely to follow someone else's lead)

-Michael had come to recognize his actions in the killing of Officers Egley and Acton were wrong; however, at the time of the offense, his ability to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired

Valid PAI-2 (5/29/2003) noted DSM-IV-TR possible diagnoses as posttraumatic stress disorder, major depressive disorder, dysthymia, and no axis II diagnoses (no personality disorder). Four of the 27 PAI critical items endorsed trauma. 26 Coefficients of Fit were 0.500 or above. The top five coefficients of fit were posttraumatic stress disorder, schizophrenia, paranoid delusions, cluster 2, and antipsychotic medications. Cluster 2 corresponded to depression (20%), dysthymia (23%), and anxiety (PTSD; 23%).

The MMPI-2 (7/24/2003) was to be interpreted with caution however, it may suggest a high degree of distress with neurotic functioning, dysthymic disorder, anxiety disorder, and dependent/compulsive personality disorder with considerable interpersonal discomfort.

Summary of Stephen E. Peterson, MD testimony notes for 2014 testimony

22-year-old Michael Tisius continued to demonstrate ongoing developmental plateauing while incarcerated at Potosi Corrections Center (no ongoing therapy or medications for untreated child and adolescent psychosocial injuries, remained distant from others, and impoverished environment). He adapted to prior abuses/neglect by staying to himself, compartmentalized pain/chaos he experienced between living in different home styles, and physical abuses (especially by his older brother Joey). He maintained safety by not aligning with anyone at Potosi Corrections Center. Prior to the offense he aligned with those he perceived as powerful (Roy Vance), while at Potosi he adapted and aligned himself with more proactive and positive correctional staff so he could continue to do his art. He adapted to distress by using art as an excellent creative outlet and emotional defense mechanism.

He reflected that Roy Vance's relationship with Tracie Bullington and him were "means to an end" for Roy Vance and not actual relationships. In that way Michael Tisius regretted getting caught up with Roy Vance's manipulations as he played into Michael's adolescent bravado (HAB-009341).

Mental Status in 2013 showed that Michael Tisius still demonstrated immature thinking as his abstract reasoning was concrete rather than abstract, suggesting though in his early 30s his maturity of reasoning plateaued in mid-adolescence. There continued to be depression, isolation, avoidance, institutional isolation/paranoia, and looking away from past traumas but no ongoing treatment. He had not demonstrated any additional violence over the interval (HAB-009549).

He continued to demonstrate mental disease/defect in that he experienced childhood onset posttraumatic stress disorder, a history of major depressive disorder, experienced dysthymia, preferred isolation, and showed subtle neurological findings (such as impaired digit span and impaired abstract reasoning).

Valid PAI on August 31, 2012 suggested possible DSM-IV diagnoses of unspecified adjustment disorder, deferred diagnosis and Axis II, unknown substance dependence, and avoidant/passive-aggressive personality.

Significant PAI narrative added that 31-year-old Michael was suspicious and hostile in relationships with others, likely to be hypervigilant and question/doubt the motives of those around him. He experienced a discomforting level of anxiety and tension. He was likely plagued by worry, had difficulty relaxing, and experienced fatigue as a result of high perceived stress. He was socially isolated. There might be mild depression. There were no significant problems with empathy (compassion for others). He had a rather negative self-evaluation, was likely to be self-critical, and blamed himself for past failures/lost opportunities. He appeared socially uncomfortable with little need or interest in interacting with others. He may take a passive/submissive stance when dealing with others but also avoided most social interactions rather than be forced to make an active commitment to a relationship. His anger control and temper were within normal range.

The October 11, 2012 (31 years old) MMPI-2 was probably valid as Michael Tisius cooperated enough to give an adequate indication about his functioning. Diagnostically, a mood disorder was prominent (Depression scale score was in the top 1.1%). There were antisocial attitudes and behaviors. Feelings of personal inadequacy, lack of self-confidence, tendency to blame himself, excess worry, low-energy, slow personal tempo, depressed mood, and stressful environment/recent traumatic experience may be impacting his functioning. He endorsed poor memory, concentration, problems with indecisiveness, and feeling immobilized. He felt withdrawn with no energy for life. He admitted to rule violations and acknowledged past antisocial behavior. He usually developed a worst-case scenario pattern of thinking as he viewed the world in a highly negative manner. He worried even about neutral events as problematic. He had a meager capacity to experience pleasure in life.

He was interpersonally inhibited and shy. He may avoid others for fear of being hurt, had few friends, was quiet, was submissive, and was conventional. He may not assert himself appropriately and might frequently be taken advantage of by others. His personality characteristics were stable over time as was his reclusive behavior, introverted lifestyle, and interpersonal avoidance.

June 26, 2018 Paula K. Lundberg-Love, PhD Report (Adverse Childhood Experiences; ACEs) noted her opinion that Michael Tisius experienced a very traumatic childhood and adolescence. He experienced the majority of the 10 ACEs. The greater number of ACEs, the more impactful they are across the lifespan. Michael Tisius experienced childhood verbal abuse, emotional neglect and physical neglect by his mother, verbal abuse, emotional and physical abuse by his father, severe physical abuse by his older brother, parental separation, and his mother experienced mental illness. He was treated for depression during childhood.

Dr. Love noted the trauma exposures caused profound permanent effects on Michael's brain development by virtue of disrupting and disregulating the delicate balance among physiological, emotional, and cognitive functions. That disruption increased the likelihood he would develop posttraumatic stress disorder (PTSD). Mr. Tisius did not receive any therapeutic interventions to counteract the effects of the "6 out of 10" ACEs. His experiences of ACEs caused him to experience emotional neediness, powerlessness, and vulnerability to manipulation by Roy Vance.

Dr. Love described her opinion in detail. Dr. Love considered the diagnostic formulation advanced by this writer during 2004 that noted depression and PTSD. Dr. Love found it not surprising that Mr. Tisius experienced many negative life outcomes related to the number of ACEs he experienced. These included childhood-onset posttraumatic stress disorder, poor

academic achievement, poor educational attainment, mental distress, and involvement in the criminal justice system.

Dr. Love noted that had she been retained in 2010, she would've diagnosed Michael Tisius with DSM-IV-TR PTSD. She described substantial diagnostic justification for the PTSD diagnosis (page 45) and that he continued to experience PTSD.

Dr. Love concluded by discussing the effect of trauma on psychological, physiological, emotional, and cognitive development of an individual. Magnitude and duration of traumatic events shape brain development and therefore subsequent behavior. Factors such as that Michael Tisius was the second child born to his 20-year-old mother Patty and 18-year-old father Chuck, that Chuck repeatedly told Michael he was disappointed Michael was not a girl, that Michael was fatherless from birth forward, and that life with his mother/brother were chaotic and unpredictable with physical/verbal/emotional neglect/abuse by his mother/brother throughout the entirety of his formative years (childhood and adolescence) were highlighted.

At an early age, Michael recognized he could not count on his mother or brother to help him survive/navigate the trauma that was his life. He had to survive in spite of family member abuse/neglect. Michael has had a lifelong difficulty ascertaining who was and was not trustworthy. His ability to form relationships with others was negatively impacted by repeated family member betrayal. This left him extremely emotionally needy and searching for someone who would love/care for him. If he found someone he thought was legitimately nurturant or might look to his best interest, Michael tended to attach himself to that person and inappropriately trust those who might seek to take advantage.

Michael's mother did not intervene his older brother Joey's physical abuse, so Michael endured unrelenting powerlessness caused by fear. His brother's aggression was chronic, unpredictable, and severe. Michael could not escape it except to avoid home. Michael demonstrated anxiety at age 12 with hyperactivity, fidgeting, and jumpiness so that Dr. Wool may have wanted to talk about ADHD or other psychological problem at that age. Dr. Love noted that alteration of anxiety circuits would put Michael at risk for varying anxiety disorders (including PTSD).

As a consequence of never having had any treatment for his childhood experiences, Michael Tisius would have been neurologically predisposed to seek someone to love him. This would've resulted in gullibility, manipulability, and vulnerability to those who might seek to take advantage.

June 26, 2018 Dale G. Watson, PhD Neuropsychological Report addressed presence or absence of neuropsychological dysfunction, impact of any neuropsychological dysfunction on cognition/behavior, and presence or absence of neuropsychological dysfunction at the time of the offense with discussion of how such neuropsychological dysfunction would have impaired his intellectual functioning or behavior at the time of the offense. The neuropsychological assessment included 14.75 hours of evaluation, an extensive neuropsychological test battery, and extensive record review. Dr. Watson's data sources included the psychiatric assessment/testimony by this writer, assessment/treatment by psychiatrist AE Daniel, MD (2001), and assessment by neuropsychologist Dennis Cowan, PhD (May 2003).

Dr. Watson summarized his opinions about Mr. Tisius. First, Dr. Watson found that Mr. Tisius experienced neuropsychological dysfunction.

Second, this dysfunction included “deep-brain” frontal-striatal and temporal lobe deficits. So, Mr. Tisius demonstrated profound forgetfulness of verbal memory, marked deficits in motor programming “motor perseveration and speech (stuttering) and movement,” associated cognitive perseverations, apparent motor impairments, significant signal-different deficits across memory/attention/auditory processing tasks, and severe loss of sense of smell (microsmia).

Dr. Watson noted that Mr. Tisius experienced stuttering since childhood that was more prominent under the stress of testing, motor perseveration resulting in erratic and impulsive testing behavior, loss of control of motor planning with informational perseverations, and many extraneous tic-like motor movements.

Mr. Tisius demonstrated memory impairment, especially deficits in recall after a period of interference, distraction-triggered forgetfulness, and failure to retrieve words adequately during free recall. These were consistent with frontal-striatal dysfunction more than temporal lobe dysfunction. He experienced “signal-detection” deficits across memory/attention/auditory processing consistent with prior pediatric findings of hyperactivity, fidgeting, and jumpiness. He demonstrated deficits in capacity to problem solve using verbal fluid reasoning skills.

This deficit pattern indicated Mr. Tisius demonstrated behavioral inconsistency, could easily be frustrated when struggling to perform consistently, and could be vulnerable to distraction (similar to early concerns about ADHD).

There were also psychiatric impairments including severe depression, insecure attachment (that significantly impacts his capacity for relationships) and a background of severe trauma that further impacted his functional capacities. Psychiatric difficulties began during childhood as noted by depression with withdrawal, poor school performance, irritability, mood swings, insomnia, anorexia, decreased concentration, anger. His attachment issues made him vulnerable to manipulation and influence by those who provided attention to him.

Third, Mr. Tisius experienced these neuropsychological dysfunctions at the time of the offense as they were long-standing and began during childhood. Dr. Watson noted evidence of this included childhood stuttering and early emotional dysregulation.

Dr. Watson noted the 2018 neuropsychological evaluation took place when Mr. Tisius was 37 years old. The crimes were committed when Mr. Tisius was 19 years old, well before continued frontal lobe development during the mid-20s. Dr. Watson noted the process of myelination and pruning that made cognitive processing and decision-making more efficient and accurate had yet to take place when Mr. Tisius was 19 years old.

Dr. Watson concluded that Mr. Tisius' brain impairments at 19 years old would have reduced his information processing accuracy and efficiency. Those exerted a greater effect at 19 years old than at 37 years old.

June 26, 2018 George W. Woods, Jr., MD Report (neuropsychiatric evaluation) noted that he was asked seven questions regarding Mr. Tisius. These included did Mr. Tisius suffer

from mental disease or defect, did he suffer from mental disease or defect at the time of the offense, at the time of the offense was Mr. Tisius under influence of extreme mental or emotional disturbance, at the time of the offense did Mr. Tisius act under extreme duress or under the substantial domination of another person, at the time of the offense was Mr. Tisius' capacity to appreciate the criminality of his conduct to the requirements of law substantially impaired, at the time of the offense how did Michael Tisius age-in combination with mental disease or defect-affect his behavior, and at the time of the offense did Mr. Tisius' mental disease or defect affect his ability to exercise the deliberation that is a requisite element of first-degree murder.

Dr. Woods reviewed numerous records, witness statements, case materials, and interviewed Mr. Tisius (on May 26, 2018). This included testimony by Stephen E. Peterson, MD, and review of Dr. Watson's neuropsychological assessment.

Dr. Woods concluded that Michael Tisius had mental disease and defect that affected every part of his life including his mental state at the time the offenses and at the time of the evaluation (page 23; 136 of 365). Mr. Tisius continued to suffer bilateral temporal lobe disease with obsessions, gullibility, deepening of affective responses, language-related disorders, and math academic impairment.

These cognitive deficits were more global than just temporal lobe dysfunction. This included frontal and striatal functioning impairment related to memory, ability to adequately weigh/deliberate, ability to sequence thinking/actions, and impaired understanding/response to social cues. He was vulnerable to amnesic periods and dissociative episodes (when perceptions of reality are altered or lost completely to memory). This was a neurologically mediated vulnerability caused by brain impairment sensitive to environment and resulted from chronic posttraumatic stress disorder (PTSD) with absence seizures.

Dr. Woods described PTSD Michael Tisius suffered as profound and chronic through his childhood. This would've caused him to develop inadequate and destructive coping mechanisms. Dr. Woods indicated the traumatic history should have been more thoroughly presented at the time of trial, the impact of trauma was underestimated, the impact of trauma was incompletely presented, his cognitive deficits were never discussed, and the brain impairment/trauma consequences of pervasive poor decision-making was not explained. Last, impact of the multiple impairments on Michael's capacity to conform his behavior to the law at the time of the offense was not explained.

Dr. Woods described that Mr. Tisius experienced cognitive deficits (frontotemporal striatal deficits). They created a greater vulnerability to trauma. These "neurologically-derived" difficulties (weighing and deliberating, understanding context, making decisions, and understanding nuance behavior of others) would have deprived him of the ability to recognize those who were trying to manipulate him. Mr. Tisius experienced chronic trauma not single episode trauma. Dr. Woods noted that Mr. Tisius parents heightened his response to trauma rather than moderated it.

Dr. Woods described the frontotemporal striatal dysfunction as impactful to impair Michael Tisius' executive functioning.

Dr. Woods described dependent personality disorder symptoms for Michael regarding Roy Vance. This included grooming by Roy Vance, during the offense, and Michael's subsequent belief that Mr. Vance lacked culpability for the offense. These were evidence of pathological self-esteem due to extreme childhood/adolescent trauma and cognitive deficits. Michael Tisius had looked to Mr. Vance as someone who would finally care for him. Michael's perceptions were flawed, and his self-esteem was flawed his entire life. These undermined his ability to be independent. He had been vulnerable to the pressures of others such as being scammed by his mother, beaten by his brother, abused by his brother, scammed by his brother, and scammed by Roy Vance. Mr. Tisius did not understand the degree to which he was used by others over the years.

Dr. Woods described eight DSM-5 diagnostic descriptors for Dependent Personality Disorder. He highlighted that Michael was 19 years old at the time of the offense, was homeless, had not completed basic education, hadn't tried to get a GED, held few jobs, moved from living space to living space, had not lived independently, and being in jail represented better living conditions. Before that, Tracie Bullington had provided shelter with food for Mr. Tisius, something he had been unable to do on his own. He had difficulty initiating projects on his own due to his lack of self-esteem. It was Dr. Woods' opinion that volunteering to break someone out of jail was completely out of character with Michael's past minor offenses and entirely consistent with extremely poor judgment arising from cognitive deficits. Ultimately, Michael Tisius due to his dependent personality with isolation, behavioral inhibition, and avoidance with cognitive/emotional lability was exploitable by Roy Vance.

Dr. Woods concluded that Mr. Tisius continued to suffer from posttraumatic stress disorder, frontotemporal striatal dysfunction, and dependent personality.

First, PTSD was supported by narrative history of significant trauma/neglect during childhood. This included avoidance and behavioral inhibition well documented during child and adolescent years. Multiple personality tests documented long-standing symptoms of anxiety, extremely poor self-esteem, vulnerability, poor social skills, and depression. All of those were consequences of posttraumatic stress disorder.

Second, Dr. Woods described Mr. Tisius as living with a brain that did not work effectively. There were global deficits (many different features of brain functioning) that Mr. Tisius experienced in childhood/adolescence and continued to experience in adulthood. Mr. Tisius was also vulnerable to absence seizure activity (short periods of loss of awareness), as a consequence of mid-temporal lobe dysfunction.

Third, dependent personality caused Mr. Tisius to experience extreme vulnerability and suggestibility. He was vulnerable to grooming by others, something that existed long before the offense.

Dr. Woods concluded that Mr. Tisius suffered mental disease/defect at the time of the offense (posttraumatic stress disorder, frontal temporal striatal dysfunction, and dependent personality), experienced trance-like behavior prior to/during the offense, had been groomed/exploited by Mr. Vance, and did not understand the degree to which he had been exploited.

Dr. Woods concluded Mr. Tisius experienced extreme mental/emotional disturbance due to his environmental stressors. He was groomed by Mr. Vance, didn't plan the jailbreak, was

homeless/penniless when released from jail, was vulnerable to Mr. Vance offering a place to stay with drugs, and was too impaired by cognitive and/emotional vulnerabilities to recognize he was being exploited.

Dr. Woods concluded that Mr. Tisius acted under extreme duress/substantial domination of Mr. Vance. This domination continued for years after the offense.

Dr. Woods concluded that Mr. Tisius' capacity to appreciate the criminality of his conduct/conform his conduct requirements of law was substantially impaired. This impairment rose from his difficulty picking up social cues, vulnerability to Mr. Vance's grooming, and impaired cognitive/affective abilities before the offense. This was noted in the May 29, 2003 PAI that Mr. Tisius "may have limited social skills, with particular difficulty in determining normal nuances to interpersonal behavior that provide the meaning to personal relationships" (page 5-6, PAI). Such impairments would have degraded during real-world stresses. Dr. Woods believed he controlled for mere environmental distress on Mr. Tisius' actions.

Dr. Woods concluded Michael's age of 19 years old was relevant during the offense. Dr. Woods highlighted in detail that 19-year-old brain functioning was not comparable to an adult brain due to the immaturity of the adolescent brain. Adolescent brains are also especially vulnerable to consequences of childhood abuse. Abuse causes increased risk for chronic hyperarousal, specific neurochemical changes within the brain, and memory loss/dissociative amnesia.

Dr. Woods concluded that at the time of the offense, Mr. Tisius' brain functioning deficits were beyond that of normal adolescence and would have caused increasingly poor adaptive functioning. Michael Tisius' cognitive and traumatic symptoms would have substantially impaired his capacity to effectively reason, deliberate, and conform his conduct to law. (page 32; page 145 of 365).

June 25, 2018 James E. Aiken Report (prison management and adjustment matters) was a record review (page 4). Mr. Akin had 45 years of correctional system knowledge and experience in multiple jurisdictions and multiple classification/security evaluation situations. He opined that Michael Tisius could be safely maintained in the Missouri prison system while properly confined in a secure environment the rest of his life (page 5).

Some noted factors were that Mr. Tisius did not demonstrate predatory behavior, continual/methodological use of violence/power to gain control over inmate/staff/facility operation, random or systematic behaviors regarding escape/attempted escape, violence against staff, sexually predatory behaviors, or organized collective continual violence. Mr. Tisius had not accumulated a history of violent behavior between October 2001 and June 2018 (page 13). In addition, Mr. Tisius was 37 years old in 2018 so his increasing age indicated he was less likely to be aggressive and disruptive. Mr. Tisius may need to be protected from more predatory elements of the prison population as he aged. Mr. Tisius was not involved with gangs/gang members, had not attempted to escape or had escaped from prison, and had no contraband substance abuse violations. The Missouri Department of Corrections prison system could safely confine and manage Mr. Tisius the rest of his life.

FINDINGS:

Identifying Information

41-year-old Michael Tisius was anxiously waiting for his hearing on clemency, while on death row. He had been assigned psychiatric status MH-4 but didn't know what that meant. He wasn't getting any psychotherapeutic or medication treatment and was not seeing any counsellors. His last visitor was 51-year-old Tara Doty in December 2021, a friend. They became friends after Michael separated from his wife. Michael's divorce had been filed but he had received no finalization papers. His wife had chosen drugs over him, so they had no contact.

Tara Doty and Michael spoke a few times per day. It made him feel good that she thinks enough of him to share about her life. She is a good listener. Otherwise, he was not close to anyone. They talked 10-20 minutes at a time.

He remained in his cell 24/7 except for time out to play basketball and shower. He didn't mind because since 2001 he isolated himself from prison drama and lying. In PCC, death row inmates were not segregated.

He felt positive about his federal defense team. They had been representing him for five years and he liked them. Though he did not remember this writer from the previous assessments, he had always been honest with the experts who interviewed him.

Past Medical History

Michael Tisius was allergic to Septra antibiotics, NyQuil, and opiates. He didn't know what Septra did. NyQuil caused a stomach reaction so that the skin on his abdomen was rashy and felt on fire. Opiates, in particular Percocet, gave him a "hot pins and needles sensation," vomiting, and seizures. He was not treated with any over-the-counter medications.

He believed his health was fine. He did not seek any medical care in DOC. His only injuries had been in 2009 and 2021 when he fractured his right pinky. He had full use of his right fifth finger though it was crooked. He had not been attacked since the evaluation in 2013.

His human connections were guarded. He avoided "bad people who were not fit for society." He believed there "only bad people in here."

Television, playing basketball, and Tara were the only things that kept him going. They had been talking for about three years, and she was a nice lady.

He really had no answer when asked what the best things were about him. He described it as an emptiness such as there was "nothing there," and nothing was good about his life or him. He believed "countless juries and judges had dictated that." He said that his life had been a waste.

Alcohol and Drug Use History

Michael Tisius denied using alcohol or drugs.

Conduct Violations

His last conduct violation was in 2014. It was related to an accusation that he was trading a gaming CD with his cellmate when he was only showing it to him. He had not been in any fights in the interval from August 2013-November 2022.

DISCUSSION OF EVENTS RELATED TO THE LEGAL SITUATION:

Mr. Tisius noted that he lived an extremely pathetic life. By this he meant that he had many failings. Since childhood, he felt his life was pathetic. He had always felt others discarded him when they were done with him. For example, he revered his older brother who would get him to steal and then beat him up. He always felt discarded by his father and had no other positive male role models. Similarly, his mother died from a brain tumor in October 2018 before he could resolve their difficulties. He hadn't heard of grief work about the loss of her. He had stopped "hitting his head against the wall" about those events.

He had felt starved for attention in childhood. Then he would "do anything for approval." He didn't recognize that pattern until five or six years before this updated assessment.

Regarding the offense, Michael reflected that he had been 19 years old, wasn't thinking about consequences, and didn't realize that he would either be in prison the rest of his life or on death row.

Over the last 10 years he had dealt with a great deal of depression to which he reacted by withdrawing and avoiding thoughts about his past. He had wandered most of his life not understanding his life direction. It wasn't until the last 5-10 years he came to recognize and care about his life, feeling that he didn't catch up to normal adulthood attention and thinking until then. He knows that he is not the same person he was during the offense or when first incarcerated. This self-understanding process has been gradual. He sees the changes in himself much like parts of a dirty watch that is gradually cleaned and progressively runs better.

He has not had a conduct violation in at least 10 years. He avoids conflict with other inmates. It is a mark of maturity for himself that he removes himself from trouble in the prison. He has learned to be "okay" with what others think about him but not react to it.

He still had "flashbacks" about the offense, usually nightly. They hadn't changed much and were no less frequent. His best coping was to "ride the wave" and wonder how he "got here." He ultimately concludes that these flashbacks/dreams/reliving of the offense reinforce his life as failed or wasted. Trying to avoid thinking about what happened was ineffective. He tries to counteract those feelings with seeing what is positive about day-to-day life now.

One of things that makes him feel that his life has been wasted is that he tends to blame himself for his childhood in "self-imposed guilt." To have lived a life with his chaotic mother had always made him feel he must've done something wrong early on.

He is very hypervigilant to those around who might harm him so found it safer to stay to himself. He enjoys highly structured activities such as full-court five-on five-basketball four times per week. He's proud of his "jump shot."

When he has flashbacks or relives the events of the killings, he feels "very horrible," they make him want to vomit, he reacts by hitting himself, and he's unable to push these thoughts away from his awareness. His only way to deal with these is to compartmentalize them for a while. He can't shake the negative feelings even at when alone at night. He also responds by sending emails to Tara and praying.

He tries to learn life lessons evident in movies such as *Goodwill Hunting*, *Miracles from Heaven*, and *Forest Gump*. Some lessons he learned from these movies included becoming aware of things right in front of him that he did not see, improving through life, and remaining hopeful. He is grateful to be able to learn from those depictions of life maturity. He intended to keep finding something to live as well as possible.

PSYCHOLOGICAL TESTING:

Michael Tisius completed intelligence tests and general personality tests during each evaluation. The current psychological testing is summarized. Then, findings of psychological tests during the three time periods (2003, 2012, and 2022) are compared and contrasted.

Shipley-2 (November 5, 2022)

The Shipley-2 is a rapid IQ instrument reported in standard scores, with an average IQ of 100 points (+ or -15 IQ points and standard error of 3-4 points). Average IQs range between 85 and 115 IQ points. The elements of the Shipley-2 are Vocabulary, Abstraction, and Composite (estimated full-scale IQ) scores.

Mr. Tisius had completed 8th grade. He produced a Vocabulary score of 118 IQ points (88th percentile) and an Abstraction score of 93 IQ points (32nd percentile). These summarized to a Composite (estimated full-scale IQ) of 104 IQ points (61st percentile).

These scores were commensurate with his face-to-face presentation, especially since he reads the "word of the day" on his DOC tablet. He was a strong reader. He only answered the first 13 of 25 items on the Abstraction and all 13 items were correct. The Abstraction score likely underestimates his ability as likely would have scored higher had he just answered more items.

On August 31, 2012, Mr. Tisius produced a Shipley-2 Vocabulary score of 105 IQ points (63rd percentile), an Abstraction score of 84 IQ points (14th percentile), and a Composite score (estimated full-scale IQ) of 91 IQ points (30th percentile).

PAI Plus (November 5, 2022)

The PAI Plus is a 344-question general personality assessment with validity scales, proposed DSM-5 diagnoses, and critical items. The test is to be integrated with other information as one clinical hypothesis regarding psychiatric diagnoses.

Michael Tisius completed an acceptable number of items. He attended appropriately to item content and responded consistently to similar items. Certain aspects of the profile raise the possibility of denial of problems drinking or drug use so that interpretive hypotheses regarding abuse of substances should be reviewed with caution. There was no evidence to suggest he portrayed himself in a more negative or pathological light than clinically warranted.

Marked significant elevations indicated the presence of clinical features that would be likely sources of difficulty. The pattern suggested he was unhappy, emotionally labile, and probably still dealing with anger that typically presents as a state of crisis with marked distress and depression. His current distress may be associated with difficulties or rejection in interpersonal relationships and such individuals often feel betrayed or abandoned by those

close to them. This compounds feelings of hopelessness and helplessness. He may have a more general pattern of anxious ambivalence in close relationships varying from bitterness/resentment on one hand and dependency/anxiety about possible rejection on the other. His anger was directed as much at himself as at others. He was uncertain about his goals and priorities as well as tense and pessimistic about what the future may hold.

The combination of hopelessness, resentment, and impulsivity may place him at increased risk for self-harm. Other clinical features included significant depressive experience, problematic personality traits, mild maladaptive behavior patterns aimed at controlling anxiety, or disturbing traumatic events that continue to distress him with recurrent episodes of anxiety, close monitoring of the environment for evidence of others trying to harm or discredit him, and some degree of anxiety. He reported no significant problems with unusual thoughts or peculiar experiences, problems with empathy, unusually elevated mood or heightened activity, difficulties with health or physical functioning, and no significant problems alcohol or drug abuse or dependence.

His self-concept was poorly established with characteristic harsh self-criticism and severe self-doubt. Apart from a sense of identity established by close relationships, he likely feels incomplete, unfulfilled, and inadequate. His self-esteem was quite fragile and likely to plummet in response to slights or oversights by others.

Interpersonally, he appeared very socially uncomfortable with little need or interest in interacting with others. He may appear rather passive and submissive when dealing with others. Socially, he was likely experiencing notable stress and turmoil in a number of major life areas. He perceived his social support as being somewhat lower than that of the average adult. He may have very few close relationships or be satisfied with the quality of those relationships.

From a treatment perspective, he was not reporting distress from thoughts of self-harm, his temper was in the normal range, his anger management was fairly well controlled without difficulty, and treatment could be rather challenging. He recognized that areas of his life were not going well but resisted the idea that personal changes were needed.

Possible DSM-5 diagnoses according to PAI Plus included Major Depressive Disorder, single episode unspecified. Other areas for diagnostic study included antisocial and borderline personality disorder.

He endorsed six of 27 PAI critical items. These items have very low endorsement rates in the normative sample. He endorsed one Potential for Aggression item and three Traumatic Stressor items.

Review of additional PAI Plus scales utilizing *Personality Assessment Inventory (PAI) Professional Manual Second Edition* added some information. First, Malingering Index (MAL; raw value 1; T57) was not in the range of feigning a severe mental disorder, Rogers Discriminant Function (RDF; negative number; T52) suggested he answered like a bona fide patient not a psychiatric simulator, Defensiveness Index (DEF; T38) was not in the range of coached dissimulation; and Cashel Discriminate Function (CDF; T54) was in the range of mild defensiveness that did not interfere with honest responding.

Second, the highest Full-Scale Profile elevations were Depression (DEP; T73), Borderline (BOR; T70), and Stress (STR; T73). Antisocial Features (ANT; T54), Schizophrenia (SCZ; T51), and Paranoia (PAR; T62) did not suggest active illness. Anxiety Related Disorder (ARD; T67) was in the meaningful range. Drug Problems (DRG; T44) and Alcohol Problems (ALC; T44) referred to infrequent drug use "if at all" and few if any adverse consequences related to drinking. Aggression (AGG; T44) was in the range of reasonable control over expressions of anger and hostility.

Depression (DEP; T73) indicated prominent unhappiness and dysphoria with feelings of despondency much of the time and withdrawal from activities. These persons tend to be viewed as guilt ridden, moody, and dissatisfied. The DEP-C (Cognitive; T75) elevation reflected expectations of personal inadequacy, powerlessness, or helplessness in dealing with demands of the environment. Such persons tend to feel hopeless and that they failed at most important life tasks. This was an opposite pattern from grandiosity or narcissism. The DEP-P (Physiological; T72) elevation reflected vegetative signs of depression (sleep problems, appetite problems, and lack of energy or drive) and motor slowing.

Borderline (BOR; T70) personality features suggested a history of impulsive or emotionally labile behaviors and feeling misunderstood by others. Such persons find it difficult to sustain close relationships. This did not suggest a diagnosis of borderline personality disorder unless there were prominent elevations of most BOR scales. BOR-I (Identity Problem; T77) reflect identity issues beyond what is expected during adulthood with feelings of emptiness, lack of fulfillment, and boredom. BOR-A (Affective Instability; T72) suggested a propensity to experience a particularly negative affect with possible anxiety/depression/anger as the typical response. BOR-N (Negative Relationships; T72) suggested very intense and chaotic relationships. Such persons may have felt others did not meet their needs, felt betrayed, and felt exploited as a result. BOR-S (Self-Harm; T37) did not suggest acting impulsively or risk for hazardous behavior or self-mutilation. These elevations did not rise to the level of Borderline Personality Disorder, in view of his life traumas.

Stress (STR; T73) elevations assess current life stressors. At this level, significant worry, rumination, and unhappiness would be likely.

Antisocial Features (ANT; T54) suggested a person who reports being considerate and warm in relationships. Such individuals typically exhibit reasonable control over impulses and behavior. The ANT-A (Antisocial Behaviors; T75) would suggest a history of difficulties with authority and social conventions. Antisocial behavior would manifest in adolescence. ANT-E (Egocentricity; T39) was in the range of someone who repeatedly places the needs of others above their own and will have difficulty having their own needs met. ANT-S (Stimulus-Seeking; T40) was in the range of someone who is very timid and avoids novelty. Such persons are likely to feel uneasy when their routine is disrupted may experience interpersonal disruption.

Schizophrenia (SCZ; T51) overall was in the range of effective social relationships with no attention or concentration problems. SCZ-S (Social Detachment; T66) reflects social disinterest and lack of affective responsiveness. The score may indicate limited ability to interpret normal nuances of interpersonal behavior that provide meaning to personal relationships.

Paranoia (PAR; T62) at this level suggested a person who was sensitive, tough-minded, and skeptical. PAR-H (hypervigilance; T72) would indicate a hypersensitive person who spends a great deal of time monitoring the environment for evidence that others are not trustworthy, may be trying to harm or discredit him in some way, and he will question/mistrust the motives of those around as a matter of course. Respectively, PAR-P (Persecution; T57) and PAR-R (Resentment; T52) were at the level of no interfering jealousy/delusional ideas of conspiracy/intrigue and no hostility/bitterness.

Anxiety Related Disorder (ARD; T67) was in the range of persons who have significant fears or worry and little self-confidence. ARD-T (Traumatic Stress; T79) was above the range of a past disturbing traumatic event that continued to be a source of distress and produce recurrent episodes of anxiety.

Third, Mr. Tisius Highest PAI Coefficients of Fit include persistent depressive disorder (dysthymia), major depressive disorder, posttraumatic stress disorder, borderline personality disorder, and somatic symptom related disorder.

The highest PAI Cluster Profile was Cluster 7. Most common diagnoses for Cluster 7 patients include major depression (23%), dysthymia (42%) or anxiety disorder (23%; about half are diagnosed with posttraumatic stress disorder). About 15% of this patient group receives a diagnosis of dependent personality. The second most prominent PAI Cluster Profile was Cluster 10. Most common Cluster 10 diagnoses were borderline personality (20%) often with dysthymic disorder (24%). The third most common cluster was Cluster 2. The most common Cluster 2 included major depression (20%), dysthymia (23%) or an anxiety disorder (23%; mostly posttraumatic stress disorder).

Taken together, the current PAI Plus suggests long-standing difficulties with major depression, dysthymia, anxiety, and possible posttraumatic stress disorder. There is no indication his recent and current functioning is consistent with overriding antisocial personality disorder, overriding borderline personality disorder, risk for psychotic decompensation, or lingering risk for aggression.

Psychological test summary

Clinically, the 2022 and 2012 IQ scores for Michael Tisius are not substantially different, given the long-term corrections environment and his relative lack of formal education. There is a relative weakness in his abstraction capacity consistent with lower academic attainment and subtle impairments of reasoning capacity. This relative abstraction weakness is noted in the contemporaneous Mental Status Examinations and is consistent with the consequences of Adverse Childhood Experiences (Love), more extensive evidence of neuropsychological dysfunction (Watson), and more extensive discussion of PTSD/frontotemporal striatal dysfunction/dependent personality (Dr. Woods).

The PAI tests (2003, 2012, and 2022 PAI Plus) consistently demonstrate overlapping diagnoses of posttraumatic stress disorder, major depressive disorder, dysthymia, and anxiety without underlying propensity for antisocial mindset/antisocial personality or risk for psychotic decompensation or lingering risk for aggression. In particular, he demonstrated many traits opposite of those who would be thought to have antisocial personality. These test results are consistent with his face-to-face presentation and Mental Status Examinations at each time point.

The MMPI-2 (2003, 2012) results are less clear about posttraumatic stress disorder but indicate a high degree of neurotic (mental impairment) functioning, dysthymia (low-grade persistent depression) or Depression, anxiety disorder, dependent/compulsive personality disorder, and considerable interpersonal discomfort. There were some neurocognitive elements such as experiences of poor memory, poor concentration, indecisiveness, and feelings of immobility. He was isolative, introverted, quiet, submissive, conventional, and likely to avoid others out of fear of being hurt.

MENTAL STATUS EXAMINATION: (November 5, 2022)

Michael Tisius was well-developed and well-nourished. He had shaved his head but had a full graying beard. He wore a wedding ring. He sported many tattoos. His eye contact was appropriate. Psychomotor functioning was normal. He appeared both anxious and stern.

He was oriented to time, place, person, and the situation. He did not watch television news. He did not talk to anyone much at all. He did not feel the outside world had much effect on him because his world was "four concrete walls."

His mood was "blah," with some happy days. His last good mood was related to phone calls, basketball, and movies. He has had no episodes of feeling down and no episodes of feeling elated or where he doesn't need to sleep or eat or feels excessively energized.

His appetite was normal. He gained 40 pounds over the previous few years. He denied symptoms of eating disorder or pathological control of food intake.

He had a good energy level but hardly slept. He kept himself going with soda and coffee.

His sleep was poor. He tended to go to bed at 4:30 AM or later, sleep 4 or 5 hours and then sleep a few hours during the day. It kept him up to think "they are about to kill me" and this was on his mind all the time. He doesn't know when he last slept well. He denied bad dreams or nightmares or even any dreams that he remembered.

He did not have an answer about what he thought his future would hold. He believed that he was next on the execution list after Kevin Johnson on November 29, 2022, Scott McLaughlin on January 3, 2023, and Leonard Taylor on February 7, 2023. Such thoughts dominated his mind.

He did not have an active sex drive though there were sexual thoughts in his mind.

He always felt the life was not worth living. He had not felt relief from this for as long as he can remember.

He had some suicidal ideation but denied a plan or an ultimate out plan. He denied any suicide attempts (even if no one knew) or ever wanting to stage a suicide to look like an accident or provoke someone to harm him or kill him.

He denied auditory, visual, olfactory, gustatory, and tactile hallucinations. He did not feel that he had the ability to read people's minds or predict the future. He did not receive compelling messages from the TV, radio, or his DOC tablet.

He denied experiencing alternative identity. He denied experiencing more than one mind in his brain or more than one identity in his body. Others had said he dissociated but he was not aware of this. He was told these episodes lasted seconds to minutes. He had no evidence of postictal state such as muscular soreness, bruises, soiling, or wetting himself.

He occasionally experienced racing thoughts which are "hard to shake." Most of them were about not having any relief from being aware of imminent execution. He denied any obsessive-compulsive rituals or having to have things "just so" in his cell.

He denied significant paranoia beyond alertness needed to survive "prison drama." His only phobia was of Brown recluse and Wolf spiders. He denied agoraphobia.

It was difficult to occupy his mind as he had no workbooks, no self-help books, and no classes. Michael Tisius functioned in the average range of intelligence with a fund of knowledge in the average range.

His attention and concentration (as assessed by having him serially subtract seven from one hundred, spell a five-letter word in reverse order, and spell a six-letter word in reverse order) were all intact. His recognition memory (recall of three objects immediately, at one minute, and at five minutes) was flawed. That is, he immediately recited three of three items, but at one minute only one of three items, and at five minutes only one of three items without recognizing the other two from lists of five.

His categorical reasoning (similarities) was functional (rather than concrete or abstract), somewhat delayed for his age. His social judgment (reasoning through hypothetical situations) was cautious, respectful, and safety minded without underlying sexual or violent themes. His abstract reasoning (proverb interpretation) was functional, self-referential, and somewhat delayed for his age.

His digit span (a lateralized screening for generalized brain functioning) was abnormal. That is, he readily recited six digits forward but only three reversed. Six digits forward and six reverse would have been normal findings.

His spontaneously written sentence was "Hello there, how are you today?" did not reflect fine motor incoordination or tremor. He completed intersecting pentagons and a clock face to the requested parameters in a manner that did not indicate constructional apraxia or visual neglect due to parietal dysfunction or visual pathway difficulties resulting from a stroke.

DSM-5 DIAGNOSTIC FORMULATION:

At 41 years old, Michael Tisius continues to experience long-standing consequences of early childhood abuse and neglect. He has presented consistently in the three assessments by this evaluator (May-June 2003, August-October 2012, and November 5, 2022). He demonstrates cardinal symptoms of childhood onset posttraumatic stress disorder (PTSD), early onset dysthymia, severe major depression, and passive-dependent personality (personality disorder NOS; with compulsive features), and substance use disorders (alcohol/marijuana) by history/in a controlled environment. Mr. Tisius also demonstrated Mental Status Examination findings consistent with subtle neurological signs often observed consequent to PTSD and untreated psychosocial trauma.

In addition, during 2018 independent thorough assessments confirmed ongoing negative impact of adverse childhood experiences (Love), ongoing neuropsychological deficits (Watson), and ongoing neuropsychiatric impairments (Woods) that were present prior to and during the June 22, 2000 murders of officers Leon Egley and Jason Acton.

Biologically, it is well established that Michael Tisius experienced a chaotic, physically, emotionally, and environmentally abusive upbringing so that he entered treatment at age 15 years old for symptoms of depression and withdrawal with poor school performance and mood difficulties in June 1996. Antidepressant medications were recommended (HAB-007904). Before that, he experienced substantial childhood abuse and neglect, commonly known to result in altered brain structure and functioning of the auditory, visual, and somatosensory cortex brain areas (Teicher; Annual Research Review: Enduring neurobiological effects of child abuse and neglect; Pubmed Child and Adolescent Mental Health; JCPP 57.3 2016; Abstract) and McCrory; Childhood maltreatment latent vulnerability and the shift to preventative psychiatry-the contribution of functional brain imaging; JCPP 58.4; 2017 (functional MRI studies showing altered functioning in a range of neurocognitive systems that include threat processing, word processing, emotion regulation and executive control).

There is no indication that his interpersonal difficulties arose from traumatic brain injury or other injury toxic to the brain but arose from interpersonal traumas.

Psychologically, Michael Tisius did not have any dependable maternal or paternal figures that were not either exploitative or abusive so learned isolation and to idealize powerful others (identification with the aggressor). That survival adaptation made him exquisitely vulnerable to influential others who may be inclined to manipulate him. He also learned adolescent bravado to cover up his sense of insecurity. It was not until the last 10 years or so of incarceration that Michael has become capable of ignoring the inputs of others by living a more isolated life and not engaging in violent or maladaptive actions (substance abuse or engaging in conflicts with others).

As is also well established, Michael has adapted to living with untreated child onset posttraumatic stress disorder, periodic depression, dysthymia, anxiety, and aggravated PTSD/Depression as a consequence of his actions in the killing of the two officers. He feels inordinately blameworthy for what happened to him in childhood, has frequent nightmares of the killings, trusts very few others, avoids interpersonal conflict, and tries to live in isolation.

Socially, Michael Tisius experienced delayed maturation of adolescent brain functioning as a consequence of untreated childhood physical abuse/neglect. For at least the last 20 years, Michael Tisius has had no trauma-focused psychotherapeutic effort and thus has managed his difficulties in isolation.

The current **DSM-5** diagnosis for Michael Tisius is as follows:
 Posttraumatic Stress Disorder (F43.10) childhood onset
 Persistent Depressive Disorder (F34.1)
 Dependent Personality Disorder (F60.7) with compulsive features

Posttraumatic Stress Disorder (F43.10) childhood onset is diagnosed for Mr. Tisius. He experienced direct exposure to physical abuse during childhood (mother, brother), resided in chaotic family environments, and could never rely on any parental figures. He was directly

traumatized by the actions of shooting officers Egley and Acton and has continued to experience posttraumatic consequences. He experiences intrusive symptoms related to the shootings of the two officers in the form of recurrent/involuntary distressing memories, nightmares, affect isolation (dissociative reaction), and ongoing psychological distress. He avoids others as a consequence of social deprivation in childhood as well as the actions during the killings of the two officers. He compartmentalizes feelings so he can avoid some awareness of childhood and adult traumas. He views himself negatively, has difficulty with recall, feels indecisive, feels blameworthy for being victimized during childhood by his mother, experiences the world as dangerous, has great difficulty feeling any positive emotional state, feels estranged from almost everyone, and has persistent inability to experience positive emotions (experiences his life as wasted). Last, he sleeps very poorly, is hypervigilant to potential harm, and fears others may harm him, which are altered arousal and reactivity as a consequence of the traumatic events.

Persistent Depressive Disorder (F34.1) is diagnosed for Mr. Tisius due to his long-standing chronic depressed mood more days than not. He has episodes of altered sleep, low-energy, persistent low-self-esteem, difficulty making decisions, and long-standing feelings of hopelessness.

Dependent Personality Disorder (F60.7) with compulsive features is diagnosed for Mr. Tisius due to his expressed unmet need to be taken care of by others though he has adapted by becoming socially isolated. This is considered an underlying personality feature as evidenced by consistent psychological testing over time (2003 MMPI-2; 2018 Woods assessment; and 2022 PAI Plus). Such a vulnerability in view of his untreated childhood PTSD and resultant depression, would have made him especially vulnerable to motivated others who wished to manipulate his need for validation.

DISCUSSION:

Mental Disease or Defect

Posttraumatic stress disorder, Persistent depressive disorder, and Dependent personality disorder are mental diseases as defined by the DSM-5-TR. His history of alcohol and cannabis use are in sustained full remission.

There is no evidence of malingering or deception by Michael Tisius especially in view of his consistent presentation from 2003-2018 to this writer, and in 2018 to Doctors Love, Woods, and Watson. Michael Tisius put in good effort during all assessments, including the extensive evaluations during 2018 (Love, Woods, Watson). His collaborative efforts indicate that while he does not feel mature, he has matured over time and, while still in need of psychiatric treatment, is no longer the braggadocios youth he was at age 19 but a much steadier adult.

Supporting research highlights that child maltreatment causes changed brain structure and brain functioning. Some of the changes in the traumatized adolescent brain permanently reduce capacity for executive control (planning, flexible thinking, anticipating outcomes) so that automatic, behavioral, counterproductive cognitive responses, are more poorly regulated (McCrory; Childhood maltreatment, latent vulnerability in the shift to preventative psychiatry-contrition of functional brain imaging; JCPP 58:4; 2017), more trauma exposure negatively associates with performance on executive functioning, complex reasoning, and social cognition (Barzilay, et al; Association between traumatic stress load, psychopathology and cognition in the Philadelphia Neurodevelopmental Cohort; Psychological Medicine 49:2;

2019; abstract), and traumatic stressful events result in unique differences in symptoms, neural cognition, and structural/functional brain parameters (Gur, et al.; Burden of Environmental Adversity Associated with Psychopathology, Maturation, and Brain Behavior Parameters in Youths; JAMA Psychiatry 76:9; 2019).

Of the many research reports available about Adverse Childhood Experiences, functional (functional MRI) and structural brain changes occur after severe child maltreatment. Those changes delay development of adult thinking modalities, capacity to delay gratification of impulses, and to utilize mature executive functioning.

Neurobiologically, it is well known in the child maltreatment/trauma/child abuse/child sexual abuse literature that adolescence is not defined by a specific age cut off. Frontal lobes of the brain do not achieve adult maturity at 18 years old. Normal brain maturation continues from approximately age 19 through 25 years old or later depending on neurodevelopmental challenges in the particular individual. In traumatized or deprived youth, or those for example have ADHD, frontal lobe development that had been delayed can extend into the late 20s.

An extensive discussion of this is in: *Age of Opportunity: Lessons from the New Science of Adolescence* by Lawrence Steinberg, PhD; 2014. Dr Steinberg describes that the age boundary between adolescents and adults does not “point to an obvious chronological age at which a sharp legal distinction between adolescents and adults should be drawn for all purposes ... Generally..., people reach various kinds of maturity between the ages of roughly fifteen and twenty-two. Adolescents' judgment in situations characterized by emotional arousal, time pressure, or the potential for social coercion ... is unlikely to be as mature as adults until they are older, certainly no earlier than age eighteen and perhaps as late as twenty-one” (page 202).

Adolescent brain development at the time of the offense

Michael Tisius was 19 years and four months old the time of the offense. He had suffered with untreated childhood physical and emotional abuse, emotional neglect, depression at 15 years old, showed academic failure (did not advance beyond eighth grade despite normal intelligence), had behavioral problems with anxiety and anger, had been unable to live independently, and never received emotional nurturing that he required for normal development. He did not perceive himself as catching up developmentally until the last 10 years or so.

At the time of the offense 19-year-old Michael Tisius functioned as a seriously developmentally delayed adolescent with clinically significant untreated psychiatric and cognitive problems that contributed to his offense. Over the subsequent 20 years, Mental Status Examinations, multiple self-reported objectively scored psychological tests, and evaluations by evaluators from different disciplines show that Michael's development has not remained static. As is shown in those assessments, Michael Tisius has continued to develop more adaptive thinking patterns. Practical evidence of this improved thinking is demonstrated by his consistently improved behavior, artistic endeavors, and no evidence of ongoing violent behavior in the correctional environment.

Consistently (with reference to the full reports), in 2018 Dr. Love (Adverse Childhood Experiences) noted that Michael's trauma exposures caused profound permanent effects on his brain development. These disrupted and dysregulated normal development and put

Michael Tisius at increased risk for posttraumatic stress disorder. Michael Tisius would've been neurologically predisposed to seek someone to love him and that resulted in gullibility and vulnerability to those who might seek advantage, such as Roy Vance. Also, in 2018, Dr. Watson described ongoing neuropsychological dysfunction in the frontal striatal areas of the brain. These were present at the time of the offense and still evident in 2018. Dr. Watson noted that at the time of the offense, Michael would've been 19 years old, well before continued frontal lobe development. And, in 2018 Dr. Woods gave the neuropsychiatric formulation that Michael Tisius experienced frontotemporal striatal cognitive deficits. These were neurologically derived (weighing and deliberating, understanding context, making decisions, and understanding nuanced behavior of others) so that he would've been less able to understand those who are trying to manipulate him. Dr. Woods found that Michael Tisius had dependent personality that made him vulnerable to grooming by Roy Vance. Dr. Woods described posttraumatic stress disorder, frontotemporal striatal dysfunction, and dependent personality with risk for trance-like behavior (reportedly that still continues in 2022) that would have made Michael Tisius vulnerable to substantial domination by Mr. Vance. Dr. Woods noted that at 19 years old Michael Tisius would have been functioning with an adolescent brain.

The individual assessments (Peterson, Woods, Watson, Love) echo excerpts from *Handbook of Life Course Development* (2018) "... Exposure to chronic stress during childhood (poverty) or experiencing adverse childhood events (child maltreatment, neglect, parental divorce, parental substance abuse) may cause detrimental impact to the developing brain... Repeated exposure to stressful events has been associated with structural differences in specific brain regions (amygdala, hippocampus, prefrontal cortex) which are in turn associated with functional differences in learning, memory, and aspects of executive functioning ... An emerging adult, who has experienced chronic stress or adverse events earlier in childhood and adolescence and is cognitively immature, is more likely to suffer secondary effects such as school failure, risky/impulsive behaviors, accidental injury, criminal activity, or substance misuse or overuse. These behaviors may in turn interfere with the ongoing development of an optimal pathway to adulthood."

Thus, first, multiple assessments demonstrate Michael Tisius would have had the neurodevelopmental capacity of a much younger teenager than his 19 years and four months would suggest during the events leading to the June 22, 2000 shooting of officers Egley and Acton. Second, in view of the neurodevelopmental information, there was no bright line of adult brain maturity for Michael Tisius at 18 years old. His more normal adult brain maturation was decades into his future.

Factors from *Roper v. Simmons*

On June 22, 2000, Michael Tisius had not crossed a bright line to adult brain maturity at 18 years old by virtue of his PTSD, depression, and neurodevelopmentally delayed state. Multiple assessments have demonstrated that burden.

In 2005, the USSC in *Roper v. Simmons* noted that Simmons had committed a capital murder at age 17 and then after he turned 18 years old was sentenced to death. Eighth amendment and 14th amendment considerations were discussed regarding juveniles. Regarding an evolving standard of decency, adolescent brains were considered not fully developed and therefore Simmons did not have the resultant level of adult judgment, ability to assess risks, or ability to assess consequences of his actions. He was more susceptible to peer pressure

because he was developmentally a child. Thus, he was categorically less culpable than an adult.

From a neuropsychological development perspective, Tisius and Simmons share common adolescent brain immaturity. Similar to Simmons not having adult judgment, ability to assess risk, and ability to assess consequences of his actions, Michael Tisius was developmentally immature even though chronologically over age 18 years old. Biologically, as a 19-year-old, he still would not have developed frontal lobe brain capacity for adult executive functioning, cognitive deficits from trauma rendered him developmentally delayed, and more so he was under the substantial domination of Roy Vance.

Emotional growth over time/Current maturity level/Institutional adjustment

Michael Tisius is now 41 years old and has made a successful transition to nonviolent living within the Missouri DOC. Michael Tisius demonstrates no current psychiatric or psychological data to suggest he has underlying fulminate or unexpressed violent tendencies. All psychological evaluations from 2003 forward to 2022 demonstrate the opposite of any antisocial mindset. He has had no conduct violations for at least 10 years.

Michael Tisius has made an excellent institutional adjustment. His psychiatric/psychological functioning is stable. Though Michael Tisius doesn't feel mature, he has matured, and continues to show promise for ongoing personal growth.

This maturing process over time for Michael Tisius was evident during three evaluations by this writer, spanning 20 years of assessments (2003, 2012, 2022). In addition, during 2018, bracketed by this evaluator's assessments, independent psychologists Love and Watson as well as psychiatrist Woods came to the same conclusions.

Michael Tisius has come to grips with the gravity of his offense and is living a peaceful life. He has learned self-control, has empathy for others, shows empathy for the men he killed, is no longer impulsive, and is seeking to make the best life he can in his current situation.

Finally, from a Correctional security and management perspective, Mr. Aiken found that Michael Tisius could be safely maintained in the Missouri prison system while properly confined in a secure environment the rest of his life. I concur.

Thank you for consulting Stephen E. Peterson, MD, LLC. If any new issues have arisen or any element of this report needs clarification do not hesitate to contact me.

____ E-signed SEP, MD @ 10:57 on 01/12/2023 _____

SEP MD

Stephen E. Peterson, MD
 Diplomate, American Board of Psychiatry and Neurology 1992
 ABPN Subspecialty in Forensic Psychiatry 1994, Recertified March 2003
 Life Fellow American Psychiatric Association, April 2022

STATE OF STATE OF MISSOURI VS. MICHAEL TISIUS

**REPORT OF JAMES E. AIKEN
JAMES E. AIKEN AND ASSOCIATES, INC.**

DATE: JUNE 25, 2018

I. Introduction/Methodology

I have been retained to review materials in the above referenced matter. More specifically, I evaluated the materials submitted by Counsel and reached expert opinions in a confinement operational context, as to the confinement and criminal history of Mr. Michael Tisius.

The approaches and methodology used in evaluating the issues in this proceeding are similar or identical to assessments conducted by correctional professionals in establishing expert findings, opinions, management approaches, investigative fact finding, policy and procedure development and implementation. These approaches are used to determine the security status of an inmate.

Examples of these approaches include but are not limited to:

- reviewing facility related reports and legal documents;
- operationally assessing medical records;
- reviewing investigative reports;
- assessing, in a prison operational context, inmate behavior and security related issues of confinement.

(See Exhibit A - Materials Reviewed by Expert).

II. Expert Qualifications

I have held the following positions:

- Director of Corrections for the U. S. Virgin Islands (prison/jails)
- Commissioner of the Indiana Department of Correction (adult/juvenile)
- Deputy Regional Administrator, South Carolina Department of Corrections (managing 16 prisons ranging from super-maximum to minimum security)
- Warden, (Central Correctional Institution -CCI) State Penitentiary, South Carolina Department of Corrections (high security prison that housed the most predator, dangerous and violent inmate population in adjudicated and safe-keeper (pretrial status)
- Warden, Women's Prison, South Carolina Department of Corrections (maximum, medium and minimum security population)
- Deputy Warden and Administrative Assistant to the Warden, South Carolina Department of Corrections (high security, medium and minimum security population)
- Counselor with the Comprehensive Drug Abuse Treatment Program, South Carolina Department of Corrections

I have over 45 (forty-five) years of experience in the management of confinement facilities and correctional systems. (See Exhibit B - Resume). A major focus of my career has been the assessment and restoration of facilities and systems that have experienced chronic and acute security, operational critical events and management shortfalls. These have included issues of:

- staff malfeasance
- corruption
- security critical-event prevention and management

- budget shortfalls
- failure to provide inmate population access to necessary health care
- public loss of trust in the confinement system
- inmate loss of trust in the professionalism of confinement facility staff
- staff loss of trust in the professionalism of administrators
- emergency response and preparedness
- inmate disruptive and violent behavior management
- confinement facility and system culture assessment and improvement
- confinement facility and system overall performance assessment
- performance of death penalty executions of condemned inmates
- inmate classification system (design, implementation and monitoring)
- addressing civil legal complaints
- adherence with court orders
- inmate disciplinary system performance assessments
- confinement facility security technology (development, implementation and monitoring)
- new prison construction
- renovation of existing confinement facilities to enhance security performance
- confinement facility operational policy and procedure issues
- post order development, reassessment, interpretation, and monitoring
- facility operational performance assessments
- policy development and interpretation
- contraband control
- staff training and development
- evaluation of staff training
- employee productivity evaluations
- employee discipline
- confinement facility cost containment strategies
- use of force and restraint evaluation and implementation
- criminal and administrative investigations (operational evaluations) of
- confinement setting critical incidents
- management of overcrowded confinement facilities
- Gang/Security Threat Group (STG) monitoring and management

I have also assisted the legislative and executive branches of government on the state and federal levels by providing expert advice concerning budgetary issues and statutory reforms regarding corrections.

Additionally, I have provided consulting services to the U. S. Department of Justice, National Institute of Corrections, as well as served as a private contract provider to federal, state and county jurisdictions in a number of areas including, but not limited to:

- inmate classification
- management of women offenders

- managing violent youthful offenders in adult prisons
- managing prison security systems
- prison culture change
- correctional leadership development
- assessment of security operational performance
- executive training for new and experienced wardens
- prison critical event avoidance
- management of super-maximum security prisons
- management of the hard-to-manage violent inmate
- riot/gang management
- use of force (to include lethal force) evaluation and application
- critical event prevention evaluations

I have also consulted with attorneys and rendered expert testimony in capital, criminal and civil cases. I have been qualified as an expert and provided such testimony in the states of Washington, Ohio, Georgia, Arizona, Delaware, North Carolina, Montana, Pennsylvania, New York, South Carolina, Indiana, Virginia, Maryland, Louisiana, Oregon, New Hampshire, Missouri, Alabama, Mississippi, Florida, Texas and the United States District Courts of Maryland, New York, Connecticut, Virginia, Ohio, South Carolina, Michigan, Arizona, West Virginia, Florida, Texas, Georgia, Alabama, Missouri, Tennessee, District of Columbia and Pennsylvania as well as the Court of Queen's Bench, Canada relative to: future danger posed to inmates, staff and the community by defendants, the ability of inmates to adjust to prison, classification of inmates to determine proper confinement levels, prison conditions, and other matters generally relating to prisons, jails, and criminal justice matters. (See Exhibit B, Resume for a more complete list of qualifications).

This report is prepared with the understanding that confinement facilities are inherently dangerous places which house and manage individuals who have demonstrated behaviors that are in violation of law, social standards, and mores of the general society. Some prisoners may be disruptive and/or have serious criminal violations as well as length of sentence that requires them to be housed in highly secured facilities for extended periods. Inmate population that have demonstrated a compliant, often non-violent behavior pattern over time can be housed with other inmate population with similar established behavior patterns. Regardless, confinement facilities must have adequate well-trained staff, physical plant, develop/implement protocols, procedures, and practices as well as establish systems that protect inmates/staff from harm, comply with constitutional requirements and sound correctional practices.

It is also acknowledged that prison officials are allowed a degree of operational discretion and flexibility to ensure that inmates, staff and the community are protected. The range of discretion and flexibility to invade an inmate's privacy and movement is relatively wide when compared to rights and safeguards provided to citizens in the general community. This discretion is generally granted to further ensure the safety and security of staff, prisoners and the general community.

A professional interview of Mr. Tisius was not conducted in preparation of this report. I have conducted thousands of inmate classification and security evaluations without professional interviews. My level of proficiency was not diminished when evaluations were conducted using

materials provided by counsel as in this proceeding.

Overview of Mr. Tisius' Confinement and Criminal Justice History as Provided in Documents Afforded by Counsel

Mr. Tisius criminal history includes the following:

1. Mr. Tisius is a 37-year-old (date of birth: February 16, 1981) male. (at HAB-000066 – HAB-000067). On June 14, 2000, Mr. Tisius was admitted into the St. Louis County Justice Center. He was arrested for failure to return lease or rented property valued at \$150 or more. It is also noted that he was released on the same day.
2. At MAT-032342, Chariton County Sheriff's Department (Keytesville, Missouri) a handwritten notation shows that "murder 1st two counts (police officers)".
3. At HAB-004976, Boone County Sheriff's Department, Mr. Tisius was admitted on July 8, 2010, and his arrest date was July 8, 2010.
4. At HAB-001197, State of Missouri-Department of Corrections-Commitment Report states that Mr. Tisius was sentenced to the Department of Corrections and Human Services on October 1, 2001 and sentenced to death for offenses of first degree murder that had been committed on June 22, 2000. The document reflects that Leon Egley and Jason Acton had been murdered with a firearm.
5. At HAB-001200, a Commitment Report, Case No: 06D9-CR00874-02; states Mr. Tisius was sentenced for the crime of Possession of a Prohibited Article in DOC. This proceeding involved Mr. Tisius, possessing a metal object, commonly known as a boot shank, a weapon or item of personal property that could be used in such a manner as to endanger the life or limb and security of a correctional Center or to endanger the life or limb of any offender or an employee of a correctional center to wit: Potosi Correctional Center. The offense occurred on June 6, 2006. Mr. Tisius pleaded guilty on January 7, 2009 and was sentenced to five years to the Department of Corrections concurrent with sentences that were previously imposed.
6. At MAT-058415, records reveal that Mr. Tisius was charged and found guilty of failure to return property. His arrest date is listed as October 7, 1999 and that he was found guilty on November 1, 1999. He received a suspended sentence of one year and probation for two years.

The Following Discussion is Submitted Regarding Mr. Tisius's Confinement to the Missouri Department of Corrections.

1.0 Finding: Mr. Tisius can be safely managed in the Missouri prison system while properly confined. He can be managed in this secured confinement environment for an extended period to include the remainder of his life.

Discussion: This finding remains after analysis and consideration of Mr. Tisius' confinement records within the Missouri Department of Corrections as provided by counsel. Based upon the above referenced qualifications and review of the materials reveal that Mr. Tisius' confinement history does not reflect a pattern of a prison predator nor is there evidence of his continual, methodical use of violence and power to

successfully gain control over inmates, staff or the operation of the confinement facility. There is the absence of random and systemic behaviors regarding escape or attempted escapes, violence against staff, sexual predator behaviors, or organize collective continual violence.

These findings are made understanding that confinement facilities are inherently dangerous places containing persons that are dysfunctional when evaluated using community standards of acceptable social interactions and expectations. Some laypersons to the criminal justice confinement regiment cannot totally understand inmate behavior patterns and the different cultural nuances. They often assess confinement setting behavior using community conduct standards and expectations. Many community members, alien to the confinement culture and environment, have difficulty understanding that prisons/jails are abnormal environments containing individuals collectively that have inabilities to conform and obey community expectations of resolving conflict, disputes, concerns and endangerment issues through more civil and appropriate methods. This does not mean that the adverse behavior patterns of inmate population are to be accepted and condoned. Instead, it describes why inmates demonstrate adverse behavior patterns.

The examples of incidents listed below involving Mr. Tisius while in confinement status within the Missouri Department of Corrections are discussed in a correctional system security perspective and not necessarily in a community based assessment context. I have considered all incidents and infractions contained in the official records as provided by Counsel in this proceeding. The following are examples of incidents reviewed that were considered in determining the finding:

1. Notation: at MAT-032358, Mr. Tisius requested assignment to general population on December 13, 2000, due his compliant behavior pattern for six months. The staff response to the request stated that the request could not be granted due to (1) escape risk and (2) risk to jailers.
2. Notation: at MAT-032361, Mr. Tisius' counsel requested, in correspondence dated August 3, 2000 that he be allowed to consult with clergy to which it was approved. The specifics of the approval was that the preacher be allowed to be in the cell with Mr. Tisius.
3. Notation: at HAB-004980, it is stated that Mr. Tisius' "... trial is over" and "... Potosi will send a team of four officers to pick him up."
4. Notation: at HAB-004985, it is stated that... "Subject should be considered an "escape risk" !!!!".
5. Notation: at HAB-001266, Mr. Tisius received a *Certificate of Completion of Apprenticeship* under the sponsorship of the Missouri Vocational Enterprises Apprenticeship Program on September 30, 2013.
6. Notation: at HAB-001268, it is noted that Mr. Tisius as of December 7, 2016, was assigned to "Honor Dorm" at PCC exhibiting positive behavior and conduct. It is also noted that Mr. Tisius was assigned to housing unit number 5 general population and works in the factory.
7. Notation: at HAB-001275, Mr. Tisius was assigned extra duty on May 30, 2017, and June 1, 2017.

8. Notation: at HAB-001277, Mr. Tisius received a Conduct Violation Report on March 6, 2014. The violation pertained to failure to comply with an order. This violation involved his attempt to hide a CD disk.
9. Notation: at HAB-001278, Mr. Tisius received a Conduct Violation Report on May 28, 2012. The violation involved a search of cell and the recovery of two items of clothing with the names altered.
10. Notation: at HAB-001279, Mr. Tisius received a Conduct Violation Report on March 2, 2012. The violation involved obtaining unauthorized cash card and attempting to make copies from a printer.
11. Notation: at HAB-001280, Mr. Tisius received a Conduct Violation Report on August 17, 2011. The violation involved Mr. Tisius being passed a box of ibuprofen from another offender.
12. Notation: at HAB-001281, Mr. Tisius received a Conduct Violation Report on August 9, 2010. The violation involved Mr. Tisius passing a "Top Bag" to another offender. Mr. Tisius admitted to passing the item.
13. Notation: at HAB-001282, Mr. Tisius received a Conduct Violation Report on June 4, 2010. The violation involved Mr. Tisius was in possession of 162 colored pencils which was over the authorized amount of 12 pencils. Additionally, at HAB-001283, it is noted that Mr. Tisius had made inappropriate statements to staff prior to and after his cell was "searched". Also, as notation that he is to be released back to "P/C unit".
14. Notation: at HAB-001286, Mr. Tisius received a Conduct Violation Report on October 5, 2009. The violation involved Mr. Tisius staff observing him asleep during the announced count.
15. Notation: at HAB-001287, Mr. Tisius received a Conduct Violation Report March 25, 2009. The violation involved Mr. Tisius being asleep during the announced count.
16. Notation: at HAB-001290, Mr. Tisius received a Conduct Violation Report on December 25, 2008. The violation involved Mr. Tisius being in possession of a baby powder container, an electric motor in a bag, one piece of carbon paper and three bread ties.
17. Notation: at HAB-001291, Mr. Tisius received a Conduct Violation Report on October 12, 2008. The violation involved Mr. Tisius being in possession of one bag of tobacco, one lighter, and one pack of rolling papers.
18. Notation: at HAB-001293, Mr. Tisius received a Conduct Violation Report on September 29, 2008. The violation involved Mr. Tisius sleeping doing count.
19. Notation: at HAB-001296, Mr. Tisius received a Conduct Violation Report on August 28, 2008. The violation involved Mr. Tisius being out of his assigned visiting area using the microwave.
20. Notation: at HAB-001297, Mr. Tisius received a Conduct Violation Report on July 17, 2008. The violation involved Mr. Tisius being asleep during count.
21. Notation: at HAB-001299, Mr. Tisius received a Conduct Violation Report on May 25, 2008. The violation involved Mr. Tisius tattooing another inmate. Mr. Tisius destroyed potential evidence by flushing it down the toilet. The tattoo gun and accessories were placed in a lockbox.
22. Notation: at HAB-001301, Mr. Tisius received a Conduct Violation Report on February 18, 2008. Mr. Tisius was found in possession of three pieces of carbon paper and "ZZ" loose paper as well as photocopies were discovered in his cell by

- staff. The narrative also stated that these items are used in the tattoo process.
23. Notation: at HAB-001304, Mr. Tisius received a Conduct Violation Report on March 8, 2007. Mr. Tisius was ordered to submit to a urine sample drug test which he refused by stating, "fuck you bastards".
 24. Notation: at HAB-001306, Mr. Tisius received a Conduct Violation Report on December 29, 2006. Mr. Tisius was discovered to have body art on his wrists and stomach. Staff also found several various spoons, and destroyed a state pillow and pillowcase.
 25. Notation: at HAB-001308, Mr. Tisius received a Conduct Violation Report on September 19, 2006. Mr. Tisius had to altered undershorts (waistband). Mr. Tisius acknowledged to staff that the undergarments belonged to him and not his cell mate.
 26. Notation: at HAB-001313, Mr. Tisius received a Conduct Violation Report on June 6, 2006. Based on a reliable source, Mr. Tisius radio was concealing a "homemade" weapon hidden under the circuit board. Mr. Tisius gave a statement to staff revealing that another inmate, ... "Placed it there and told me it would be in my best interests to keep it, it's well-known I have problems with the Muslims." Also, at HAB-001316, it is memorialized that ... "Inmate Tisius was placed on TASC status per the Shift Supervisor after it was discovered that Tisius had the shank out of a hidden inside his radio."
 27. Notation: at HAB-001318, Mr. Tisius received a Conduct Violation Report on April 12, 2006. The conduct violation involved a large group of inmates that walked towards housing unit number six. Staff ordered these inmates to return to the appropriate location. The group continued towards the housing unit. Staff again ordered that this group return to their appropriate location; however, several offenders at the front of the group did turn around and started walking towards staff. Mr. Tisius failed to return and continued to move toward unit number six along with 17 offenders. This action delayed the release of the final walk to mainline until the sally port could be cleared and ID cards of offenders involved could be collected. It is believed that this was organized and that the inmates participating were deliberately disobeying staff directives.
 28. Notation: at HAB-001321, Mr. Tisius received a Conduct Violation Report on January 4, 2006. This conduct violation involved Mr. Tisius sleeping during count.
 29. Notation: at HAB-001322, Mr. Tisius received a Conduct Violation Report on December 21, 2005. Mr. Tisius and another inmate were found passing two cans of soda which was unauthorized.
 30. Notation: at HAB-001323, Mr. Tisius received a Conduct Violation Report on February 1, 2005. The violation involved the discovery of one set of broken earphones, two white altered tapes, one extra photo album, and one pencil sharpener with a loose blade. Mr. Tisius admitted to staff that the items belong to him and the blade was taken from his pencil sharpener to cut photos.
 31. Notation: at HAB-001325, Mr. Tisius received a Conduct Violation Report on September 6, 2004. Mr. Tisius was heard by staff stating "if this officer trips on us today let's take care of business and go to the hole". It was further stated by staff that Mr. Tisius and another offender were observed staring the staff member down and moving their heads. Also, at HAB-001327, notations were made that the seriousness of the violation involving threats and Mr. Tisius was responsible for this violation.

32. Notation: at HAB-001329, Mr. Tisius received a Conduct Violation Report on September 5, 2004. Mr. Tisius had in possession an excess bag of smoking paraphernalia.
33. Notation: at HAB-001330, Mr. Tisius, on May 28, 2004, had a classification hearing concerning protective custody. Mr. Tisius stated to staff that he was in fear for his life from other inmates. He further stated that these inmates were "booty bandits" and attempted to bother him. He further stated he did not want additional trouble than what he already has and does not think he can make it in general population. The committee recommendation is that he was to be assigned to protective custody pending bed space. Further, at HAB-001331, protective custody confinement was ordered on the basis that Mr. Tisius was in an immediate security risk, there was an urgent need to separate him from others for his own safety or that of others, and that the housing assignment was necessary for the safety and good order of the institution.
34. Notation: at HAB-001332, Mr. Tisius received a Conduct Violation Report on February 5, 2004. This violation involved staff observing Mr. Tisius receiving a tattoo from his cellmate.
35. Notation: at HAB-001334, Mr. Tisius received a Conduct Violation Report on September 10, 2003. Mr. Tisius was observed by staff walking in the wing without an orange jumpsuit on while on activity restrictions.
36. Notation: at HAB-001335. Mr. Tisius received a Conduct Violation Report on August 29, 2003. This violation involved staff finding a thin wire approximately 4 ½ inches long and sharpen on one end with a loop on the other end. The item was found in a Bible.
37. Notation: at HAB-001336, Mr. Tisius received a Conduct Violation Report on July 18, 2003. This violation involved Mr. Tisius lying in his bunk during count.
38. Notation: at HAB-001337, Mr. Tisius received a Conduct Violation Report on June 3, 2003. This violation involved Mr. Tisius sitting on the floor in the kitchen resting his head on the stove. The staff member had requested him to acknowledge the presence of staff on at least three occasions.
39. Notation: at HAB-001338, Mr. Tisius received a Conduct Violation Report on March 5, 2003. Staff observed Mr. Tisius in possession of excess canteen items (12 pack of RC Cola).
40. Notation: at HAB-001339, Mr. Tisius received a Conduct Violation Report on September 26, 2002. The violation involved Mr. Tisius receiving a food-service shirt from another inmate. Upon a search, a rubber seal had been concealed. Mr. Tisius was assigned extra duty.
41. Notation: at HAB-001341, Classification Hearing was conducted on June 27, 2002. It was memorialized that Mr. Tisius had been accepted into the Psychiatric Treatment Unit however, he requested to be returned to 2A housing.
42. Notation: at HAB-001342, Mr. Tisius received a Conduct Violation Report on June 3, 2002. The violation involved Mr. Tisius lying in his bunk during count.
43. Notation: at HAB-001343, Mr. Tisius received a Conduct Violation Report on May 25, 2002. The violation involved Mr. Tisius lying in his bunk during count.
44. Notation: at HAB-001345, Mr. Tisius received a Conduct Violation Report on May 15, 2002. The violation involved Mr. Tisius being asleep in his bunk during count.
45. Notation: at HAB-001346, Mr. Tisius received a Conduct Violation Report on April

- 2, 2002. This violation involved Mr. Tisius having possession of a tattoo gun, beard trimmer belonging to another offender and a Walkman belonging to another offender.
46. Notation: at HAB-001347, Mr. Tisius received a Conduct Violation Report on February 18, 2002. This violation involved Mr. Tisius not sleeping on his assigned bunk. It was an issue of top bunk versus bottom bunk.
 47. Notation: at HAB-001348, Mr. Tisius received a Conduct Violation Report on March 18, 2002. This violation involved Mr. Tisius lying on his bed during count.
 48. Notation: at HAB-001350, Mr. Tisius received a Conduct Violation Report on February 3, 2002. This violation involved Mr. Tisius being out of bounds by going to a table during walk.
 49. Notation: at HAB-001351, Mr. Tisius received a Conduct Violation Report on January 14, 2002. It involved Mr. Tisius talking on the telephone on the inappropriate wing of the housing unit and he had been advised of this violation before.
 50. Notation: at HAB-001352, Mr. Tisius received a Conduct Violation Report on January 9, 2002. It involved Mr. Tisius staff discovering that he had in his possession a Walkman which belong to another inmate. Mr. Tisius stated that the Walkman was loaned to him by another inmate.
 51. Notation: at HAB-001353, Mr. Tisius received a Conduct Violation Report on November 24, 2001. It involved Mr. Tisius lying on his bunk during count.
 52. Notation: at HAB-001355, Mr. Tisius received a Conduct Violation Report on October 25, 2001. This violation involved in envelope that contained one fourth of what appeared to be loose tobacco. Additionally, two roll cigarettes did appear to be of the same substance. Administrative segregation housing did not allow possession of tobacco.
 53. Notation: at MAT-058497, Mr. Tisius received a classification hearing on February 4, 2009. This hearing pertained to the fact that Mr. Tisius was in protective custody due to the issue of his endangerment from two inmates. These two inmates received lock up based on issues. The recommendation from staff was for him to be assigned to PC pending bed space availability.
 54. Notation: at MAT-058500, as of February 4, 2009, Mr. Tisius had at least 27 declared enemies within the Missouri Department of Corrections.
 55. Notation: at MAT-058544, on June 20, 2002 Mr. Tisius advised staff that he was attempting to stay away from an inmate in compliance with what the staff told him to do. He further advised staff that he continued to receive letters from this particular inmate. The correspondence contained sexual explicit content. Mr. Tisius advised staff that he overheard this inmate telling other persons that he is going to get even and it won't be pleasant. Mr. Tisius requested that additional inmates be listed on his enemies list. Additionally, there are notations in the materials reviewed where he advised staff of additional enemies so that appropriate security protocols were implemented.
 56. Notation: at MAT-058574, Mr. Tisius received a Conduct Violation Report on October 21, 2009. This violation involved Mr. Tisius making a comment to which a correctional staff member considered to be insulting behavior. More specifically, it entailed several officers going into his cell and he made the comment to the effect that staff should not do anything in the cell that he would not do.
 57. Notation: at MAT-058578, Mr. Tisius received a Conduct Violation Report on

October 5, 2009. This violation involved Mr. Tisius sleeping at count time.

58. Notation: at MAT-058580, Mr. Tisius received a Conduct Violation Report on March 25, 2009. This violation involved Mr. Tisius sleeping at count time.
59. Notation: at MAT-087078 to Mat_087090, testimony was provided pertaining to Chariton County, Missouri Deputy Sheriff observing Mr. Tisius, in a cell, while the deputy entered into the booking end, approximately fifteen to twenty feet separated them. The deputy saw movement in the cell. Since staff continuously watch inmates, the deputy at MAT-087080 stated "I just happened to glance over at his (Mr. Tisius') cell." The deputy further stated that Mr. Tisius was observed having "his hands in a position of holding a pistol doing motions of a shooting." The testimony also stated that Mr. Tisius held his hands towards the deputy "and made motions and a noise of shooting" the deputy several times.

Based on the deputy's testimony, a prison operational analysis presents the following:

- a) There is an absence of criminal charges or disciplinary violations for the observations made by the deputy. When inmates conduct behaviors that are in violation of institutional rules or statute then it is the responsibility of the officials to conduct an investigation or administrative review. I've not been provided with documentation that reflects that any sanction, reclassification, additional security measures or any other measures were taken as a result of this observation.
 - b) Based on the testimony presented, Mr. Tisius was confined in an appropriate security housing configuration that did not present a risk of imminent endangerment to the law-enforcement official who made the observation. According to the testimony, at no time did Mr. Tisius have possession of a firearm or any other weapon to inflict endangerment to the law-enforcement official when this observation was made.
 - c) Unfortunately, inmate population make immature behavioral gestures that law enforcement officials should be observant but to also assess the gesture in a proper context. In this particular case, the observation should have been appropriately memorialized at the time of the incident for information purposes only.
 - d) For the purpose of my analysis, it is reasonable to conclude that Mr. Tisius was confined in Chariton County on July 2, 2000, when this observation was made. (17 years and 11 months ago). Furthermore, Mr. Tisius has been constantly observed for an extended period by security staff without Mr. Tisius committing violence against them. The gravity of this observation by law enforcement is of the least amount of significance in determining his adjustment to incarceration, endangerment to staff and other inmates.
60. Notation: at MAT-086955 to MAT-086959, testimony was provided pertaining to Boone County, Missouri correctional officer interacting with Mr. Tisius while the officer was performing duties at the facility. The officer testified that on April 6, 2001, Mr. Tisius requested to speak with the transportation officer immediately. The officer testified that the purpose of the request involved Mr. Tisius wanting to be immediately moved out of the county. The correctional officer advised Mr. Tisius to complete a request form and the officer offered to provide him with the request form. The officer also testified that Mr. Tisius' stated he had a court order that allowed him to be housed in another facility outside of Boone County which would allow him to have special visits with family, loved ones and his attorneys. Further conversation

with the correctional officer, Mr. Tisius was advised that he was not going to be transferred. The correctional officer testified that Mr. Tisius was surprised and shocked. The testimony of the correctional officer additionally stated that Mr. Tisius inquired as to whether the officer knew who he was. The officer replied, “not particularly”. The officer testified that Mr. Tisius responded by asking don’t you “keep up with the current events”. The officer’s reply was no. The officer’s testimony was that Mr. Tisius stated “that he had killed two police officers up in Moberly”.

Based on the deputy’s testimony, a prison operational analysis presents the following:

- a) There is an absence of criminal charges or disciplinary violations for the observations made by the correctional officer. When inmates conduct behaviors that are in violation of institutional rules or statute then it is the responsibility of the officials to conduct an investigation or administrative review. I’ve not been provided with documentation that reflects that any sanction, reclassification, additional security measures or any other measures were taken as a result of this observation.
- b) Based on the testimony presented, Mr. Tisius was confined in an appropriate security housing configuration that did not present a risk of imminent endangerment to the jail official who made the observation.
- c) Unfortunately, inmate population make immature comments that staff should be observant. In this particular case, the observation should have been appropriately memorialized at the time of the incident for information purposes only.
- d) For the purpose of my analysis, it is reasonable to conclude that Mr. Tisius was confined in Boone County on April 6, 2001, when this observation was made. (17 years and 2 months ago). The gravity of this observation by correctional staff is of the least amount of significance in determining his adjustment to incarceration, endangerment to staff and other inmates.

Discussion:

- A. From an operational perspective, Mr. Tisius was correctly charged and adjudicated for having in his possession a piece of metal from a boot that staff assessed as being a potential weapon. Assessment of this violation, which is conducted in a prison operational context, reveals that Mr. Tisius has not attempted or inflicted bodily harm to another inmate or staff member with or without a weapon, he has not demonstrated a chronic history of violent behavior while in lawful confinement. There is no validation that he has demonstrated gang or security threat group systemic or individualized violence. It is also noteworthy from a correctional assessment perspective that the piece of metal from the boot is not reported to have been sharpened on either end or manipulated in some way to be used as a weapon. In my experience incidents of this kind are largely resolved without adjudication in court. That is to say an incident of this sort in my experience would most likely not be prosecuted criminally.

In assessing a weapon possession violation, within the confinement setting assessment, must be made as to a possible motivation. Inmate population may possess weapons as a result of: a) other, more predator, population requiring the inmate to

“hold” the possible weapon, b) the inmate that has been found in possession of a weapon was in fear of his life and needed protection, c) the inmate may have self-mutilation intent, as well as, d) the inmate may have possessed this potential weapon as an instrument to conduct hobby craft activities. Therefore, it is noteworthy, in a prison operational context, that Mr. Tisius had life endangerment issues from other inmates that required protective custody status being granted to him. He has not demonstrated violence while in confinement.

- B. Mr. Tisius has accrued a number of disciplinary violations between October 1, 2001 and June 24, 2018 (16 years 8 months). At the completion of this review there is the absence of violent behavior.

The analysis of the behaviors delineate that rule infractions exemplified by interfering with the count, creating a disturbance¹, disobeying an order, verbal and gesturing threatening behavior, and possession of contraband, most often represent a person’s response to the harsh reality of confinement. The inmate is told what he can do, when to do it, where he can place items, what he can have and not have, what he can eat, what he can wear as well as many other rules he must follow daily, weekly, yearly and into decades. As the inmate becomes aware that the correctional regiment is steadfast and the aging processes of the inmate continues, the inmate begins to become more compliant over the decades.

Other factors were considered to validate the finding that Mr. Tisius can be and has been properly managed in the Missouri Department of Corrections which includes the following:

1. Mr. Tisius is now 37 years of age. His age is a factor in formulating the finding. My extensive experience in managing inmate population has shown that the age and/or the aging of a prisoner has a relationship to the inmate becoming less aggressive and disruptive. His current age places him in the age in which the age factor identifies him as a less aggressive, disruptive inmate who demonstrates less chronic dysfunctional prison behaviors. Again, there is the absence of Mr. Tisius committing continual violence as he has aged. In fact, there is the absence of random and/or systematic violence incidents while he has been in prison.
2. Another factor considered is as Tisius further ages, he will probably need to be further protected from the predatory more dangerous, violent and disruptive prison population due to the age factor. The older he becomes the greater the endangerment level he will endure. The younger predator population prey upon the seemingly weaker, sicker, older and non-gang affiliated inmate. These attacks are often without provocation or forewarning.
3. Again, Mr. Tisius has not committed chronic acts of group violent gang behaviors. Such behaviors may include orchestrating full scale riots/disturbances, active

¹ The term “disturbance” in a correctional setting has a wide spectrum of description. This term can use to describe a riot, hostage taking, to not moving to location as ordered by staff. The term regarding “disturbance” in context of the report involves the lesser degree of rule violations within a prison setting.

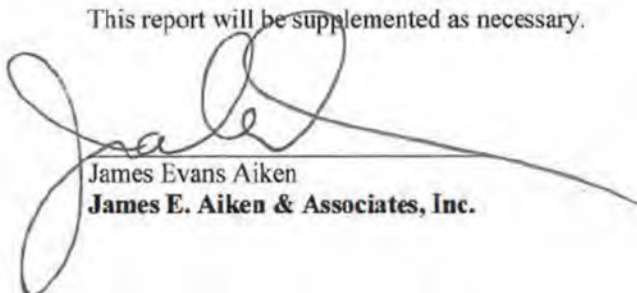
recruitment of new gang members, ordering prison murders, as well as controlling geographic areas of the confinement facility.

4. Mr. Tisius is void of prison escapes or attempts to escape.
5. Mr. Tisius prison history is void of contraband substance abuse violations.
6. Further, Mr. Tisius, under the very best circumstances, may receive life in prison without consideration of parole. Therefore, Mr. Tisius will remain in custody for the remainder of his life. This completely removes the issue of his potential adjustment or lack thereof in the community or the need for the prison system to prepare him for return to society. The purpose of life does not include the need of preparing him for such return. He will be confined in a prison setting for life. The confinement priority for the prison system in managing Mr. Tisius is incapacitation.
7. The confinement systems can control and manage about any type of behavior displayed by inmate population and can manage long-term confinement population. These systems include but not limited to: classification, physical structures, special equipment and technology, medical delivery, experienced staff with special training, programs, operational procedures and protocols, information technology, chain of command structure, emergency response units, inmate disciplinary process, lethal and non-lethal force capability, security intelligence and physical restraints that are available to manage Mr. Tisius. The confinement facilities can kill Mr. Tisius, if necessary, to ensure that the mandate of incapacitation for life is maintained.

Expert Opinion:

It is my opinion that Mr. Tisius can be safely confined and managed within the Missouri Department of Corrections prison system for the remainder of his life.

This report will be supplemented as necessary.



James Evans Aiken
James E. Aiken & Associates, Inc.

A. Material List

County Jail Records

- St. Louis County, (06/14/2000)
- Chariton County, (06/23/2000-02/09/2001)
- Boone County, (02/09/2001-10/01/2001, 07/08/2010-07/16/2010)

Missouri Department of Corrections Records

- MDOC Records, (10/01/2001-02/2018, 10/2001-05/2010, PCR2 Ex. 15)
- MDOC Property Records, (10/2001-06/2012, PCR2 Ex. 16)
- MDOC Work Records, (10/2001-05/2010, PCR2 Ex. 20)
- MDOC Memos re: Boots, (2006, PCR2 Ex. 69)
- MDOC Individual Confinement Records, (10/2001-05/2010, PCR2 Ex. 83)

Transcript Excerpts

- Donna Harmon, (08/02/2001: 1002-1014, 07/13/2010: 898-905)
- Jacqueline Petri, (08/01/2001: 893-898, 07/13/2010: 905-911)
- Tori Teague, (02/12/2014: 296-307)
- Timothy O'Hara, (06/25/2014: 220-233)
- Gerald Greene, (171-180)
- Peron Johnson (180-190)

Reports and Photographs Re: 07/02/2000 Chariton County Jail Incident

Report Re: 04/06/2001 Boone County Jail Incident

Boone County Misc. Report dated 05/03/2001

Report by Jackie Petri to Sgt. Shelley Martin dated 05/06/2001

Report by Sgt. Shelley Martin to Off. Jackie Petri dated 05/09/2001

Boone County Misc. Report dated 06/06/2001

Boone County Misc. Report dated 06/06/2001

Complaint Report by Off. Jackie Petri dated 06/12/2001

Memorandum of Interview dated 06/21/2013

Memorandum of Interview dated 07/29/20

Attachment B**CURRICULUM VITAE OF JAMES E. AIKEN****James Evans Aiken**

The undersigned maintains a consulting concern in prison management and adjustment matters as James E. Aiken & Associates, Inc. I also served as Director of Corrections for the United States Virgin Islands, and Commissioner for the Indiana Department of Correction. I began my corrections career in 1971 at the South Carolina Department of Corrections as a counselor with the Comprehensive Drug Abuse Treatment Program. Also, while with the South Carolina Department of Corrections, I held positions as Deputy Regional Administrator in the Midlands Correctional Region (managing 16 prisons), Deputy Warden and Administrative Assistant to the Warden of the Manning Correctional Institution, Deputy Warden and Warden at the Central Correctional Institution (state penitentiary), and Warden of the Women's Correctional Center. While serving in these positions, I received extensive experience in the areas of prison classification and management of inmate population. During my years in prison work, I have conducted thousands of inmate classification evaluations relative to their adjustment to prison and current/future danger to the public, prison staff, and other inmates. These reviews included minimum custody (low security offenders) to maximum security (violent, high profile, disruptive, predatory, aggressive inmates). Additionally, I participated in the development of prison classification systems designed to better protect inmate population from other more violent inmates and the public.

The United States Congress appointed me, in July 2004 to the National Prison Rape Elimination Commission. Over a five (5) year period, the Commission conducted comprehensive hearings and examined all penological, economic, physical, mental, medical and social issues relating to prison rape in America. At the conclusion of its review, the Commission issued a comprehensive report on the subject, including a recommended set of national standards to reduce and eliminate prison rape. Also, a grant program made annual grants (up to \$40 million each year) to state and local programs that enhanced the prevention and punishment of prison rape and maintain safe and secure prisons despite budget reductions. The Commission had authority to issue subpoenas, and the statute allows for the Attorney General to seek enforcement of subpoenas in district court. The Federal Bureau of Prisons must have total compliance to the final standards.

I received a Master Degree in Criminal Justice from the University of South Carolina and Bachelors of Arts Degree from Benedict College, Columbia, South Carolina. I have also taught a number of courses in corrections at the university and technical college levels.

I have consulted with the U.S. Department of Justice, National Institute of Corrections, as well as served as a private contract provider to federal, state and county jurisdictions (jails and prisons) in a number of areas to include but not limited to inmate classification, managing violent youthful offenders in adult prisons, managing prison security systems, correctional leadership development, assessment of security operational performance, executive training for new and experienced wardens, prison critical event avoidance, management of super-maximum security prisons, management of the hard to manage-violent inmate, STG/gang management, and riot management.

I have also consulted with attorneys and rendered expert testimony in capital, criminal and civil

cases. I have been qualified as an expert and provided such testimony in the states of Washington, Ohio, Georgia, Arizona, Delaware, North Carolina, Montana, Pennsylvania, New York, South Carolina, Indiana, Virginia, Maryland, Louisiana, Oregon, New Hampshire, Missouri, Alabama, Mississippi, Florida, Texas and the United States District Courts of New York, Connecticut, Virginia, Ohio, South Carolina, Michigan, Arizona, West Virginia, Florida, Texas, Georgia, Alabama, Missouri, Tennessee, Louisiana, District of Columbia and Pennsylvania as well as the Court of Queen's Bench, Canada relative to: future danger posed to inmates, staff and the community by trial defendants, the ability of inmates to adjust to prison, classification of inmates to determine proper confinement levels, prison conditions, and other matters generally relating to prisons, jails, and criminal justice matters.

More specific overview of background qualifications is submitted: From August 1992 to August 1994, I was Director of the Bureau of Corrections for the United States Virgin Islands. My responsibilities encompassed the overall administration of the bureau which included jail and prison facilities. I also worked closely with other territorial agencies, the legislature, courts, and federal governmental entities. In the Virgin Islands, I had a specific mission to re-establish a correctional system (prison and jail) which was diminished by overcrowded conditions, gang problems, random and systematic violence, escapes, non-compliance with court orders (to include medical care and delivery issues), general mismanagement, and public mistrust.

From March 1989 until August 1992, I was Commissioner for the Indiana Department of Corrections. I was responsible for the overall administration of the Indiana corrections system that consisted of 46 separate adult and juvenile facilities with a population of 14,000 inmates and parole services with a population of 3,490 parolees. I reported directly to the Governor of Indiana and worked closely with the state legislature. Also, during my Indiana administration, I created a Division of Security to address gang problems, contraband control, drug testing, and other concerns. My administration also initiated an Offender Relations Division to resolve offender grievances and complaints, and to reduce court involvement.

From September 1971 until March 1989, I was with the South Carolina Department of Corrections in a variety of capacities including Deputy Regional Administrator, and different times as Warden of the Central Correctional Institution, Warden of the Women's Correctional Institution and as an inmate social worker.

As Deputy Regional Administrator from April 1987 to March 1989, I supervised sixteen South Carolina institutions at all security levels including maximum. I supervised a workforce of 2,500 with an annual budget of \$97 million. This position required that I select institution heads and I was intimately involved with new facility design.

As Warden of the Central Correctional Institution (state penitentiary) from May 1982 until April 1987, I operated the largest correctional facility in South Carolina with 1,800 medium and maximum custody inmates, 530 staff members, and an annual budget of \$8 million. I was personally responsible for all activities involving security and treatment staff, as well as coordinating and supervising all welfare and morale services for inmates. CCI is now closed. At the time it was where the South Carolina death row was located and where executions were carried out. I was called upon to carry out two executions. From September 1976 until

September 1979, I was Deputy Warden of this institution.

As Warden of the Women's Correctional Institution from September 1979 until May 1982, I was chief administrator of a state women's prison. I was responsible for all employee hiring, evaluation, and supervision as well as, all aspects of inmate welfare. During my tenure, I studied and reviewed all available records and files on assigned inmates to evaluate their behavior changes and rehabilitation progress.

From about 1990 to 1992, I was also Adjunct Professor at the Indiana University-Purdue University in Indianapolis, teaching corrections related criminal justice courses.

I am able to render an expert opinion, in an operational context, regarding future danger and adaptability of inmates and issues pertaining to prison/jail safety, operations, administration and security.

Summary of Qualifications:

I have over forty (45) years of experience in correctional administration, facility operations/management, inspection/assessment of facility performance and technical assistance consultations with clients in the United States, Dutch Kingdom, Canada, Costa Rica, Puerto Rico, and U.S. Virgin Islands. He has provided services to federal, state, county and local correctional facilities and jurisdictions in the areas of correctional leadership/organizational development, management of prison disturbances, system productivity, cost containment, enhancing prison security systems, managing the violent youthful offender in adult prisons, gang/security threat group (STG) management, new warden's training, super maximum security facility management training, inmate classification, assessment of prison security/operational performance, prison staffing analyses, reduction of prison critical security events (murder/suicide/riot/hostage situation) and advising governments relative to prison privatization transactions/productivity.

Employment History:

August 1994 to present, president, James E. Aiken and Associates, Inc. (correctional consultant firm); August, 1992 to August 1994, Director, Bureau of Corrections, United States Virgin Islands and consultant; March, 1989 to August, 1992, Commissioner, Indiana Department of Correction; April, 1987 to March 1989, Deputy Regional Administrator, South Carolina Department of Corrections; May, 1982 to April, 1987, Warden, Central Correctional Institution (state penitentiary) South Carolina Department of Corrections; September, 1979 to May, 1982, Warden, Women's Correctional Center, South Carolina Department of Corrections; September, 1976 to September, 1979, Deputy Warden for Administration, Central Correctional Institution (state penitentiary) South Carolina Department of Corrections; February, 1974 to September, 1976, Deputy Warden for Institutional Operations, Manning Correctional Institution, South Carolina Department of Corrections; September, 1972 to February 1974 Administrative Assistant to Warden, Manning Correctional Institution, South Carolina Department of Corrections; September, 1971 to September, 1972, Social Worker for Substance Abuse Treatment, South Carolina Department of Corrections.

Relevant Experience:

I have provided direct professional and consultant services in almost every aspect of the correctional field. More specifically, my scope of expertise includes the following:

Director, Bureau of Corrections, United States Virgin Islands

Held the position as Director that encompassed authority and responsibility for the overall administration of the Corrections Bureau for the United States Virgin Islands (jails and prison). Worked closely with other territorial agencies, the legislature, courts and federal governmental agencies.

My task was to coordinate a project to re-establish a jail/prison correctional system which was diminished by overcrowded conditions, lack of medical care, escapes, and noncompliance to court orders, corruption, general mismanagement, negative media, gang involvement, work force dysfunction, and public mistrust.

Commissioner, Indiana Department of Correction

The position encompassed the overall administration of the Department of Correction for the State of Indiana, which consisted of forty-six (46) separate adult and juvenile facilities (population 14,000) and parole services (population 3, 490) with an operations budget of \$305 Million.

As Commissioner, reported directly to the Governor of the State of Indiana and worked closely with the legislature, other state and federal agencies, the courts and the public. My tasks were to establish an operational mission and priority of issues for the agency; establish agency mission goals; manage overpopulation, develop a new basic employee supervision program; and reorganized daily operations to ensure a more responsive and efficient structure.

My accomplishments included but were not limited to:

Offender Health Care Delivery: The department contracted with the Indiana University School of Medicine to provide a medical director for clinical services. Developed and implemented a program to reduce cost and increase the quality of medical care.

Security: Created the Division of Security to address agency security needs. Initiated a gang intelligence network to tract and evaluate their activities. Increased contraband control efforts by additional searches, drug testing, use of K-9 units, provided additional training and equipment, and increased prosecution efforts. Designed 650 bed maximum security unit that conformed to modern correctional security management and Court mandates. Conducted meetings with the National Guard, State Police, as well as other mutual aid agencies to coordinate and develop an emergency response and disaster preparedness program. Conducted full response drills to evaluate the agency's response capability. Evaluated and enhanced escape prevention/apprehension measures. Conducted security audits and inspections of facilities.

Offender Relations: Established an Offender Relations Division and appointed a coordinator. This division functions as part of Internal Audits and works in tandem with the Division of Internal Affairs, the Operations Division and the Division of Legislative and Information Services. The task of this division is to resolve offender grievances and complaints that originate from inside the agency and resolve them prior to court involvement.

Prison Population:

- Completed site selection, plans and construction of a new maximum security Institution
- Increased community corrections coverage from 35 to 50 counties (from 3,500 to 7,000 clients)
- Established community service/restitution programs
- Established county work release programs
- Established residential treatment programs and created home detention utilizing electronic monitoring
- Created over five hundred (500) new emergency prison beds within the first nine months of tenure

Juvenile Justice:

- Reduced Indiana Boy's School population from a high of 670 in 1989 to a low of 380 in 1990
- Conducted comprehensive reviews using several committees of community representatives concerning treatment programs, educational programs and employee training programs
- Established a Research Department at the Indiana Boy's School.
- Group home placements had tripled during 1992.
- Community involvement and recreational programs have been increased at both Indiana Boy's School and Indiana Girl's School.

Cost Containment: Developed a plan to increase participative management and input to the budget process. Meetings were held with State Budget Agency personnel on a regular basis in an effort to increase the Budget Agency's participation in the department's budget preparation regarding cost control. Reduced the operational budget of 305 million dollars by 41 million dollars for fiscal year 1992.

**Deputy Regional Administrator, Midlands Correctional Region, South Carolina
Department of Corrections**

Served as the Deputy Chief Administrator for the following: Directly planned, prescribed and supervised activities of sixteen (16) institutions, including minimum, medium and work release, shock probation (boot camp), restitution centers and maximum security facilities. Also, had general supervision of a ninety-seven (97) million dollar budget, as well as a work force of 2,500 employees. Duties also included policy development and interaction with lawmakers, management of over population, the community and other departmental agencies concerning long-range agency planning and developing agency future needs. Additionally, made selections of institutional heads, as well as being involved in new facility design, reviewed all use of force actions, and provided supervision to prison wardens during emergency situations and normal

operations.

Warden, Central Correctional Institution, South Carolina Department of Corrections

The previous largest correctional facility in South Carolina with 1800 medium/-maximum/super maximum custody inmates, 530 staff members, and an operating budget of eight (8) million dollars. Served as the chief administrator for the following areas/- activities: Directly planned, prescribed and supervised all security control and safety activities/operations, as well as, conducted announced and unannounced inspections of the institution. Interviewed, selected and evaluated employee's performance and effected other personnel actions as required. Personally responsible for all activities involving population management, security and treatment staff, as well as, coordinated and supervised all welfare/morale services for inmates to include medical delivery and access. Supervised and coordinated all activities with representatives from non-departmental agencies. Duties also involved emergency preparedness, interpreting all laws, policies, rules and regulations, compliance with court orders (conditions of confinement) and operating procedures for employees and inmates. Studied and analyzed long-range department requirements for institutions, as well as participating in litigation action involving the South Carolina Department of Corrections. Duties also included meeting with the Inmate Advisory Council and acting on recommendations received from the Inmate Grievance Committee, as well as meeting with members of the legislature on matters relating to corrections. Also was responsible for carrying out the capital punishment laws for the state of South Carolina. This facility also provided high security management for population that were under the jurisdiction of the South Carolina Department of Mental Health and for population that were in pre-adjudication status that required more intense security to which the jail system could not provide.

Warden, Women's Correctional Institution, South Carolina Department of Corrections

Served as the chief administrator for the following: Directly planned, prescribed and supervised all security, control and safety activities and operations, personally responded to all disturbances and emergencies, interviewed/selected and evaluated employee's performance, counseled employees, supervised and coordinated all activities of the security and treatment staff, management of overpopulation, coordinated and supervised all welfare and morale services for female inmates including clothing, food service, mail service, visitation, medical services, religious services, educational programs and recreational programs. Supervised the implementation and executing of all laws, policies, rules, regulations and operating procedures applicable to the Women's Correctional Center. Also, studied and reviewed all available records/files on assigned inmates to evaluate their behavioral changes and rehabilitation progress. Duties included meeting with the Inmate Advisory Council as well as receiving and acting upon recommendations received from the Inmate Grievance Committee.

Deputy Warden/Administration, Central Correctional Institution, South Carolina Department of Corrections

Served as the Institutional Coordinator for the following areas/activities: Maintenance/construction, boiler room/energy, food service, employee parking, canteen services, Adjustment Committee, mail service, all security systems, transportation, pest control, criminal

investigations and emergency response.

Deputy Warden/Institutional Operations, Manning Correctional Institution South Carolina Department of Corrections

Served as the Institutional Coordinator for the following areas: Youthful Offender Division, medical services, living areas, maintenance/construction, laundry services, visitation, emergency response, security, transportation, food service, commissary, administrative/punitive segregation, officer's quarters, classification teams, inmate interview/correspondence, recreation programs, energy (usage/conservation), Parole Board (prepared parole evaluations), supervision of security staff of fifty-five (55) employees, Chairman of Employee Evaluation Committee, purchasing, inmate pay and Chairman of Adjustment Committee. Prepared correspondence for the warden, conducted the majority of institutional investigations, coordinated all escape apprehension efforts and remained on twenty-four (24) hour call.

Administrative Assistant/Institutional Operations, Manning Correctional Institution, South Carolina Department of Corrections

Responsibilities included vocational rehabilitation, alcoholics anonymous, Project Mate (Paraprofessional Counseling Program), Classification Team #2, Pastoral Care, Drug Abuse Treatment Program, Recreation Program, Occupational Safety and Health Act (O.S.H.A.), Emergency Response, Work Release Program, Education Program, tours, Employee Evaluation Committee member and inmate interviewing/correspondence. Performed duties of deputy warden in his absence and remained on twenty- four (24) hour call at all times.

Social Worker/Drug Abuse Treatment Program, Manning Correctional Institution, South Carolina Department of Corrections

Responsibilities included conducting group therapy and individualized counseling to offenders with drug problems. Conferred with the warden and staff to integrate the Drug Abuse Program with other institutional activities. Member of the Adjustment committee and the Warden's Treatment Team.

A major focus of my career has been the assessment and restoration of facilities and systems that have experienced chronic and acute security critical events and management shortfalls. These have included issues of:

- Inmate management and security,
- staff malfeasance,
- corruption,
- prison violence,
- sexual misconduct potential and actual critical events in confinement settings
- security critical-event prevention, evaluation, and management,
- budget shortfalls,
- public loss of trust in the confinement system,
- inmate loss of trust in the professionalism of confinement facility staff,

- staff loss of trust in the professionalism of administrators,
- emergency response and preparedness,
- inmate disruptive and violent behavior management,
- confinement facility and system culture assessment and improvement,
- confinement facility and system overall performance assessment,
- performance of death penalty executions of condemned inmates,
- inmate classification system (design, implementation and monitoring),
- addressing civil legal complaints,
- adherence with court orders,
- inmate disciplinary system performance assessments,
- confinement facility security technology (development, implementation and monitoring),
- new prison construction,
- renovation of existing confinement facilities to enhance security performance,
- confinement facility operational policy and procedure issues,
- post order development, reassessment, interpretation, and monitoring,
- facility operational performance assessments,
- policy development and interpretation,
- contraband control,
- staff training and development,
- evaluation of training,
- employee productivity evaluations,
- employee discipline,
- confinement facility cost containment strategies,
- use of force and restraint evaluation and implementation,
- criminal and administrative investigations (operational evaluations) of confinement setting critical incidents,
- staff supervision, and
- Gang/SGT management.

I have also assisted the legislative and executive branches of government on the state and federal levels by providing expert advice concerning budgetary issues and statutory reforms regarding confinement facilities and systems.

Additionally, I have provided consulting services to the U. S. Department of Justice, National Institute of Corrections, as well as served as a private contract provider to federal, state and county jurisdictions in a number of areas including, but not limited to:

- inmate classification,
- management of women offenders,
- managing violent youthful offenders in adult prisons,
- managing prison security systems,
- prison culture change,
- correctional leadership development,

- assessment of security operational performance,
- executive training for new and experienced wardens,
- prison critical event avoidance,
- management of super-maximum security prisons,
- management of the hard-to-manage violent inmate,
- riot/gang management,
- use of force evaluation and application, and
- post critical event evaluations.

DECLARATION OF LAURENCE STEINBERG

I, Laurence Steinberg, declare as follows:

1. My name is Laurence Steinberg. My address is 1924 Pine Street, Philadelphia, Pennsylvania, 19103, USA.

2. I hold the degrees of A.B. in Psychology from Vassar College (Poughkeepsie, New York) and Ph.D. in Human Development and Family Studies from Cornell University (Ithaca, New York).

3. I am a developmental psychologist specializing in adolescence, broadly defined as the second decade of life. Throughout this document, “adolescence” refers to the period of development from age 10 to age 20. Adolescence can be further divided into three phases: “early adolescence” (10 through 13), “middle adolescence” (14 through 17) and, “late adolescence” (18 through 20).

4. I am on the faculty at Temple University, in Philadelphia, Pennsylvania, USA, where I am a Distinguished University Professor and the Laura H. Carnell Professor of Psychology. I am a Fellow of the American Psychological Association, the Association for Psychological Science, and the American Academy of Arts and Sciences. I was a member of the National Academies’ Board on Children, Youth, and Families and chaired the National Academies’ Committee on the Science of Adolescence. I was President of the Division of Developmental Psychology of the American Psychological Association and President of the Society for Research on Adolescence.

5. I received my Ph.D. in 1977 and have been continuously engaged in research on adolescent development since that time. I am the author or co-author of approximately 450 scientific articles and 17 books on young people. Prior to my appointment at Temple University, where I have been since 1988, I was on the faculty at the University of Wisconsin—Madison (1983-1988) and the University of California, Irvine (1977-1983). From 1997-2007, I directed the John D. and Catherine T. MacArthur Foundation Research Network on Adolescent Development

and Juvenile Justice, a national multidisciplinary initiative on the implications of research on adolescent development for policy and practice concerning the treatment of juveniles in the legal system. I also was a member of the MacArthur Foundation Research Network on Law and Neuroscience, a national initiative examining the ways in which neuroscientific research may inform and improve legal policy and practice.

6. Since 1997, I have been studying the implications of research on adolescent development for legal decisions about the behavior of young people. More specifically, my colleagues and I have been examining whether, to what extent, and in what respects adolescents and adults differ in ways that may inform decisions about the treatment of adolescents under the law.

7. I have been qualified as an expert witness in state courts in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, the District of Columbia, Florida, Indiana, Kentucky, Massachusetts, Missouri, Nevada, Ohio, Oregon, Pennsylvania, and Wisconsin, as well as the United States District Courts for the Southern District of New York, the Eastern District of New York, the District of Connecticut, and the District of New Mexico. I have also been deposed as an expert in cases in California, Colorado, Florida, Michigan, North Carolina, Pennsylvania, Rhode Island, and Wisconsin; in U.S. District Courts in the Eastern District of Michigan, the Western District of Washington, and the District of Colorado; and in the Military Court of Commission Review in Guantanamo Bay, Cuba. In addition, I was the lead scientific consultant for the American Psychological Association (APA) when the Association filed Amicus Curiae briefs in *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2011); and *Roper v. Simmons*, 543 U.S. 551 (2005). One of my articles, "Less Guilty by Reason of Adolescence," (co-authored with Elizabeth Scott),¹ was cited in the Court's majority opinion in *Roper* and in *Miller*, as was the APA amicus brief that I helped draft.

¹ Steinberg, L., & Scott, E. (2003). Less guilty by reason of adolescence: Developmental immaturity, diminished responsibility, and the juvenile death penalty. *American Psychologist*, 58, 1009-1018.

REFERRAL QUESTION

8. Ms. Sarah Topolski, a mitigation specialist and investigator working with an attorney in the Federal Public Defenders office in the Kansas City, Missouri, who is representing Michael Tisius, requested that I outline the current understanding of neurobiological and psychological development during adolescence, the ways in which neurobiological immaturity impacts behavior and psychosocial development during this period, and the basis for and evolution of the understanding of ongoing behavioral development during these years. I have been specifically asked to summarize the state of the scientific literature on brain and psychological development during late adolescence. The scientific question I have been asked to address is whether individuals who are 19 years old also share the attributes of adolescents under 18 that trigger the constitutional protections the Supreme Court has already recognized for juveniles. Mr. Tisius was 19 years old at the time of the capital crime for which he was convicted in 2000 and sentenced in 2001.

MATERIALS RECEIVED

9. I reviewed the testimony outline prepared by Mr. Tisius's trial attorneys; depositions of co-defendant Tracie Bullington in 2001 and 2018; a transcript of the testimony of Dr. Stephen Peterson (psychiatrist) in 2004; reports prepared by James Aiken (corrections expert), Dr. Dale Watson (neuropsychologist), and Dr. George Woods (psychiatrist), all in 2018; Mr. Tisius's jail records from Boone County, Chariton County, and St. Louis County; and Mr. Tisius's records from the Missouri Department of Corrections.

OVERVIEW OF EXPERT OPINION

10. Over the past two decades, considerable scientific evidence has accumulated demonstrating that, compared to adults, adolescents are more impulsive, prone to engage in risky and reckless behavior, motivated more by reward than punishment, and less oriented to the future and more to the present. These characteristics of adolescents are now viewed as normative, driven by processes of brain maturation that are not under the young person's control, and typically persist throughout adolescence in normally developing individuals ages 10 through 20 years.

11. In several landmark cases decided between 2005 and 2016, the U.S. Supreme Court held that these aspects of juvenile immaturity mitigate criminal responsibility in ways that must be taken into account in sentencing decisions.² The Court has also recognized that juvenile immaturity affects the ways in which adolescents perceive and make decisions in legal contexts.³

12. In the past ten years, additional scientific evidence has accrued indicating that many aspects of psychological and neurobiological immaturity characteristic of early adolescents and middle adolescents are also characteristic of late adolescents.

13. Although late adolescents are in some ways similar to individuals in their mid-20s, in other ways, and under certain circumstances, they are more like individuals in early and middle adolescence in their behavior, psychological functioning, and brain development. Developmental science does not support the bright-line boundary observed in criminal law under which 18-year-olds are categorically deemed adults.⁴

14. The recognition that the same sort of psychological and neurobiological immaturity characteristic of juveniles also describes individuals who are between 18 and 21 years old suggests that the logic reflected in the U.S. Supreme Court decisions in *Roper*, *Graham*, *Miller*, and in *Montgomery v. Louisiana*, applies with equal force to late adolescents, like the defendant in this case, who was 19 years old at the time of the offense.

BRAIN DEVELOPMENT CONTINUES BEYOND THE TEEN YEARS

15. For most of the 20th century, scientists believed that brain maturation ended sometime during late childhood, a conclusion based on the observation that the brain reached its adult size and volume by age 10. Research examining the brain's internal anatomy and brain

² Steinberg, L. (2013). The influence of neuroscience on U.S. Supreme Court decisions involving adolescents' criminal culpability. *Nature Reviews Neuroscience*, 14, 513-518.

³ *JDB v. North Carolina*, 564 U.S. 261.

⁴ Center for Law, Brain & Behavior at Massachusetts General Hospital (2022). *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers*. <https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence>; Scott, E., Bonnie, R. & Steinberg, L. (2016). Young adulthood as a transitional legal category, *Fordham Law Review*, 85, 641-666.

activity patterns – instead of focusing solely on the brain’s appearance – started challenging this widely held belief in the late 1990s.⁵

16. The advent of functional Magnetic Resonance Imaging (fMRI) permitted scientists and researchers to actually observe living individuals’ brains and examine their responses to various stimuli and activities.

17. The results of these examinations demonstrated that key brain systems and structures – especially those involved in self-regulation and higher-order cognition – continue to mature throughout adolescence, until at least the age of 21, and likely beyond in some areas of function.⁶

18. In response to these revelations about ongoing brain maturation, researchers began to focus on the ways that adolescent behavior is more accurately characterized as reflecting psychological and neurobiological immaturity.⁷ The results of many of these studies and descriptions of adolescent behavior were used by the U. S. Supreme Court, first in *Roper v. Simmons*, and later in *Graham v. Florida*, *Miller v. Alabama*, and *Montgomery v. Louisiana*, as the foundation for the high court’s conclusions that adolescents younger than 18 should not be treated as adults by the criminal justice system. The Court, consistent with the prevailing science and the consensus among researchers in this field, reasoned that because the adolescent brain is still developing, adolescents’ often impulsive and ill-considered behavior is not fully mature, and their culpability cannot be compared to and should not be equated with that of presumptively mature

⁵ Gogtay, N., et al. (2004). Dynamic mapping of human cortical development during childhood through early adulthood. *Proceedings of the National Academies of Sciences*, 101, 8174–8179; Giedd, J., Blumenthal, J., Jeffries, N., Castellanos, F., Liu, H., Zijdenbos, A., . . . Rapoport, J. (1999). Brain development during childhood and adolescence: a longitudinal MRI study. *Nature Neuroscience*, 2, 861–863; Sowell, E., Thompson, P., Leonard, C., Welcome, S., Kan, E., & Toga, A. (2004). Longitudinal mapping of cortical thickness and brain growth in normal children. *Journal of Neuroscience*, 24, 8223–8231.

⁶ Casey, B. J., Tottenham, N., Liston, C., & Durston, S. (2005). Imaging the developing brain: What have we learned about cognitive development? *Trends in Cognitive Science*, 9, 104–110.

⁷ Steinberg, L., & Scott, E. (2003). Less guilty by reason of adolescence: Developmental immaturity, diminished responsibility, and the juvenile death penalty. *American Psychologist*, 58, 1009–1018.

adults.⁸ In addition, the Court noted that because psychological and neurobiological development are still ongoing in adolescence, individuals are still amenable to change and able to profit from rehabilitation.

19. Further study of brain maturation conducted during the past decade has revealed that several aspects of brain development affecting judgment and decision-making are not only ongoing during early and middle adolescence, but continue at least until age 21. As more research confirming this conclusion accumulated, by 2015 the notion that brain maturation continues into late adolescence became widely accepted among neuroscientists,⁹ and additional evidence consistent with this view has continued to be published in scientific journals.¹⁰ This contemporary

⁸ The American Psychological Association filed briefs as amicus curiae in *Roper*, *Graham*, and *Miller*, outlining the state of neuropsychological and behavioral research on adolescent brain development and behavior for the Court. See Brief for the American Psychological Association, American Psychiatric Association, and National Association of Social Workers as Amici Curiae in Support of Petitioners, *Miller v. Alabama*, 567 U.S. 460 (2012) (No. 10-9646); Brief for the American Psychological Association, American Psychiatric Association, National Association of Social Workers, and Mental Health America as Amici Curiae Supporting Petitioners, *Graham v. Florida*, 560 U.S. 48 (2010) (No. 08-7412), *Sullivan v. Florida*, 560 U.S. 181 (2010) (No. 08-7621); Brief for the American Psychological Association, and the Missouri Psychological Association as Amici Curiae Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633).

⁹ Dosenbach, N., et al. (2011). Prediction of individual brain maturity using fMRI. *Science*, 329, 1358–1361; Fair, D., et al. (2009). Functional brain networks develop from a “local to distributed” organization. *PLoS Computational Biology*, 5, 1–14; Hedman A., van Haren N., Schnack H., Kahn R., & Hulshoff Pol, H. (2012). Human brain changes across the life span: A review of 56 longitudinal magnetic resonance imaging studies. *Human Brain Mapping*, 33, 1987–2002; Pfefferbaum, A., Rohlfing, T., Rosenbloom, M., Chu, W., & Colrain, I. (2013). Variation in longitudinal trajectories of regional brain volumes of healthy men and women (ages 10 to 85 years) measured with atlas-based parcellation of MRI. *NeuroImage*, 65, 176–193; Simmonds, D., Hallquist, M., Asato, M., & Luna, B. (2014). Developmental stages and sex differences of white matter and behavioral development through adolescence: A longitudinal diffusion tensor imaging (DTI) study. *NeuroImage*, 92, 356–368. Somerville, L., Jones, R., & Casey, B.J. (2010). A time of change: behavioral and neural correlates of adolescent sensitivity to appetitive and aversive environmental cues. *Brain & Cognition*, 72, 124–133.

¹⁰ Center for Law, Brain & Behavior at Massachusetts General Hospital (2022). *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers*, <https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence>; Moaisala, M., Salmela, V., Carlson, S., Salmela-Aro, K., Lonka, K., Hakkarainen, K., & Alho, K. (2018). Neural

view of brain development as ongoing at least until age 21 stands in marked contrast to the view held by scientists as recently as 15 years ago.

20. We now know that, in many respects, **individuals between 18 and 21 are more neurobiologically similar to younger teenagers than had previously been thought, their character has not yet been fully formed (as those brain regions most determinant of character are the last to mature), they remain amenable to change, and they are able to profit from rehabilitation. Accordingly, predictions about adolescents' future character and behavior based on assessments made prior to maturation amount to little more than speculation.** The APA's observation in its brief in *Roper* therefore applies to individuals who are younger than 21: "The absence of proof that assessments of adolescent behavior will remain stable into adulthood invites unreliable capital sentencing based on faulty appraisals of character and future conduct."¹¹

21. Although mental health professionals are able to characterize the functional and behavioral features of an individual adolescent, their ability to reliably predict future character formation, dangerousness, or amenability to rehabilitation is inherently limited. This is true even for adolescents with histories of delinquent behavior, because misconduct diminishes at a

activity patterns between different executive tasks are more similar in adulthood than in adolescence. *Brain and Behavior*, 8, e01063; Ravindranath, O., Ordaz, S. J., Padmanabhan, A., Foran, W., Jalbrzikowski, M., Calabro, F. J., & Luna, B. (2020). Influences of affective context on amygdala functional connectivity during cognitive control from adolescence through adulthood. *Developmental cognitive neuroscience*, 45, 100836; Tamnes, C., Herting, M., Goddings, A., Meuwese, R., Blakemore, S., Dahl, R., . . . Mills, K. (2017). Development of the cerebral cortex across adolescence: A multisample study of inter-related longitudinal changes in cortical volume, surface area, and thickness. *Journal of Neuroscience*, 37, 3402-3412; Whitaker, K., Vértes, P., Romero-García, R., Váša, F., Moutoussis, M., Prabhu, G., . . . Bullmore, E. (2016). Adolescence is associated with genomically patterned consolidation of the hubs of the human brain connectome. *PNAS*, 113, 9105-9110.

¹¹ Brief for the American Psychological Association, and the Missouri Psychological Association as *Amici Curiae* Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633), p. 24. The APA Amicus brief in *Roper*, for which I was the lead scientific consultant, and which I helped draft, did not address the death penalty for persons aged 18-20 because this issue was not before the court.

high rate between adolescence and adulthood.¹² Thus, mental health professionals' ability to reliably distinguish between the relatively few adolescents who will continue as career criminals and the vast majority of adolescents who will, as adults, "repudiate their reckless experimentation is limited. As a general matter, litigating maturity on a case-by-case basis is likely to be an error-prone undertaking, with the outcomes determined by factors other than psychological immaturity—such as physical appearance or demeanor . . . immaturity is often ignored when the facts of a particular case engender a punitive response; indeed, immaturity is likely to count as mitigating only when the offender otherwise presents a sympathetic case."¹³

PSYCHOLOGICAL IMMATURITY IN ADOLESCENCE

22. Research conducted during the past 15 years also has led scientists to revise longstanding views of psychological development during adolescence. Conclusions drawn from this psychological research parallel those drawn from recent studies of brain development and indicate that **individuals in their late teens and early 20s are less mature than their older counterparts in several important and legally-relevant ways.**¹⁴ The results of these

¹² Sweeten, G., Piquero, A., & Steinberg, L. (2013). Age and the explanation of crime, revisited. *Journal of Youth and Adolescence*, 42, 921-938.

¹³ Scott, E., & Steinberg, L. (2008). *Rethinking juvenile justice*. Cambridge, MA: Harvard University Press, pp. 140-141.

¹⁴ Center for Law, Brain & Behavior at Massachusetts General Hospital (2022). *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers*. <https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence>; Scott, E., Bonnie, R. & Steinberg, L. (2016). Young adulthood as a transitional legal category, *Fordham Law Review*, 85, 641-666 and Steinberg, L. (2014). *Age of opportunity: Lessons from the new science of adolescence*. New York: Houghton Mifflin, Harcourt.

psychological studies, including many that have been conducted by my research group, have been found not only in the United States, but around the world.¹⁵

23. First, adolescents are more likely than adults to underestimate the number, seriousness, and likelihood of risks involved in a given situation. When asked to make a decision about a course of action, compared to adults, adolescents have more difficulty identifying the possible costs and benefits of each alternative, underestimate the chances of various negative consequences occurring, and underestimate the degree to which they could be harmed if the negative consequences occurred.¹⁶

24. Second, adolescents and people in their early 20s are more likely than older individuals to engage in what psychologists call “sensation-seeking,” the pursuit of arousing, rewarding, exciting, or novel experiences.¹⁷ As a consequence of this, young people are more apt to focus on the potential rewards of a given decision, including social rewards such as the admiration of peers, than on the potential costs. Other studies have indicated that heightened risk taking among adolescents is due to the greater attention they pay to the potential rewards of a risky

¹⁵ Duell, N., Steinberg, L., Chein, J., Al-Hassan, S., Bacchini, D., Chang, L., . . . Alampay, L. (2016). Interaction of reward seeking and self-regulation in the prediction of risk taking: A cross-national test of the dual systems model. *Developmental Psychology*, 52, 1593-1605; Duell, N., Steinberg, L., Icenogle, G., Chein, J., Chaudary, N., Di Giunta, L., . . . Chang, L. (2018). Age patterns in risk taking around the world. *Journal of Youth and Adolescence*, 47, 1052-1072; Steinberg, L., & Icenogle, G. (2019). Using developmental science to distinguish adolescents and adults under the law. *Annual Review of Developmental Psychology*, 1, 21-40. Steinberg, L., Icenogle, G., Shulman, E., Breiner, K., Chein, J., Bacchini, D., . . . Takash, H. (2018). Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation. *Developmental Science*, 21, 1-13.

¹⁶ Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., Lexcen, F., Reppucci, N., & Schwartz, R. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior*, 27, 333-363.

¹⁷ Steinberg, L., Albert, D., Cauffman, E., Banich, M., Graham, S., & Woolard, J. (2008). Age differences in sensation seeking and impulsivity as indexed by behavior and self-report: Evidence for a dual systems model. *Developmental Psychology*, 44, 1764-1778.

choice relative to the potential costs. This tendency is especially pronounced among individuals between the ages of 18 and 21.¹⁸

25. Third, adolescents and individuals in their early 20s are less able than older individuals to control their impulses and consider the future consequences of their actions and decisions. In general, adolescents are more short-sighted and less likely to plan ahead than adults. Adolescents have more difficulty than adults in foreseeing the possible outcomes of their actions and regulating their behavior accordingly. Importantly, significant gains in impulse control continue to occur well into the early 20s.¹⁹

26. Fourth, the development of basic cognitive abilities, including memory and logical reasoning, matures before the development of emotional maturity. Emotional maturity includes the ability to exercise self-control, rein in sensation seeking, properly consider the risks and rewards of alternative courses of action, and resist coercive pressure from others. A young person who appears to be intellectually mature may be socially and emotionally immature.²⁰ Thus, it is possible

¹⁸ Cauffman, E., Shulman, E., Steinberg, L., Claus, E., Banich, M., Graham, S., & Woolard, J. (2010). Age differences in affective decision making as indexed by performance on the Iowa Gambling Task. *Developmental Psychology*, 46, 193-207; Steinberg, L., Icenogle, G., Shulman, E., Breiner, K., Chein, J., Bacchini, D., . . . Takash, H. (2018). Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation. *Developmental Science*, 21, 1-13.

¹⁹ Steinberg, L., Graham, S., O'Brien, L., Woolard, J., Cauffman, E., & Banich, M. (2009). Age differences in future orientation and delay discounting. *Child Development*, 80, 28-44; Steinberg, L., Albert, D., Cauffman, E., Banich, M., Graham, S., & Woolard, J. (2008) Age differences in sensation seeking and impulsivity as indexed by behavior and self-report: Evidence for a dual systems model. *Developmental Psychology*, 44, 1764-1778; Steinberg, L., Icenogle, G., Shulman, E., Breiner, K., Chein, J., Bacchini, D., . . . Takash, H. (2018). Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation. *Developmental Science*, 21, 1-13.

²⁰ Icenogle, G., Steinberg, L., Duell, N., Chein, J., Chang, L., Chaudary, N., . . . Bacchini, D. (2019). Adolescents' cognitive capacity reaches adult levels prior to their psychosocial maturity: Evidence for a "maturity gap" in a multinational sample. *Law and Human Behavior*, 43, 69-85; Steinberg, L., Cauffman, E., Woolard, J., Graham, S., & Banich, M. (2009). Are adolescents less mature than adults? Minors' access to abortion, the juvenile death penalty, and the alleged APA "flip-flop". *American Psychologist*, 64, 583-594.

that a young person in his late teens or early 20s may fully understand the difference between right and wrong but have difficulty comporting himself in a manner consistent with this understanding.

27. A consequence of this gap between intellectual and emotional maturity is that the tendencies of adolescents and people in their early 20s, relative to individuals in their mid- or late 20s, are more focused on rewards, more impulsive, and more myopic.

28. These tendencies are exacerbated when adolescents are making decisions in situations that are emotionally arousing, including those that generate or are characterized by strong negative emotions, such as fear, threat, anger, or anxiety.²¹ Psychologists distinguish between “cold cognition” – which refers to the thinking abilities used under calm circumstances – and “hot cognition” – which refers to the thinking abilities used under emotionally arousing ones. Adolescents’ deficiencies in judgment and self-control, relative to adults, are greater under “hot” circumstances in which emotions are aroused than they are under calmer, “cold” circumstances.²²

29. Fifth, adolescents’ deficiencies in judgment are exacerbated by the presence of peers, a factor that often arouses adolescents’ emotions. It is well established that a disproportionate amount of adolescent and young adult risk taking occurs in the presence of peers.²³ Scientists believe that this is because, when they are with their peers, young people pay relatively more attention to the potential rewards of a risky decision than they do when they are

²¹ Dreyfuss, M., Caudle, K., Drysdale, A. T., Johnston, N. E., Cohen, A. O., Somerville, L. H., Galvan, A., Tottenham, N., Hare, T. A., & Casey, B. J. (2014). Teens impulsively react rather than retreat from threat. *Developmental Neuroscience*, 36, 220-227.

²² Cohen, A., Breiner, K., Steinberg, L., Bonnie, R., Scott, E., Taylor-Thompson, K., . . . Casey, B.J. (2016). When is an adolescent an adult? Assessing cognitive control in emotional and non-emotional contexts. *Psychological Science*, 4, 549-562; Steinberg, L. (2014). *Age of opportunity: Lessons From the New Science of Adolescence*. New York: Houghton Mifflin Harcourt; Steinberg, L., Cauffman, E., Woolard, J., Graham, S., & Banich, M. (2009). Are adolescents less mature than adults? Minors’ access to abortion, the juvenile death penalty, and the alleged APA “flip-flop”. *American Psychologist*, 64, 583-594; Steinberg, L., & Icenogle, G. (2019). Using developmental science to distinguish adolescents and adults under the law. *Annual Review of Developmental Psychology*, 1, 21-40.

²³ Albert, D., & Steinberg, L. (2011). Peer influences on adolescent risk behavior. In M. Bardo, D. Fishbein, & R. Milich (Eds.), *Inhibitory control and drug abuse prevention: From research to translation*. (Part 3, pp. 211-226). New York: Springer.

alone. When they are with their peers, adolescents are especially drawn to immediate rewards, including both material rewards (e.g., money, drugs) as well as social rewards (e.g., praise, the admiration of others).²⁴ In our research lab, we have shown that the mere presence of peers activates the brain's "reward center" among adolescents and people in their early 20s, but has no such effect on adults.²⁵

30. My colleagues and I have found that these peer effects on risk taking and attentiveness to rewards occur regardless of the number of peers present, their degree of familiarity with one another, and whether the peers are real or illusory. Brain imaging studies show that adolescents are especially sensitive to social rejection, which may make conforming to one's peers especially important.²⁶ That a much greater proportion of juvenile crimes, compared to adult crimes, occur when individuals are in groups is consistent with this data.²⁷

31. The combination of heightened attentiveness to rewards and still-maturing impulse control makes middle and late adolescence a time of greater risk-taking than any other stage of development. This has been demonstrated both in studies of risk-taking in psychological

²⁴ O'Brien, L., Albert, D., Chein, J., & Steinberg, L. (2011). Adolescents prefer more immediate rewards when in the presence of their peers. *Journal of Research on Adolescence*, 21, 747-753; Silva, K., Patrianakos, J., Chein, J., & Steinberg, L. (2017). Joint effects of peer pressure and fatigue on risk and reward processing in adolescence. *Journal of Youth and Adolescence*, 46, 1878-1890; Weigard, A., Chein, J., Albert, D., Smith, A., & Steinberg, L. (2014). Effects of anonymous peer observation on adolescents' preference for immediate rewards. *Developmental Science*, 17, 71-78.

²⁵ Chein, J., Albert, D., O'Brien, L., Uckert, K., & Steinberg, L. (2011). Peers increase adolescent risk taking by enhancing activity in the brain's reward circuitry. *Developmental Science*, 14, F1-F10; Smith, A., Steinberg, L., Strang, N., & Chein, J. (2015). Age differences in the impact of peers on adolescents' and adults' neural response to reward. *Developmental Cognitive Neuroscience*, 11, 75-82.

²⁶ Blakemore, S-J. (2008). The social brain in adolescence. *Nature Reviews Neuroscience*, 9, 267-277; Somerville, L. (2013). The teenage brain: Sensitivity to social evaluation. *Current Directions in Psychological Science*, 22, 121-127.

²⁷ Zimring, F., & Laquear, H. (2015). Kids, groups, and crime: In defense of conventional wisdom. *Journal of Research in Crime and Delinquency*, 52, 403-415.

experiments (when other factors, such as outside influences, can be controlled) and in the analysis of data on risky behavior in the real world.²⁸

32. In recent experimental studies of risk-taking, the peak age for risky decision-making has been determined to be in the late teens and early 20s.²⁹ This age trend is consistent with epidemiological data on age trends in risky behavior, which show peaks in the adverse outcomes of risk-taking in the late teens and early 20s in a wide range of behaviors, including driver deaths, unintended pregnancy, arrests for violent and non-violent crime, and binge drinking.³⁰

33. The immaturity of adolescents, relative to adults, that affects their propensity to engage in criminal behavior also affects their legal decision making more generally. Thus, when faced with decisions about how to best defend themselves during legal hearings, adolescents are more likely than adults to make impulsive and short-sighted decisions that fail to fully appreciate and judge the riskiness of different courses of actions.³¹

NEUROBIOLOGICAL ACCOUNTS OF ADOLESCENT IMMATURITY

34. Many scientists, including myself, believe that the main underlying cause of psychological immaturity during adolescence and the early 20s is the different timetables along

²⁸ Duell, N., Steinberg, L., Icenogle, G., Chein, J., Chaudary, N., Di Giunta, L., . . . Chang, L. (2018). Age patterns in risk taking around the world. *Journal of Youth and Adolescence*, 47, 1052-1072.

²⁹ Braams, B., van Duijvenvoorde, A., Peper, J., & Crone, E. (2015). Longitudinal changes in adolescent risk-taking: A comprehensive study of neural responses to rewards, pubertal development and risk taking behavior. *Journal of Neuroscience*, 35, 7226-7238; Shulman, E., & Cauffman, E. (2014). Deciding in the dark: Age differences in intuitive risk judgment. *Developmental Psychology*, 50, 167-177.

³⁰ Willoughby, T., Good, M., Adachi, P., Hamza, C., & Tavernier, R. (2013). Examining the link between adolescent brain development and risk taking from a social-developmental perspective. *Brain and Cognition*, 83, 315-323.

³¹ Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., Lexcen, F., Reppucci, N., & Schwartz, R. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior*, 27, 333-363.

which two important brain systems change during this period, sometimes referred to as a “maturational imbalance.”³²

35. The system that is responsible for the increase in sensation-seeking and reward-seeking that takes place in adolescence, which is localized mainly in the brain’s limbic system, undergoes dramatic changes very early in adolescence, around the time of puberty. Attentiveness to rewards remains high through the late teen years and into the early 20s. But the system that is responsible for self-control, regulating impulses, thinking ahead, evaluating the rewards and costs of a risky act, and resisting peer pressure, which is localized mainly in the prefrontal cortex, is still undergoing significant maturation well into the mid-20s.³³

36. Thus, during middle and late adolescence there is an imbalance between the reward system and the self-control system that inclines adolescents toward sensation-seeking and impulsivity. As this “maturational imbalance” diminishes, during the mid-20s, there are improvements in such capacities as impulse control, resistance to peer pressure, planning, and thinking ahead.³⁴

37. Studies of structural and functional development of the brain are consistent with this view. Specifically, **research on neurobiological development shows continued maturation**

³² Casey, B. J., et al. (2010). The storm and stress of adolescence: Insights from human imaging and mouse genetics. *Developmental Psychobiology*, 52, 225-235; Shulman, E., Smith, A., Silva, K., Icenogle, G., Duell, N., Chein, J., & Steinberg, L. (2016). The dual systems model: Review, reappraisal, and reaffirmation. *Developmental Cognitive Neuroscience*, 17, 103-117.

³³ Shulman, E., Harden, K., Chein, J., & Steinberg, L. (2015). Sex differences in the developmental trajectories of impulse control and sensation-seeking from early adolescence to early adulthood. *Journal of Youth and Adolescence*, 44, 1-17; Steinberg, L. (2008). A social neuroscience perspective on adolescent risk-taking. *Developmental Review*, 28, 78-106; Van Leijenhorst, L., Moor, B. G., Op de Macks, Z. A., Rombouts, S. A. R. B., Westenberg, P. M., & Crone, E. A. (2010). Adolescent risky decisionmaking: Neurocognitive development of reward and control regions. *NeuroImage*, 51, 345-355.

³⁴ Albert, D., & Steinberg, L. (2011). Judgment and decision making in adolescence. *Journal of Research on Adolescence*, 21, 211-224; Blakemore, S.-J., & T. Robbins, T. (2012). Decision-making in the adolescent brain. *Nature Neuroscience*, 15, 1184-1191.

into the early or even mid-20s of brain regions and systems that govern various aspects of self-regulation and higher-order cognitive function. These developments involve structural (i.e., in the brain's anatomy) and functional (i.e., in the brain's activity) changes in the prefrontal and parietal cortices, as well as improved structural and functional connectivity between the limbic system and the prefrontal cortex.

38. The structural changes are primarily the result of two processes: synaptic pruning (the elimination of unnecessary connections between neurons, which allows the brain to transmit information more efficiently), and myelination (the growth of sheaths of myelin around neuronal connections, which functions as a form of insulation that allows the brain to transmit information more quickly).

39. Although the process of synaptic pruning is largely finished by age 16, myelination continues into the late teens and throughout the 20s.³⁵ Thus, although the development of the prefrontal cortex is largely complete by the end of middle adolescence, the maturation of connections between this region and regions that govern self-regulation and the brain's emotional centers, facilitated by the continued myelination of these connections, continues into late adolescence (at least through age 20) and may not be complete until the mid-20s.³⁶ As a consequence, late adolescents often have difficulty controlling their impulses, especially in emotionally arousing situations.

40. Recent studies that my colleagues and I conducted of middle adolescents, late adolescents, and individuals in their mid-20s, illustrate this point. We assessed individuals' impulse control and brain activity while experimentally manipulating their emotional state. Under conditions during which individuals were not emotionally aroused, individuals between 18 and 21

³⁵ For reviews of changes in brain structure and function during adolescence and young adulthood, see Blakemore, S-J. (2012). Imaging brain development: The adolescent brain. *Neuroimage*, 61, 397-406; Engle, R. (2013). The teen brain. *Current Directions in Psychological Science*, 22 (2) (whole issue); and Luciana, M. (Ed.) (2010). Adolescent brain development: Current themes and future directions. *Brain and Cognition*, 72 (2), whole issue; and Spear, L., & Silveri, M. (2016). Special issue on the adolescent brain. *Neuroscience and Biobehavioral Reviews*, 70 (whole issue).

³⁶ Khundrakpam, B, Lewis, J., Zhao, L., Chouinard-Decorte, F., & Evans, A. (2016). Brain connectivity in normally developing children and adolescents. *NeuroImage*, 134, 192-203.

exhibited impulse control and patterns of brain activity comparable to those in their mid-20s. But under emotionally arousing conditions, 18- to 21-year-olds demonstrated levels of impulsive behavior and patterns of brain activity that were comparable to those in their mid-teens.³⁷ In other words, under some circumstances, the brain of a 18- to 21-year-old functions in ways that are similar to that of a 16- or 17-year old.

DESISTANCE FROM CRIME AFTER YOUNG ADULTHOOD

41. Research in developmental psychology has produced a growing understanding of the ways in which normative psychological maturation contributes to desistance from crime. My colleagues and I have shown that normal and expected improvements in self-control, resistance to peer pressure, and future orientation, which occur in most individuals, are related to desistance from crime during the late adolescent and young adult years.³⁸

42. Scientists have also shown that the human brain is malleable, or “plastic.” Neuroplasticity refers to the potential for the brain to be modified by experience. Certain periods in development appear to be times of greater neuroplasticity than others. There is growing consensus that there is considerable neuroplasticity in adolescence, which suggests that during those time periods, there are greater opportunities for individuals to change.³⁹ In *Graham*, the

³⁷ Cohen, et al. (2016). When is an adolescent an adult? Assessing cognitive control in emotional and non-emotional contexts. *Psychological Science*, 4, 549-562; Rudolph, M., Miranda-Dominguez, O., Cohen, A., Breiner, K., Steinberg, L., . . . Fair, D. (2017). At risk of being risky: The relationship between “brain age” under emotional states and risk preference. *Developmental Cognitive Neuroscience*, 24, 93-106

³⁸ Monahan, K., Steinberg, L., & Cauffman, E. (2009). Affiliation with antisocial peers, susceptibility to peer influence, and desistance from antisocial behavior during the transition to adulthood. *Developmental Psychology*, 45, 1520-1530; and Monahan, K., Steinberg, L., Cauffman, E., & Mulvey, E. (2009). Trajectories of antisocial behavior and psychosocial maturity from adolescence to young adulthood. *Developmental Psychology*, 45, 1654-1668). This observation is consistent with findings from developmental neuroscience, noted earlier (for example, Liston, C., Watts, R., Tottenham, N., Davidson, M., Niogi, S., Ulug, A., & Casey, B.J. (2006). Frontostriatal microstructure predicts individual differences in cognitive control. *Cerebral Cortex*, 16, 553-560).

³⁹ For a discussion of adolescent neuroplasticity, see Aoki, C., Romeo, R., & Smith, S. (2017). Adolescence as a critical period for developmental plasticity. *Brain Research*, 1654, 85-86; Guyer,

United States Supreme Court recognized that adolescents' brains are not fully developed, and their lack of maturity and capacity for growth led the Court to hold that youth who commit serious crimes must have an opportunity for release based on demonstrated maturity and rehabilitation.

43. Very few individuals who have committed crimes as juveniles continue offending beyond their mid-20s, an observation that is contained in Mr. Aiken's report.⁴⁰ My colleagues and I have found, as have other researchers, that approximately 90 percent of serious juvenile offenders age out of crime and do not continue criminal behavior into adulthood.⁴¹

44. Longitudinal studies documenting this pattern of desistance are consistent with epidemiological evidence on the relation between age and crime. In general, sociological studies demonstrate what scientists describe as an "age-crime curve," which shows that, in the aggregate, crime peaks in the late teen years and declines during the early 20s.⁴² For example, according to recent data from the United States Federal Bureau of Investigation, on arrest rates as a function of age, arrests for property crime and for violent crime increase between 10 and 19 years, peak in the

A., Pérez-Edgar, K., & Crone, E., (2018). Opportunities for neurodevelopmental plasticity from infancy through early adulthood. *Child Development*, 89, 687-297; Kays, J., Hurley, R., Taber, K. (2012). The dynamic brain: Neuroplasticity and mental health. *Journal of Clinical Neuropsychiatry and Clinical Neuroscience*, 24, 118-124; Steinberg, L. (2014). *Age of Opportunity: Lessons From the New Science of Adolescence*. New York: Houghton Mifflin Harcourt; and Thomas, M., & Johnson, M. (2008). New advances in understanding sensitive periods in brain development. *Current Directions in Psychological Science*, 17, 1-5.

⁴⁰ Report of James Aiken, p. 13.

⁴¹ Monahan, K., Steinberg, L., Cauffman, E., & Mulvey, E. (2013). Psychosocial (im)maturity from adolescence to early adulthood: Distinguishing between adolescence-limited and persistent antisocial behavior. *Development and Psychopathology*, 25, 1093-1105; and Mulvey, E., Steinberg, L., Piquero, A., Besana, M., Fagan, J., Schubert, C., & Cauffman, E. (2010). Trajectories of desistance and continuity in antisocial behavior following court adjudication among serious adolescent offenders. *Development and Psychopathology*, 22, 453-475.

⁴² Sweeten, G., Piquero, A., & Steinberg, L. (2013). Age and the explanation of crime, revisited. *Journal of Youth and Adolescence*, 42, 921-938.

late teens or early 20s, and decline most dramatically after 25.⁴³ This is a robust pattern observed not only in the United States, but across the industrialized world and over historical time.⁴⁴

45. Research in developmental psychology has produced a growing understanding of the ways in which normative psychological maturation contributes to desistance from crime. My colleagues and I have shown that normal and expected improvements in self-control, resistance to peer pressure, and future orientation, are related to desistance from crime during the late adolescent and young adult years.⁴⁵ This observation is consistent with findings from developmental neuroscience, noted earlier.⁴⁶

46. In summary, there is strong scientific evidence that (1) most adolescent offending reflects transient developmental immaturity rather than irreparably bad character; (2) this developmental immaturity has been linked to predictable patterns of structural and functional brain development during adolescence; (3) this process of brain maturation continues through the late teens and into the early 20s; (4) the adolescent brain is especially “plastic,” or susceptible to environmental influence, which makes juveniles more amenable to rehabilitation; and (5) the vast majority of adolescent offenders age out of crime as they mature into their mid-20s.

⁴³ U.S. Department of Justice. (2020). *Crime in the United States*, 2019.

⁴⁴ Farrington, D. (1986). Age and crime. In M. Tonry & N. Morris (Eds.), *Crime and justice: An annual review of research*, vol. 7 (pp. 189-250). Chicago: University of Chicago Press; Hirschi, T., & Gottfredson, M. (1983). Age and the explanation of crime. *American Journal of Sociology*, 89, 552-84; and Piquero, A., Farrington, D., & Blumstein, A. (2007). *Key issues in criminal careers research: New analysis from the Cambridge study in delinquent development*. Cambridge: Cambridge University Press.

⁴⁵ Monahan, K., Steinberg, L., & Cauffman, E. (2009). Affiliation with antisocial peers, susceptibility to peer influence, and desistance from antisocial behavior during the transition to adulthood. *Developmental Psychology*, 45, 1520-1530; Monahan, K., Steinberg, L., Cauffman, E., & Mulvey, E. (2009). Trajectories of antisocial behavior and psychosocial maturity from adolescence to young adulthood. *Developmental Psychology*, 45, 1654-1668.

⁴⁶ For example, see Liston, C., Watts, R., Tottenham, N., Davidson, M., Niogi, S., Ulug, A., & Casey, B.J. (2006). Frontostriatal microstructure predicts individual differences in cognitive control. *Cerebral Cortex*, 16, 553-560.

EVIDENCE OF IMPAIRED DEVELOPMENT PARTICULAR TO MR. TISIUS

47. There is growing evidence that the maturation of brain systems governing self-regulation and impulse control is more likely to be slower and stunted in individuals who have experienced various types of trauma and disadvantage, including exposure to domestic violence, physical abuse, neglect, and chronic poverty.⁴⁷ The evaluations of Mr. Tisius I reviewed by Dr. Woods, as well as the testimony of Dr. Peterson, describe the extensive trauma and abuse to which Mr. Tisius was exposed throughout his childhood, which are known to adversely affect children's emotional and cognitive development. In addition to the mental illnesses and behavioral problems to which these experiences contributed, it is likely that they also impaired Mr. Tisius's brain development in regions of the brain that are important for impulse control and emotional regulation. This is consistent with Dr. Watson's report of Mr. Tisius's significant brain dysfunction, itself further confirmed by neuropsychological testing. Thus, the psychological and neurobiological immaturity I described in this report as characteristic of average adolescents was likely exacerbated by the environmental conditions to which Mr. Tisius was exposed throughout his childhood.

CONCLUSION

48. Extensive studies demonstrate that important neurobiological development is ongoing throughout the teenage years and continues into the early 20s. As a result of neurobiological immaturity, young people, even those past the age of majority, continue to

⁴⁷ De Bellis, M. D., & Zisk, A. (2014). The biological effects of childhood trauma. *Child and adolescent psychiatric clinics of North America*, 23, 185–vii; Farah M.J. (2018). Socioeconomic status and the brain: Prospects for neuroscience-informed policy. *Nature Reviews Neuroscience*, 19, 428-438; Farah, M (2017). The neuroscience of socioeconomic status: Correlates, causes, and consequences. *Neuron* 96, 56-71; Herringa, (2017). Trauma, PTSD, and the developing brain. *Current Psychiatry Reports*, 19, 69; Lawson, G.M., Hook, C.J., & Farah, M.J. (2017) A meta-analysis of the relationship between socioeconomic status and executive function on performance among children. *Developmental Science*, 21; Noble, K. G., & Farah, M. J. (2013). Neurocognitive consequences of socioeconomic disparities: the intersection of cognitive neuroscience and public health. *Developmental Science*, 16, 639–640; Palacios-Barrios, E., & Hanson, J. (2019). Poverty and self-regulation: Connecting psychosocial processes, neurobiology, and the risk for psychopathology. *Comprehensive Psychiatry*, 90, 52-64.

demonstrate difficulties in exercising self-restraint, controlling impulses, considering future consequences, making decisions independently from their peers, and resisting the coercive influence of others. Heightened susceptibility to emotionally laden and socially charged situations renders adolescents more vulnerable to others' influence, and in such situations young people are even less able to consider and weigh the risks and consequences of a chosen course of action.⁴⁸

Many of the same immaturities that characterize the brains of individuals younger than 18, and that have been found to mitigate their criminal culpability, are characteristic of the brains of individuals between 18 and 21. These same deficiencies in judgment may impair the decision making of juveniles when they are asked to make legal decisions that bear on judgments of their criminal responsibility and deliberations about sentencing.

49. **Criminal acts committed by adolescents, even those past the age of 18, are best understood in light of their neurobiological and psychological immaturity. For this reason, it is inappropriate to assign the same degree of culpability to criminal acts committed at this age to that which would be assigned to the behavior of a fully mature and responsible adult.**

50. In his majority opinion in *Roper v. Simmons*, Justice Kennedy noted three characteristics of juveniles that diminish their criminal responsibility: their impetuosity, their susceptibility to peer influence, and their capacity to change. In Justice Kennedy's opinion in *Graham v. Florida*, as well as Justice Kagan's opinion in *Miller v. Alabama*, the Court noted that the characterization of juveniles as inherently less mature than adults, and therefore less responsible for their crimes, was supported by a growing scientific literature affirming adolescents' neurobiological as well as psychological immaturity.⁴⁹ In the ten years that have elapsed since *Miller*, scientific evidence consistent with these arguments continues to accrue.

51. The crime for which Mr. Tisius was convicted has many of the hallmark characteristics of offenses committed by juveniles. It was an impulsive act committed in the

⁴⁸ Scott, E., Duell, N., & Steinberg, L. (2018). Brain development, social context, and justice policy. *Washington University Journal of Law and Policy*, 57, 13-74.

⁴⁹ Steinberg, L. (2017). Adolescent brain science and juvenile justice policymaking. *Psychology, Public Policy, and Law*, 23, 410-420.

presence of peers that was likely motivated in part by the undue influence of an older, more mature individual, and the need to impress this person whom Mr. Tisius thought to be a friend, from his youthful perspective. In my view, the offense was more likely the product of transient immaturity than intractably bad character.

52. Mr. Tisius's disciplinary record, which was thoroughly reviewed by James Aiken, an expert in corrections and confinement, is consistent with this opinion. According to this expert's report, "there is the absence of Mr. Tisius committing continual violence as he has aged. In fact, there is the absence of random and/or systematic violence incidents while he has been in prison." I agree with Mr. Aiken's opinion that "Mr. Tisius can be safely confined and managed within the Missouri Department of Corrections prison system for the remainder of his life."⁵⁰

53. Recent discoveries in psychological and brain science, as well as societal changes, should urge us to rethink how we view people in late adolescence and young adulthood in terms of their treatment under the law. Individualized assessments of adolescents conducted for the purpose of predicting future offending are unreliable, influenced by factors that have nothing to do with future criminal behavior (such as a defendant's physical appearance), and easily tainted by conscious and unconscious biases.⁵¹ It is now clear that neurobiological and psychological immaturity of the sort that the Supreme Court referenced in its opinions on juveniles' diminished culpability is also characteristic of individuals in their late teens and early 20s. **For the very same reason that the Supreme Court found capital punishment in cases involving defendants under the age of 18 to be unconstitutional, this penalty should be prohibited in all cases involving defendants who are under the age of 21.**⁵²

⁵⁰ Report of James Aiken, pp. 13-14.

⁵¹ Tonry, M. (2019). Predictions of dangerousness in sentencing: Déjà vu all over again. *Crime and Justice: A Review of Research*, 48, 439-482.

⁵² This view is consistent with that recently adopted by the American Bar Association ("The American Bar Association, without taking a position supporting or opposing the death penalty, urges each jurisdiction that imposes capital punishment to prohibit the imposition of a death sentence on or execution of any individual who was 21 years old or younger at the time of the offense," Resolution, Death Penalty Due Process Review Project, Section of Civil Rights and Social Justice, American Bar Association, February, 2018).

54. As one expert has written, “the likelihood of error in ascertaining putatively enduring features of an adolescent’s behavior is high. The fundamental problem is found in the inability to distinguish in a reliable way between the few adolescent offenders who may not be amenable to rehabilitation and the many who will spontaneously desist or who will respond to sanction or intervention. The absence of proof that assessments of adolescent behavior will remain stable into adulthood invites unreliable capital sentencing based on faulty appraisals of character and future conduct.”⁵³

55. Attempts to predict at capital sentencing an adolescent offender’s character formation and dangerousness in adulthood are inherently prone to error and create an obvious risk of wrongful execution. **The same evidence which could be used to argue that a death sentence is warranted in a case of an adult defendant may, in an adolescent, may very well reflect transitory behavior that would not support such an argument, the circumstance here.** A strong presumption that mitigation applies categorically to individuals under 21 avoids both innocent errors and more pernicious influences that may distort individualized determinations.

56. In my view, evidence from contemporary research on adolescent brain and psychological development, which has continued to develop since the time of Mr. Tisius’s trial and sentencing, should be strongly considered when evaluating his request for post-conviction relief.

57. I believe that the facts I have stated in this report are true and that the opinions I have expressed are within a reasonable degree of scientific certainty.



Laurence Steinberg, Ph.D.

Philadelphia, PA

January 9, 2023

⁵³ Brief for the American Psychological Association, and the Missouri Psychological Association as *Amici Curiae* Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633).

SC99938

Paula K. Lundberg-Love, Ph.D.
Tyler Counseling & Assessment Center, LLP
1121 E SE Loop 323 #204, Tyler, TX 75701

Evaluative Report on Michael Tisius

Michael Tisius is a thirty-seven-year-old man referred to me by his attorneys. Mr. Tisius' legal team has asked me to assess the effects of his adverse childhood experiences and exposure to trauma on his development and functioning.

I. REFERRAL QUESTIONS

1. Has Mr. Tisius been exposed to Adverse Childhood Experiences (ACEs) or childhood trauma?
2. If Mr. Tisius has been exposed to ACEs or childhood trauma, how have those experiences affected his development and functioning?

II. EXPERT QUALIFICATIONS

I am a retired Professor of Psychology at the University of Texas at Tyler and I also maintain a private practice as a licensed professional counselor and licensed psychological associate at Tyler Counseling & Assessment Center. I hold a Bachelor of Science degree in Chemistry from Xavier University in Cincinnati, Ohio, and a Master's of Arts in Psychology and a Ph. D. in Physiological Psychology from the University of Cincinnati. I completed a three-year post-doctoral fellowship at Washington University School of Medicine in St. Louis, Missouri. I have authored or co-authored over 100 scholarly journal articles, book chapters, and presentations and co-edited three books. My principal research interests lie in the areas of the impact of childhood trauma on the brain and behavior as well as psychopharmacology. I am a diplomate of the American College of Forensic Examiners, and the American Psychotherapy Association, in the areas of Psychopharmacology and Child Sexual Abuse. I have testified proximately 50 times as an expert witness for the prosecution and the defense in criminal matters, including capital cases.

III. EXPERT OPINION

I have thoroughly reviewed the information contained within this document. Based upon the data in the social history of Michael Tisius, it is clear that he experienced a very traumatic childhood and adolescence, which resulted in exposure to six out of ten possible ACEs. Research has demonstrated that the greater the exposure to ACEs, the more negatively mental and physical health are impacted across the lifespan. These are the six ACEs to which Michael was exposed: Physical neglect, emotional neglect, verbal abuse, physical abuse, parental separation, and a family member who experienced mental illness. He was a victim of childhood verbal abuse, emotional neglect, and physical neglect by his mother, verbal abuse, emotional neglect and physical abuse by his father, severe physical abuse by his older brother, and parental separation. Additionally, according to Michael his mother experienced mental illness and Michael was treated for depression during childhood.

Michael Tisius' exposure to trauma is salient because traumatic experience has profound effects on brain development and neural circuitry, which disrupts and dysregulates the delicate balance among physiological, emotional and cognitive functioning. Exposure to trauma can also result in

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the development of post-traumatic stress disorder (PTSD). In my professional opinion, the recognition that Michael Tisius was a victim of six out of ten ACEs and did not receive effective therapeutic intervention is critical to the understanding of the dynamics of this case. Specifically, had Michael not experienced childhood and adolescent physical abuse, verbal abuse, physical and emotional neglect, absence of a male role model and mental illness on the part of his mother, he would not have been so emotionally needy, powerless, and therefore vulnerable to the manipulation of Roy Vance.

IV. MATERIALS RELIED UPON

See Index to Background Packets in Appendix 3.

V. FAMILY HISTORY

The following family history and subsequent educational history is derived from my meetings with Mr. Tisius on June 8 and 9, 2018 at the Potosi Correctional Institution in Potosi, Missouri, and from witness statements and other materials provided by counsel. The materials were consistent with the history that Mr. Tisius reported to me.

Michael Andrew Tisius was born on February 16, 1981. His parents are Charles Tisius and Patricia Lambert. Ms. Lambert died on Oct 31, 2016.

Patricia Lambert's birth name is Patricia Ann Mertens. She was born on July 22, 1960, in St. Louis, Missouri. Her mother is Dorothy "Dottie" Quinn. Her father is Andrew Mertens. When her parents married, Andrew was 35 and Dorothy was 20. Dottie was not interested in being a mother. She spent most of her time drinking at bars and returning home in the early morning hours. Before Patty completed elementary school, Dottie moved out completely. At a bar, Dottie met and befriended a man named Robert Sparks. Since Dottie had nowhere to go, Robert's mother let her move in. Dottie eventually married Robert, a chronically unemployed severe alcoholic. After Dottie moved out, she almost never saw Patty.

Patty remained living at home with Andrew. He ran a landscaping business and worked 12-16 hour days. He rarely took days off. Andrew never wanted children but fell in love with Patty as soon as she was born. Patty always hung on him. Although Andrew was not home much, he sometimes let Patty ride along to his jobs. Andrew, not Dottie, was Patty's primary caregiver. Andrew's unrelenting work schedule and Dottie's absence meant Patty was alone a great deal. Her maternal aunt, Gloria Gray, sometimes spent time with her. When the two were out together, Patty liked to tell strangers that Aunt Gloria was her real mom and had given her to Dottie as a baby.

Andrew died of a heart attack when Patty was 13 years old. She was getting ready for school one morning when she found him dead on the toilet seat. Andrew left the house to Patty. Following his death, there was a custody dispute between Andrew's bookkeeper and Dottie, each vying for custody of Patty so that one of them could claim Andrew's house. Dottie ended up moving back in, but still spent the majority of her time out at the bars. She liked to sit for hours drinking tequila and brought little Patty along with her. Patty charmed the drunks at the bar and seemed to have a knack for convincing them to give her money. Robert Sparks sometimes gave her as much as \$20 at a time.

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Patty did not finish high school. She was sexually promiscuous and became pregnant at 17 giving birth to her first son, Joseph Mertens, a month after her 18th birthday. Joey's father was Charles "Chucky" Mace. Patty and Chucky were not in a relationship. For several years, Chucky denied that he was Joey's father.

Joey was born prematurely and had serious health problems, including an under-developed esophageal muscle. Joey was so tiny that if you cupped your hands together, he could fit inside. When he was just a few days old, Joey turned blue while in Patty's care. He was taken to his pediatrician's office where he stopped breathing. The pediatrician administered CPR and Joey was transported to Children's Hospital in an ambulance. While en route, Joey had heart complications and he had to be revived. He was placed in a neonatal intensive care unit (NICU) where he remained, in an incubator hooked up to monitors, for several months. During this time, Patty rarely visited Joey. When she did, she stayed only briefly. Dottie usually went to the hospital to sit with Joey after finishing her shift at the local bar. She was critical of Patty's absence from Joey's bedside and the two fought bitterly about it. Patty would insist it was pointless to visit her sick baby, often asking, "What can I do? I'd just be sitting there." Joey had a difficult recovery in the hospital. His veins were so small that he had to have his ankle cut to administer an IV. The baby could be heard screaming in pain from down the hall. Doctors insisted Joey reach a minimum weight of five pounds before he could be released. He struggled to gain that much. When he finally did, Patty took him home.

Patty, Dottie, and Joey lived together in the house she had inherited from her father. During and after Joey's stay in the NICU, Patty hosted parties in the house at which she and her guests drank alcohol. Dottie and her sister, Gloria Gray, came to suspect Patty was up to no good and planned to catch her in the act. At a time when Patty expected them to be away, they showed up unannounced, parked down the street, and watched Patty's house from behind some bushes. They saw a crowd of people who were drinking and partying. Patty was driving off in a hurry and returning with carloads of people, repeatedly. Gloria and Dottie entered through the front door, which was left wide open, and found Joey screaming and crying in his crib. He was alone and he appeared to have been left unattended for some time. His face was beet red and he was gasping for air from crying so hard for such a long time. Gravely concerned about Joey's welfare, Gloria and Dottie took Joey to live with them in Cahokia, Illinois. Patty did not resist the removal of Joey; she seemed to welcome it. She did, though, insist on continuing to collect welfare. To that end, Gloria drafted an agreement on her typewriter saying Patty would relinquish custody of Joey temporarily, but still collect benefits for him. Gloria kept Joey until he was 16 months old. During that time, Patty never visited Joey or called to inquire about his welfare.

Patty married Michael's father, Charles "Chuck" Tisius, on December 28, 1979. Chuck was 17 years old on their wedding day. Patty was 19. While this was the first marriage for both, Chuck would be married four times and Patty three times.

Chuck met Patty when he worked at Kentucky Fried Chicken where Dottie was the swing manager. At their wedding reception, baby Joey was returned to Patty's custody. Chuck's father, Donald Tisius, Sr., was a local police officer. He warned his son not to marry Patty because she was known to the Brentwood Police Department as having been a child prostitute. Her rumored nickname was "the bag lady" because her face would be covered with a bag to disguise her age from the men who paid to have sex with her.

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Michael Tisius' paternal grandparents were Donald Tisius, Sr. and Carol Barnett Tisius Wilson. Donald Sr. and Carol were both 15 years old when they were married on August 28, 1958. Carol's mother, Pearl Barnett and Donald's mother, Genevieve Tisius, gave their consent as required by law. Almost exactly five months later their first child, Donald Tisius, Jr., was born. Donald and Carol had five children in under seven years. Michael's father, Chuck Tisius, was their fourth child. When their youngest was still an infant, the couple relinquished all of their children to the custody of relatives.

Carol suffered significant and longstanding mental health issues. She was institutionalized on numerous occasions at a psychiatric facility in St. Louis. At different times throughout her life, starting before age 14, she received electroshock therapy. Her behavior toward her children was volatile, paranoid, and hostile. Her children feared her frequent and unpredictable mood swings. A perfectly friendly conversation with Carol could turn on a dime. She would scream and be full of rage without provocation. Once, in a rage, Carol flung a statue through a plate glass window. She accused her children of being liars starting when they were very small. Later in life, Carol's grandchildren also feared her. Once, when Carol's young granddaughter had a loose tooth, Carol decided she would extract it herself. Ignoring the protests of the child and the child's mother, Carol grabbed a pair of metal pliers in one hand, forcing the child's head still with her other arm, and yanked out the tooth. Carol often threatened to beat her grandchildren and was not trusted to be alone with them.

Numerous Tisius family members have substance abuse issues. Chuck's brother, Ron, was an alcoholic who died before his 50th birthday. Chuck and Chuck's sister both have longstanding struggles with addiction to prescription pills. Donald Sr. was married at least four times. He adopted a child with his wife, Nancy. That child died of a methadone overdose at 20 years old. Donald Sr. was an alcoholic. When he quit drinking, he developed an addiction to prescription pills. He was morbidly obese, as were his two sisters. Carol was an alcoholic and had numerous significant health problems. Carol died on January 8, 2004, age 61. Don Sr. died on April 18, 2008, age 65.

There is also a significant history of suicide on both the maternal and paternal sides of Michael's family. On November 14, 1957, Charles Barnett, Sr., Michael's paternal great-grandfather, died of a self-inflicted shotgun wound to the head at age 53. The Coroner's Inquest Report further details that Mr. Barnett was found lying on the bed in the bedroom of his basement apartment. Pearl Barnett, Mr. Barnett's widow, reported that he had recently been suffering from severe headaches and nervousness and was always playing with the shotgun, which was kept loaded. Shirley Weber, Mr. Barnett's daughter, 23, reported her father had been despondent. Michael's grandmother, Carol Barnett, was also interviewed as part of the inquest. She was 15 years old. Mr. Barnett's blood alcohol level registered at .07 at the time he took his own life.

On February 16, 1912, Charles Henry Tisius, Michael's paternal 2nd great-grandfather, committed suicide by swallowing carbolic acid at age 29. He orphaned three children, including Michael's great-grandfather, Charles Edward Tisius, who was just three years old. According to the Coroner's Inquest, Mr. Tisius went to the home where his mother and sister were living at 7:30 pm, rang the doorbell and drank the bottle of carbolic acid when his sister Mary opened the door. Mary reported that two of Mr. Tisius' children had scarlet fever at the time Mr. Tisius' suicide. An Alton Illinois Evening Telegraph news article reports that Charles was despondent. The article

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goes on to report, "Charles Tisius was the second one of the sons of Mr. and Mrs. Tisius to commit suicide within a year ..."

On May 16, 1911, Walter Tisius, Michael's paternal third great-uncle also committed suicide by drinking carbolic acid, at age 24. Walter Tisius killed himself exactly nine months before his brother, Charles Henry Tisius. An Alton Illinois Evening Telegraph news article reports:

Walter was "found lying on the sidewalk, suffering intensely. Members of his family say that he had been despondent for a short time. Monday evening he went home to supper and seemed in his usual condition of mind, but after supper he seemed to be very despondent. He threatened to kill himself but little attention was paid to his threat. His mother told him to go to bed and he would feel better in the morning ... Members of his family say that some time ago he fell in getting off an interurban car and his head was badly injured. They say he was never mentally right since then and had been subject to brief periods of mental derangement."

On October 26, 1993, Charles Lawrence Quinn, Michael's maternal first cousin twice removed committed suicide by jumping from Chain of Rocks Bridge in St. Louis, MO. He was 59. The Coroner's report stated drowning was the cause of death but also noted two gunshot wounds to the head and acute ethanol intoxication. It stated earlier in the day Mr. Quinn shot his girlfriend who was in critical condition at a local hospital.

On April 25, 1924, William F. Keuhl, Michael's maternal 3rd great-uncle, committed suicide on by fastening one end of a rubber hose between his teeth and the other end to an unlit gas burner, poisoning himself. His death occurred in his daughter's basement. He was 78.

On August 31, 1970, Adolph "Otto" Kuehl, Michael's maternal 3rd great-grandfather, committed suicide by jumping from the deck rail of a ferryboat at age 69. News articles report chronic sleeplessness and repeated prior threats to commit suicide. It is also reported, "he suffered a severe sunstroke two years [prior] and at times became irresponsible." Kuehl survived the plunge into the river but died en route to the hospital.

VI. CHILDHOOD HISTORY

Michael Andrew Tisius was born on February 16, 1981, in Creve Couer, Missouri. Michael was Chuck's first child and Patty's second. Shortly after Michael's birth, Chuck stormed out of the delivery room complaining that he had wanted the baby to be a girl. Patty told Michael this story ad nauseum throughout his life, though Chuck later denied having said it.

Similarly, Joey hated Michael from the moment he was born. When Michael was still an infant, Joey tried to choke and kill him. This was a favorite story of Patty's. She told it whenever someone remarked on how opposite Michael and Joey were.

There is evidence that Patty may have used alcohol just before or during the time she was pregnant with Michael. For example, the partying and drinking witnessed by Gloria and Dottie appeared not to be interrupted by either Joey's birth or his stay in the NICU. Neighbors and family members witnessed Patty drinking. Alcohol seemed to be the constant backdrop to Michael and Joey's lives. Indeed, they spent much of their childhoods in bars, staying well into the night even at very young ages. The fact that Joey, as well as Michael's younger half-sister, Kaitlyn, were born prematurely

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is another possible indicator of chronic alcohol use in pregnancy. Patty's penchant for getting on the phone late at night and talking for hours suggests possible alcohol use.

Patty and Chuck had a difficult relationship. When Michael was a baby, Patty called Aunt Gloria. Patty was crying and upset. She told Gloria that Chuck had been hitting her so she went to the shelter. Patty was crying and upset.

When Michael was just a few months old, Patty learned Chuck was having extramarital affairs. She confronted one of the women with whom he was sleeping. When the woman told Chuck about Patty's confrontation, Chuck became enraged and disappeared, abandoning Patty and the boys.

In June 1982, Chuck joined the Army Reserves and left for basic training. He did not return until November of that year, when Michael was 16 months old. While Chuck was away, his best friend called to say Patty propositioned him and another man to pay her for sex at the bar where Dottie worked. Two of Patty's best friends told Chuck the same story and added that Patty was working for a pimp. Patty spent a lot of time at the bar. She regularly dropped off Michael and Joey there at night, returning to pick them up around 1AM. This started when Michael was still in his car seat; Joey was a toddler. Being dropped off at the bar at night would continue to be a regular feature of Michael and Joey's lives for years. Shortly after Chuck returned from basic training, he began divorce proceedings. Patty received AFDC for both children and they remained at home with her.

When family visited Patty's house, they would find toddler Michael running loose and wearing a diaper that was soiled for so long, he would gotten his hands in it. Patty would be elsewhere in the house, occupied with other things. She was cold and uninterested in her kids. Of the two, Joey was her favorite. If Joey tried to hug her, she hugged him back. That was not the case with Michael. Patty spoke harshly to Michael and yelled at him constantly. She was not affectionate. She did not hug him. Michael often appeared to be hungry. When questioned about it, Patty would take a cold hot dog out of the fridge and toss it at him. He seemed happy to get anything to eat. She did not cook regular meals. The boys lived on Pepsi, cold hot dogs, and chips.

Chuck and Patty's relationship was hostile and antagonistic. They fought over custody of Michael for more than ten years. Michael primarily lived with Patty. Chuck occasionally saw his son – mostly on weekends or holidays.

Despite inheriting a paid-for house from her father, Patty got behind in her property taxes and she lost the house in 1984. She took Joey and Michael and moved into an apartment in St. Louis. Patty's boyfriend, Mark Keck, moved in with them for a short time. Mark had a son but only had visitation with him.

Patty and Chuck filed for divorce on January 5, 1983. It was finalized on September 7, 1983. On November 25, 1983, Patty filed a temporary restraining order against Chuck.

Michael recalls being at a gas station at age 3 or 4. Patty came out of the store, saw a woman. Patty said, "that's that fucking fat bitch that dad cheated on me with." I didn't know what a "fucking bitch" was or even who "dad" was.

Chuck married Leslie Cox on December 9, 1983. They filed for divorce on November 25, 1985. Their divorce was finalized on January 31, 1986. Chuck and Leslie Cox did not have any children

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together. On September 27, 1986, Chuck married his third wife, Leslie Semore. Michael, age five, attended their wedding with Patty. During the reception, Patty left by herself, leaving Michael behind without making any arrangements for his care. Leslie's friend, a nineteen-year-old whom Patty had never met, took Michael home with her that night.

Michael continued to live with Patty. Chuck and Leslie sporadically took him on weekends or holidays. They pre-arranged custody hand-offs, but Patty regularly cancelled at the last minute or failed to appear. Sometimes Chuck and Leslie arrived at Patty's on schedule to pick up Michael only to find no one was home. Numerous family members believed Patty was working as a prostitute during this time.

When Michael was about five years old, Chuck gave Patty a car. This initially improved the visitation issues but things quickly devolved back to the old pattern of irregularity. Leslie tried to mediate Chuck and Patty's volatile and hostile relationship, but it only grew more antagonistic. Once, after Patty gained a few pounds, Chuck crudely told her she looked like she was pregnant again.

Sometime in his early 20's, Chuck began working as a police officer. Several generations of Tisius family members have worked in law enforcement, the military and as fire fighters. Chuck's father, Don Tisius, Sr., was a police officer at several departments in the St. Louis area, including Brentwood, Manchester, Warson Woods, and Country Club Hills. He resigned from Manchester Police Department in 1970 under allegations of wrongdoing. In 1981, he was demoted from his position at Warson Woods Police Department. Chuck's stepmother, Nancy, was a 911 dispatcher at the Brentwood, Missouri Police Department. Chuck's brother, Eugene Tisius, is a police officer in Warson Woods. His brother Don Tisius, Jr. was in the military. His brother, Ron Tisius, was a firefighter in Richmond Heights. Ron's son, Ron Jr., is the Fire Marshal of High Ridge, Missouri. Tisius family involvement in law enforcement can be traced even further, dating back to the 1800's. Christian Henry Tisius, Michael's third great-grandfather was the long time police chief in Alton, Illinois. Other members of the Tisius family were also law enforcement and firefighters in that same area.

When Michael was less than six years old, Chuck brought him to the police department where he was working. He introduced Michael to his colleagues by name but did not identify Michael as his son. At the station, Chuck's fellow officers had an African American man in custody with his hands cuffed behind his back. Michael had never seen a black person before, except on TV. Chuck handed Michael a nightstick and asked, "You want to beat a nigger to death?" Michael was scared and did not know how to respond. He did not want to beat anyone.

On April 5, 1987, when Chuck was 24 years old and still working in the same department, he was shot on the job and severely injured. According to the official version of events offered by the Jennings Police Department in 1987, two African American brothers, Mark and Amos Branigan, were pulled over by Chuck on suspicion they were driving a stolen vehicle. When Chuck ordered them out of the car, one of the men shot at him. The bullet hit just below Chuck's bulletproof vest. Michael, five, first learned his father had been shot by seeing a report on the news.

During Chuck's recovery, he became addicted to pain pills and began forging prescriptions and stealing from relatives. Chuck left his job at the department in March 1988, a year after the shooting. From that point on, his employment was unstable and erratic. Chuck worked briefly as

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a security guard at Monsanto Chemical in 1988. He struggled to stay in one position, working at four different police departments in one year. After that, Chuck took temporary jobs as a security guard – positions that, again, did not last long. In custody records, Chuck's loss of two different jobs is explained as being "due to health."

Chuck took his youngest daughter Lauren — whom he fathered with Leslie — to Walgreens to attempt to get drugs with a forged prescription. He brought Lauren because he thought the police would be less likely to arrest him with his young daughter in tow. However, they did arrest him, and Lauren was embarrassed to be recognized by the father of her schoolmate (also a police officer) at the station while Chuck was in booking.

During this time, Patty continued to abandon Michael and Joey at bars while she did other things. Dottie worked as a waitress at a bar called Colombo's in St. Louis. Patty brought the boys there a few nights a week. She set them up behind the pool table and left until late into the night. Michael busied himself by drawing pictures and tried to ignore the noise and chaos around him. Sometimes Dottie spilled out her tip jar so he and Joey could play bumper pool. Other times, they would wander to the back room and watch TV.

As a child, Michael had episodes where he appeared to be zoned out. He would stare into space, completely in his own world. During these episodes, his name could be called several times and he would appear not to hear it – much longer than normal. Then he would snap out of it and return to being his regular self seemingly unaware anything had happened.

Michael was a timid child. He often became frustrated trying to communicate. He was slow to talk and could not find the words he was looking for. He also had a stutter that appeared when he got excited. Michael was self-conscious and embarrassed about it. When Michael stuttered, Patty responded by berating him, further humiliating him, often in front of family members.

Michael would get stuck on a word or phrase. He still does it now. Then it stays with him for a period of time and continues until the problem is no longer there. It is not just a matter of calming down. As long as the problem is still there, he perseverates.

Family members, neighbors, and friends recall that Michael was gullible and naïve. He would fall for anything.

Patty and Chuck bitterly disputed child support, custody, and visitation through their lawyers. Patty maintained physical custody. Chuck adhered only partly to their visitation schedule, which allowed him to see Michael every other weekend, every Wednesday, and certain weeks during the summer. He and Patty alternated holidays.

When Michael was in first grade, Chuck and Leslie's first child was born – the girl Chuck had longed for. Chuck's visits to Michael dropped off. By the time Michael entered first grade, the custody arrangement had become completely spontaneous and unpredictable. When Patty and Chuck met to exchange Michael, they often had explosive fights in front of him. Both parents routinely used Michael, as a pawn in their disputes.

Repeatedly, Michael told his friends, school teachers and others with whom he came into contact that he was expecting Chuck to pick him up for a visit. Friends saw him, more often than not; sit

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on the front porch waiting for hours before finally giving up. Back inside the house, Michael would cry and cry. Patty sometimes made up stories to explain why Chuck had not shown up, such as that, he had to work. Michael told neighborhood friends that, when he was born, his dad had really wanted a girl instead. Patty noticed Michael becoming depressed. He did not want to leave the house and stopped wanting to play. His pediatrician noted that Michael, five, was a “nice little boy that looks at TV all day.”

At some point, Chuck and Patty’s relationship became so antagonistic that Leslie intervened. She had managed to cultivate a civil relationship with Patty, which allowed the two women to communicate and arrange for exchanging Michael without involving Chuck at all. For a time, Leslie’s office was in the King’s Henry/Chippewa neighborhood, the same area where Patty lived with Michael. This made for a convenient pickup -- Leslie could get Michael after work to take him back to Chuck’s for the weekend without going out of her way. However, the neighborhood was so dangerous that when Leslie became pregnant she had to quit her job because she felt so unsafe there. The final straw came when a flasher exposed himself to Leslie as she was walking to her car one night. After she quit this job, Michael’s regular visits with his dad also stopped.

When Chuck and Leslie did pick up Michael, it was often late – well past ten at night. They knew to expect the boy to be in rough shape. Michael was frequently sick and seemed to have a constant runny nose. His hair was greasy; he wore dirty and too-small clothes, and reeked of urine. Chuck and Leslie had to bathe and delouse him, and sometimes buy new clothes for him, before they could take him anywhere in public. Other family members also recall Michael being dressed poorly and having inadequate hygiene.

Michael’s pediatric medical records are peppered with illnesses and ailments. He is seen numerous times for earaches, hearing abnormalities, bronchitis, pharyngitis, vomiting, stomach ache, cough, fevers, cold, runny noses and rashes. School nurse records indicate Michael was seen for pinkeye, losing the crowns on his teeth at age seven, stomach aches and a persistent rash.

Mike had no recollection of getting scabies, though records confirm that he did. However, he remembers having ringworm. He did not know at the time what ringworm was. Later he learned it is something you get when you are dirty.

I pointed out to Michael that his medical records indicate he had numerous rashes as a child. The records never identified the etiology.

No one ever told Michael to shower or explained why one should shower. No one explained anything to him. For example, he started maturing sexually before Joey and asked his mom why he was getting hair under his arms. Patty just laughed at him. Another time, he asked her how babies were born. She put her thumb in her mouth and pointed to her vagina.

Patty hid everything from Michael. He never knew much about Mom’s boyfriends. He did not interact with her much. Sometimes she would go in her room and just cry for hours.

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Once in class the teacher told the students to ask their parents about "Flower Power." When Mike asked, Patty said she did not know about it. The next day, he went back to school and he was the only kid whose parent did not know about "Flower Power."

Although Patty rarely had a job, she was often gone from the house, leaving Michael and Joey alone together. When she was home, the boys were left to their own devices. Michael and Joey were physical opposites. Joey was large for his age. He was stocky, thick, and muscular. He was physically powerful. Michael, 2 ½ years younger, was short and bird-boned. When Michael was three years old, Joey was approximately seven or eight inches taller and nearly one and a half times the size of Michael. When Michael was 7 ½ years old, Joey was nearly six inches taller and outweighed him by more than 30 pounds. In school, Michael was one of the smallest of all the boys his age. Gerald Wool, Michael's pediatrician noted five times that Michael was small for his age. On August 13, 1994, Dr. Wool noted Michael, 13, was in the tenth percentile for height and weight. Teachers and classmates also recall Michael being small for his age. Janice Page reported that even in his repeat sixth grade year he was very small compared to the average sixth grader.

When Michael was around four or five years old, Joey's attacks upon him escalated. He beat him on a daily basis. The beatings were unprovoked, severe, and could happen at any moment. In addition to punching and kicking, Joey threw baseballs, hockey balls, bottles, and shoes at Michael as hard as he could. Patty did not intervene to stop the abuse. She yelled and screamed constantly at both of the boys but did nothing else. Joey was undeterred. When Joey attacked Michael, it was Michael who would be sent to his room. When Michael went to his room, Joey often followed him there to continue the fight. Without any adults willing to step in, Michael was at Joey's mercy. Michael did what he could to minimize his own suffering. He often slept on his stomach because he had bruises all over his back, making it painful to lay facing up. During the attacks, Joey's habit was to back Michael into a corner until he was stuck without any room to move around. Michael learned that if he was going to get stuck, it was better to get stuck in a position that left his backside exposed, rather than his front, because being hit in the back hurt less, so he tried to get stuck that way whenever he could.

During visits at Chuck's house, Leslie was the primary caregiver. She perceived Michael as a sad little boy who was nobody's favorite. Having witnessed Patty's neglectful parenting, she felt sorry for Michael and wanted to help him. But Leslie's nurturance was routinely weaponized by Chuck to disparage Patty. Leslie recalls that Chuck interrogated Michael anytime they gave him anything. For example, if Leslie made dinner, Chuck would comment to Michael that he bet Patty never cooked. Leslie wondered what was going on at Patty's home but did not ask because she wanted Michael to have at least one place to go where he did not have to be worried. She was concerned that Chuck was turning every visit into an interrogation, and that Chuck disparaging Patty in front of him put Michael in a terrible position.

According to Michael, his parents were bitter enemies but he never understood why, other than his mom told Michael that dad cheated on her. Chuck constantly spoke negatively about Patty in front of Michael. He told Michael that his mother was a prostitute. Michael did not know what a prostitute was. He later asked Joey, who explained it. Michael was shocked that his mom would do that.

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When Leslie made a hot meal for Michael and the rest of the family and they all sat at the table together as a family, Michael was bewildered. At Patty's house they typically ate on their own or rarely when they all sat together to eat, they did so without speaking. They ate as quickly as possible. Family dinners in the traditional sense were a foreign experience, fraught with anxiety for Michael. He did not know how to act and worried he would do or say the wrong thing.

Leslie got the impression that Michael was accustomed to eating cereal for breakfast, lunch, and dinner. He was very skinny. He seemed desperate for affection. When he was about six years old, Leslie was driving with him in the backseat. Unexpectedly, she heard this tiny voice ask, "Can I call you Mom?" Leslie told Michael that he could call her anything he wanted.

On September 28, 1991, Michael's pediatrician at the Children's Clinic noted he was immature and cried easily. Michael was 4'8 $\frac{3}{4}$ " and 66 pounds. On June 30, 1992 and October 5, 1992, the doctor noted that Michael, age 11, still wet the bed. The doctor also noted that Patty wet the bed until she was in fourth grade.

By third grade, violence and terror were regular features of Michael's daily life. Joey's assaults on Michael were unpredictable and vicious. He once hit Michael in the back of the head with a 12" decorative garden rock. Another time, Michael was standing in the street talking to some neighborhood children when Joey came out of nowhere. He punched Michael in the head repeatedly until he fell to the ground, and then banged his head against the ground until he lost consciousness, as neighborhood friends looked on. Michael was unconscious for several minutes. Childhood friend, Deanna Guenther, knelt on the ground beside Michael and held him until he woke up. When he started talking, his words were "all jumbled up." Calling an adult for help was not something any of the children viewed as an option available to them. They believed it would be pointless to tell Michael's mother because she would not have cared or done anything about it.

As children, Joey and Michael cut the top off of a whiffle ball bat. They filled it with gravel and duct taped the top closed again. This made the bat's swing exponentially more forceful. The two would hit balls in the backyard and pretend to be like the home run guys on TV. Joey also used this bat to assault and terrorize Michael. He would chase Michael, swinging and hitting him until he was backed into a corner. Joey left dents in a door at their Hillsboro home from hitting Michael with the bat while Michael crouched against the door.

Kids from the neighborhood stayed away from Patty's house when she was home. It was common knowledge that she hated kids and did not want them around. She was known for her mood swings. She would be happy one minute then angry the next.

Life under Patty's rule could be chaotic and disorienting. She was distant and unaffectionate. Patty was emotionally and verbally abusive to Michael. She screamed at him constantly regardless of who else was around. Her constant berating made family members who witnessed it very uncomfortable. She called Michael names such as "stupid" and was hypercritical. When Patty went away on trips, she often left the boys with Dottie, who openly favored Joey and doted on him. Dottie, like Patty, was cruel toward Michael, similarly denigrating him with names like "stupid" and "idiot."

Patty's house was dirty, unkempt, and in a state of disrepair.

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Michael had no chores as a kid. Rarely, he was told to mow the lawn. No one taught him how to do dishes or clean bowls. He did not learn how to clean a bowl or take a regular shower until much later in life. People made fun of him for not knowing how to clean things when he came to prison. People made him aware of how bad his hygiene was, and that he smelled. Patty never made him take showers or baths. He would run around outside, get dirty and be disgusting. Then he put on different clothes on in the morning without showering. He did not brush his teeth. He would just go to school. Now he is neurotic about cleaning.

Joey attacked Michael with impunity, often destroying the house in the process. Patty owned a large wooden china cabinet, which had been passed down in the family. Joey busted out the glass from its doors and kicked in the entire wood panel from the back. Patty yelled at him but left the furniture broken. Family life was void of any collective routine. Michael stayed awake until 2 a.m., sometimes leaving in the middle of the night to walk down to the corner store and get a soda. Joey kept his own preferred schedule.

Patty had predictable and solitary rituals. She spent every night in the same chair, sitting with her legs pulled up to her chest inside her favorite blue housecoat, sucking her thumb and writing for hours in a notepad. When she was not sucking her thumb, she chain-smoked cigarettes. When she was not writing in the legal pad, she compulsively twirled her hair and talked on the phone for hours. In the absence of any adult intervention, Joey's attacks on Michael increased in frequency and intensity. They were most severe when Michael was between the ages of eight and ten. When I asked why his mother did not intervene to protect him, he said that I needed to understand that his mother was a small, tiny person. Joey was physically stronger than his mother when he was a child so she really could not physically protect Michael.

Joey had severe and frightening night terrors for years. These began when Michael was nine or ten years old. Sleepwalking is a familial trait. Dottie walked and talked in her sleep as a child, once making it down the block before her mother caught her. During Joey's episodes, he often screamed alarmingly and behaved erratically. Once, he ran through the house shrieking, "They're going to kill us!" He turned on every light in the house and punched at invisible enemies. Michael did not understand that Joey was asleep and believed people were breaking into the house. Another time, Joey jumped out of the top bunk, slammed his head into the wall – hard enough to leave a dent and screamed about spiders. Patty attempted to physically subdue Joey but she was no match for him. This happened during the "spider" night terror. Michael described how powerless he felt. He said that in a nutshell powerlessness the theme of his childhood. Even as a young teen, Joey was incredibly strong. Because Michael, regularly suffered interruptions in his sleep, he struggled to stay awake during class. Joey saw a doctor about the night terrors and they stopped when Michael was eleven or twelve.

Michael also disclosed that lying was like breathing to his mother and brother. He recalled a time at about age 12 when Joey's dad and family came to his birthday party. They gave him cards containing money. He estimated that they gave him hundreds of dollars. He put the money under his mattress for safekeeping. Later he wanted to go shopping with the money. He went to get it. It was gone. He knew his brother had not taken it because he would have spent it and there would have been evidence of him buying things. He knew that his mom had to have taken it. Indeed, his mother, when she learned about the money being gone lectured him and grounded him because someone had stolen the money from him. He told me, "If Mom had asked to use it to help pay

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bills, I would have helped her.” Michael explained that what he learned from that experience was that lying was a way of life in his family. He also described what appears to be a type of hypervigilance. He indicated that now he is always looking for signs of people lying to him. He is constantly scanning the environment for evidence of lying.

When asked how he made sense of his life at home, he said that he did not. “The only peaceful part was staying up at night. It was quiet and safe.” He also described a relationship that he had with his cat named Trouble. “He was my buddy.”

I also asked how he dealt with Joey’s aggression. He replied, “I learned how to take a punch. I could not fight back or it would be worse.” He would try to stay away from Joey. Michael explained, “I used to recognize that something was wrong but if someone keeps telling you something is X, Y, or Z, you come to believe it.” Regarding Joey’s aggression, his mom used to tell him that was what brothers do. “You’re a little brother and that is what happens.” Michael indicated that before he was even a teenager, he had given up. He said, “You can only push a rock up the hill for so long and then you quit trying. You realize that you still have to get up the hill.”

I inquired when he felt the most hopeless. Michael responded that he did not think there was ever a time that he did not feel hopeless, that he had even tattooed that on his arm, which he then showed me. “I would just pray to die.”

Patty was chronically unemployed and spent most of her time in the house. She was known for running various scams in which she sometimes enlisted Michael. Patty sold her food stamps to buy cigarettes and siphoned gas from her fathers-in-law’s car.

Patty also often rearranged the contents of the house while her kids were at school. Michael and Joey routinely came home to discover all their things had been moved into different rooms. If they were home, Patty enlisted their help. Sometimes she woke them up early in the morning and announced, “Get up, we’re moving rooms!” and the three of them would move couches, beds, shelves – all the furniture – to new locations. They rotated bedrooms more than ten times during the seven years they lived in the Hillsboro house. Michael’s maternal grandmother, Dottie, did the same thing. She moved the furniture in her house nearly every day. When her husband came home after working all night, he’d go to sit on the bed and find it was gone. Michael, from a young age, stayed up late into the night engaging in similar behaviors, taking everything off the shelves and rearranging the room.

Patty also behaved in other erratic and confusing ways. When Michael was nine or ten years old, he and Patty were driving him home from her mother’s house in their ’72 Impala. Michael wore his Ninja Turtles tee shirt, a jean jacket, and his Batman belt. Patty wore a brown knit sweater. Unexpectedly and without looking at Michael, Patty said, “I could step on the gas and swerve this car into that tree and kill us both right now.” Michael grabbed the door handle and braced for impact. He tried to imagine how fast the car was going and wondered if he could jump out of the car. He wondered what he did to make her want to kill him. Patty was equally vicious to other peoples’ children. Once, Michael was in the driveway talking to his friend DeAnna Guenther, who was just ten years old. From the front porch, Patty screamed at Michael, “Get away from that slut!”

Repeatedly as a child Michael had medical issues related to urinary and testicular problems. In 1990, nine-year-old Michael began seeing a pediatrician for chronic bedwetting. He was given

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Tofranil, a tricyclic antidepressant. That was somewhat successful but the problem persisted. His pediatrician noted a strong family history of bedwetting, including by Michael's mother until she was in the fourth grade.

Michael saw the school nurse for testicular pain at age seven. Two years later, he was seen at the Des Peres Emergency Room several times in one week for severe testicular pain. He underwent various painful and embarrassing examinations. On September 13, 1990, Michael woke up in severe right groin / abdominal pain. A testicular radiology scan was done and the diagnosis was "probable torsion / untorsion [right] testis." Patty was "instructed to bring Michael to ER immediately if scrotal pain returns. Informed of risk if delay occurs in bringing pat[ient] to ER. Mother verbalized understanding of instruction." Three days later Michael was seen again in the Emergency Room, "9 yo WM presents on return visit to ER to be seen for recurrent right testicular pain. Pt was sent home from school due to pain & inability to walk [because of] pain." On that date a cystourethroscopy, bilateral testicular fixation and dilatation was scheduled. Patty recalled a specialist told her that Michael required emergency surgery or he could die. On September 24, 1990, Michael underwent three procedures: cystourethroscopy, urethral dilatation and a bilateral testicular fixation, completed by Dr. Richard Still, an urologist.

The pre-op sedation procedure was frightening and traumatizing. Michael, just nine years old at the time, did not understand what was going to happen to him. No one prepared him by explaining, beforehand, what he could expect from the sedation process or the surgery. Michael, like his mother, is extremely needle-phobic. His pediatric records note he refused a hepatitis B shot at fifteen because he was "too afraid of shots, refuses..." Nurses had trouble getting the IV in, which frightened him badly. When they were finally successful inserting it, he was wheeled to the operating room. The nurses put his gas mask on and told him to count down from 100. Instead, Michael entered a full-blown panic. His heart raced. He shrieked as loudly as he could and yelled, a bunch of curse words. He was terrified and convinced, without a doubt that he was going to die.

To this day, Michael can vividly recall the feeling of the gas mask on his face. He was breathing and screaming so hard that steam and sweat built up underneath the mask. He remembers the antiseptic smell of the operating room, the nurses' rubber gloves, and the smell of the gas. He remembers the feeling of the bright, warm light on his bare stomach.

Michael did not recognize his own doctors or nurses as familiar because they had caps and masks on. All he could see was their eyes. He knew for certain that he was going to die, and he was fighting for his life to escape the operating table. His struggling caused the IV to be partially ripped out of his arm. He remembers the feeling of the nurses' hands, in rubber gloves, gripping and grabbing his arms and legs, trying with all their might to hold him down as he wrestled to escape. It was like a nightmare, only he was awake. He believed he was going to die. He was desperate. The nurses and the doctors didn't say a word to him. He screamed, cussed, struggled to get up, and flailed his legs.

Suddenly, it was "lights out" in his head. His next memory is waking up after surgery. He immediately remembered yelling at the nurses and he felt guilty. He did not know why he'd snapped or why he thought he would die. At no point did it occur to him to ask an adult for help: *"I didn't want to tell nobody what was going on. I was embarrassed."* In a sixth grade autobiography, Michael reflected on the surgery, which had taken place two years earlier:

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"Later on I kept, haveing since the begging of school. I was in and out of the hospital all year. I finally had sergury schedualed. My left testical my lower stomache or abdomine. I finally had surgery, both testicals were sewn down, so the other testical wouldn't have the same problem. I still have a little pain when yurinating." [sic]¹

Patty failed to follow up with Dr. Still following Michael's procedure. It was next brought to the attention of his pediatrician more than two years later. On October 5, 1992, Michael, age eleven, was seen by his pediatrician for "intermittent penile / testicular pain on urination off and on since testicle operation per Dr. Still at [Metropolitan Deaconess West] now 2 years ago and not back to him [due to] on card now, not insurance, etc., etc. Refer to [Genitourinary] ...asap." Dr. Still saw Michael three days later on October 8, 1992. Michael reported having blood in his urine at school, urethral burning and enuresis. On October 12, 1992, Michael was admitted to Des Peres Hospital diagnosed with Urethral Meatal Stenosis – a narrowing of the tip of the penis. Dr. Still observed "the right testis to be descended and normal to palpation. The left testis was descended and somewhat smaller. The urethral meatus was noted to be extremely tight and had to be dilated prior to insertion of the pediatric cystoscope." Michael was again administered a general anesthetic. A second cystourethroscopy and urethral dilatation were performed.

On October 13, 1992, the day after Michael underwent his second genital surgery under general anesthesia, he was already back in school. Records indicate he lost recess that day as a punishment for "lack of effort."

Michael's profoundly low sense of self-worth was evidenced in his own writings. Michael prolifically drafted notes to himself, about himself. He left them all over the house, scrawled on paper, his jeans, shoes, and basketballs. What follows is an example written by Michael in fourth grade:

"I'm weird I'm stupid I'm a weido I'm ugly I'm a morron nobody likes me I'm ugly
I'm a dork a geekazoid I'm a slob I'm a geek nobody loves me I'm not worth a cent"
[sic]

Four days into his repeat sixth grade school year, John Perry from Domestic Relations Services conducted assessment visits in the homes of Patty and Chuck. Mr. Perry interviewed both parents and Leslie. He thought Chuck was making up flimsy excuses for why he hadn't been visiting Michael. He doubted Chuck's sincerity in purporting to want Michael to live with him. At the time of Mr. Perry's visit, Chuck had not seen his son in over two years, with the possible exception of one time when Chuck picked up Michael and took him for a hamburger. Chuck claimed to have sent Michael letters over the years, but Michael denied receiving them. Chuck accused Patty of intercepting the mail, which she denied. When asked about his father's absence by Mr. Perry, Michael defended his dad, saying he was really busy. Numerous letters from Chuck to Michael appear in the custody file.

Mr. Perry observed that Michael was not doing well in his present setting. He failed sixth grade and seemed quite unhappy. He observed Joey was quite a bit bigger than Michael. Michael told Mr. Perry that Joey beat him up a lot. Mr. Perry found that Patty's home was not well kept and that she did not pay attention to the boys' hygiene. He thought Michael seemed quite uncomfortable in his presence but also noted that the boy did not have difficulty saying, in front

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of Patty, that he wanted to live with his father. Nor was Patty upset by the remarks. Privately, Michael told Mr. Perry that he wanted to get away from Joey and thought things would be better at his dad's, but could not supply any relevant specifics as to how that would be.

When Mr. Perry visited Chuck and Leslie's, he found they had set aside a room for Michael with some furniture but without any drapes or bedding. They told Mr. Perry they had Christmas and birthday presents for Michael at the house, but when he asked to see them, they said the presents were at Leslie's mom's house. Chuck and Leslie told Mr. Perry they thought it would be better for Michael to live with them, but he thought the remarks were delivered mechanically and lacked depth. He thought Chuck's lack of sincerity was disturbing and indicated his suspicion that Chuck was putting Michael through the turmoil of a custody change for a break in child support.

However, Mr. Perry noted that Leslie and Chuck seemed to care about their surroundings and appearances in a way Patty did not. And Leslie said she had an employee assistance program at her job that would provide transition counseling for Michael which would be required should the court allow a change of custody. Mr. Perry agonized over his recommendation in the report. He indicated neither parent was likely to provide a good environment for Michael. He expected Michael moving in with Chuck would invite a great deal of disappointment, but prospects at Patty's were possibly even more grim. Mr. Perry acknowledged Michael desperately wished to live with his dad. With great reticence, he ultimately recommended the court heed Michael's wishes and allow him to live with his dad on a trial basis for the school year.

Michael began his second sixth grade year living with Patty in Hillsboro. Janice Page, Michael's teacher, had been Joey's teacher two years prior. When Joey was in Mrs. Page's class, Patty expressed an interest in him, attending many of his parent/teacher conferences and stopping in after school to ask how he was doing. Things were different with Michael. Patty stopped in less often. She did not seem interested in his work.

Mrs. Page remembers Patty was desperate to hear something positive about her kids from Mrs. Page, because that would make Patty feel good about herself. If Michael himself showed her something he was proud of, she shrugged.

It was obvious to her that Patty had struggled in life. She looked much older than her 33 years. The condition of her teeth were a telling indicator of that. Mrs. Page recalls that Patty looked like she had a lot of miles on her. She seemed like an orphan. Hillsboro was an impoverished school district, and Mrs. Page viewed Patty as the poorest parent she had seen that year – or any year – in Hillsboro. Patty also seemed to have some emotional problems. Mrs. Page recalls that, during conversations, Patty avoided eye contact in a peculiar way. When Mrs. Page talked to Patty, Patty would not look at her. Even when Mrs. Page was asking Patty a question, Patty looked downward. However, if Mrs. Page looked somewhere else – at Michael, for example, Patty would turn her gaze toward Mrs. Page. Put differently, Patty would only look at Mrs. Page if the teacher wasn't looking back at her.

Mrs. Page recalls that Patty reminded her of an abused animal; it was clear her self-esteem was very poor. Mrs. Page recalls that Patty seemed like a very sad woman who had no clue about parenting or nurturing. Mrs. Page recalls these as the reasons why she still remembered Patty after many years.

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Michael was a year older than his classmates. However, this did little to close the achievement gap between them. He struggled to keep up academically and in gym class. He was still quite small. He dressed younger than his age, wearing overalls nearly every day, after the other sixth graders had long outgrown the style. Mrs. Page recalls that Michael constantly told her, "*Joey is mean to me. He hits me.*" Despite this being his constant refrain, Mrs. Page assumed he was joking and brushed it off.

On April 20, 1993 Michael was seen at Des Peres Hospital Emergency Room for abrasions on his penis. The injuries were caused by Michael being kned in the groin at 7:30AM that Tuesday morning. The zipper of his pants cut into his penis, causing bleeding and problems with urination.

Michael began telling everyone in class that he was going to go live with his dad. He repeated, "My dad wants me" over and over again. Mrs. Page thought it was a bad idea for Michael to go live with his dad when he'd only just started making progress in her class. She expressed her concerns to Patty, who offered that it was what Mike wanted to do. Mrs. Page recalls telling Patty that, as a mother, she had some say in the matter. Mrs. Page recalls Patty responded by looking at her like she was crazy.

Michael moved in with Chuck, Leslie, and their daughters, Lauren and Corinne, on September 17, 1993. He stayed less than two months before returning to his mother's house. At Chuck's, Leslie was Michael's primary caregiver. Although Chuck had petitioned for custody, Leslie reports that he had little interest in the boy once he actually got him.

Leslie tried to help Michael as he struggled at his new school, Riverview Gardens.

When he went to school at Dad's, they were learning things he'd learned a year before. They were behind compared to the Hillsboro school. At the school he went to near Dad's, he was one of just a handful of white kids. That was when he took dad's lighter that looked like a gun to school. He thought he could show it to the black kids as a means of protection. Michael also explained that his father was a racist. He repeatedly used the "n" word.

Michael, still in his second year of sixth grade, could read but not fluently. When he read aloud to Leslie, he went very slowly and struggled to sound out each word. Even when he could read the words, he did not understand what they meant. Leslie recalls that he reminded her of a third or fourth grader, not a kid who was supposed to be in seventh grade. Teachers made special accommodations for Michael, including putting his homework together for Leslie to pick up every single day. At home, Leslie sat with him and helped him through his assignments. She recalls that Michael tried very hard but could not catch up, which was frustrating for him. Leslie recalls that Michael was not badly behaved; he just could not understand his schoolwork. Leslie and Michael's teachers openly discussed the fact that he was slow. Despite that, nothing was done to evaluate him nor were any special education services provided. Leslie recalls discussing with Michael's teachers the possibility of having him evaluated, but it never materialized.

Michael also struggled socially at school. He was an outcast. The other kids picked on him and then he'd get in trouble for fighting. He dressed funny, wearing loose clothing in dark colors. Leslie recalls that Mike attempted to talk big at school to ward off bullying. However, this had the opposite effect, instead making Mike the object of the joke. Similarly, he tried to dress like a gangster in an effort to appear tough. That, too, made him the subject of ridicule, given his

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diminutive size. Leslie now regrets how the adults handled Michael's issues. She recalls that Michael's teachers concentrated so much on discipline that they missed the fact that he was slow and had learning problems.

When I asked Michael about Leslie he said that she was awesome for the window of time that he got to spend at Chuck's house. He explained that Leslie was an example of passages in First Corinthians in the Bible. "Love is kind. Love is patient." She tried to help him with schoolwork and was "the Mom I never had and always wanted."

However, Leslie's concern for Michael was not shared by Chuck, who was rarely present. When he was around, his focus on Michael was punitive in nature. He routinely performed "cell searches" of Michael's room, turning it upside down looking for contraband.

Chuck was also disengaged from his other children. Leslie recalls that Chuck was an okay parent until the kids turned five, at which point they mentally outgrew him. As a parent, he was undermining and irresponsible. Leslie recalls having spent her life trying to hide Chuck's shortcomings from her children. She recalls that he did not act like a dad to their children. At one point, Chuck was unemployed while Leslie was working. When Leslie left in the morning, Chuck was responsible for watching their baby, Corrine. On a number of occasions, Leslie came home to find Chuck sleeping right where she'd left him that morning, with Corinne crawling around on the bed. Chuck saw no problem with sleeping all day with the baby nearby. Chuck's parenting did not improve with experience. Leslie recalls that when Corrine got older, she wanted to skip school. Leslie told her she was not allowed to do that. In response, Chuck taught Corinne to hide under her bed until Leslie left for work. The two bummed cigarettes off one another when Corinne was still a teenager. As a grandparent, Chuck delivered more of the same. Leslie was appalled when Chuck, thinking he was being funny, taught their five-year-old grandson how to say 'fuck.'

Despite Chuck's indifference toward his son, Michael remained desperate for his attention. One day, Chuck spontaneously told Michael they were going to the arcade together. Michael, very excited to spend time with his dad, hopped in the car. However, as soon as they got to the arcade, their next door neighbor appeared who was a young woman, approximately 19 years old. She put her hands down Chuck's pants in front of Michael. Chuck handed Michael some coins and told him to play games before disappearing with the neighbor.

When Chuck returned, he and Michael got in the car together. During the drive home, Chuck screamed at Michael, warning him that he'd better keep his mouth shut. Michael did not understand what he'd seen or why his dad was yelling at him. He was thinking about how sad he was, and how he was never good at video games. In previous counseling, Michael had learned that when he was confused about something, he should write it down. So when they got home, Michael privately wrote himself a letter describing the events of the day. Soon after, Chuck performed a "cell search" of Michael's room and discovered the letter. Hence, Chuck went to Leslie on his own and tried to explain that Michael was delusional. He flew into a rage and screamed that Michael was trying to blackmail him. Chuck ordered Michael into the car and drove him back to Patty's, slapping Michael's head against the window and yelling until they got to Patty's home.

When Chuck arrived at Patty's front door with Michael, he was in a fit of rage. He called Michael all sorts of names. He told Patty that she could have Michael, that he did not want his son anymore, and that he did not care about Michael. Chuck said these things in front of Michael, who was sitting

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nearby, crying. He screamed that he did not want “the little motherfucker” anymore. Michael ran inside and secretly watched them from down the hall. Patty made Chuck sit on the couch and write a letter, dated December 7, 1993, explaining that he was giving permission for Michael to live at Patty’s. She was afraid Chuck would later accuse her of kidnapping Michael. When Joey asked what he was doing back home, Michael explained, “My dad didn’t want me anymore.”

Around this time, Michael scrawled, “I hate myself. Everybody hates, me. I wish I would die” all over his jeans and shoes.

“Mrs. Page noticed significant changes in Michael’s behavior and affect. She recalls that he was markedly subdued, much quieter, and did not seem happy. He was clearly very depressed. Mrs. Page recalled that day he came back from his dad’s house. Everyone could tell he was very embarrassed. The kids would ask him, “Mike, I thought you went to live with your dad?” Mike would just hang his head and mumble that it had not worked out.

Mrs. Page recalls that this new version of Michael was somber. He went through the motions but seemed depressed. He was not laughing or smiling anymore. A certain sparkle was gone. He seemed resigned to the fact that his dad did not want him. Mrs. Page reports being haunted by the memory of Michael, prior to leaving for his dad’s house, having repeated over and over again, “My dad wants me.”

When Michael moved back in with Patty, she favored an odd method of discipline. Patty recalled that, to punish Michael, who was then thirteen, she would have him get on the bed on all fours with his butt in the air. Then she would hit the bed with a whiffle ball bat “to scare him.” Patty recalled that, once, when she did this, Michael cried, “Don’t beat me like my dad does!” and was shaking half scared to death. Michael told Patty that when he lived with Chuck, Chuck took him around in his patrol car to meet women. Michael’s job was to wait in the car and listen for the radio.

Living back at Patty’s meant a return to daily assaults by Joey. To escape, Michael started spending more time at the house of his friend, DeAnna Guenther. She lived down the street. DeAnna’s mother, Donna Hendricks, readily took in Michael. Her house was a refuge for Michael, partly because Joey could not go there. Donna had witnessed Joey’s violence and, as a result, he was banned from her house. For this same reason, Joey was banned from other neighbors’ houses, as well, including the Bakers. First thing in the morning – every morning – Michael brought his bowl of cereal over to Donna’s house. DeAnna recalled that Patty was mean and constantly yelled at Michael. She called him names and embarrassed him in front of other people. Joey was allowed to drink her sodas but Michael was not. DeAnna recalled that kids at school picked on Michael because he was a wimp and wouldn’t stand up for himself. They made fun of him for not having a dad. He was also picked on by older kids in the neighborhood. Michael was very nervous and his whole body would shake constantly. DeAnna’s parents trusted Michael. He was the only boy allowed in DeAnna’s room with the door closed. Michael began calling Donna “Mom.” He went with her everywhere, including on trips to the grocery store. Taking trips to the grocery store with Donna is one of Michael’s best childhood memories.

Michael’s mother recalled that it was around this time that Michael began taking Prozac and Paxil, which he would continue to take through 1994. Michael also reported this in his mental health intake at Boone County. Michael reported that Prozac made him jittery and Paxil caused him

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gastrointestinal upset. Patty recalled that Michael would get very moody. He'd say that nobody loved him, everybody hated him, and he wanted to die. He once tried to jump off a bridge onto the highway. Patty remembered getting a call from a neighbor who was scared telling her Michael was trying to cut his wrists open. She described Michael as upset and crying when they brought him back to her house. Patty said Michael talked about harming himself "a couple times a month." In a questionnaire Patty filled out on 10/14/1996 when Michael was 15 years old she reported in response to the question, 'What does your child do when he/she is very upset': Depends on the situation – he could threaten to kill himself to running away, or take off and comes home when he feels like it.' Patty also reported in response to the question, 'Do you think your child would try to commit suicide?': "I really can't say because he always threatens to do it."

Michael was prescribed and took Tofranil, a tricyclic antidepressant from ages 9 to 14 to treat bedwetting. Michael started using marijuana at age 11 or 12. He recalls that the first time he smoked, he felt calm for the first time in his entire life. It got rid of his anxiety. Michael also took Ritalin, unprescribed, from the ages of 15 to 19 years old.

Michael was targeted at school and at home. School nurse records from 1994 indicate Michael was being bullied at Hillsboro. He was seen for having his chair pulled out from under him, being tripped, and being stabbed with a pen in the hand and stabbed with a pencil in the eye. Later, in January 1996, someone kicked his foot which caused him to fall on his back. The school called Patty and instructed her to take him to the doctor. However, medical records indicate that she did not do so.

On June 5, 1996, medical records document Michael's left breast was tender and swollen.

Joey recalled that Michael was not strong minded. He was easily manipulated. Joey would dare him to steal things and to fight people, and he would do it. Joey knew Michael had low self-esteem. Michael would say he wanted to kill himself. Michael wrote, "I hate myself. Everybody hates me. I wish I would die" all over his jeans and shoes.

Around this time, Patty worked at a local restaurant called Happy Days Pizza. She got home from work late at night most evenings. Happy Days was purchased by Patty's uncle, Elmo Quinn and his wife, Ann. They renamed the restaurant 'Quinn's Place' and hired Joey to do their deliveries. On their first night, Ann and Elmo hid a stash of approximately \$200 in cash in the restaurant. This was meant to be their change for customers on opening day. It was stolen that same night. Ann and Elmo believed Joey stole it.

Neighbor Patty Gray recalled that Michael would sometimes run to her house clutching his stomach and screaming that he could not take Joey's abuse anymore. The boys fought constantly and Michael sometimes escaped the house and stayed with Patty Gray overnight. She recalled Michael saying that he did not want to be here anymore. She understood that to mean that he wanted to die.

Other times, Michael escaped to the house of Corey Baker, a longtime friend and neighbor. Michael, age fourteen, once showed up to Corey's house around midnight. He seemed very scared. Corey invited him in and volunteered to sleep on the floor and let Michael sleep in his bed. Michael insisted on sleeping in the closet. When Corey woke up the next morning, Michael had not moved.

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He stayed in Corey's closet all day while Corey went to school. When Corey got home, Michael was still in the same spot. He had not moved or eaten anything.

At fourteen, Michael had sex for the first time. A girl who lived next door invited him over. He sneaked out of the house to meet her at her place and they ended up having sex. Michael fell in love with her. One night he went to meet her and saw a line of at least seven young men in her backyard. She was fellating one of them and the rest were waiting their turn. Michael was devastated. One of his friends, Corey Baker, was among the guys in line. They all laughed at Michael because it was common knowledge that the girl did this all the time. They did not understand how Michael could not have possibly known this about her.

During the summer of 1996, Michael essentially lived at Donna Hendricks' house. Donna laid down some ground rules which Michael followed. Donna recalls that Michael was very respectful. Donna's husband thought Michael might be gay. Donna's house became Michael's house. He was welcome to enter without knocking. Michael called Donna "Mom" and would ask Donna to let him move in. He tagged along everywhere with the family. Donna recognized that Michael was depressed and needed someone to show they cared. She knew something was wrong at home, but felt it was not her business and didn't want to pry. She thought Michael could be easily led astray by anyone who acted as if they cared. Michael helped around Donna's house, taking out the trash, watching the baby, and vacuuming. Donna understood that Michael was safe from Joey at her house. Patty told her that Michael's dad hadn't wanted him from birth. The neighborhood kids told her that Joey acted like the father of the home.

The summer before Michael started high school, he was prescribed the SSRI antidepressant/anxiolytic medication, Paxil.

During 9th grade, Michael started running away from home and skipping school more often. Wanting help, Patty drove Michael over to Chuck's house and banged on his door. Despite the fact that Chuck was clearly home, he did not answer the door at first. After some time, Chuck finally emerged and barked at them to get off his property, threatening to have Patty and Michael arrested if they did not leave.

Later that year, Patty showed up at Michael's school in the middle of the day, pulled him out of class, and asked, "So, you still want to live with your dad?" Michael did not know what to say, so he said, "...I guess?" Patty yelled, "let's go, then!" When Michael got into Patty's van, all his belongings were stuffed into trash bags in the backseat. The ride to Chuck's was silent. When they got to Chuck's house, he was sitting in a recliner. Patty yelled, "Here's your fucking son!" Patty told Chuck that she did not want Michael anymore and slammed the door. Chuck looked stunned and angry. He took Michael in for a couple days. Michael slept on the couch. Chuck made sure nobody got attached to Michael. Michael was not permitted to go to the second floor of the house because there was nothing there that he needed in spite of the fact that there was only a full bathroom/shower on that floor. He saw a picture of Chuck and his family at Disney World. He asked if they had been at Disney World. Chuck said, "Yes, it sucks to be you." Michael understood he was not welcome to stay. Leslie, Corinne, and Lauren stayed away from Michael. He was not allowed to hang out with them. Chuck followed Michael wherever he went, watching him. If Michael sat on the couch, Chuck sat right across from him. If Michael had to go to the bathroom, Chuck would yell, "Where are you going?" and he'd sit and watch the door while Michael went to the bathroom. Chuck watched him while he slept.

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One day, out of the blue, Chuck started screaming, "You got the audacity to come here to my house?!" and Chuck told Michael, "Get the fuck in the car." He drove him to Patty's house, all the way smacking Michael's head against the car window. Michael thought about opening the truck door and killing himself. After Chuck pounded him on the head multiple times, Michael developed a headache and a lump on his head. Michael didn't understand why any of this was happening. He didn't know what he'd done. He wondered, "What did I do? How come nobody wants me to live with them?"

What Chuck said that day still stands out to Michael because he remembers wondering what the word "audacity" meant and later looked it up. When Chuck pulled up to Patty's house, he yelled, "You fucking bitch!" He tossed Michael's things, still in trash bags, onto the yard, threw the car into reverse, and screeched off.

During 1996, Michael was seen by the school nurse, at different times, for being hit on the right side of his face with a baseball bat, feeling dizzy, having high temperatures, and rashes. Most often though Michael was seen for stomach ache, nausea and vomiting. In just over two and a half years he is seen by the school nurse twenty times for stomach related problems. A week after his fifteenth birthday, he was seen by the school nurse because he had not eaten in two days. The nurse gave him two packets of crackers. Six months later, Michael was seen by his pediatrician. On the date of that appointment, he was 5'4" tall and weighed only 104 pounds.

In October 1996, Patty married Mark Keck. This was a surprise to Michael and Joey, who came home from school one day to find Patty on speakerphone with Mark. She asked them, "What do you think about me and Mark getting married?" Patty was obsessed with Mark. She stalked him when he was in a serious relationship with a woman named Julia. Patty drove back and forth in front of his house, watching him, and watching for Julia's car. She saw them other places in town, too, and would call Aunt Gloria to tell her about it. Patty befriended Julia in order to sabotage her relationship with Mark. Patty eventually convinced Mark to leave Julia for her.

Patty's family doubted that Mark married Patty for love. Patty was about to lose her house for failing to pay property taxes and so planned to sell it instead. The family thought Mark was using her because he knew she'd have a little cash from the sale. Indeed, when Patty sold her house, she paid a chunk of Mark's bills. At the time, Mark very much needed the money. He was out of work and laid up from a serious car accident that took place a year before his marriage to Patty. As a result of the accident, Mark had to relearn basic life skills. His personality changed. He became short tempered and cruel. Mark later committed suicide by shooting himself four times in the chest.

Patty wanted to move into Mark's house. She told Aunt Gloria that they'd applied for an occupancy permit and were told Michael could not live with them because it was just a one-bedroom house, fit for a maximum of two people. Michael did end up moving in, but his "room" was an unfinished, open concrete basement. It was cluttered and filthy. They shoved a bunch of junk to one side to carve out a space for Mike's bed. Joey moved in with his aunt and uncle, Tammy and Jim Newkirk.

Mark was cold, dismissive, and verbally abusive toward Michael. He called him names like "stupid" and "ugly." Michael avoided talking to his new stepdad and felt unwelcome in the house. As soon as they moved into Mark's house, Michael started staying away from home as much as possible. He took to wandering around Maplewood on foot, with no destination, whenever he wasn't at school.

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Sometimes he'd stay out all night walking. Sometimes sneak back into mom and Mark's house and leave in the AM. Sometimes he would hide in the basement and urinate in the drain. When they went to work, he would use the bathroom upstairs. Sometimes he went to school just to use the bathroom.

Mark and Patty were married just under two years, but he kicked her and Michael out of his house after only two months of marriage. Patty and Michael went their separate ways. Michael lived for a short time with his uncle Don. After Don, Michael stayed, always for short periods of time, with a succession of paternal relatives. These included his grandfather, Aunt Genevieve, Uncle Gene, and great-aunt Lillian "Sis" Weinzerl. Sis recalled that when Michael stayed with her, he'd kiss her cheek and say, "You're my mom now."

Michael began dating Terra Launius, an older girl from school.

Patty got a 2-bedroom apartment in St. Louis and Michael moved back in with her. However, it lasted only a short time. Joey, who had been living elsewhere, showed up there one day. When Michael came home from school, he found Joey sleeping in his room. Michael slept on the couch for the first night or two, but then gave up and left home. Patty knew about this but did nothing to stop it.

Now homeless, Michael began sleeping in Terra's car. Terra's father, Kevin Launius, found Michael asleep in the driveway one night and invited him to move in with the family. Kevin contacted Patty. He recalled, "She didn't give a shit about Michael. She had an 'I don't care' attitude." Kevin tried to motivate Michael to get his GED. Michael got excited about this at first, but quickly gave up. Kevin recalled that Michael was a follower who could be led to do anything but was no good at doing things on his own. Kevin and other adults in the neighborhood noticed that Michael hung out with kids who were younger than him. He rode his bike and drew pictures with a child who lived across the street from the Launiuses. Michael deeply desired to be part of a family unit like the Launiuses, but felt out of place in their home, much like he had at Chuck and Leslie's. The Launiuses had dinners together, schedules and obligations, and were honest with each other. That was foreign to him. He felt unsure about how he was supposed to act. It made him nervous. Michael lived with the Launiuses for about a month before Kevin and Michael got into a dispute over some unreturned video games which resulted in Michael being kicked out.

During the springtime Michael was, again, homeless and wandering the streets of St. Louis. He slept in alleyways on Manchester road, in an area of town that was partly commercial and partly industrial. Michael got scared to sleep in an alley one night when it was freezing and snowing. He walked to Patty's house but did not knock or go inside. He fell asleep on the porch, planning to leave the next morning before anyone was up. He awoke to find Patty's car gone, indicating she walked by him asleep on the porch in the freezing cold and did nothing. Patty's roommate noticed him and invited him inside for a sandwich and a shower. Michael lost his job at Jack 'N' the Box in May 1998 due to being homeless.

Michael returned to sleeping on the couch in Patty's apartment for a short time. One close friend recalled that Michael totally changed when Joey moved back in. Joey's violence was extreme and dangerous. One witness recalled once witnessing Joey "flip out" after a minor argument with Michael. Joey went to the kitchen, collected a bunch of knives, and started hurling them at Michael,

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cutting her in the process. Michael ran and hid in the closet. His friend's boyfriend blocked the closet and hit Joey, who froze up and fell on his face.

Michael once handed Joey a knife and asked Joey to kill him. On a number of occasions, Joey handed Michael knives and guns and told Michael to kill himself.

Joey and his girlfriend, Marla, had a friend named Olan Standish Smith, who went by Stan. Stan was schizophrenic. Marla and Joey grew tired of him and began ditching Stan when he tried to hang out with them. Michael, in desperate need of a friend, began spending time with Stan. Michael recalls that at least Stan noticed him. Patty didn't want him back. Stan's mother, Mary Beth, occasionally let Michael stay with her at her house in Moberly.

In March 1998, Michael was caught sleeping in Stan's closet at an independent living facility (sometimes called "the Presbyterian home" in the records). This was not the first time. The case worker who found Michael noted that his mom put him out of the house and he had nowhere to go. She contacted Patty who said, "I didn't put him out. He leaves whenever he wants. My ex-husband has custody, not me." The caseworker made a mandated reporter call to DFS.

On April 4, 1998, Michael was assigned to caseworker John Reichle with the St. Louis County Dept. of Human Services, Office of County Youth Program. Upon meeting Michael, Mr. Reichle notes, "Interested in a job. Lives with mom. Not a great situation. Sleeps on the couch..." Ten days later, Mr. Reichle visited Michael's GED class and spoke with his teacher, Lynn Silverman. Ms. Silverman told Mr. Reichle that Michael had been there since 6:30 and did not have a place to stay. She showed him a note Michael had written: "Life blows I need a place to live. If I go to DFS I will kill myself no shelters or I will kill myself."

On May 12, 1998, Mr. Reichle spoke to Michael who told him that his mom had left home and sold her stuff and he couldn't get a hold of her. He told Mr. Reichle he'd lost his dad's phone number but that, "dad doesn't call back, anyway" Mr. Reichle notes that he called various agencies, including an evangelical children's home, DFS, and spoke with Larry Best at a transitional living program for homeless teens called Youth In Need (YIN). On May 13, 1998, Mr. Reichle attempted unsuccessfully to reach Chuck at work. He also tried his home phone number and pager, which were not in service.

Later that day, Mr. Reichle spoke with Michael again. Michael reported that he wanted to get into transitional living. Mr. Reichle also noted, "Learning problem, nobody believes it. Going on since 2nd grade. Can't concentrate if read too much eyes shake."

Mr. Reichle met with Michael and Patty on May 14, 1998. Patty explained that she did not have a job. He offered assistance in finding one.

The following day, Mr. Reichle contacted Youth In Need, a group home for homeless teens regarding placing Michael there. He attempted to reach Chuck for the second time at his work and home phone numbers. He left a message asking Chuck to get back to him regarding Michael. Mr. Reichle also spoke with Patty. Patty asked if he'd gotten hold of Chuck. Mr. Reichle told her he'd left a message. Mr. Reichle noted, "She asked about why she gets the brunt of the blame when she takes him in and dad doesn't." Patty told him that Michael had not come home the night before. Mr. Reichle noted, "She has called child support enforcement in the past to round up dad for money/child support. She is supposed to go out of town next week. Leaving Sunday and Monday

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for a week. Not sure with Mike situation. I told her to call my office # if need to do that. I would be checking.”

The next evening at 8PM, Mr. Reichle notes, “I checked my answering machine at work, no answer [from Patty].”

On May 18, 1998, Mr. Reichle called Mr. Tisius at home; the line was busy. Back at his office, he received two messages from Michael wanting to talk about Youth In Need. Mr. Reichle called Chuck’s home phone number again; no answer. He called Chuck at work and was told Chuck was still on strike. Mr. Reichle spoke with Michael about Youth In Need. They also discussed going together to Chuck’s home to talk with him. Mr. Reichle spoke with Larry Best at Youth In Need, who said that Michael had called him and made an appointment for Tuesday.

On May 19, 1998, Mr. Reichle spoke with Patty, who had spoken with Larry Best. Mr. Reichle was attempting to secure placement for Michael at Youth In Need, but the state program required signature from the custodial parent. Mr. Reichle notes, “He said the letter wouldn’t work for her to sign [Michael] in and that [Michael] would still have to be interviewed. I offered to meet her at 2:20...to drive up. She thought maybe just get a hold of dad 1st. She is calling Larry about this and will call me back. 11:24-I talked to Larry. We rescheduled to 1PM he is [finding] out about dad.”

On May 20, 1998, Mr. Reichle called Chuck twice and left a message with Chuck’s sister.

Later that day, Mr. Reichle spoke with Patty. He noted, “She said her and Mike went to dad’s place last night 6ish. Dad wasn’t real happy to see him. Dad’s wife invited them in. They told dad what they were wanting to do. Dad thought mom could sign [granting permission for Michael, seventeen and homeless, to live at Youth In Need] or that it will cost him money, etc...”

On May 21, 1998, Mr. Reichle notes, “Mike called and told me about going up to dad’s place, said dad gave him [illegible] dad kicked him out. Thought it cost money that mom could sign, etc. Talked of me trying dad and [illegible]. Suggests take mom to see dad...” Mr. Reichle called Chuck later that day. The secretary at Chuck’s office told Mr. Reichle that Chuck is usually outside on the picket line, but wasn’t there that day.

On May 26, 1998, Mr. Reichle called Chuck; the line was busy. He called again the next day and left a message on Chuck’s answering machine. Michael called Mr. Reichle that same day to ask if Mr. Reichle had managed to reach his dad. Later that day, Reichle notes, “Mike called ahead about what’s up with his dad. Also said Joe broke into his mom’s bedroom and took movies from her. Mike said she is going to move out even if she has to leave her stuff so for Mike to call me and find out what’s up. I told him I’d try Dad and Larry and call Mike back.” A half hour later, Mr. Reichle notes, “I tried Mr. Tisius at home, no answer. I tried pager – says, “The number you have reached is no longer in service.” I called Mr. Tisius’ [work], secretary says are still on strike.” Mr. Reichle called Larry Best later that same day. Larry told Mr. Reichle that the costs [of housing a child at Youth In Need] are covered by federal monies at no cost to the child’s legal guardian. Mr. Reichle suggested to Mr. Best that they try showing up unannounced to Chuck’s workplace or home. Mr. Best replied that he preferred to keep trying by phone rather than make the trip there only to miss him, and said that he was willing to keep trying. Later that day, Mr. Reichle noted, “I called Mike and Patty. [Patty told me] Chuck said not to set foot on his house again. Sis [Aunt Lillian Weinzerl] talked to Mike...[she] has talked with Chuck...[and] yelled at Chuck about

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signing. Chuck doesn't want to talk with her anymore. Patty said Chuck doesn't talk to his dad. I asked for aunt's phone # he doesn't have it. Asked about Grandpa and Mike said he would call and talk to him about calling me. Suggested they go up to the house. Both said dad won't talk to him. They don't think [Chuck] will open the door." Throughout that evening, Mr. Reichle calls Chuck four times. The line was busy three times; once, there was no answer. Two days later, he called Chuck four times with the same result. Mr. Reichle noted, "Talked to Lisa about the idea that Larry Best try to talk to [Chuck]."

On June 1, 1998, Mr. Reichle notes, "I called Big Brothers Big Sisters organization. They work with kids age 5-17 years old...There is a year waiting list right now. Parents need to call for info and an application...I called Mr. Tisius at home, no answer."

On June 3, 1998, Mr. Reichle called Chuck at home; no answer. He called Chuck at work and was told by the secretary that Chuck was still on strike. Later that day, Mr. Reichle noted, "Talked to patty. She said Mike is living at YIN. Her court papers were good enough to sign him in she mailed them to Larry and he said ok. Mike moved in on Monday the 1st. She said he called today and said he really likes it there. YIN did say that if dad came out there he could take mike out. She said he already has a lead on a job. I asked Patty about the job situation. She said some leads haven't worked out yet. I let her know that if she wants some assistance to let me know to assist her. Told her to pass onto Mike I'm glad for him."

Mr. Reichle also spoke with Michael by phone that day. He noted, "[Michael] is thinking about leaving because they say he needs a TB shot and he is refusing to get it. he said they said you have to get it or leave. Big concern is being so far from friends and neighbors. Talked with Moro [a] house parent [who] said TB test is with a needle and [Michael] said he doesn't like it. State requirements." Mr. Reichle spoke with Patty who told him that Michael is afraid of needles. Mr. Reichle then called Michael and told him he'd spoken with Moro and left Mr. Best a message. Mr. Reichle notes, "Acknowledges the needle fear. He thinks they don't care. I told him that we care and don't do it for the money and that I was off at 3:00. He is to talk to Larry after 5:00. Mike said he would call me after 5:00..." Later that evening, Mr. Best called Mr. Reichle to let him know the issue was resolved; Michael agreed to get the TB test.

On June 4, 1998, Mr. Best met with Michael to discuss his refusal of the TB test. Mr. Best informed Michael that, as an alternative to the TB shot, he could get a chest x-ray, but it would not be covered by his insurance. Michael told Mr. Best he could not afford to pay for an x-ray. Michael told Mr. Best that he'd spoken with his mom and told her he might be put out of the program. She reportedly asked Michael what he expected to happen to himself, since coming home was not an option. Michael responded that he would die. Mr. Best took Michael to the staff office and called the on-call, where it was decided not to put Michael on Code Red, but "to get a contract from him."

Shortly after entering Youth In Need, Michael filled out a life skills assessment form. The following are excerpts from that assessment, including Michael's handwritten answers:

Q: You have \$5.00 and spent \$3.35 – how much do you have left?

A: "\$2.65"

Q: Name two reasons it's important to have a savings account.

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A: "1) to save money; 2) [left blank]"

Q: How do you open a savings account?

A: "?"

Q: Why is it important to file income taxes every year even if you only worked part time?

A: "?"

Q: Give 2 examples of things you'd use credit for.

A: "1) Don't; 2) Know"

Q: Is making a rent-to-own purchase a good idea?

A: "I don't know"

Q: Do you have a driver's license?

A: "No"

Q: Where could you get food if you couldn't afford to buy any?

A: "?"

Q: Name two adults that you can count on to help you when you are out on your own.

A: "1) Don Tisius; 2) Terra Launius" [Terra was Michael's ex-girlfriend with whom he'd recently broken up.]

Q: When you are out on your own, with whom will you spend important times like holidays, birthdays, etc.?

A: "Terra Launius or by myself"

Q: What is the difference between passive, assertive, and aggressive behavior?

A: "?; ?; ?"

Q: List 3 ways you deal with situations that make you angry:

A: "1) I think about Terra Launius; 2) Loveing Terra Launius; 3) Get pissed off and live with it." [sic]

Q: When did you last see a doctor?

A: "?"

Q: When did you last see a dentist?

A: "?"

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Q: How is your family involved in helping you get ready to be on your own?

A: "Not at all"

Q: Describe how you talk with your family about the good things and bad things that may happen to you.

A: "I don't"

Q: When you are upset or down, who do you talk to?

A: "No one"

While at Youth In Need, Mike didn't shower regularly. He smoked weed and had sex with girls. He had a job at a restaurant where Michael was a dishwasher. It was so stressful. He couldn't figure out how to clock in and out. He couldn't even finish the night. He talked to one of his female co-workers. She told him to stay with it. He told her he couldn't. The girl gave him her tips which were approximately \$200. That was the best money he ever had. She kissed him on the head and said she hoped this would help. Michael indicated that to this day he wished he could find her because "she knew something was wrong."

On June 9, 1998, Mr. Best notes, "Mike met with Bob B. and I after getting news that the on-call had been contacted Sunday night. Staff reports that another resident told that Mike had made some statements like, 'I wish I wasn't alive.'..." Mr. Best instructed Michael to contact staff if he was feeling suicidal or self-destructive.

On June 17, 1998, an incident report was filed at YIN, the details of which are as follows: "...came to staff, stated he found Mike Tysius [sic] on his bedroom floor moaning. Mike stated he got out of bed and 'just went down and hit his head' He was holding his hand on his R forehead [complaining of] a headache. R asked him to lie back down, he refused and went downstairs to the kitchen, ate breakfast, and began to clown around stating he just needed Tylenol and felt fine." A nurse was contacted, who evaluated Michael and requested that staff give him a Tylenol.

On July 2, 1998, Mr. Reichle noted, "Talked with Mike he is still at YIN. It's working out!! He has a job at Hardees, working on his GED plans to go to community college for commercial art and western history. Take some business classes. Has a roommate David from Arnold who he gets along well with. He is getting picked up Sat by grandfather to spend the day with him. Talks to mom every one in a while." Mr. Reichle told Michael that he wanted to arrange for him to tour the design studio, Trendmasters, and meet an artist there named Lorenzo. Mr. Reichle noted, "[Michael] loves the idea."

Throughout the week of July 10th, Mr. Reichle made various arrangements to take Michael on the Trendmasters tour. Michael would need a release to attend. On July 20th, 1998, Mr. Reichle spoke with Patty. He noted, "Patty Keck called...told me she was in process of moving. She got a call from Mike who wanted her to come pick him up. She wasn't sure why. Heard that he fell, broke his arm and something about Grandpa. I called Mike to touch base with him. He got a permanent place to live at his grandpa's. His full time job at KFC he is transferring to one in Maplewood...I asked if he will continue with GED here and he said yes. I asked him if he was leaving because of

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something that happened at YIN and he said no. I asked him to call me when he got settled into Grandpa's to get his address to pick him up for the tour. He said, "fine."

On July 23, 1998, Mr. Reichle received the permission form back from Patty with a note stating, "Michael is no longer living at YIN. He is supposed to call you on where to pick him up."

Patty signed Michael out of YIN and picked him up from the group home. When they got into her car, she asked, "Where am I taking you? I ain't got no place for you."

On July 27, 1998, Mr. Reichle spoke with Lorenzo at Trendmasters to confirm the tour date and time.

On July 28, 1998, Mr. Reichle spoke with Patty. Patty told him she'd spoken with Michael the day before and Michael had been trying to get a hold of Mr. Reichle. Patty gave Mr. Reichle Stan's number. He called Stan but there was no answer. The next day, Mr. Reichle called Stan's house again but Michael was not there. Stan told him that he'd seen Michael earlier when he was on his way to a friend's house. Mr. Reichle called Patty's home and pager numbers but both were disconnected. Mr. Reichle tried Stan again but was still unable to reach Michael. He looked up "Tisius" in the phone book and reached Michael's great aunt who did not know where Michael was. Mr. Reichle tried Stan's again with no luck. Mr. Reichle called Lorenzo at Trendmasters to cancel the tour.

On August 4, 1998, Mr. Reichle received a message from Michael saying that [Michael] and his friend really needed to talk with him. Mr. Reichle called him back at Stan's. He noted, "Mike reported that mom moved out of house is now living in a van. Mike says he qualifies for Presbyterian home but it costs \$100 initial then \$50/day. He asked if he could get into Dept. of Mental Health or DFS to get him into the program. I talked with Stan (18 years old). He has been with DFS and DMH for 5 years. Stan said 1st was \$100 initial then \$50 out of paycheck now it's \$50/day. Stan feels it's just because she doesn't like Mike. A person came to the door and Stan had to go and said Mike would call me back and Stan would work on some things." Mr. Reichle called staff to discuss involving DFS.

Between August 5 and 16, 1998, Mr. Reichle tried to reach Michael and Patty without success. He continued, unsuccessfully, to find placement for Michael.

On August 17, 1998, Mr. Reichle spoke with Patty. Patty told him that she'd been staying with friends and that Michael was too old for the shelters. Patty did not have a job. She told Mr. Reichle that she had restaurant experience but was unsure what she wanted to do. She told him that Michael was working at an industrial court with Stan. But then he got sick and his employer required a doctor's note. Patty could not afford to take him to the doctor, so Michael was fired. Patty reported that Michael told her his arm (which was broken) was "fine" and that he'd been sick with a bad cold. Mr. Reichle spoke with Michael later that day and asked him about leaving YIN. Michael reported that his grandfather changed his mind [about letting Michael stay with him].

Mr. Reichle told Michael that he'd just spoken with Grandpa and the man didn't know anything about Michael coming to live with him. Michael was occasionally living with Patty in her van. He'd been chased out of Stan's halfway house a few times. Patty called me about any ideas for Mike. Mr. Reichle suggested to Patty that she call a hotline and/or DFS for help finding Michael somewhere to live. Patty complained that the last time she talked with DFS they told her she would

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have to pay for Michael's placement or go to jail. Mr. Reichle gave Patty the number for Stan's halfway house. Later, he spoke with Michael and asked why he'd left YIN. Michael replied that he didn't want to talk about it. Mr. Reichle asked Michael if he wanted to get together to talk, but Michael said he didn't know where he was going to be. Mr. Reichle gave Michael his own number and told him to give him a call if he ever wanted to re-set up the Trendmasters tour.

Mr. Reichle attempted unsuccessfully to reach Patty between August 9, 1998, and September 14, 1998. When he paged her on August 12th, 1998 he got an out-of-service recording. He finally reached her on September 15, 1998. She called him from work. He noted, "She is living her to pass on to Mike that GED classes have started back up." Patty told him that she did not know what Michael was doing. He called Stan; no answer and no answering machine. He called Michael's grandfather. He told Mr. Reichle that Michael had moved to Moberly. He said that Michael called him 2-3 weeks prior asking for money and food. Mr. Reichle called Stan's mother's number and left a message for Michael. The girl who answered told Mr. Reichle that Michael did not have a phone.

On August 20, 1998, Patty filed for bankruptcy – her first of two.

On his eighteenth birthday, February 16, 1999, Michael was living with Stan's mother, Mary Beth Smith, her mother and her two daughters, Ariel and Alicia. She gave him clean socks and underwear for a birthday gift. He lived in their filthy basement but cleaned it up. Michael explained that the Smiths were "very sheltered." They did not even know a curse word and were like "The Brady Bunch" and the "Partridge Family." One time he went upstairs in shorts without a shirt and a towel to take a shower. Mary Beth was upset and said, "Boys must wear shirts in this house." The Smiths also had family dinners which heightened his anxiety because he did not know how to behave. So he would stay in the basement and sneak upstairs later to get some food.

That year, Michael experienced the death of a close friend. The two met on the streets when they were both homeless as teens. When Michael showed up to his house one day, his friend's brother told Michael that his friend had been shot and killed over drugs. Michael's first tattoo, a cross with the year "1999", was a memorial tattoo for that friend.

Eventually, Stan left the halfway house where he'd been staying and moved in with Michael and Mary Beth. Stan was decompensating severely. He sat silently staring into space in the basement all day. He never showered. He was schizophrenic and paranoid. At the time, Michael was working at a fast food restaurant. Wanting to avoid Stan, he stopped coming home at night.

Around this time, Michael had a rent-to-own stereo. He'd made several payments on it and believed it essentially belonged to him. His friend, Jennifer Fox, convinced him to pawn the stereo so they'd have money to buy weed and food.

Stan's bizarre behavior was starting to scare Michael. Feeling unsafe in the home, he moved out. Michael floated around Moberly, hanging out in different places and meeting up with people he barely knew. If a group of people ended up at someone's house, Michael would try to find a way to ask the host if he could stay over.

Being homeless made it impossible to keep his job. He wasn't able to shower regularly and had no way to keep track of what day of the week or time of day it was.

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Michael was arrested on October 7, 1999, for stealing CDs, a Calvin Klein t-shirt, and for having an outstanding warrant. He was transported to the Randolph County Jail and arraigned the following day. He plead guilty and served a month and a half. Roy Vance was also incarcerated at Randolph County at that time and his attorneys at his trial claimed this is when Vance and Michael met. Michael was released from Randolph County at the end of November in 1999.

Michael briefly dated Heather Gabelman, another girl he met in Moberly. After spending time with Heather, He asked around the trailer court. He wanted to know where that cool girl was that he'd met before. Friends looked at Michael as if he was crazy and replied, "She's in school, dude." Michael was shocked to learn Heather was only 14 years old.

On New Year's Eve 1999, Heather's step-sister, Misty Bunch, threw a party in her trailer. A week or so later, Michael was hanging out in Misty's trailer with Jennifer Fox. The three of them were watching a movie on the couch when Michael fell asleep. He was extremely high. Misty woke him up, fed him three Adderall and they had sex for hours and hours. Misty was a 21-year-old alcoholic and methamphetamine addict. After their first sexual encounter, Michael moved into her trailer. Neither Michael nor Misty had a job. They lived on Misty's food stamps and spent their days watching movies and having sex for hours at a time. Misty cooked for him. She had a reputation for picking up younger men.

Michael lived with Misty in her trailer for about a month or two. She stayed drunk and high all the time. Everyone in the trailer court was aware that Misty was prostituting herself out of her home except for Michael, despite the fact that he was living with her and, unemployed, rarely left their trailer.

While Michael lived in Misty's trailer, he often witnessed men come over to visit her. The men would take Misty into another room and lock the door behind them. Michael would notice the trailer shaking. Misty would explain to Michael that she had to take the guy in the other room to help him shoot up. It wasn't until much later that Michael learned the truth. At a party, a group of friends were discussing the fact that Misty prostituted herself for meth. They discussed it openly, assuming it was common knowledge. Michael, embarrassed to be the last to know, pretended like he'd known all along.

During this time, Michael felt lost and deeply confused. He was unhappy in his situation, but couldn't figure out how to get out of it. He knew people were supposed to get jobs. He didn't know how to accomplish that. He constantly wondered, "What the hell am I supposed to be doing and how do I do it?" He was sometimes anxious if Misty had people over to the trailer -- more than two people made Michael highly uneasy. He would hide in the back room until they left.

According to Michael, he met Roy Vance in 1999. Roy hung around the trailer court where Misty lived.

According to Misty, after four or five weeks of living together, she was ready to move on from the relationship and arranged for Michael to get a ride back to St. Louis. Patty arranged for Michael to stay with Joey and Marla. In St. Louis, Michael worked for one day at Shop N' Save.

While Michael was living with him, Joey came up with a fraudulent check scheme. Joey stole his grandfather's check writer and forged a check for \$8500. Joey convinced Michael to carry out a rouse to cash the check while Joey waited in the car. Joey gave him specific instructions. They

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succeeded in getting about \$1000, but then the rouse went off-script. Unable to think on his feet, Michael froze, and things went terribly awry. Michael took the blame from Joey's grandfather, but the police were not called. Joey kept all the money and did not give Michael a cut.

When Joey and Michael returned home that night, Joey acted like Michael was his best friend. He bought Michael cigarettes and liquor with \$100 bills. Michael drank until he passed out on the couch. While he was unconscious, Joey and Marla had called the police on Michael and reported his parole violation. On May 3, 2000, Michael was taken to St. Louis Central for booking on a fugitive charge from Randolph County. He was transported to Randolph County Jail and held there in May and June of 2000. It was during this time that he was reunited with Roy Vance.

In jail, Roy groomed Michael. He listened to him. Roy learned that Michael had nowhere to live and no means of supporting himself. Roy had his girlfriend, Tracie Bulington, (Michael's co-defendant) bring cigarettes for Roy to give to Michael. Roy complimented Michael on his artistic ability and sent drawings he made to Tracie. Roy told Tracie that Michael had a bad home life. Roy spoke to them both about Michael working on Tracie's father's farm. Roy had Tracie contact someone on Michael's behalf in an attempt to set up early work release doing just that. Roy also told Michael that he was facing a lengthy sentence – some 50 years – and wanted to escape. Michael was scheduled to be released in just a few weeks. Roy asked Michael to help him. Roy was in Randolph County because he was transferred after being accused of attempting to escape from the Macon County Jail. Roy talked Michael through the jailbreak plan repeatedly.

Roy instructed Michael to connect with Tracie after Michael was released from custody. He gave Michael names and phone numbers of people he should call to get in touch with Tracie. Roy gave Michael a description of Tracie and her car so that Michael would recognize her.

Roy told Michael that, if he did this for Roy, they would be like brothers forever. He told Michael that the three of them would run off to Mexico together and be a family. Three times between late May and mid-June of 2000, Michael petitioned the court for early release. Finally, on June 13, 2000, the court granted his request for early release noting Michael only had eighteen days left on his sentence.

Michael had a hold in St. Louis so he was transported there and released on June 14, 2000. As instructed by Roy, Michael contacted Tracie and asked for her assistance in returning to the Huntsville area. Tracie had also been instructed by Roy and was waiting to hear from Michael. Tracie wasn't able to come to St. Louis to pick up Michael as he had hoped. Michael scrambled and ultimately convinced his mother to drive him to a Quik Trip in Columbia, Missouri to meet her. Michael stayed with Tracie until the crime took place on June 22, 2000. Tracie provided Michael with somewhere to live, transportation, food, drugs and alcohol. Michael repeatedly passed out from intoxication. Tracie recalls that Roy gave her explicit instructions, "I was not to let Mike out of my sight." During the week leading up to the crime, Michael talked endlessly about how great Roy was, how Roy was his best friend, how much he loved Roy. He talked every day about how much he missed Roy and how excited he was to see him.

During one of my interviews with Michael, we discussed his anxiety levels since being incarcerated. He indicated that he has great anxiety surrounding eating with meals with other inmates. Indeed, he reported that he had been to the "chow hall" only once in the past three years. Being packed in a room with many other people, and feeling "stared at" is intensely aversive for

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Michael. His anxiety escalated to the point where he began having panic attacks. The process of obtaining food and eating it with others in close quarters feels like being “cattle.” He is also phobic about exposure to germs via the food because he has no control over how the food is prepared or what may be in the food. Once he understood how his and others “nasty, dirty hygiene habits” could result in food-borne illnesses, it was impossible for him to eat in “chow hall.” At one point he had lost 119 pounds. All of the food he ingests is obtained from the commissary. If he cannot obtain commissary food, he will not eat.

VI. EDUCATIONAL HISTORY

Michael started kindergarten in 1986 at his first school, Buder Elementary in St. Louis, MO. He struggled in the following areas: putting events in logical sequence, identifying days of the week, using left to right progression, measuring and weighing objects, communicating observations, solving simple picture number stories. The California Achievement Test was administered in April 1987. Michael’s scores as reflected by the national percentile rank range from 38-90. His average score was the 67th percentile rank. In first grade his academic performance started to decline. On a progress report, his teacher marked “Needs Improvement” in 6 out of 10 areas.

During the summer of 1988 Michael and his family moved to Hillsboro and the boys enrolled at Hillsboro R3 Elementary, Michael’s second school. In second grade, Michael earned mostly C’s and B’s in school. His teacher noted that he should have a more positive attitude toward learning. The Otis-Lennon School Ability Test is administered in December 1988. Michael’s Deviation Intelligence Quotient (DIQ) is 105. The Iowa Test of Basic Skills is administered in March 1989. His scores as reflected by the national percentile rank range from 16 (Spelling) to 50 and 51 (Math Problems and Reading). Generally, he scored higher in math than in reading areas.

Michael’s third grade teacher, Sue Stafford, made note that he was achieving below his grade level throughout the entire year. She commented, “Mike has the potential to be a better student but has a careless attitude and does not try.” He was marked “below grade level achievement” for all quarters of the school year, saving the first which was ungraded. Unspecified behavioral issues were noted in P.E. and in the classroom. In the Spring of 1990 while a third grader the Missouri Mastery and Achievement Tests (MMAT) is administered. Michael’s standardized testing scores are alarmingly low. They dipped considerably. His scores are reflected by the national percentile rank are the following: 5 (Reading), 14(Language), 19 (Math), 13(Science) and 12 (Social Studies).

In class, Michael had a very difficult time keeping up. He often noticed he’d lost chunks of time. For example, he’d be working hard to puzzle through a math problem only to look up from his desk and realize everyone was in the middle of a lesson about history. He could not figure out why all the other students seemed to understand and keep up while he could not. He sat in class constantly confused, thinking, “How did we get here?”

Michael has reported, “I didn’t want to say I fucked up and look stupid, so I just acted like I got it. I couldn’t follow the changes. I couldn’t hold on to one thing in my head long enough to add the next thing on top of it.” He developed methods for masking his deficits, such as sitting in the back row where it was easier to copy from other students. His go-to face saving strategy was to project an “I don’t care” attitude when met with something he didn’t understand.

He also used his "I don't care" attitude when met with simple tasks which were, for him, intellectual challenges. For example, Michael had trouble with simple tasks such as changing the tire on a bike, which had been demonstrated to him dozens of times. Joey and friends often worked on bikes alongside Michael. They'd show him how to change a tire using their own bikes. Then Michael would be expected to do his own. Despite having just been shown, he wouldn't be able to figure out how to complete the task. Rather than let everybody witness this and make fun of him, Michael would go on the offensive. He would say something like, "I'm not even paying attention. I don't care at all." He might even knock over bike itself to demonstrate how little he cared.

Doing homework was torturous. He might be able to read a word or two, but then he'd get confused. It was like "trying to read Mandarin" As far back as Michael can remember, he's had difficulty following TV shows and movies, including cartoons. He could not keep up with the plots, nor did he understand any of the jokes. He'd look around and realize the other kids were laughing and he couldn't figure out why.

Michael's fourth grade classroom teacher was Margaret Fitzgerald. On November 20, 1990, two months after his testicular surgery, Mrs. Fitzgerald evaluated him for ADD-H using a Revised Conner's Questionnaire. He scored 1.2, with 1.97 being a significant indicator of hyperkinetic behavior. Mrs. Page, a teacher who worked closely with Mrs. Fitzgerald, recalled her being the worst teacher she had ever known. Mrs. Page recalled that Mrs. Fitzgerald's classroom was almost always silent. Mrs. Fitzgerald had a sign she'd place on her desk that read, "TEACHER IS OUT." If kids came up to ask her questions, she'd bark at them and point to the sign. Mrs. Page thought that, given how much Michael struggled academically, fourth grade would have been an especially critical year for him, as that when the curriculum moves away from learning to read and toward reading to learn. Mrs. Page recalls that 4th grade is a time when struggling kids start having serious problems. To succeed, thought Mrs. Page, Michael would have needed a really good teacher during that time. Mrs. Page recalled that Mrs. Fitzgerald was able to get away with terrible behavior because her husband was the principal.

In fourth grade Michael earned mostly D's and F's in school. His teachers commented on his difficulty following directions, keeping his work orderly, bringing materials to class, and working independently. Another teacher wrote, "Michael often throws away his work even if it's completed, seems not to want to do well, but is a very fine person on "good days." The Missouri Mastery and Achievement Test was administered again in Spring 1991. Michael's scores improved somewhat. He scored between the 24th and 55th state percentile rank.

Michael has little recollection of 3rd or 4th grade.

Fifth grade was very challenging. He acted more defiant because he was so frustrated. He couldn't catch up. He was embarrassed. He didn't want to let everyone know he was stupid so he wouldn't do the work. Everybody was ahead of him. He would try hard to answer the first two multiple choice questions. Then he would give up and guess at the other answers.

In the fall of 1991 Michael begins his fifth grade year at a new school, his third, Hillsboro Middle. His teacher was Lovella Moore. Michael's academic performance continued its steep decline. His semester grades were D's and F's with one lone C in Fall English. Michael recalls Mrs. Moore would wait several minutes before calling on someone after she'd asked a question. He believed she did this to give him some extra time to think about the answer because she knew he was slower

than the other kids. In January of 1992 while a fifth grader the Otis-Lennon School Ability Test was administered again. He gets 20 of 72 questions correct. His score as reflected by the national percentile rank and stanine are 6-2 (Verbal) and 12-3 (Non-Verbal), the composite score being 7-2. Put another way his score on this test is lower than 93% of same grade students taking the test nationally. Michael's score as reflected by the local grade percentile rank and stanine is even lower: 2-1. The Missouri Mastery & Achievement Test was administered again that spring. Michael was 11 years old. Students were asked to review their scores and write self-evaluations. His scores dipped significantly from the prior year. Michael scored in the 14th state percentile rank for Science and wrote, "*My best.*" He scored in the 2nd state percentiles for Social Studies and Reading/Language Arts and wrote, "*I did my best but I still did bad.*" In Math, he scored in the 11th state percentile rank and wrote, "*I did ok.*" On March 19, 1992, a letter is sent from Middle School Principal Charles Martin to Mr. and Mrs. Charles Tisius at Patty's house in Hillsboro. Chuck Tisius had never lived at this address and he and Patty had been divorced by over eight years at this point. The letter states in part, "At this point your student is being considered for retention. In most cases there is still sufficient time remaining to change this decision. You might wish to make an appointment to talk with your child's teacher about this matter ... the final decision will be made in late May after fourth quarter grades are established and all test scores are returned and evaluated." There is no indication in the school records that any follow up occurred. Michael was considered for retention but was ultimately promoted. He was referred for self-esteem classes. Patty and Michael attended only two of the six recommended classes and did not return.

At the end of the school year, Mrs. Moore crossed out the words "promoted" and "retained" and indicated that Michael would be "assigned" to sixth grade.

In the 1992-1993 sixth grade school year Michael's teacher was Ed Huffman. During the fall of that year, Michael was seen at the emergency room for testicular pain and, now, urethral stricture. He was absent from school ten days throughout the year. He failed nearly every class and was considered for retention. In Spring 1993, the Missouri Mastery & Achievement Test was administered again. Michael's highest score was in reading, social studies, and civics (7th state percentile rank, all); he scored in the 5th state percentile rank for math and the 1st state percentile rank for science. Testing-wise he hit an all-time low.

Michael was referred for self-esteem classes. Patty and Michael attended all six classes. Counselor Jane Howe notes, "Mike participated in discussions and activities dealing with self-esteem, feelings, beliefs, attitudes and communication. Mike was polite and cooperative with the instructors. He was very talkative and eager to participate. However, Mike is very immature and did not interact well with his peers. He does not appear to communicate well with his mother. During this six-week course, Mike made numerous references to an older brother who he says beats him up. He also says his mother hits him with a belt. He says that Family Services have been involved and that his mother has told him to lie to the case worker. On the last night of class, Mike got into a fight with another boy. His mother was crying and says she can't handle him. She gave the other instructor information leading us to believe that Mike could be a threat to himself and other people. I have contacted Mike's counselor. He and his family appear to be in need of much help. I recommend further counseling."

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Around this time, Michael, twelve, wrote the following note:

"I'm a bogis butthead, I boring kid, because everyone says I am, I have no freinds all, my mom hates me, Joey hates me, my dad, don't give a crap about me he's always saying I'm stupid I bet. I don't care about my stupid DAD! I'm scared of the ball, when someone thows it to me. I'm a big cry baby, I cry over tha littles things i'm a wimp, dumb, fag, fagit, Corey, Jamey and, E.J. can beet me up. I'm dumb because I bearly past Fourth grade because she didn't like me she put in Fith grade. Mrs. Moore passed me in sixth because she thinks i can do the work if i could i would of. so I can't. Oh! and not to get smart but I'll probly flunk sixth grade. Unless she either thinks I'm good to our just hates me to just puts me in the seventh grade The End" [sic]

Michael also did a scratch sketch during this time. A scratch sketch is a drawing etched on special black-coated paper. Michael graded his own work, writing "F+" on the sketch.

A letter was sent on March 16, 1993, which is an exact duplicate to the letter sent the year prior on March 19, 1992 from Assistant Principal Charles Martin. Again, the letter was sent to Mr. and Mrs. Charles Tisius at Patty's house in Hillsboro. A follow up letter is sent to the same address on May 19, 1993 which states in part "fourth quarter grades for the year are now established. At this point we feel it would be in Mike's best interest to repeat the present grade." No follow up from Mike's parents is reflected in the school records. Michael himself did not know he was at risk of failure until a letter came to the house at the end of the year saying he'd be repeating sixth grade in the upcoming school year.

Mike began his second year of sixth grade on August 23, 1993. His classroom teacher was Janice Page. Mrs. Page was routinely given the challenged kids because she was known for being good with them. Indeed, Joey was placed in her class two years earlier which resulted in his grades improving from D's and F's to C's and B's. Mrs. Page's curriculum was punctuated with creative, fun projects. For example, students wrote a school newspaper for which Mike did the cover art. By mid-September though plans were in motion for Michael to withdraw from Mrs. Page's class and to attend a different school while living with Chuck. On September 16, 1993, Mrs. Page wrote a letter summarizing Mike's classroom performance and current grades. Mrs. Page reports that she is pleased with Michael's attendance, behavior and school performance.

While adjusting to his new living situation, Michael's stepmom, Leslie, took an interest in him and tried to help him with his struggles at his new school, now his fourth different school, Riverview Gardens. Leslie and Michael's teachers openly discussed the fact that he was "slow." However, Leslie now thinks that they were so focused on his discipline problems that they missed what was really going on, which was that he had learning disabilities. The first quarter he was at Riverview gardens, his teacher commented, "Mike needs to get it together, put forth more effort." By the second quarter, he was dropped from the school. He transferred back to Hillsboro on December 8, 1993. His grades for the spring semester include C's in English and Reading, a B in Spelling, a D in math, a B- in science, and an F in social studies.

Michael was promoted to seventh grade and begun attending his fifth different school, Hillsboro Junior High, in the fall of 1994. In December of 1994 while a 13 year-old seventh grader the Otis-Lennon School Ability Test was administered again. He answered 33 of 72 questions correct. His

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score as reflected by the national percentile rank and stanine are 23-4 (Verbal) and 32-4 (Non-Verbal), the composite score being 25-4. Put another way, his score on this test was lower than 75% of same grade students (most a year younger than Michael) taking the test nationally. Michael's score as reflected by the local grade percentile rank and stanine was even lower 21-3.

In seventh grade, Michael reportedly fell off a stage at school and sustained an open head injury. Michael remembers getting a CT Scan at Festus Hospital. He reported that he lost consciousness and didn't remember people carrying him from the stage area down to a different place in the school.

Michael ended his seventh grade year with mostly F's, one D-, a C- in Home Ec., and an A- in Art. He was required to attend summer school in order to be promoted to eighth grade. In summer school, Michael found that the classes went much slower, covered much of the same material he'd been exposed to the previous year, and provided ample opportunities to cheat. Because there were only tests and no homework, he could pass by cheating. He passed 7th grade summer school with a C and a D.

That pattern repeated in eighth grade, 1995-1996. Michael's fall and spring semester grades were all F's, notwithstanding passing grades in PE, Art and School-Within-A-School -- a Learning Support Classroom. In the Spring of 1996 the Missouri Mastery and Achievement Test was administered again. Without exception Michael was rated low in every single subject. His score as reflected by the state percentile rank ranged from 1 (Reading and Science), 3 (Language Arts) 9 (Mathematics) and 11 (Social Studies / Civics). Put another way, amongst other eighth grade students, most a year younger, Michael scored below 89-99% of other students. Following his classroom performance during the school year Michael attended summer school and again cheated there in order to be promoted to ninth grade at Hillsboro High School, his sixth school.

As a ninth grader, Michael's grades in the first quarter of 1996 at Hillsboro High School couldn't be worse. He reportedly was absent ten days and gets F's in every subject and an "N" in study hall.

In November 1996 Michael enrolled at his seventh and final school -- Maplewood- Richmond Heights Senior High School in St. Louis. He was absent three days in November 1996. Michael recalls barely attending Maplewood. In the first quarter, he received mostly D's and C's. He received B's in Physical science and Pre-Algebra. By the end of the second quarter, he'd failed World Geography, Art, English, Gen Wood Tech, Language Arts, P.E., and Algebra. His GPA was 1.425.

In December 1996 Michael was absent school six days. In January, he was absent once and occasionally skipped the first or last periods of the day. He attended the first two weeks of class in February. On March 26, 1997 it was noted that the Department of Family Services and Patty were contacted about Michael's poor attendance.

Michael broke his arm in spring of his 9th grade year. They were trying to give him an IV on his arm. The doctor had a nurse named Stacy come in. They injected him with morphine and Michael got an erection. As the nurse walked out, he looked down and saw the erection. They called Stacy back in. Stacy was giggling and making fun of him. Michael was angry. The doctors gave Michael's mother a prescription for Percocet which she apparently filled. However he was never given a Percocet by his mother despite all of his pain. The only way he found out about it, someone

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named Cera came to watch him because Patty had to go to work. Patty showed Cera the Percocet and told Cera you can only give him one pill. But when he asked Cera for a pill, she wouldn't give him one because she was "anti-pill." The next day, he'd forgotten that there were the pain pills. The entire time he was recovering with the broken arm he wasn't given pain pills.

On April 24, 1997, Maplewood-Richmond Heights Assistant Principal notifies Michael by mail that he had been dropped from the attendance rolls.

VII. THE SCIENCE OF CHILDHOOD TRAUMA AND ADVERSE EXPERIENCES¹

Michael's social history is replete with trauma and various adverse childhood experiences that have deeply affected his development and functioning.

A. The impact of trauma

Both researchers and clinicians recognize that the psychological consequences of trauma affect multiple domains of functioning: emotional, cognitive, and physiological. In each area traumatic experience disrupts and dysregulates the delicate balance that allows each system to respond optimally to incoming information.² Our brains involve multiple, intricate, interconnected neurochemical systems designed to detect internal and external stimuli, identify, and interpret complex information coming from multiple sources and motivate appropriate action. Contrary to common belief, the human brain is not an immutable organ. Rather, it is malleable, and it is shaped in an ongoing fashion by the environment and subsequent experience. Neural circuitry changes as a function of such experience. Neurons that fire together, wire together. Each environmentally triggered reaction causes a chain of events in the brain such as the release of neurotransmitters. For example, upon detection of threatening stimuli, catecholamines such as epinephrine and norepinephrine are released. An emerging body of research shows that chronic, traumatic exposure is also linked to with changes in the brain's chemistry, structure and function. Traumatic experience produces such a strong and overwhelming fight-or-flight response that it compromises certain regulatory effects of the brain which have negative long-term biological consequences. Chronic danger, or its perception, produces chronic activation of what was likely intended as a rapid response system, and the long-term consequences of these reactions can be damaging.³

¹ All citational references and science relied upon in the report were scientifically accepted prior to Michael Tisius' resentencing in 2010. The information in this report would have been available to Mr. Tisius' counsel had they consulted me or another appropriate expert.

² Lizabeth Roemer & Leslie Lebowitz, *Understanding Severe Traumatization*, 20 *The Advocate* 1 (Ky. Dep't of Public Advocacy 1998) available at www.e-archives.ky.gov/pubs/Public_Adv/jan98/trauma.htm (last visited June 23, 2018); see also J. Douglas Bremner, *Does Stress Damage the Brain?*, 45 *Society of Biological Psychiatry* 797 (1999); J. Douglas Bremner & Eric Vermetten, *Stress and Development: Behavioral and Biological Consequences*, 13 *Development and Psychopathology* 473-74 (2001).

³ Research has shown that chronic exposure to traumatic stress results in the release of hormones and neurochemicals, which affect the chemistry and physiology of the brain. Specifically, in response to perceived threat, the hippocampus activates the hypothalamic-pituitary-adrenal (HPA) axis, which causes the paraventricular nucleus of the hypothalamus to release

After chronic exposure to overwhelming, terrifying experiences, an individual's physiology may be altered such that s/he remains in a state of readiness to perceive threat and act immediately (hypervigilance). These alterations may interfere with the brain's ability to process information completely by short-circuiting the balanced relationship between primal immediate responding and higher cortical reasoning and analysis. Usually information travels through an intricate network of brain cells (neurons) that begins by registering sensory information in the most "primitive" parts of the brain. It then continues through other parts of the brain, such as the amygdala, which assigns an emotional tone to the information, and then threads its way to the most evolutionarily advanced part of the brain, the neocortex, where information can be integrated with the brain's most complex forms of functioning, such as the ability to reason. In a state of arousal, this system is short-circuited in order to facilitate rapid response. Thus, in a crisis, sensory stimuli can immediately signal bodily responses that prepare for action with little or no cortical mediation. This overreaction to threat can be easily triggered by reminders of a previous traumatic experience and can result in aggressive behavior.

During a traumatic experience, emotions are so intense, intolerable, and overwhelming that they can either deactivate or defy our typical coping strategies. Feelings of horror, fear, helplessness, and shame can outstrip one's usual emotional regulatory responses. Dramatic forms of emotional experiences invoke dramatic forms of emotional regulation. As a result, traumatic experiences can disrupt the integration of the basic processes of emotion and cognition, which can result in emotional reactivity and hypersensitivity to danger.

B. Symptoms of anxiety associated with brain regions and their respective circuits

Anxiety disorders have overlapping symptoms of anxiety/fear coupled with worry. Progress has been made in understanding the circuitry underlying the core symptoms of anxiety/fear based on neurobiological research on the amygdala. The amygdala is an almond-shaped part of the brain located near the hippocampus, has important anatomical connections that allow it to integrate sensory and cognitive information and then determine whether there will be a fear response.⁴

Specifically, the affect or feeling of fear is thought to be regulated via reciprocal connections that the amygdala shares with the pre-frontal cortex that regulate emotions, namely the anterior cingulate cortex and the orbitofrontal cortex (See Appendix 2, Figure 1). However, fear is not just

adrenocorticotrophic-releasing factor (CRF). CRF causes the brain to release adrenocorticotrophic hormone (ACTH). ACTH travels through the bloodstream and causes the adrenal cortex to release the glucocorticoid, cortisol. The adrenal medulla is also stimulated and releases epinephrine and norepinephrine to activate the fight-or-flight response. See *Stahl's Essential Psychopharmacology* (3rd ed. 2008). Individuals with a history of chronic traumatic experiences exhibit increased levels of catecholamines, dysregulation of other neurotransmitters, and increased levels of cortisol. These effects can have a structural impact on specific parts of the brain. For example, elevated levels of cortisol in the brain can cause actual cell death in the hippocampus, an area of the brain that plays an important role in the evaluation and consolidation of new information to be stored in memory.

⁴ Stephen Stahl, *Stahl's Essential Psychopharmacology* (3rd ed. 2008).

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a feeling. Additional pathways in the brain are activated in concert with fear. The fear response can also include motor responses. Depending upon the circumstances of the stressor(s) and one's temperament, those motor responses can include fight, flight, or freezing in place. The motor responses of fear are regulated in part by connections between the amygdale and the periaqueductal gray area of the brainstem. (See Appendix 2, Figure 2).

There are also endocrine reactions that accompany fear as a result of connections between the amygdale and the hypothalamus. Such connections cause changes in the hypothalamic-pituitary-adrenal (HPA) axis and in increase in cortisol levels. Increased cortisol levels can enhance survival when responding to a short-term threat. However, chronic and persistent levels of this aspect of the fear response are related to increased medical comorbidity including increased levels of coronary artery disease, Type II diabetes, and stroke. Increase levels of cortisol can also result in atrophy of neurons in the hippocampus. (See Appendix 2, Figure 3).

The rate of respiration can also change during a fear response, regulated in part by the connections between the amygdala and the parabrachial nucleus in the brainstem. (See Appendix 2, Figure 4). An adaptive response to fear is to accelerate respiratory rate when having a fight/flight reaction to enhance survival, but in excess this can lead to unwanted symptoms of shortness of breath, a false sense of being smothered, or an exacerbation of asthma, all symptoms common during anxiety such as panic attacks.

Also attuned to fear is the autonomic nervous system (ANS). The ANS is able to trigger responses from the cardiovascular system such as increased pulse and blood pressure for fight/flight reactions and survival during real threats. These autonomic and cardiovascular responses are mediated by connections between the amygdala and the locus coeruleus, the site of the norepinephrine cell bodies. (See Appendix 2, Figure 5). When autonomic responses are repetitively, and inappropriately or chronically triggered as part of an anxiety disorder, this can lead to atherosclerosis, cardiac ischemia, hypertension, myocardial infarction or even sudden death.

Finally, anxiety can be triggered internally from traumatic memories stored in the hippocampus and activated by connections with the amygdala, (see Appendix 2, Figure 6), especially in conditions such as posttraumatic stress disorder.

The processing of the fear response is regulated by the numerous neuronal connections flowing into and out of the amygdala. Each connection utilizes specific neurotransmitters acting at specific receptors including gamma-aminobutyric acid (GABA), serotonin (5-HT), norepinephrine (NE) and voltage-gated calcium channels.

C. The impact of trauma on epigenetics

Genetics is the deoxyribonucleic acid (DNA) code for what a cell can transcribe into specific proteins via ribonucleic acid (RNA). Although there are over 20,000 genes in the human genome, not every gene is expressed. Epigenetics is a parallel system that determines whether a specific gene is made into its specific RNA and corresponding protein or if it is ignored or silenced. Stahl has suggested that the genome is analogous to the lexicon of all protein "words," and that the epigenome is a "story" that results from arranging the "words" into a coherent tale. So the plot of how a normal neuron becomes a malfunctioning neuron is the selection of which specific genes

are expressed or silenced. Additionally, malfunctioning neurons are impacted by inherited genes that have abnormal nucleotide sequences which, if expressed, can contribute to mental disorders. Thus brain function depends not only on which genes are inherited, but also on whether any abnormal genes are expressed: when they are expressed but should be silenced or silenced when they should be expressed. Genes are silenced by the biochemical processes of methylation or deacetylation of chromatin and activated by demethylation and acetylation of chromatin in the cell nucleus. Hence, neurotransmission, genes themselves, and environmental experience all regulate which genes are expressed or silenced and thus all affect whether the “story” of the brain is a coherent narrative such as learning and memory or instead a regrettable tragedy revolving around stress reactions and psychiatric disorders. Experiencing trauma, particularly long, enduring, and multiple types of trauma can result in epigenetic changes in the functioning of the brain, which gives rise to dysfunctional/inappropriate behavior and/or psychiatric disorders.

D. Developmental effects of trauma

Chronic exposure to traumatic stress can have complex consequences for the developing child and adolescent, which can endure later into life. While many people successfully resolve traumatic experiences and some are more resilient, most individuals will require effective therapeutic intervention in order to recover fully from the effects of childhood trauma. This is because the negative effects of trauma are cumulative. Moreover, the cumulative impact of childhood trauma may be a function of the presence or absence of other factors that can enhance one’s vulnerability to the negative effects of trauma. Such risk factors include:

- youth
- poverty
- trauma due to interpersonal violence
- trauma that is chronic
- trauma in childhood that is not counteracted by family and/or therapeutic support

Also, the effects of trauma are not necessarily obvious because most individuals do not understand how it has affected their lives. For example a person may be hyper vigilant and/or avoidant throughout life, have difficulty trusting other people, and view the world as a dangerous place. However s/he does not realize that these behaviors/beliefs are linked to the childhood trauma, and when stress is chronic and cannot be successfully resolved, an individual’s need to rely on these distorted coping mechanisms is increased.

E. The ACE scale

Childhood trauma, in particular can have a profound and long-lasting impact on a person’s life. A growing body of research has linked traumatic experiences suffered during childhood and adolescence to an array of negative life outcomes, including involvement with the criminal justice system.

The basis for much of our understanding of Adverse Childhood Experiences (ACEs) derives from research conducted by clinicians with Kaiser Permanente and the U. S. Centers for Disease Control

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and Prevention in the 1990s.⁵ The original study included approximately 9,500 participants from a wide demographic cross-section assigned participants an “ACE score” based upon the number of the following seven ACEs that they had experienced during childhood. These included:

- Emotional abuse
- Physical abuse
- Contact Sexual abuse
- Violence against mother
- Living with household member(s) who were substance abusers
- Living with household member(s) who were chronically depressed, suicidal, mentally ill or in a psychiatric hospital
- Living with household member(s) who were ever imprisoned

Researchers determined that those with higher ACE scores, meaning those who had suffered a greater number of traumatic experiences during childhood were significantly more likely to engage in behaviors risky to their health and to suffer from various diseases. For example participants with an ACE score of 4 or higher (having suffered at least four of the seven childhood traumatic experiences) were about 12 times more likely to have attempted suicide at some point in their lives as compared to those with an ACE score of 0. Higher ACE scores also correlated with, among other things, alcoholism, illegal drug use, sexual promiscuity, heart disease, cancer, emphysema, and diabetes.

Subsequent publications added three additional ACEs⁶ that correlated with negative life outcomes:

- Parental separation, divorce or not being raised by both biological parents
- Emotional neglect
- Physical neglect

ACE scores are now generally reported on a 0-10 scale, with 0 representing no exposure to childhood trauma and 10 representing exposure to all 10 types of childhood trauma.

As with negative health outcomes, childhood trauma is also correlated with involvement in the criminal-justice system. Youth who report suffering from maltreatment are at higher risk for

⁵ See Vincent J. Felitti et al., *Relationship of Childhood abuse and Household dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACEs) Study*, 14 Am. J. Preventative Med. 245 (1998).

⁶ Vincent J. Felitti et al., *Adverse Childhood Experiences and the Risk of Premature Mortality*, 37 Am. J. Preventative Med. 389, 390 (2009); see also Centers for Disease Control and Prevention, *About the CDC-Kaiser ACE Study*, available at <http://www.cdc.gov/violenceprevention/acestudy/about.html> (last visited June 23, 2018).

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criminal involvement, both as juveniles and adults.⁷ The relationship between trauma and delinquent or criminal involvement has been well documented in numerous publications over the last 20 years.⁸ The data suggest that child abuse and neglect, poverty, sexual molestation, and witnessing domestic violence are, among others, the most common risk factors for post-traumatic reactions, aggression, and antisocial behavior.

Given these consistent findings, it is not surprising that juvenile offenders' ACE scores are significantly higher than those of the general population. A study conducted in the state of Washington found that juvenile offenders there experienced, on the average, three times more ACEs than the participants in the original ACEs study — which represents the general populace.⁹

Moreover, the data suggest that ACEs not only increase the chances of involvement in the juvenile-justice system, but increase the likelihood of re-offense. Those classified by the justice system as having a high risk of reoffending were more likely than those with a low-recidivist classification to have an ACE score of four or more. The presence and prevalence of childhood trauma is thus a strong predictor of the extent of a person's future engagement with the criminal-justice system.

There is a strong dose-response relationship between the number of ACEs and the likelihood of developing mental health and other medical problems. As for Michael, he scores a six out of ten on the ACE scale as described in the family history section of this report.

In my clinical and educational history having an ACE score of six out of ten is a very strong predictor for development of childhood onset post-traumatic stress disorder as diagnosed by Dr. Stephen Peterson in 2004, as well as involvement in the criminal justice system.

VIII. THE IMPACT OF MICHAEL TISIUS' CHILDHOOD TRAUMA AND ADVERSITY

A review of Michael Tisius' family history shows that he was exposed to a large number of ACEs, so it is not surprising that he has been diagnosed by Dr. Stephen Peterson in the past with depression and post-traumatic stress disorder. Michael scored a six out of ten on the ACEs scale.

⁷ Carly B. Dierkhising et al., *Trauma Histories among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network*, 4 Eur. J. of Psychopharmacology, at 1-2 (2013), available at <https://www.tandfonline.com/doi/abs/10.3402/ejpt.v4i0.20274> (last visited June 23, 2018).

⁸ See, e.g., *id.*; Karen M. Abram et al., *Posttraumatic Stress Disorder and Trauma in Youth in Juvenile Detention*, 61 Archives of Gen. Psych. 403 (2004); Michael G. Maxfield & Cathy Spatz Widom, *The Cycle of Violence Revisited 6 Years Later*, 61 Archives of Pediatric & Adolescent Medicine 150 (1996); Cathy A. Smith & Terrence P. Thornberry, *The Relationship Between Childhood Maltreatment and Adolescent Involvement in Delinquency* (Office of Juvenile Justice and Delinquency Prevention (Dep't of Justice) 1995).

⁹ J.A. Grevstad, *Adverse Childhood Experiences and Juvenile Justice*, PowerPoint delivered to Washington State Family Policy Counsel, Tacoma, WA (June 8, 2010).

1. **Parental Separation** - Michael's father was absent from the first 16 months of his life and divorced his mother when he was approximately two years old. Visitation with his father was minimal.
2. **Physical Neglect** - Michael was physically neglected by his mother. Family members recall Michael wearing diapers that had been soiled for so long that he had fecal matter on his hands. He smelled of urine even when he attended school as he was a bed wetter until his teenage years. His mother did not teach Michael basic hygiene habits. He was not required to bathe regularly or brush his teeth or engage in regular health habits. He was often hungry as there were no regular meal times and was much smaller than his peers. There were also incidents of medical neglect on the part of his mother.
3. **Emotional Neglect** - Michael was emotionally abused by both his mother and father. Neither parent was affectionate or verbally supportive. Michael did not feel loved by either parent or his brother. No one in Michael's family helped him feel important. Nor was his family a source of strength or support.
4. **Verbal Abuse** - Michael was verbally abused by his mother, father and brother. Patty screamed at Michael regardless of who was around. She constantly berated him often calling him "stupid" and "idiot." She was hypercritical. Joey, Michael's brother was also verbally abusive to him.
5. **Physical Abuse** - Michael's older brother, Joey, was extremely physically abusive to him without any significant intervention on the part of his mother to stop the behavior. Joey beat Michael on a daily basis. The beatings were unprovoked and severe, and they happened unexpectedly. Although Michael's mother sometimes would send Michael to his room, Joey would just continue to beat him there. Michael sustained a number of head injuries at the hands of Joey, such as being hit in the head by a 12-inch garden stone and being punched in the head many times. At least one time, Michael was even rendered unconscious.
6. **Mental Illness in the Household** - While Michael's mother was never formally diagnosed by a mental health practitioner, his mother did report that she was treated for depression when she was 13-years-old. Michael reported many periods wherein she would go to her bedroom and stay in there for long periods of time crying. She also engaged in strange rituals such as every night sitting with her legs pulled up to her chest, sucking her thumb and writing for hours on a legal pad. She chain-smoked cigarettes, compulsively twirled her hair, talked for hours on the phone and consistently moved the furniture in the home from one room to another.

Given the strong dose-response relationship between the number of ACEs and negative life outcomes, it is not surprising that Michael suffered many of those outcomes including childhood onset post-traumatic stress disorder, diagnosed by Dr. Peterson in 2004, poor academic achievement and lowered educational attainment, mental distress, and involvement in the criminal justice system.

IX. POST-TRAUMATIC STRESS DISORDER (PTSD)

According to the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR)*, which would have been the gold standard for the classification of mental disorders had I been retained for Mr. Tisius' case in 2010, he would have been diagnosed with PTSD. PTSD is characterized by the development of certain symptoms in the wake of exposure to extreme traumatic stress. It includes symptoms such as "persistent re-experiencing of the traumatic event," "persistent avoidance of stimuli with the trauma and numbing of general responsiveness," and "persistent symptoms of increased arousal, including "difficulty falling asleep or staying asleep," "hypervigilance," and "exaggerated startle response." Michael experiences these symptoms. Specifically, Michael continues to have anxiety, an exaggerated startle response, difficulty sleeping, feelings of powerlessness, intrusive dreams and nightmares, and hypervigilance.

X. CONCLUSIONS

Researchers and clinicians have recognized that the psychological consequences of trauma affect the physiological, emotional, and cognitive development of individuals. As a result of the malleability of the neural circuitry of the brain to ongoing experience, the magnitude and the duration of traumatic events literally shape one's brain function and thus one's behavior. Michael Tisius was the second child of his 20-year-old mother, Patty, and the first child of his 18-year-old father, Charles "Chuck" Tisius. Patty has reported and repeatedly told Michael that when Chuck learned of Michael's birth he was disappointed because Michael was not a girl. Michael essentially was "fatherless" from the time of his birth. Life with his mother and brother was chaotic and unpredictable. He was a victim of physical and emotional neglect and verbal abuse by his mother and significant physical abuse by his brother, Joey, for the entirety of his childhood and adolescence.

At a very early age Michael came to realize that he could not count upon his mother or brother to help him survive and navigate the trauma that was his life. Indeed, he had to try to survive in spite of his family members' abuse and neglect. As a result, Michael has had life-long difficulty ascertaining who was and was not trustworthy. Additionally, his ability to form relationships with others was negatively impacted by the fact that Michael was repeatedly betrayed by members of his family. How can one trust to enter into relationships with others when one cannot even trust one's family members? As a result, Michael was extremely emotionally needy, searching for someone who would love him and care for him. So when he thought he had found someone who was legitimately nurturant, or might look out for his best interest, he tended to attach himself to that person and often inappropriately trust him/her. As a result, he was exceedingly gullible, manipulable, and vulnerable to those who sought to take advantage of him.

The physical abuse of Michael by his older, stronger brother coupled with no effective intervention by his mother to prevent or stop such abuse, resulted in Michael living in a state of unrelenting powerlessness due to fear. Joey's aggression was chronic, unpredictable, and severe. There was no escape, and the only way Michael could protect himself from Joey, was to stay away from his home as much as possible, which is what he attempted to do. Dr. Gerald Wool, Michael's pediatrician noticed Michael's anxiety when he was 12, noting hyperactivity, fidgetiness and jumpiness. Dr. Wool made a note to watch for continued similar behavior. Dr. Wool later testified by deposition, "I may have wanted to talk about ADD or ADHD or some other problem or if he

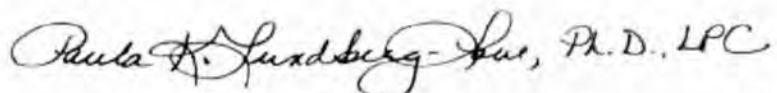
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was having a psychological problem.” This type of chronic anxiety would be predicted to necessarily negatively impact the anxiety circuitry of the brain as outlined in section VII part B of this report. Alteration of this brain circuitry put Michael at risk for various anxiety disorders including PTSD.

Research has demonstrated that adverse childhood experiences (ACEs) are documented risk factors for the development of anxiety disorders including PTSD and depression. Michael Tisius experienced six out of ten of the ACEs defined by Felitti and Anda during his childhood and adolescence. As a result, it is not surprising that Michael Tisius developed excessive and pervasive levels of anxiety, fear, and powerlessness which culminated in hypervigilance. The coalescence of these symptoms resulted in the development of PTSD from which he still suffers. Based upon the ACEs research, it is apparent that the traumatic life experiences suffered by Michael Tisius during childhood and adolescence were complexly interrelated with his mental health issues. The impact of ACEs during the early years of infancy and childhood sculpted the circuitry and responsivity of the nervous system in a manner much like a child’s footprint in wet cement. The deficits resulting from this impaired nervous system have been lifelong, particularly because Michael has never received adequate intervention and treatment.

Based upon my two clinical interviews with Michael Tisius, the records provided to me by the attorneys in this case, my education and clinical experience, it is my professional opinion that knowledge of the trauma history of Mr. Tisius is essential to the understanding of this case. Mr. Tisius has an extensive trauma history. This history shaped the development of his nervous system in a manner that created a desperate need for someone to love him and resulting gullibility, manipulability, and vulnerability such that he was especially susceptible to others taking advantage of him. These impairments have affected his behavior across his lifespan.



Paula K. Lundberg-Love, Ph. D.
Retired Professor of Psychology
Licensed Professional Counselor
Licensed Psychological Associate

Figure 1

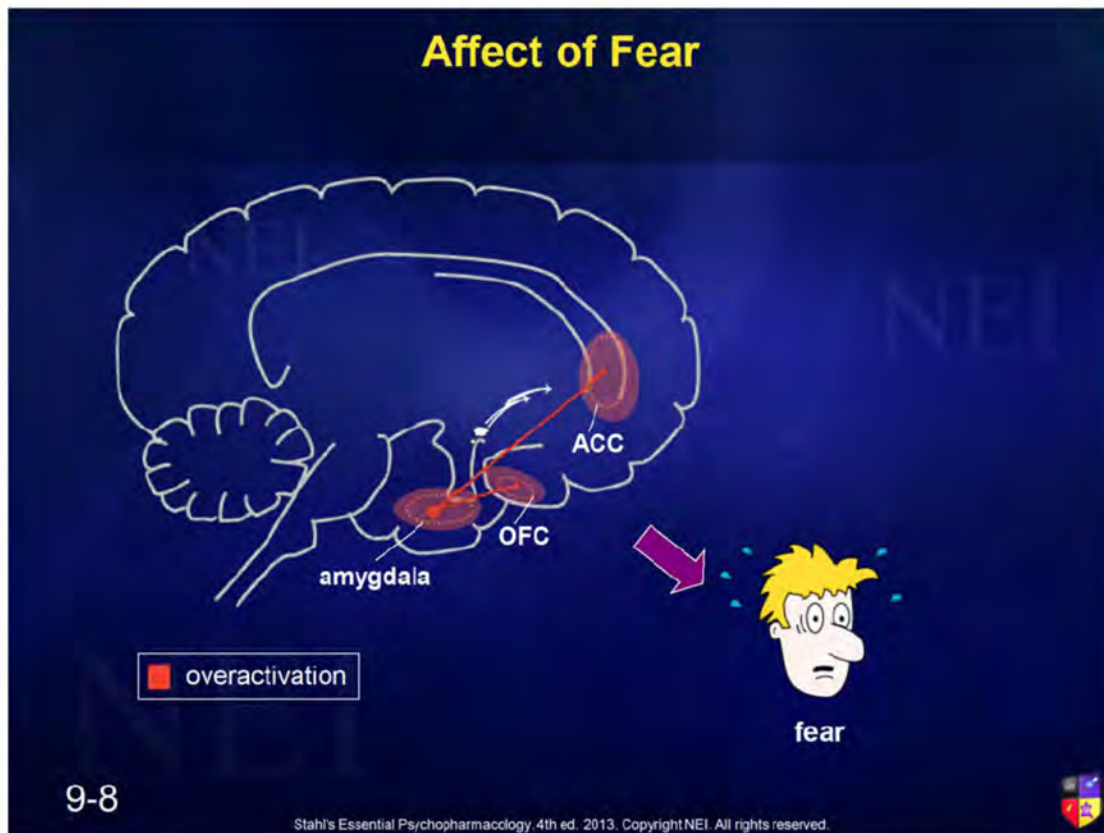


Figure 2

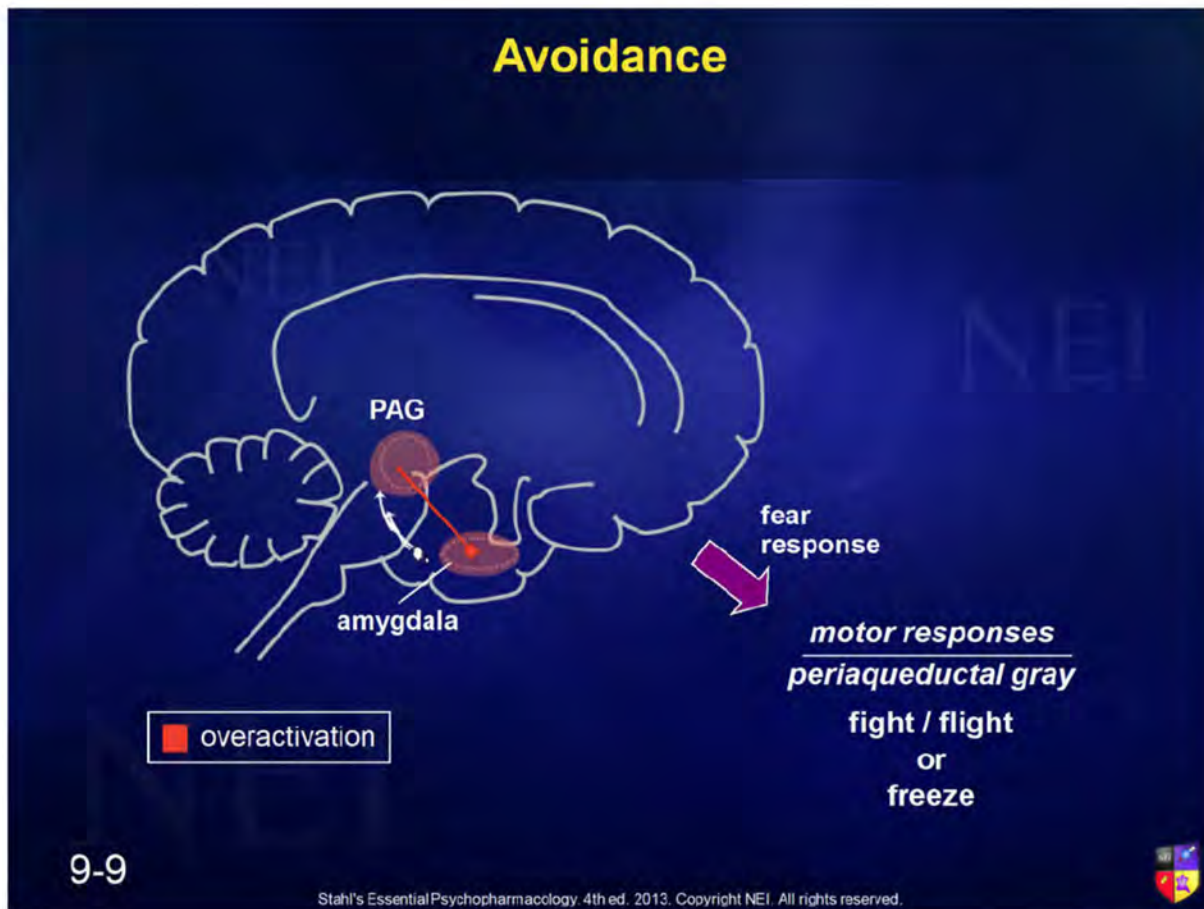


Figure 3

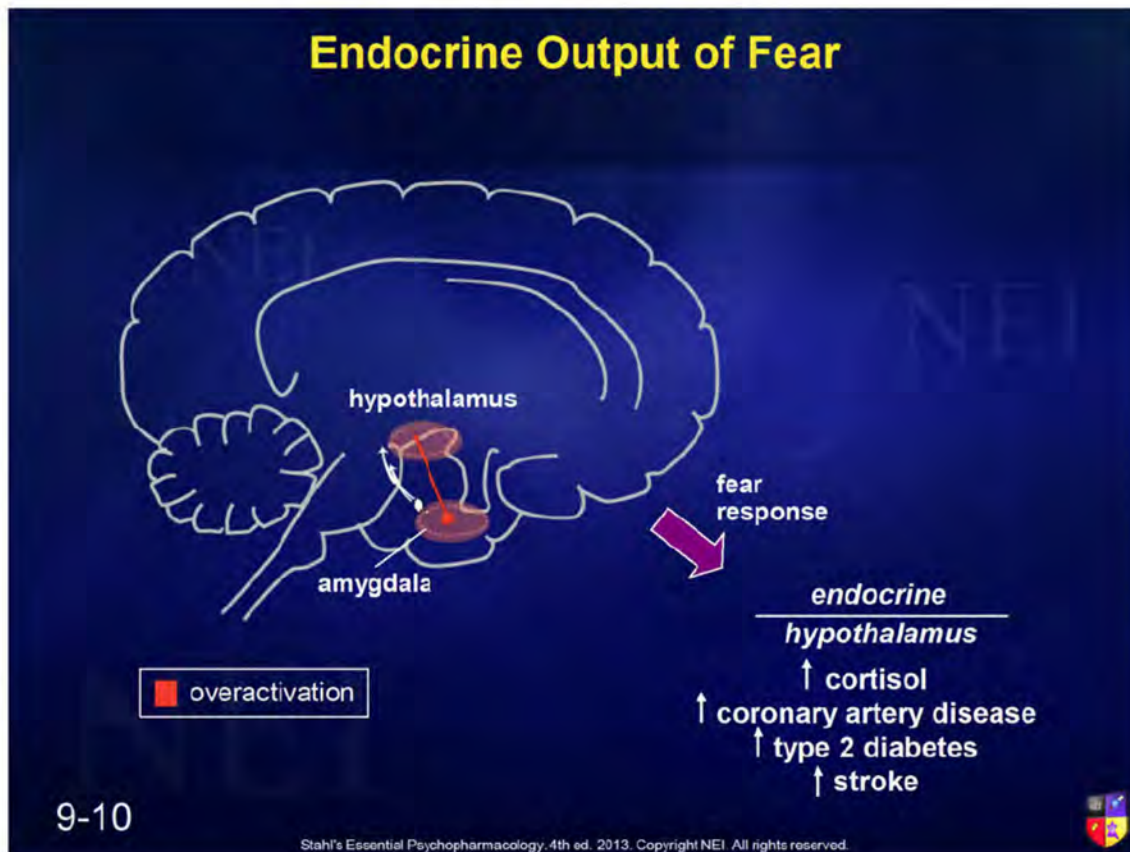


Figure 4

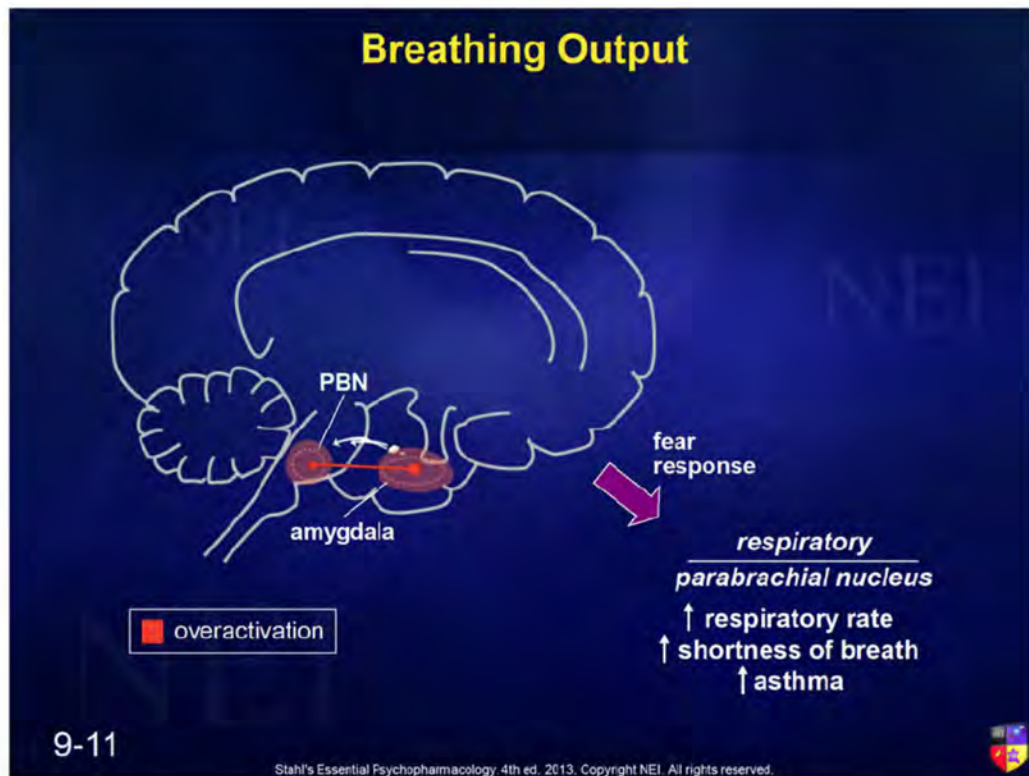


Figure 5

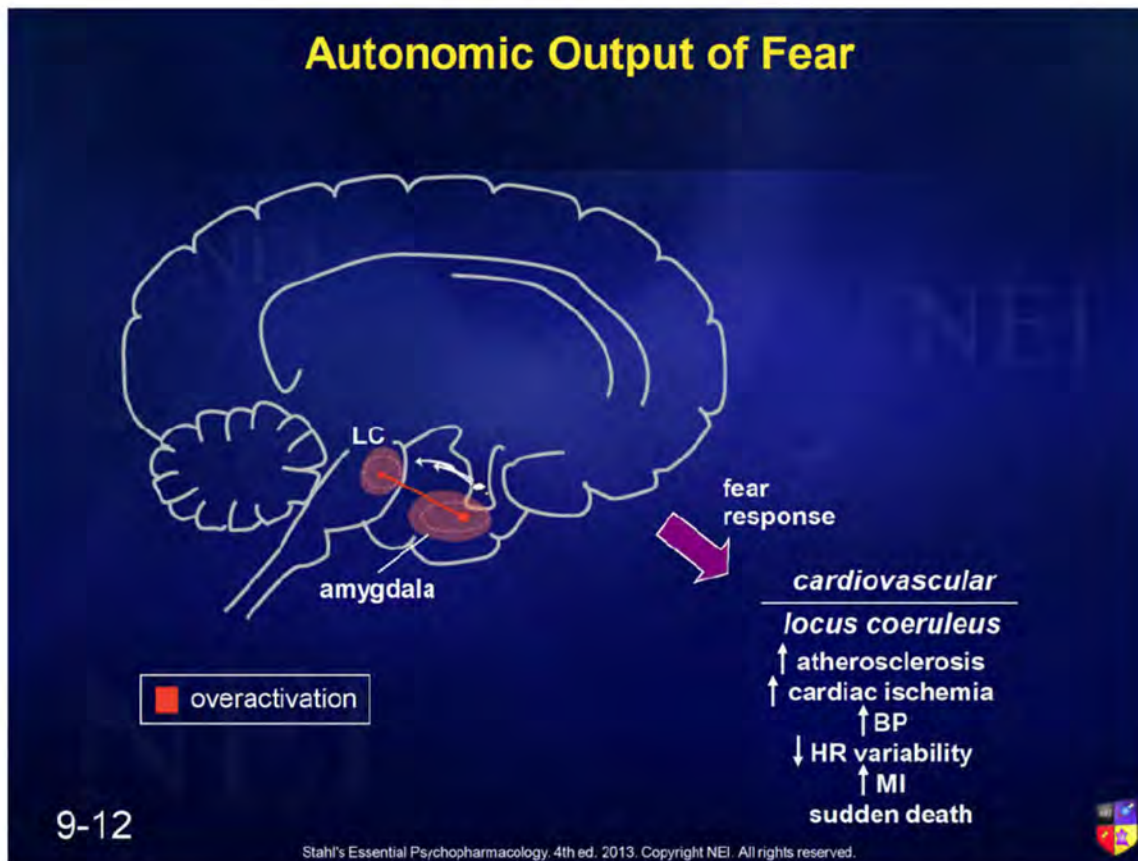


Figure 6

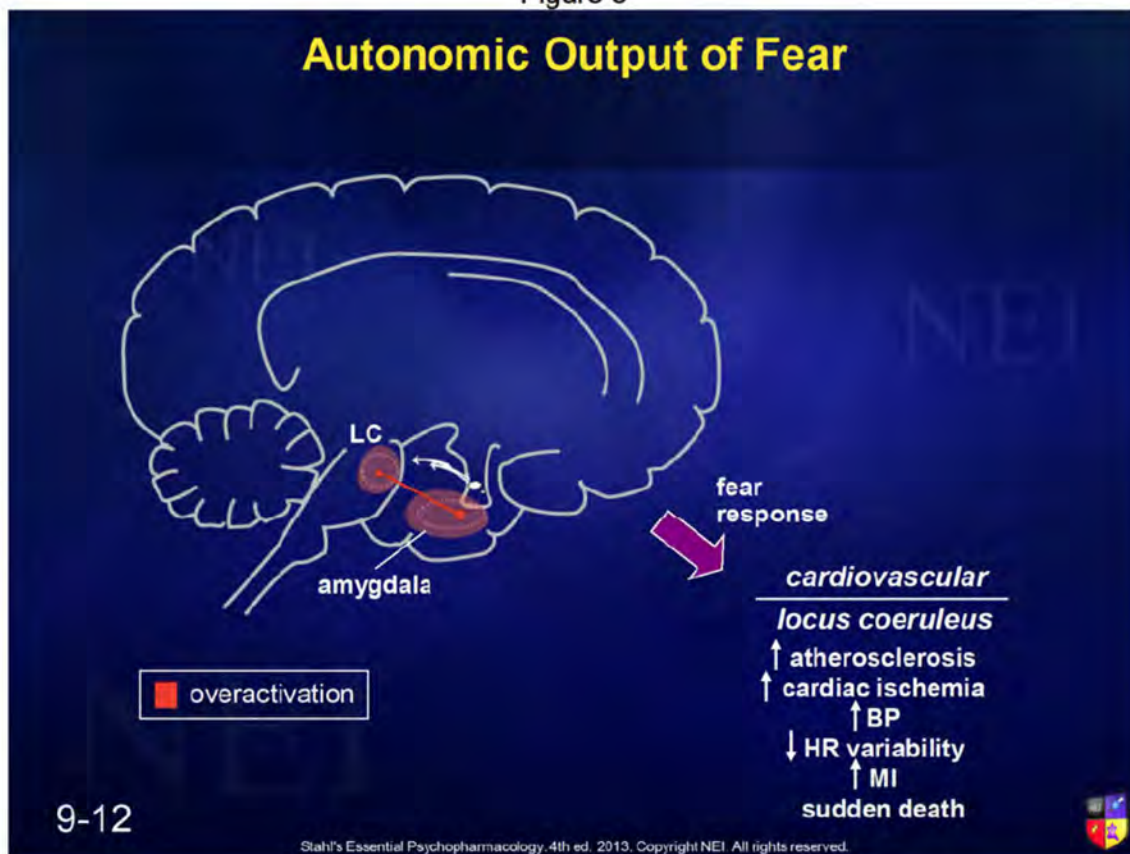
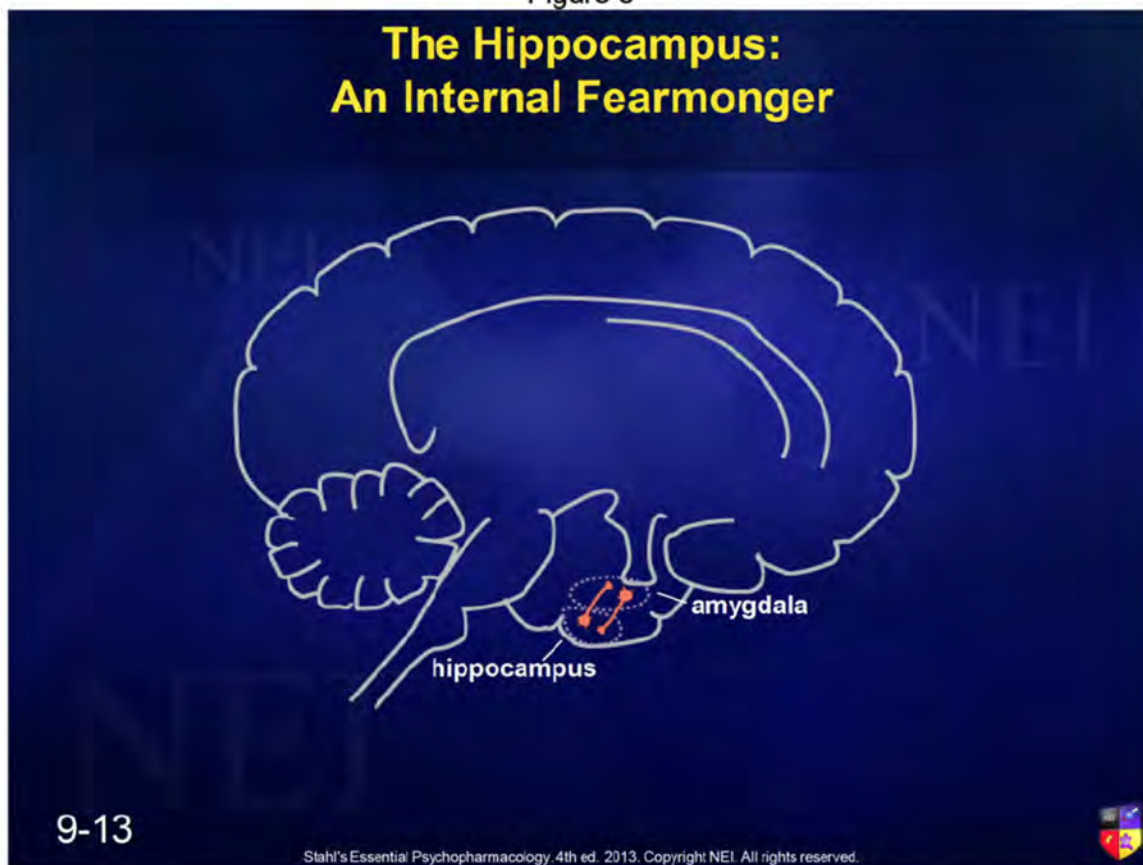


Figure 6



List of Items Turned over to Dr. Love

Original Background Packet

- I. Family History Records
 - A. Family Tree *
 - B. Charles Lee Barnett, Sr. (Paternal Great Grandfather)
 - 1. Charles Barnett Death Certificate *
 - 2. Charles Barnett Medical Examiner's Office Records *
 - 3. Charles Barnett Newsclips *
 - C. Charles Henry Tisius (Paternal 2nd Great Grandfather)
 - 1. Charles Tisius Death Certificate *
 - 2. Charles Tisius Medical Examiner's Office Records *
 - 3. Charles Tisius Newsclips *
 - D. Walter Tisius (Paternal 3rd Great-Uncle) Newsclip *
 - E. Adolf Kuehl (Maternal 3rd Great-Grandfather)
 - 1. Adolf Kuehl Death Notice *
 - 2. Adolf Kuehl Newsclip *
 - F. William F. Kuehl (Maternal 3rd Great-Uncle)
 - 1. William Kuehl Death Certificate *
 - 2. William Kuehl Newsclips *
 - G. Charles L. Quinn (Maternal 1st Cousin, 2x Removed)
 - 1. Charles Quinn Death Certificate *
 - 2. Charles Quinn Medical Examiner's Office Records *
 - 3. Charles Quinn Newsclips *
 - H. Ralph Mertens (Maternal Great Uncle) Death Certificate *
- II. Client Photos
 - A. Client/Brother (Trial 2, Exhibit 1) *
 - B. Client, Age 4 (Trial 1, Exhibit 14) *
 - C. Client (Trial 1, Exhibit 15) *
 - D. Client, Kindergarten (Trial 1, Exhibit 16) *
 - E. Client, 1st Grade (Trial 1, Exhibit 17) *
 - F. Client, 3rd Grade (Trial 1, Exhibit 23) *
 - G. Client, 5th Grade (Trial 1, Exhibit 24) *
 - H. Client, 6th Grade (Trial 2, Exhibit 13) *
 - I. Client, Age 12 (Trial 1, Exhibit 27) *
 - J. Client (Trial 1, Exhibit 35) *
 - K. Client (Miscellaneous Photos) *
- III. Medical Records
 - A. Michael Tisius *
 - 1981-01-09 The Children's Clinic Doctor's Notes

- 1981-02-16 St. Joseph Emergency Medical Treatment Auth
- 1981-02-16 OB History Record
- 1981-02-16 OB Record
- 1981-02-16 Newborn physical exam record
- 1981-02-16 Physician's orders newborn record
- 1981-02-16 Nurses Discharge Record
- 1981-02-16 Nurses Discharge Record
- 1981-02-18 Birth Record
- 1981-02-19 Newborn record
- 1984-08-09 Medicaid Records
- 1987-03-28 St. Louis History & Progress Report
- 1988-0-0 Medical History Summary
- 1988-09-22 Hillsboro School Nurse Report
- 1990-09-13 0000-00-00 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-8
- 1990-09-13 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-6
- 1990-09-13 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-12
- 1990-09-13 0000-00-00 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-7
- 1990-09-13 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-11
- 1990-09-14 Pages from MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-9
- 1990-09-17 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-10
- 1990-09-24 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-5
- 1992-00-00 Pages from 0000-00-00 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-4
- 1992-10-12 Pages from MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-2
- 1992-10-12 Pages from MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-3
- 1992-12-10 Doctor's Notes
- 1993-04-20 Pages from MedR T1 Des Peres Hospital records re MAT testicle surgery (1)
- 1993-08-26 Hillsboro Vaccination Record for Mike
- 1994-03-04 Hillsboro School Nurse Report
- 1994-03-04 Hillsboro School Nurse Report
- 1994-08-25 HAB Vaccination Records for Mike
- 1995-0-0 HAB School Nurse Report
- 1995-08-24 HAB Vaccination Record for Mike
- 1995-12-07 Lab Report
- 1996-02-14 Hillsboro School Nurse Report
- 1996-05-10 HAB School Nurse Report
- 1997-03-20 St. Mary's Patient Instruction Form
- 1997-03-28 St. Mary's Ortho reports
- 1997-03-28 IV Conscious Sedation Flowsheet
- 1998-07-09 St. Joseph Admission Record
- 1998-07-19 St. Joseph Diagnostic Imaging Reports

- 1998-07-19 St. Joseph Emergency Dept Activity Limitation Slip
- B. Joey Mertens *
 - 0000-0-0 School Nurse Incident Report Re: Joey
 - 1978-08-19 Hillsboro Health Info Record Mertens
 - 1978-11-27 The Children's Clinic Vaccination Record for Mertens
 - 1978-11-27 City of St. Louis, School Health Record Mertens
 - 1988-09-15 Hillsboro School Nurse Report
 - 1996-11-01 Hillsboro Incident Report

IV. Custody Records *

- 0000-00-00 Pages from MAT_003364-003465
- 0000-00-00 CustRC PCRI Tisius, Charles answers to interrog
- 0000-00-00 Letter from Patty to Chuck
- 0000-00-00 CustRC PCRI Tisius, Chuck ltr to Lambert, Patty re med insurance 2
- 0000-00-00 MAT CustRC PCRI Lambert, Patty handwritten notes re custody child support
- 0000-01-31 Letter re taxes
- 0000-10-28 Attorney Contract between Shea and Patty
- 1987-01-08 CustRC PCRI Lambert, Patty ltr frm StL Co circuit court re child support
- 1988-11-15 CustRC PCRI Tisius, Chuck hearing not re child support
- 1988-12-29 Court Order re child support
- 1989-11-05 CustRC PCRI Tisius, Chuck ltr to Lambert, Patty re med insurance
- 1990-08-08 CustRC PCRI Lambert, Patty food stamp job search plan
- 1991-08-23 Patty's Job Search Plan
- 1992-10-07 Circuit Court Chuck's petitions the court for Custody of Michael
- 1992-10-07 Letter to Mike from Chuck
- 1992-10-14 Circuit Court Answer to Interrogatories
- 1993-03-10 List of Patty's past employment
- 1993-06-04 Letter from Patty to her divorce atty
- 1993-08-27 Home Visit Report
- 1993-09-17 Petitioner's Motion to Modify Prior Decree
- 1993-09-17 Child Custody Pleadings
- 1993-09-21 Letter from DSS to Patty re Mike
- 1993-09-30 Letter from Patty re custody
- 1993-12-07 Letter re custody
- 1994-02-07 From Patty to Shea
- 1994-08-18 Letter from Chuck to Mike
- 1994-09-19 Letter from Patty to Charles re custody mediation

V. Education Records

A. Michael Tisius *

- 1986-00-00 1986-1987 SchR T1 MAT Kindergarten report card Buder elem
- 1987-05-02 1987-05-02 SchR T1 MAT StL Public Schools std test scores
- 1988-00-00 Hillsboro Attendance & Scholarship Record
- 1988-02-19 1987-1988 SchR T1 MAT 1st Grade report card Buder elem
- 1988-08-22 Hillsboro Student Info

- 1988-09-20 St. Louis Public School – Mertens
- 1989-01-00 Hillsboro 2nd Grade Report Card
- 1990-00-00 1990 SchR T1 MAT std test scores and letter Hillsboro Elem School
- 1990-00-00 Pages from 1990 SchR PCR2 MAT Hillsboro Elem std test scores original
- 1990-06-05 1989-1990 SchR T1 MAT 3rd Grade report card Hillsboro R-3 Elem
- 1991-00-00 1990-1991 SchR T1 MAT 4th Grade report card Hillsboro R-3 Elem
- 1992-00-00 Hillsboro Mastery & Achievement Tests
- 1992-00-00 Hillsboro 5th Grade Questionnaire by Michael
- 1992-00-00 Hillsboro 5th Grade Writing Project
- 1992-00-00 Hillsboro 5th Grade Writing Project
- 1992-00-00 Hillsboro 5th Grade Report Card
- 1992-00-00 Hillsboro 6th Grade Report Card
- 1992-00-00 Hillsboro 6th Grade Newsletter
- 1992-02-22 Hillsboro 5th Grade Collective Writing Project
- 1992-03-19 Letter from Principal to Mike's parents
- 1992-08-24 Hillsboro Discipline Report
- 1993-00-00 SchR T1 MAT 6th grade autobiography
- 1993-00-00 Hillsboro Mastery & Achievement Test 6th grade
- 1993-00-00 Michael's Sixth Grade Class
- 1993-00-00 Michael's Autobiography Grade
- 1993-00-00 Hillsboro 6th Grade Report Card
- 1993-00-00 Riverview Report Card
- 1993-00-00 1993 SchR PCR2 MAT Hillsboro Middle std test scores original
- 1993-03-16 Letter from Principal to Mike's parents
- 1993-05-19 Letter from Principal to Mike's parents
- 1993-08-26 Hillsboro Discipline Report
- 1993-09-16 Hillsboro Letter from Mrs. Page
- 1994-00-00 Hillsboro 7th Grade Report Card
- 1994-01-20 Hillsboro Handwritten Progress Report
- 1995-00-00 Hillsboro 8th Grade Report Card
- 1996-00-00 Hillsboro Mastery & Achievement Test
- 1996-00-00 Maplewood Attendance Record
- 1996-00-00 Project SLAM Overview
- 1996-00-00 Hillsboro Mastery & Achievement Results 7th Grade
- 1996-00-00 Hillsboro 9th Grade Report Card
- 1996-04-11 Maplewood Conduct Report
- 1996-06-00 Hillsboro Grade Transcript
- 1996-10-04 JAMMER Student Referral Form
- 1996-10-07 JAMMER Letter
- 1996-10-14 Jefferson County JAMMER Truancy Program
- 1996-10-14 JAMMER Info to Parents
- 1996-10-15 JAMMER Mentor Report Form
- 1996-10-30 Jefferson County Ltr to Mike's Mother
- 1996-10-31 Hillsboro Letter from Assistant Principal
- 1996-11-01 Hillsboro 9th Grade Report
- 1996-11-01 Maplewood 9th Grade Report Card

- 1996-11-12 Maplewood Letter from Principal
- 1997-03-18 Maplewood Conduct Report
- 1997-04-24 Maplewood Letter to Mike re attendance
- 1998-04-28 St. Louis County Student Registration Profile
- B. Joey Mertens *
- 1978-08-19 Hillsboro Report Card Mertens 9th Grade
- 1987-00-00 Buder Report Card, Mertens
- 1988-00-00 Hillsboro Attendance & Records Mertens
- 1988-08-22 Hillsboro Student Info Mertens
- 1989-00-00 Hillsboro Mastery & Achievement Test Mertens 7th Grade
- 1993-02-15 HAB Release re Mertens
- 1995-00-00 Hillsboro Mastery & Achievement Test Mertens 10th Grade
- VI. Juvenile Court Records *
- 1996-05-02 Arnold Incident Record
- 1996-05-02 Handwritten letter from Mike
- 1996-05-21 Jefferson County Juvenile Continuation Form
- 1996-05-24 Jefferson County Notice of Informal Adjustment
- 1996-06-06 Hillsboro Notice of Informal Adjustment
- 1996-06-21 Jefferson County Face Sheet
- 1996-06-21 Hillsboro Statement of Rights
- VII. Family Services Records *
- 1998-03-11 St. Louis County CPS Classification Screening Form
- 1998-03-11 DSS FDS Incident Report
- 1998-03-11 DSS Family Intervention Determination
- 1998-03-11 DFS Follow up report
- 1998-03-16 DSS DFS Follow up
- 1998-04-11 DFS Follow up reports
- VIII. Youth Services Records *
- 0000-00-00 St. Louis County Customer Work Plan
- 0000-00-00 St. Louis County Assessment Form
- 0000-00-00 St. Louis County Legal Concern Form
- 0000-00-00 St. Louis County Housing Concern Form
- 0000-00-00 Emotional Problems
- 0000-00-00 Staff Note Re: Michael
- 0000-00-00 JAMMER Program Outline
- 0000-00-00 Project SLAM letter
- 0000-00-00 Adult Education Program Enrollment Form
- 0000-00-00 YServR PCRI MAT YIN life skills assessment
- 0000-00-00 Mike Tisius Contract
- 0000-00-00 0000-00-00 MedR PCRI Wool, Gerald Dr. sticky note re Fragile X (1)
- 1995-11-01 JAMMER program Letter
- 1996-10-14 Jefferson County Parental Interview Form
- 1996-10-14 Jefferson County Juvenile Behavior Review Form

- 1996-10-14 Jefferson County Hobbies and Interests Form
- 1998-04-28 St. Louis County Casenotes
- 1998-05-18 Youth in Need Intake Form
- 1998-05-19 Youth in Need Intake Assessment Form
- 1998-05-19 Youth in Need Service Contact Report
- 1998-06-01 Youth in Need Initial Transition Plan
- 1998-06-01 Youth in Need Meeting Notes
- 1998-06-01 Youth in Need Consent Forms & Contracts
- 1998-06-01 Youth in Need Release of Info Auth
- 1998-06-01 Youth in Need Release of Info Auth
- 1998-06-01 Youth in Need Release of Info Auth
- 1998-06-01 Youth in Need Client Face Sheet
- 1998-06-04 Youth in Need Meeting Notes
- 1998-06-04 Youth in Need Meeting Notes
- 1998-06-05 Youth in Need Meeting Notes
- 1998-06-08 Youth in Need Meeting Notes
- 1998-06-08 Youth in Need Counseling Session Report
- 1998-06-09 St. Charles County Community College Info Form
- 1998-06-11 Youth in Need Initial Transition Plan cont.
- 1998-06-11 Youth in Need Meeting Notes
- 1998-06-17 MO DSS Incident Report
- 1998-06-22 Youth in Need First Written Warning
- 1998-06-22 Youth in Need First Written Warning
- 1998-06-23 Youth in Need Counseling Session Report
- 1998-06-25 Center for Eye Care Exam
- 1998-07-09 Youth in Need Meeting Notes
- 1998-07-13 Youth In Need Meeting Notes
- 1998-07-13 Youth in Need Handwritten Agreement
- 1998-07-13 Youth in Need Counseling Session Report
- 1998-07-14 Grace Hill Medical Visit Record
- 1998-07-15 Youth in Need Written Warning
- 1998-07-17 St. Louis County Change of Status Form
- 1998-07-17 Dept of Human Services Customer Summary Report
- 1998-07-20 Youth in Need Progress Notes
- 1998-07-21 Youth in Need Disposition Form
- 1998-07-22 St. Louis County Parental Approval Medical Release Form
- 1999-02-02 Youth in Need Self-Evaluation Form
- 1999-10-04 St. Louis County Closing Summary Report

IX. Prior Evaluations

- A. Dr. Elliot Phillips Psychiatric Evaluation, 06/20/1996 *
- B. Stipulation and Transcript of Testimony of Dr. A.E. Daniel re Psychiatric Evaluation, 04/18/2001 (PCR 2, Exhibit 6) *
- C. Dr. Shirley Taylor Psychological Evaluation, 07/15/2001 *
- D. Dr. Shirley Taylor raw data *
- E. Dr. Dennis Cowan Neuropsychological Evaluation, 05/20/2003*

F. Stipulation and Transcript of Testimony of Dr. Stephen Peterson re: Psychiatric Evaluation, 02/03/2004 (PCR 2, Exhibit 5) *

X. Miscellaneous Psychological Records *

-Exhibit 5 Handwritten Page
 -Exhibit 7 Handwritten Page
 -1990-11-20 Revised Conner's Questionnaire-Teacher Margaret Fitzgerald
 -1992-02-06 Comtrea S.E.E. Elementary Program Confirmation by J. Tracy Wiecking
 -1992-04-15 Comtrea Discharge Summary
 -1992-10-30 Comtrea Ltr to Patricia Tisius from Judith Rogers
 -1996-05-13 United Behavioral Systems-Initial Assessment and History
 -Family Therapy Notes by Kuntz (Session 2)
 -1996-07-23 Ltr to Patricia Tisius from Diane Junge
 -Family Therapy Notes by Kuntz (Session 1)
 -1996-00-00 UBS Treatment Plan/Authorization Request
 -1996-08-05 UBS Emergent/Urgent Appointment
 -Family Therapy Notes by Kuntz (Session 3)
 -Family Therapy Notes by Kuntz (Session 4)
 -Family Therapy Notes by Kuntz (Session 5)
 -1996-00-00 UBS Treatment Plan/Authorization Request
 -1996-09-10 Ltr to UBS from Kuntz encl Treatment Plan
 -1996-09-17 Kuntz Handwritten Notes
 -1996-09-18 On-Call Report by Hoyt
 -1996-09-18 On-Call Report by Unknown
 -1996-09-18 Hospital Consultation United Behavioral Clinics
 -1996-09-18 On-Call Report by Hoyt
 -1996-09-18 On-Call Report by Unknown
 -1996-09-18 St. Anthony's Medical Center Eval
 -1997-08-26 UBH Termination Summary
 -1997-08-27 Ltr to UBH from Kuntz

XI. Depositions

1. Gerald Wool, M.D. Deposition (PCR 1, Exhibit 28) *
2. Florence Murphy Deposition (PCR 1, Exhibit 34) *
3. Sharon Holladay Deposition (PCR 2, Exhibit 97) *
4. Joan Nazzoli Deposition (PCR 1, Exhibit 21) *
5. Mona Jarnagin Deposition (PCR 1, Exhibit 20) *
6. Robert Smith Deposition (PCR 1, Exhibit 35) *
7. Stephanie Ashley Deposition (PCR 1, Exhibit 18) *
8. John Perry Deposition (PCR 1, Exhibit 23) *
9. Janice Page Deposition (PCR 1, Exhibit 19) *
10. Charles Martin Deposition (PCR 1, Exhibit 22) *
11. Betty Mace Deposition (PCR 1, Exhibit 36) *
12. Gloria Gray Deposition (PCR 1, Exhibit 37) *

13. Deanna Guenther Deposition (PCR 1, Exhibit 31) *
 14. Lucinda Guenther Deposition (PCR 1, Exhibit 32) *
 15. Corey Baker Deposition (PCR 1, Exhibit 29) *
 16. Jamey Baker Deposition (PCR 1, Exhibit 30) *
 17. Donna Lee Hendricks Deposition (PCR 1, Exhibit 33) *
 18. Rebecca Gotheridge Deposition (PCR 1, Exhibit 41) *
 19. Nicole Tisius Deposition (PCR 1, Exhibit 38) *
 20. Donald Tisius, Jr. Deposition (PCR 1, Exhibit 39) *
 21. Terra Launius Deposition (PCR 1, Exhibit 40) *
 22. Melinda East Deposition (PCR 1, Exhibit 26) *
 23. Larry Best Deposition (PCR 1, Exhibit 27) *
 24. Lynne Silverman Deposition (PCR 1, Exhibit 25) *
 25. John Reichle Deposition (PCR 1, Exhibit 24) *
 26. Helen Riley Deposition (PCR 1, Exhibit 45) *
 27. James Foote Deposition (PCR 1, Exhibit 52) *
- XII. Miscellaneous
- A. Letters from Roy Vance to Tracie Bulington including Artwork (PCR 1, Exhibit 122) *
 - B. 06/22/2000 Whisenand Report Re: 06/17/2000 Jail Visit by Tisius and Bulinger [sic] (PCR 1, Exhibit 61) *
 - C. 06/22/2000 Whisenand Report Re: 06/18/2000 Jail Visit by Tisius and Bulinger [sic] (PCR 1, Exhibit 62) *
 - D. 06/22/2000 Shill Report Re: 06/18/2000 Jail Visit by Tisius and Bulinger [sic] (PCR 1, Exhibit 63) *
 - E. 06/22/2000 Voluntary Statement of Michael Tisius and Undated Letter from Roy Vance to Karl Bartholomew (PCR1, Exhibit 79)*
 - F. 06/22/2000 Platte Report Re: Interview of Michael Tisius (PCR 1, Exhibit 88) *
 - G. Missouri State Highway Patrol Documents Re: Robin Russell and Handwriting Examination (PCR 1, Exhibit 83) *
 - H. 06/27/2000 Confidential Narcotics Report Re: Evidence Seized from 1987 Mercury Cougar (PCR 1, Exhibit 58) *
 - I. Michael Tisius Boone County Jail – Mental Health Records (PCR 1, Exhibit 66) *
 - J. Michael Tisius’s Boone County Jail – Medical Records (PCR 1, Exhibit 65) *

Chronology and Records Digest

Supplemental Background Packet (Opinions & Transcripts)

I. Opinions

- A. *State v. Tisius*, 92 S.W.3d 751 (Mo. banc 2002). [Missouri Supreme Court Opinion affirming conviction and sentence on Direct Appeal, 12/10/2002.] *
- B. *Tisius v. State*, 183 S.W.3d 207 (Mo. banc 2006). [Missouri Supreme Court Opinion affirming Boone County Circuit Court grant of post-conviction sentencing relief, 01/10/2006.] *
- C. *State v. Tisius*, 362 S.W.3d 398 (Mo. banc 2012). [Missouri Supreme Court Opinion affirming sentence on Direct Appeal, 03/06/2012.] *
- D. *Tisius v. State*, 519 S.W.3d 413 (Mo. banc 2017). [Missouri Supreme Court Opinion affirming Circuit Court denial of post-conviction relief, 04/25/2017.] *

II. Transcripts

- A. Trial Proceedings, 03/02/2001– 10/01/2001 (Excluding Jury Selection)
 - 1. Vol. I of IV *
 - 2. Vol II of IV *
 - 3. Vol III of IV *
 - 4. Vol IV of IV *
- B. First State Post Conviction Proceedings, 07/14/2003 – 05/24/2004
 - 1. Vol I of II *
 - 2. Vol II of II *
- C. Resentencing Proceedings, 09/22/2008 – 09/27/2010 (Excluding Jury Selection)
 - 1. Vol I of II *
 - 2. Vol II of II *
- D. Second State Post Conviction Proceedings, 07/16/2013-06/25/2014 *

Declaration of Frank R. Baumgartner

Pursuant to 28 U.S.C. § 1746

1. My name is Frank R. Baumgartner. I am over the age of 18 years and fully competent to make this declaration.
2. I was asked by counsel for Michael Tisius, a death row inmate, to pull historical statistics related to the death penalty, both nationally and in Missouri. Those statistics look at general populations as well as under 21 offenders and under 18 offenders.
3. I am a political science professor at UNC-Chapel Hill with years of experience in the statistical study of public policy and criminal justice outcomes, including the death penalty. I received my BA, MA, and PhD degrees from the University of Michigan (1980, 1983, and 1986). I have been a faculty member since 1986 and have taught at the University of Iowa, Texas A&M University, Penn State University, and UNC-Chapel Hill, where I have held the Richard J. Richardson Distinguished Professorship in Political Science since my arrival in 2009. My research generally involves statistical analyses often based on originally collected databases. I have been fortunate to have received a number of awards for my work, including six book awards, awards for database construction, and so on. In 2017, I was inducted in the American Academy of Arts and Sciences.

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4. In 2008, I published a book about the transformation in United States public attitudes and use of the death penalty based on the rise of the “innocence” argument about the possibility of errors in the system.¹ Since then, I have integrated the death penalty into my teaching and research. I regularly teach a course about the death penalty here at UNC-Chapel Hill; it enrolls over 300 students. In 2018, I published a book, *Deadly Justice: A Statistical Portrait of the Death Penalty*,² which presents a variety of statistical analyses of such things as the geographical concentration of the death penalty, its cost, the share of death sentences reversed or carried out, the time from death sentence to execution, public opinion, and other matters. This book draws from a database I constructed over many years, consisting of information about every execution in the United States since *Gregg v. Georgia* (1976).
5. Since completing that book, I have also compiled a similar database of all US death sentences since *Furman v. Georgia* (1972), more than 8,000 observations. I have several published articles in scholarly journals and law reviews using this database. My work in this area generally is statistical in nature. That is what I have done here.

¹ Baumgartner, Frank R., Suzanna L. De Boef and Amber E. Boydston. 2008. *The Decline of the Death Penalty and the Discovery of Innocence*. New York: Cambridge University Press.

² Baumgartner, Frank R., Marty Davidson, Kaneesha R. Johnson, Arvind Krishnamurthy, and Colin P. Wilson. 2018. *Deadly Justice: A Statistical Portrait of the Death Penalty*. New York: Oxford University Press.

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Death Sentences and Executions, by Age Group, United States and Missouri, 1972-2022

Year	US Death Sentences	MO Death Sentences	US Under 18 Death Sentences	MO Under 18 Death Sentences	US Under 21 Death Sentences	MO Under 21 Death Sentences	US Executed	MO Executed	US Under 18 Executed	MO Under 18 Executed	US Under 21 Executed	MO Under 21 Executed
1972	4	0	0	0	1	0	0	0	0	0	0	0
1973	44	0	1	0	7	0	0	0	0	0	0	0
1974	157	0	12	0	35	0	0	0	0	0	0	0
1975	271	0	13	0	47	0	0	0	0	0	0	0
1976	221	0	9	0	37	0	0	0	0	0	0	0
1977	152	0	7	0	36	0	1	0	0	0	0	0
1978	208	0	6	0	43	0	0	0	0	0	0	0
1979	166	3	4	0	29	0	2	0	0	0	0	0
1980	179	3	7	0	36	1	0	0	0	0	0	0
1981	250	8	7	0	42	2	1	0	0	0	0	0
1982	276	8	13	1	59	1	2	0	0	0	0	0
1983	257	3	4	0	38	1	5	0	0	0	0	0
1984	291	7	5	0	44	0	21	0	0	0	1	0
1985	279	9	6	0	52	1	18	0	1	0	4	0
1986	325	10	9	1	52	2	18	0	2	0	3	0
1987	290	10	3	0	35	1	25	0	1	0	5	0
1988	306	17	4	0	38	1	11	0	0	0	1	0
1989	262	4	2	0	33	0	16	1	0	0	3	0
1990	256	5	6	0	35	0	23	4	1	0	2	0
1991	272	13	8	0	47	1	14	1	0	0	1	0
1992	270	6	6	0	53	0	31	1	1	0	5	0
1993	289	6	7	1	63	3	38	4	4	1	10	2
1994	300	7	16	1	78	2	31	0	0	0	4	0
1995	312	9	12	0	76	1	56	6	0	0	7	0
1996	310	9	12	0	66	0	45	6	0	0	7	2
1997	267	10	8	1	59	2	74	6	0	0	11	0
1998	296	6	14	0	73	0	68	3	3	0	11	1

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1999	273	7	13	0	62	1	98	9	1	0	20	2
2000	226	2	10	0	48	0	85	5	3	0	16	0
2001	164	5	4	0	28	1	66	7	1	0	10	1
2002	169	3	3	0	27	0	71	6	3	0	13	1
2003	153	3	0	0	23	1	65	2	1	0	10	0
2004	124	3	2	0	20	0	59	0	0	0	12	0
2005	134	2	0	0	11	0	60	5	0	0	6	0
2006	112	2	0	0	17	0	53	0	0	0	11	0
2007	128	0	0	0	19	0	42	0	0	0	13	0
2008	115	4	0	0	20	1	37	0	0	0	9	0
2009	110	2	0	0	16	0	52	1	0	0	11	0
2010	108	0	0	0	12	0	46	0	0	0	10	0
2011	80	0	0	0	8	0	43	1	0	0	11	0
2012	76	1	0	0	10	0	43	0	0	0	7	0
2013	79	3	0	0	6	0	39	2	0	0	4	0
2014	70	0	0	0	4	0	35	10	0	0	4	0
2015	49	0	0	0	6	0	28	6	0	0	5	0
2016	33	0	0	0	2	0	20	1	0	0	6	0
2017	39	1	0	0	7	0	23	1	0	0	8	1
2018	43	1	0	0	1	0	25	0	0	0	2	0
2019	34	0	0	0	2	0	22	1	0	0	3	0
2020	20	0	0	0	0	0	17	1	0	0	4	0
2021	18	0	0	0	1	0	11	1	0	0	1	0
2022	19	1	0	0	1	0	18	2	0	0	4	1

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I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.


Signature

11 JAN 2023
Date

SC99938

Electronically Filed - SUPREME COURT OF MISSOURI - January 13, 2023 - 05:19 PM

Dale G. Watson, Ph.D. – A Psychological Corporation

Clinical & Forensic Neuropsychology
3377 Deer Valley Road, PMB 310, Antioch, CA 94531
Telephone: 866-536-5301, Facsimile: 925-281-2833
Email: watson.dale@comcast.net

June 26, 2018

NEUROPSYCHOLOGICAL EVALUATION

Confidential

Name: Michael Andrew Tisius
DOB: February 16, 1981
Dates of Evaluation: May 4 & 5, 2018
Evaluated by: Dale G. Watson, Ph.D.
Referred by: Daniel Kirsch, Esq.

IDENTIFYING INFORMATION:

Michael Andrew Tisius was convicted of the murders of Officers Leon Egle and Jason Acton on June 22, 2000, which occurred during the attempted breakout of Roy Vance, a jail inmate, in Huntsville, Missouri.¹ Mr. Tisius was 19 years old at the time. He was sentenced to death on October 1, 2001. Subsequently, Mr. Tisius death penalty was over-turned during state post-conviction relief proceedings. Then, during a retrial of the penalty phase, he was again sentenced to death in 2010. Mr. Tisius is currently in federal habeas proceedings.

REFERRAL QUESTIONS

At the request of trial counsel for Mr. Tisius, Daniel Kirsch, Esq., a neuropsychological assessment was initiated to answer the following questions:

1. Does Mr. Tisius suffer from neuropsychological dysfunction of any kind?

¹ Mr. Tisius will be variously referred to as "Mr. Tisius" and "Michael."

PSY11899

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2. If so, what is the nature of any such dysfunction and how does it affect Mr. Tisius' cognition and/or behavior?

3. Did Mr. Tisius suffer from neuropsychological dysfunction at the time of the offense? If so, how would this dysfunction have impaired his intellectual functioning or behavior?

EVALUATION PROCEDURES

The evaluation was conducted at the Potosi Correctional Center in Mineral Point, Missouri, over the course of approximately 14 ¾ hours. The nature and purpose of the evaluation were explained to Mr. Tisius and he agreed to the examination.

The assessment was conducted using the following procedures:

- Behavioral Observations (BEH)
- Mental Status Examination (MSE)
- Advanced Clinical Solutions Social Cognition Tests (ACS-SCT)
- Adverse Childhood Experiences (ACE) Questionnaires
- Aphasia Screening Test (AST)
- Beck Anxiety Inventory (BAI)
- Beck Depression Inventory, Second Edition (BDI-II)
- Boston Naming Test (BNT)
- Brown Location Test (BLT)
- California Verbal Learning Test-II (CVLT-II)
- Conners Continuous Performance Test, 3rd Edition (CPT3)
- D-KEFS Color-Word Interference Test (D-KEFS C-WIT)
- D-KEFS Design Fluency Test (D-KEFS DFT)
- D-KEFS Proverb Test (D-KEFS PT)
- D-KEFS Tower Test (D-KEFS TWR)
- D-KEFS Twenty Questions Test (D-KEFS TQT)
- D-KEFS Verbal Fluency Test (D-KEFS VFT)
- D-KEFS Word Context Test (D-KEFS WCT)
- Dichotic Word Listening Test (DWLT)
- Digit Vigilance Test (DVT)

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- Finger Tapping Test (FTT)
- Green's Medical Symptom Validity Test (MSVT)
- Grip Strength (GS)
- Grooved Pegboard Test (GPT)
- Gudjonsson Suggestibility Scale (GSS-1)
- Halstead Category Test (HCT)
- Iowa Gambling Task (IGT)
- Judgment of Line Orientation (JOLO)
- Lateral Dominance Examination (LDE)
- Reliable Digit Span (RDS)
- Rey Auditory Verbal Learning Test (RAVLT)
- Rey Complex Figure Test (RCFT)
- Reynolds Interference Test (RIT)
- Ruff 2 & 7 Selective Attention Test (RUFF)
- SCAN-3 for Adolescents and Adults: Tests for Auditory Processing Disorders (SCAN-3)
- Seashore Rhythm Test (SRT)
- Sensory-Perceptual Examination (SPE)
- Sentence Repetition (SR)
- Smell Identification Test (SIT)
- Social Responsiveness Scale, Second Edition (SRS-2)
- Speech Sounds Perception Test (SSPT)
- Tactile Form Recognition Test (TFRT)
- Tactual Performance Test (TPT)
- Test of Memory Malingering (TOMM)
- Token Test (TT)
- Trail Making Test A & B (TMT)
- Trauma Symptom Inventory – 2 (TSI-2)
- Validity Indicator Profile (VIP)
- Wechsler Adult Intelligence Scale - IV (WAIS-IV)
- Wechsler Memory Scale-IV Flexible Approach (WMS-IV)
- Wide Range Achievement Test - 5 (WRAT-5)

In addition, the following records have been reviewed:

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- Post-Conviction Testimony of Stephen Eugene Peterson, M.D., read during trial.
- Stephen Eugene Peterson, M.D., Personality Assessment Inventory (PAI) (May 29, 2003 & August 31, 2012) and Minnesota Multiphasic Personality Inventory – 2 (MMPI-2) (July 24, 2003 & October 11, 2012) test protocols and interpretive reports.
- Outline of Testimony of Stephen Eugene Peterson, M.D.
- Elliott Phillips, M.D., Psychiatric Evaluation, June 20, 1996.
- Dr. Dennis Cowan, Synopsis of Neuropsychological Testing, May 20, 2003.
- Declaration of Gloria Gray, May 11, 2018.
- Declaration of Tammy Newkirk, June 4, 2018.
- Dr. Shirley Taylor, Psychological Evaluation, July 18, 2001.
- Dr. Shirley Taylor, Test Protocols, July 18, 2001.
- Miscellaneous psychiatric records.
- Deposition of Gerald Wool, M.D., October 15, 2003.
- Michael Tisius birth records.
- Michael Tisius medical records.
- Michael Tisius school records.
- Deposition of Stephanie Ashley.
- Elliott R. Phillips, MD, Psychiatric Evaluation, June 20, 1996.
- Testimony of Patricia Lambert, August 2, 2001.
- Testimony of Dana Rivera, August 2, 2001.
- Deposition of John Andrew Reichle, Jr., October 9, 2003.
- Deposition of Lynne Elizabeth Silverman, October 15, 2003.
- Deposition of Larry Gene Best, October 15, 2003.
- Testimony of Cera Brogley, August 2, 2001.
- Deposition of Deanna Marie Guenther, October 9, 2003.
- Deposition of Cory Robert Baker, October 15, 2003.
- Deposition of Jamey Patrick Baker, October 15, 2003.
- Testimony of Jamey Patrick Baker, June 24, 2014.
- Testimony of Cory Robert Baker, June 24, 2014.
- Testimony of Deanna Marie Guenther, June 24, 2014.
- Deposition of Donna Lee Hendricks, October 9, 2003.
- Testimony of Joey Mertens, August 2, 2001.

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- Deposition of John Richard Perry, Jr., October 15, 2003.
- Letter from John Richard Perry, Jr. to Attorneys David Wilson & Robert Shea in Tisius, Charles (Chuck) v. Patricia (Patty), August 27, 1993, Cause No. 483946
- Deposition of Florence Bernice Murphy, October 15, 2003.
- Deposition of Betty Lois Mace, October 9, 2003.
- Testimony of Terra Launius, June 24, 2014.
- Testimony of Dana Rivera, August 2, 2001.
- Testimony of Charles Tisius, June 24, 2014.
- Deposition of Janice Louis Page, October 9, 2003.
- The Children's Clinic Doctor's Notes.
- Deposition of Nicole Dawn Tisius, October 9, 2003.
- Department of Social Services records.
- Declaration of Tammy Newkirk, June 4, 2018.
- Jefferson County Children's Home Parental Interview form on October 14, 1996.
- Death Certificate of Charles Lee Barnett, 11/14/1957.
- Death Certificate of Charles Tisius, 02/16/1912.
- "Son of Capt. Tisius Suicides", Alton Evening Telegraph, 02/17/1912.
- "Walter Tisius a Suicide", Alton Evening Telegraph
- Defendant's Exhibit 7.
- Defendant's Exhibit 5.
- Richard H. Still, III, D.O., Operative Reports, Metropolitan Medical Center, September 24, 1990 and October 11, 1992.
- Stipulation and Transcript of Testimony of Dr. A.E. Daniel re Psychiatric Evaluation, April 18, 2001.

Based upon the results of the clinical interview, a review of records, and the results of the tests, I have formed opinions regarding the nature of Mr. Tisius' neuropsychological functioning that I hold to a reasonable degree of scientific and professional certainty. These opinions and the evidence on which they are based are set forth below.

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BACKGROUND

The following information was gathered during my interview of Mr. Tisius.

PERSONAL/SOCIAL:

Michael Tisius was born on February 16, 1981 in St. Louis, Missouri, the only child of the union of Charles Tisius and Patricia (Mertens) Tisius Lambert. Mr. Tisius was raised by his mother. Mr. Tisius told me that his father was not involved in raising him, and Michael provided limited information about him. His mother, Patricia Lambert, died about two years ago at approximately 56 years of age. Mr. Tisius does have four half-siblings. He is also married to Cari (Ager) Tisius. They were married in 2014. Mr. Tisius has no children.

Mr. Tisius related that he did not have friends in prison – believing that he cannot trust others. He did acknowledge that he had a history of gullibility.

EDUCATIONAL HISTORY:

Mr. Tisius dropped out of school during the 9th grade. He did not obtain a General Equivalency Development (GED) certificate and has never attended college. He was not in Special Education. He indicated that he failed and repeated the sixth grade. He acknowledged that he had performed poorly in school. He also reported that he did not receive encouragement from his mother to do well in school.

OCCUPATIONAL HISTORY:

Mr. Tisius had no substantial work history – only working a week here and two weeks there.

MEDICAL AND PSYCHIATRIC HISTORY:

Mr. Tisius related that he had a long history of depression. He denied any history of suicide attempts.² Mr. Tisius has been treated with several psychiatric medications for depression.

² Other social history information indicates that he did have suicidal ideation.

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He does have a history of head injury. During the 7th grade he was pushed off a stage and landed on his head in the left frontal region. He did not recall if he lost consciousness but was seen at a hospital for stitches.³ He is not aware of ever having had a seizure.

SUBSTANCE USE/ABUSE:

Mr. Tisius related that he has had limited alcohol exposure during his lifetime. However, he did smoke marijuana regularly and used Adderall, a medication typically used to treat Attention Deficit Hyperactivity Disorder (ADHD), extensively – frequently “tweeking.” He found that it helped him focus.⁴

REVIEW OF RELEVANT RECORDS

DEVELOPMENT:

Birth records indicated that Michael was born to Patricia Tisius on February 16, 1981. His father, Charles Tisius, worked at the time of Michael’s birth at Pfisters Standard. He would later be employed as a police officer. His mother was a housewife. Michael’s birth weight was 7 pounds, length was 20 ½ inches, and head circumference was 14 inches. At one minute his Apgar score was 8 and at five minutes it was 9, both indicative of a healthy newborn.⁵ Grasp and suck reflexes were normal. However, a nurse’s note indicated that there was a cephalohematoma (blood pooled external to the skull) on the right side of his head and that respirations were marked by “slight grunting, retracting, and flaring.”⁶ Respiratory issues had resolved within about an hour. PKU screening completed on February 18, 1981 was negative.

³ Other records indicated that he did have losses of consciousness after additional head injuries.

⁴ This report suggests an attempt at self-medication.

⁵ Apgar stands for “Appearance, Pulse, Grimace, Activity, and Respiration” and is a rating given to newborns.

⁶ Michael Tisius birth records, MAT_007074 & MAT_007082.

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At age three, Michael was given a prefabricated stainless steel crown for a tooth.⁷ This report may suggest that his parents did not pay adequate attention to Michael's dental health – which he confirmed. This trend continued throughout his childhood and adolescence.

Michael became a bed-wetter when he was ten to 11 years old, and the bed-wetting continued until he was 15. On June 7, 1990, Michael was prescribed Imipramine Hydrochloride, a brand-name of Tofranil. This medication is an antidepressant and nerve pain medication that is used to treat depression, anxiety and agitation. The medication is also used as a treatment for bedwetting. Then, in 1996, he was prescribed Desmopressin, a clotting promoter and antidiuretic. Desmopressin is commonly used to treat Diabetes Insipidus, but can also be used to treat bedwetting, among other issues.

Gloria Quinn Gray, Mr. Tisius' maternal great aunt, signed a declaration on May 11, 2018. She provided information about Michael's home environment and development. She described Michael's mother Patty as being hardly able to care for herself, let alone her two sons. She related, "Patty never went to the dentist. She lost most of her teeth at a young age. She got plates when Joey was married. By that time, she had no teeth left at all."⁸ She also described the relationship between Michael and his older brother, Joey Mertens. According to Ms. Gray, Joey was an aggressive and physical child who was much older and much bigger in size than Michael. She related that Joey was always beating Michael up and this was usually unprovoked. Joey would hurt Michael and Michael was unable to defend himself.

Ms. Gray also described Michael's personality, reporting, "Michael has always been a sensitive child. He was quick to tear up and would cry if he felt someone was angry with him. Much more than most kids he tried to fit in. He didn't have any sense of himself. Michael was the type of kid that was easily influenced by others. He was too eager to please. He was a follower; not at all a leader."⁹ In addition, "Michael was often off in his own world. Sometimes he was mopey and withdrawn."¹⁰

⁷ Michael Tisius medical records, MAT_004221.

⁸ Declaration of Gloria Gray, May 11, 2018, p. 10.

⁹ *Id.*, p. 8.

¹⁰ *Id.*

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Tammy Newkirk, Michael's half-brother's aunt, signed a declaration on June 4, 2018. Ms. Newkirk spent a considerable amount of time with Michael and his brother Joey when they were young. She described Michael, saying "Mikey was starved for attention and love. He used to dance around pretending to be Michael Jackson and make us all laugh. When we laughed at his dancing he really ate it up. Mikey was desperate for attention every time I saw him. He was like a lost puppy."¹¹ She also described Attention Deficit Hyperactivity Disorder (ADHD)-like symptoms, noting "He had trouble sitting still. It seemed like he had ADD. At times Mikey bounced off the walls and couldn't calm down. He couldn't keep his hands to himself."¹² She also described other behavioral symptoms that sound seizure-like, noting "He'd just be sitting on the carpet by himself, staring off into space. I guess he was a real day dreamer. He was completely off in his own world. When he was zoned out like that, you could say his name a few times or be talking to him and it would take him some time to notice you - longer than normal. Then he'd snap out of it and be his regular self like nothing happened."¹³ Ms. Newkirk also described language and communication problems that he observed:

Mikey sometimes got frustrated when he tried to communicate. He was slow to talk. He just couldn't find the words he was looking for. When I talked to Mikey, I took special care to use simple words that he could understand. I treated him like he was younger than he was because that's how he seemed to me. Mikey had a stutter. When he got excited, the stutter would come out. He was very self-conscious and embarrassed about it. Patty didn't help matters - whenever Mikey started stuttering, Patty just yelled at him and berated him. That made him feel even worse about himself. It was very hard to watch.¹⁴

¹¹ Declaration of Tammy Newkirk, June 4, 2018, p. 2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*, p. 3.

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Moreover, Michael was described as quite gullible and socially inept: "He would fall for anything. We'd tell jokes and everyone would be laughing but Mikey wouldn't get it."¹⁵

Ms. Newkirk described Michael's mother as a terrible role model. She noted, "Patty was a terrible role model. She lived to scam the system and that's what the boys saw when they were growing up. She had some kind of food stamp scam she was running. She almost never worked and instead lived off the state. She thought the world owed her something. She had real emotional problems. She could go from zero to 60 in a second and be screaming before you knew it."¹⁶ She also related, "Her house was cluttered. Patty didn't take care of herself, either. She had greasy hair. She wore stained clothing. Her teeth were terrible and some were missing. She didn't wear any makeup. She didn't always shower as much as she should. She just looked like someone who was living a very rough life."¹⁷ She also did not look after Michael's hygiene either. So not only was there neglect, there was also active abuse - Patty was often verbally abusive to an extreme. There was also no affection displayed towards Michael by his mother. Rather, she modeled dysregulated emotional behaviors.

EDUCATIONAL RECORDS:

Educational records indicate a progressive decline in his academic performance beginning in the third grade. His standardized test scores were consistently far below average.

Michael began his education in Kindergarten at Buder Elementary in St. Louis, Missouri in the school year 1986-1987. His marks for the first quarter were mostly 'Satisfactory.' The remainder of the grade card was incomplete. The California Achievement Test was administered in April 1987. Michael's scores as reflected by the national percentile rank ranged from 38-90. His average score was at the 67th national percentile rank. The teacher noted, "Michael is a very good student

¹⁵ *Id.*

¹⁶ Declaration of Tammy Newkirk, June 4, 2018, p. 6.

¹⁷ *Id.*

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and he works hard.”¹⁸ In first grade, school year 1987-1988, Michael’s marks were mostly ‘Satisfactory’ and ‘Needs Improvement.’¹⁹

In second grade, school year 1988-1989, Michael received mostly B’s and C’s. His behavior was a mix of ‘Satisfactory’ and ‘Needs Improvement.’ His teacher noted that he should have a more positive attitude toward learning. The Otis-Lennon School Ability Test (OLSAT), a group IQ test, was administered in December 1988. Michael’s Deviation Intelligence Quotient (DIQ) was 105. The Iowa Test of Basic Skills was administered in March 1989. His scores, as reflected by the national percentile rank, ranged from 16 (Spelling) to 50 and 51 (Math Problems and Reading). Generally, he scored higher in math than in reading areas.

In third grade, school year 1989-1990, at Hillsboro Elementary School, Michael was marked as having achieved “below grade level achievement” for all quarters reported. His grades range from A- to D-. In gym and music class, unspecified behavioral issues were noted. In the spring of 1990 the Missouri Mastery and Achievement Tests (MMAT) was administered. Michael’s scores, reflected by the national percentile rank, were the following:

Reading: 5
Language: 14
Math: 19
Science: 13
Social Studies: 12

His test performance had dropped dramatically. A letter was mailed to Michael’s parents on May 23, 1990 from the Second and Third Grade Counselors explaining the significance of the test.

In fourth grade, school year 1990-1991, the teacher stated explicitly, “Failure is in danger.”²⁰ Michael’s records indicated he was presenting with attentional and hyperactive behaviors. He was evaluated in November 1990 for ADD-H using a Revised Conner’s Questionnaire. He scored 1.2, with 1.97 being a significant indicator of hyperkinetic behavior. Michael’s grades were mostly D’s and F’s. His

¹⁸ Michael Tisius school records, MAT_007729.

¹⁹ *Id.*

²⁰ *Id.*, MAT_007740.

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“Study Skills and General Attitudes” were almost uniformly unsatisfactory. The Missouri Mastery and Achievement Test (MMAT) was administered again in Spring 1991. Michael’s scores, reflected by the state percentile rank, were the following:

Reading/Language Arts: 25
 Math: 55
 Science: 24
 Social Studies: 24

Records indicated that Michael’s performance maintained its downward slope in the fifth grade, school year 1991-1992. In January of 1992 the Otis-Lennon School Ability Test (OLSAT) was administered again. Michael answered 20 of 72 questions correct. His score as reflected by the national percentile rank were as follows:

Verbal: 6
 Non-Verbal: 12
 Composite score: 7

Michael’s score as reflected by the local grade percentile rank was even lower, 2. The MMAT was administered again in spring 1992. After reviewing their scores, students wrote self-evaluations. Michael’s scores as reflected by the state percentile rank and self-evaluation are the following:

Science: 14 “My best”²¹
 Social Studies and Reading/Language Arts: 2
 “I did my best but I still did bad.”²²
 Math: 11 “I did ok.”²³
 Reading: 10

Michael earned mostly F’s and Unsatisfactory marks throughout his fifth grade year. He was unable to complete assignments on time, listen carefully/follow directions, work independently and use time wisely. His teacher noted in her

²¹ *Id.*, MAT_002057.

²² *Id.*

²³ *Id.*

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fourth quarter remarks, "Mike seems not to want to do well in school. He did not complete his book and often throws away work even if it is completed. I hope he can do better next year."²⁴ Records indicate Michael was considered for retention in fifth grade but ultimately "assigned" to sixth grade.

Michael's academic performance in his sixth grade year, 1992-1993, was the worst yet and resulted in his retention. Except for a single C in Spelling he received all D and F semester grades for the year. His study skills and general attitude were unsatisfactory in 28 of 36 categories, and just average in the remaining.

In Spring 1993, Michael again took the MMAT. His scores as reflected by the state percentile rank were the following:

Reading: 7
Social Studies, Civics: 7
Language Arts: 7
Math: 5
Science: 1

Two letters to Michael's parents were sent home indicating he was under consideration again and then confirmed for retention.

Michael's second sixth grade, 1993-1994, was initially also difficult for him. Less than a month into the school year he transferred out of the school district he had been in since second grade. From mid-September until early December he lived with his father and attended school in St. Louis. Teachers there were concerned about his school performance. "Mike needs to get it together in Soc Studies. He needs to put effort into both work and some social skills."²⁵ In December he returned to live with his mother and finished the rest of the year back where he had started. He ended his second sixth grade year with mostly B and C grades and only a single F. His teacher, Mrs. Janice Page, who had made a connection with Michael, wrote a glowing letter recommending him to the seventh grade. The letter was written in September, just before Michael went to live with his father, switching schools.

²⁴ *Id.*, MAT_007763.

²⁵ *Id.*, MAT_007778.

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In seventh grade, 1994-1995, now at the middle school, his grades are abysmal. The OLSAT was administered again. He answered 33 of 72 questions correct. His scores, as reflected by the national percentile ranks, 23 (Verbal) and 32 (Non-Verbal), the composite score being 25. Michael's score as reflected by the local grade percentile rank was even lower - 21. When the year was over, Michael left seventh grade with mostly F's, one D-, a C-, and an A-. He was required to attend summer school to advance to 8th grade. He passed with a C and a D.

In eighth grade, 1995-1996, Michael failed all classes except P.E., Art, and School-Within-A-School. School-Within-A-School was a learning support classroom. In the spring, the MMAT was administered. His scores as reflected by the state percentile rank were as follows:

Reading and Science: 1
Language Arts: 3
Mathematics: 9
Social Studies/Civics: 11

Because of his poor classroom performance during the school year, Michael attended summer school to be promoted to ninth grade at Hillsboro High School.

In ninth grade, 1996-1997, at Hillsboro High School, Michael earned F's in every subject and an "N" in study hall. He moved again, back to St. Louis in November 1996, and attended Maplewood-Richmond Heights Senior High School for the remainder of his academic career. Michael's GPA was 1.425. He was dropped from the attendance rolls on April 24, 1997 at age 16.

MEDICAL:

During his childhood, Michael was frequently treated for infections, including otitis media, an ear infection. Medications included Septra, Trimox, Promethazine with codeine, Sulfatrim, Coly-Mycin S Otic, Ceclor, Polytrim, Erythromycin Ethylsuccinate, Amoxicillin, and Prednisone.

In September 1990, at the age of nine, Michael suffered severe testicular pain. He was seen at the Emergency Room several times and sent home from school because the pain was so severe he was unable to walk. Dr. Richard Still, III, a

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urologist, performed three procedures on September 24, 1990: cystourethroscopy, urethral dilatation and a bilateral testicular fixation, under general anesthesia. Michael underwent a fixation of the testes due to recurrent pain in the groin. It was noted that "At the time of scrotal exploration both testes were identified and appeared to be grossly normal. The appendix testes on both sides was removed. Bilateral testicular fixation was performed without incident."²⁶

In March 1991 Michael was treated at St. Mary's Health Center for a fracture of the low radius bone and ulna.

On October 5, 1992, Michael, who was then 11 years old, was seen by his pediatrician for intermittent penile / testicular pain. He was then again seen by Dr. Still on October 8, 1992. Michael had had an episode of hematuria (blood in his urine) while at school. He was still complaining of urethral burning. He was also having problems with enuresis. Subsequently, on October 12, 1992, Michael was hospitalized and diagnosed with Urethral Meatal Stenosis, a narrowing of the opening of the penis. Dr. Still then completed another cystourethroscopy and urethral dilation under general anesthesia.²⁷

In January and again in April 1995, Michael was being treated for urinary incontinence, presumably due to wetting the bed. He was about 13 or 14 years old. On October 5, 1995, Michael was prescribed Imipramine Hydrochloride, antidepressant and nerve-pain reducer. It is used to treat depression, anxiety, agitation, and bedwetting.

On March 26, 1997, Michael was treated for a fracture of the left wrist, having fallen while playing basketball. In April 1997, Michael was examined by Bellevue Radiology and a fracture of the arm was confirmed.

Records also indicated that Michael was knocked unconscious for about 5 minutes by his older brother when Michael was 13.²⁸

²⁶ Michael Tisius medical records, MAT_002379-MAT_002380.

²⁷ Richard H. Still, III, D.O., Operative Report, Metropolitan Medical Center, September 24, 1990, MAT_002375-MAT_002377.

²⁸ Deposition of Deanna Marie Gunther, October 9, 2003, MAT_058277.

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PSYCHIATRIC:

Gloria Quinn Gray, Mr. Tisius' maternal great aunt, signed a declaration on May 11, 2018. She described a history of suicide as running in the family. Her paternal cousin, maternal great uncle and maternal great-grandfather all killed themselves. Mr. Tisius' paternal family also has a positive history of suicide.²⁹ Michael's paternal great-grandfather, 53 years old, shot himself in the head. Michael's paternal second great-grandfather, 29 years old, killed himself by drinking carbolic acid.³⁰ Michael's paternal third great-uncle, 24, also killed himself by drinking carbolic acid (less than a year before his brother).^{31 32}

Patricia Lambert, Michael's mother, testified that Michael's personality and behaviors changed in third or fourth grade.³³ He became depressed, stopped wanting to play, and wanted instead to stay in the house all the time. Michael's mother also testified that Michael made self-hating and self-deprecating statements "quite a bit" and it wasn't unusual to find handwritten notes when he was elementary school aged. Ms. Lambert read one of the notes into the record:

I'm a bogis butthead, I boring kid, because everyone says I am,
 I have no freinds at all, my mom hates me, Joey hates me, my
 dad, don't give a crap about me he's always saying I'm stupid I
 bet. I don't care about my stupid DAD! I'm scared of the ball,
 when someone thows it to me. I'm a big cry baby, I cry over tha
 littles things i'm a wimp, dumb, fag, fagit, Corey, Jamey and,
 E.J. can beet me up. I'm dumb because I bearly past Fourth
 grade because she didn't like me she put in Fith grade. Mrs.
 Moore passed me in sixth because she thinks i can do the work
 if i could i would of. so I can't. Oh! and not to get smart but I'll

²⁹ Death Certificate of Charles Lee Barnett, 11/14/1957, Cause of Death: Shot gun wound of skull and brain, HAB_002519-HAB_002520.

³⁰ Death Certificate of Charles Tisius, 02/16/1912, Cause of Death: Carbolic Acid Poisoning, HAB_002521-HAB_002522.

³¹ "Son of Capt. Tisius Suicides", *Alton Evening Telegraph*, 02/17/1912 at 1, HAB_002525.

³² "Walter Tisius a Suicide", *Alton Evening Telegraph*, 05/16/1911 at 1, HAB_002526.

³³ This report appears to coincide with the dramatic slide in Michael's school performance at the same time.

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probably flunk sixth grade. Unless she either thinks I'm good to our just hates me to just puts me in the seventh grade The End [sic]³⁴

Ms. Lambert also testified that Michael was very moody and would say that nobody loved him, everybody hated him, and he wanted to die. Ms. Lambert and Michael's brother, Joseph Mertens, testified that Michael prolifically wrote notes expressing his feelings of self-loathing. For example, "I hate myself. Everybody hates me. I wish I would die." He wrote these notes on paper, on his clothing, shoes and other items. Another such example follows:

I'm weird I'm stupid I'm a weido I'm ugly I'm a morron nobody likes me I'm ugly I'm a dork a geekazoid I'm a slob I'm a geek nobody loves me I'm not worth a cent [sic]³⁵

Dana Rivera also testified regarding Michael's depression and self-hatred.³⁶

On October 21, 1993, Dr. Gerald Wool, Michael's pediatrician noted Michael's level of hyperactivity, fidgetiness and jumpiness and made a notation to watch out for continued similar behavior. Dr. Wool explained later in a deposition that this was a possible red flag, "I may have wanted to talk about ADD or ADHD or some other problem or if he was having a psychological problem."³⁷ Chuck Tisius, Lucinda Guenther, Deanna Guenther and Stephanie Ashley also testified regarding Michael's jumpiness. Michael's art teacher, Stephanie Ashley, testified at a deposition that Michael's high-strung energy and over-eagerness for social contact were off putting to other children and that his energy level was above and beyond a normal sixth grader.³⁸ Deanna Guenther testified by deposition that Michael's hands regularly shook and trembled - "Like he was nervous all the time. They were like trembling, shaking...basically all the time."³⁹

³⁴ Defendant's Exhibit 7, MAT_015036.

³⁵ Defendant's Exhibit 5, MAT_015035.

³⁶ Testimony of Dana Rivera, August 2, 2001, MAT_087280.

³⁷ Deposition of Dr. Gerald Wool, MAT_037951.

³⁸ Deposition of Stephanie Ashley, MAT_037738.

³⁹ Deposition of Deanna Guenther, MAT_058274.

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On May 13, 1996 Michael was seen at United Behavioral Health Systems. Michael was having trouble sleeping and had threatened to commit suicide. Michael's symptoms began a year prior, and suicidal ideation began a few years before that.

On June 20, 1996, Michael, 15 years old, was seen for psychiatric evaluation by Elliott R. Phillips, M.D., at the South County United Behavioral Systems office. Records indicate that Michael had experienced rejection from his father with whom he then had little contact. There was a history of low to failing grades in school, difficulty falling asleep, weight loss, past suicidal ideation, "anergy, amotivation and anhedonia... evident in his behavior, as well as decreased concentration and memory, withdrawal from his family, mood swing and irritability."⁴⁰ The diagnoses were: AXIS I - 313.81 oppositional defiant disorder and 311 depressive disorder NOS; AXIS II - deferred; AXIS III - none; AXIS IV - moderate; AXIS V - 52 moderate symptoms and moderate impairment. Michael was prescribed Paxil 20mg #30, refill x2s, return for follow up in 3 weeks. Paxil is a brand-name version of paroxetine hydrochloride, which is a Selective Serotonin Reuptake Inhibitor (SSRI). Paxil, an oral psychotropic drug, is used in the treatment of anxiety disorder, obsessive compulsive disorder (OCD) and depression. Michael's symptoms included depression with withdrawal, poor school performance, irritability, mood swings, insomnia, anorexia, decreased concentration and anger. Michael denied active suicidal ideation but confirmed past ideation without intent. Michael reported feeling very rejected by his biological father and having "straight F's" in school.

Subsequently, William Kuntz, M.S., L.C.S.W., with the Family Resource Center of St. Louis, conducted in-home therapy with Michael during late 1996. Notes indicated that Michael was still 15 years old. Mr. Kuntz then prepared a termination summary for his in-home treatment of Michael on August 29, 1996. He had seen Michael for five sessions. Michael was seen for rebellious and defiant behavior. He confirmed that Michael was still being prescribed Paxil for depression.

Michael's mother also testified that he began taking Prozac and Paxil in the sixth grade or thereabouts and continued to take it through 1994.⁴¹ Michael also reported

⁴⁰ Elliott R. Phillips, M.D., Psychiatric Evaluation, June 20, 1996, MAT_005554.

⁴¹ Records would indicate the treatment continued after this time frame.

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this during his intake processing at Boone County. Michael reported that Prozac made him jittery and Paxil caused him gastrointestinal upset.

In a Jefferson County Children's Home Parental Interview form on October 14, 1996, Ms. Lambert reported on Michael, who was 15. Asked, "What does your child do when he/she is very upset?" Ms. Lambert answered, "Depends on the situation – he could threaten to kill himself to running away..." In response to the question, "Do you think your child would try to commit suicide?" Ms. Lambert reported, "I really can't say because he always threatens to do it."⁴²

Records indicated that Michael's GED teacher, Lynne Silverman, testified by deposition that she knew Michael as a 9th grader at Maplewood High School. When she knew him he was upset, depressed, homeless and in need of a place to stay. She contacted his caseworker, John Reichle, to alert him that Michael, 17 years old, and homeless, had written the following note in class: "Life blows I need a place to live. If I go to DFS I will kill myself no shelters I will kill myself."⁴³ On the front of Michael's GED folder, he wrote, "I want to die."⁴⁴ Youth In Need records also indicated that Michael made statements to staff such as, "I wish I wasn't alive..."⁴⁵

TRAUMA:

Records and testimony indicated profound levels of trauma.

Ms. Lambert testified that Michael's father rejected him from birth and continued to be unloving throughout Michael's life. She also testified that her older son, Joey, was abusive towards Michael. Moreover, she told Dr. Peterson that Michael gave up on life in third grade.

Numerous friends and neighbors that spent time around Michael and Joey when they were children testified to having witnessed Joey's severe, unrelenting, and nearly lifelong abuse and hatred of Michael. Consistently the witnesses report that

⁴² Jefferson County Children's Home Parental Interview form on October 14, 1996, MAT_005932

⁴³ Deposition of John Andrew Reichle, Jr., October 9, 2003, MAT_037855.

⁴⁴ Deposition of Lynne Elizabeth Silverman, October 15, 2003, MAT_010729.

⁴⁵ Deposition of Larry Gene Best, October 15, 2003, MAT_037910

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Michael did not fight back. Witnesses that testified to having witnessed this abuse include Patty Gray, Cera Brogley, Deanna Guenther, Jamey Baker and Corey Baker. Ms. Brogley detailed an attack in which Joe threw steak knives at Michael. Michael ran into a bedroom and Joey broke through the door and had to be pulled away by two people to not further attack Michael who was hiding in a closet.⁴⁶ Jamey Baker described Joey's abuse as "brutal."⁴⁷ Corey Baker said Joey forced Michael fight other kids and hit Michael himself every other day. Corey explained that his family didn't welcome Joey in their home because of how aggressive he was. Deanna Guenther testified by deposition at the time that she knew Michael Joey beat him approximately three times a week. Joey also put him down, called him names and downgraded him. Deanna observed Joey knock Michael unconscious when Michael was 13 years old.⁴⁸ She said when he came to Michael was incoherent and had no memory of what had happened. Donna Hendricks, DeAnna's mother, testified that Joey was not allowed in her house due to his violent behavior toward Michael. Both Donna Hendricks and Patty Gray testified that Michael would seek refuge at their homes to escape from Joey.

According to Gloria Gray, Joey was an aggressive and physical child. He was older and much bigger in size than Michael. She recalled:

I have a picture of the boys from a trip to Florida we took when they were little. You can see just how much smaller Michael was than his big brother. Joey was always beating Michael up. If Michael was just sitting on the couch minding his own business, Joey would go up and hit him over the head just to provoke him. They had play swords and bats and Joey was always hitting Michael really hard with them. It was more than just playing; Joey was hurting him. Joey was so much bigger and stronger than Michael that Michael couldn't defend himself. Patty constantly screamed at both the boys when things like this were happening. Joey was always going after Michael. He threw things at him like

⁴⁶ Testimony of Cera Brogley, August 2, 2001, MAT_087269.

⁴⁷ Testimony of Jamey Baker, p. 94.

⁴⁸ Deposition of Deanna Marie Gunther, October 9, 2003, MAT_058277.

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balls and bats. Michael came to his mother crying and Joey laughed at him. Patty didn't discipline Joey.⁴⁹

Michael's half-brother, Joey Mertens, himself testified that he beat Michael daily, starting when Michael was around four or five years old. Mr. Mertens testified that the beatings were most severe when Michael was between the ages of eight and ten. Mr. Mertens testified that he threw objects at Michael, including baseballs, and that Michael did not fight back. He acknowledged that he hated his younger half-brother. Contemporaneously, John Perry, Jr. noted in a 1993 report that Michael complained Joey beats him up a lot. Joey didn't deny it.⁵⁰

The abuse suffered by Michael was not limited to that of his brother Joey. In a declaration, Joey's aunt, Tammy Newkirk, recalled having witnessed Patty relentlessly berating and degrading Michael in front of others. She recalled that Patty called Michael names, and that, when he stuttered, would yell at him and embarrass him in front of family members. Jamey Baker, Michael's next door neighbor who saw him every day, said in deposition that Patty's mood swings were so severe he described her as almost bipolar. Corey Baker, Jamey's brother, testified by deposition that Patty was "very vocal" and would yell a lot.⁵¹

Florence Bernice Murphy testified in a deposition that Patty was not loving toward Michael and denied him affection that she wouldn't deny Joey, and that she smacked Michael's hands.⁵² Betty Mace testified in a deposition, "It was kind of a sad situation, love-wise, in the family. There wasn't a lot of love there...both parents weren't there for [Michael]"⁵³

Terra Launius testified in a deposition that Patty yelled at Michael for everything and blamed Joey for nothing. She testified that Patty had wild mood swings and never praised Michael. She testified that Joey once almost pushed Michael down the stairs. She testified that Patty and Joey constantly verbally abused Michael, calling him stupid and telling him he'd never amount to anything.⁵⁴

⁴⁹ Declaration of Gloria Gray, May 11, 2018.

⁵⁰ Deposition of John Richard Perry, Jr., October 15, 2003, MAAT_037832.

⁵¹ Deposition of Jamey Baker, October 15, 2003, MAT_058215.

⁵² Deposition of Florence Bernice Murphy, October 15, 2003, MAT_038004.

⁵³ Deposition of Betty Lois Mace, October 9, 2003, MAT_038048.

⁵⁴ Testimony of Terra Launius, June 24, 2014, p. 116.

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Dana Rivera, who had known Michael since he was born, testified about having witnessed his self-loathing behavior and depression. She testified that Michael struggled with the absence of his father and often said that nobody loved him. She testified that when she saw Michael in Maplewood in front of a foster care home, he did not look well and had clearly not been taking care of himself.⁵⁵

A discharge summary dated April 20, 1993, when Michael was 12 years old noted his report of physical abuse by both his mother and his brother. He reported his mother hitting him with a belt. Corey Baker also corroborated Patty hitting Michael with a belt when he was deposed.

Case worker John Reichle's notes indicated that Michael became homeless as a teenager. His notes also indicated that, despite knowing this, his father refused to help even by simply providing a signature granting permission for Michael to be placed in a group home.

NEGLECT HISTORY:

Michael's father, Chuck Tisius, testified that when he picked Michael up from Patty Lambert's home while sharing custody, it was evident that his hygiene was not being looked after. Michael's hair was greasy, he wore dirty and too-small clothes, and reeked of urine. Chuck testified that he and his wife, Leslie, had to bathe Michael, and sometimes buy new clothes for him, before they could take him anywhere in public.⁵⁶

John Perry, a Domestic Relations Services representative, conducted a home study in 1993 and noted the following: "The home itself is not well kept. The boys don't seem to pay a lot of attention to their personal hygiene ... Michael was quite uncomfortable."⁵⁷

Perry also noted Chuck's neglect of Michael: "Michael hadn't seen his father for over two years. I asked him how he felt about this and he attempted to justify his father's inattention by saying he was 'busy.'"⁵⁸ Perry continued, "[Michael's]

⁵⁵ Testimony of Dana Rivera, August 2, 2001, MAT_087280.

⁵⁶ Testimony of Charles Tisius, June 24, 2014, p. 60, 145.

⁵⁷ Deposition of John Richard Perry, Jr., October 15, 2003, MAT_037831.

⁵⁸ Letter from John Richard Perry, Jr. to Attorneys David Wilson & Robert Shea in Tisius, Charles (Chuck) v. Patricia (Patty), August 27, 1993, MAT_004302.

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primary motivation appears to be a fantasy he has that the degree to which his father has neglected him over the years will somehow be magically compensated.”⁵⁹

Michael’s medical records – both from his pediatrician and from the school nurse - provide a wealth of indications that Michael was neglected. Michael’s pediatric medical records are replete with illnesses and ailments. He was seen numerous times for earaches, hearing abnormalities, bronchitis, pharyngitis, vomiting, stomach ache, cough, fevers, cold, runny noses and rashes. But far beyond that are specific notations indicative of possible neglect.

Michael’s pediatric records from Michael’s five year check-up noted that he was “a nice little boy that looks at TV all day.”⁶⁰ Dr. Gerald Wool later explained the significance of this notation in a deposition, “That would be a little flag that he’s being in front of the television all day long and nothing much more to do, no stimulation other than that. Which is not good, as far as we’re concerned ... the child would be in front of a TV set all day long, and he was picking up what – what life should be from make-believe television.”⁶¹ Wool goes on to say this can have a negative impact on socialization.

Dr. Wool also spoke to a notation on October 5, 1992, when Michael was seen for stomach ache, diarrhea and headache as well as intermittent penile/testicular pain. Wool noted that no follow up care occurred following a testicle operation under general anesthesia two years earlier. “He never went back because they were on Medicaid – that’s what the card means – and he didn’t have any insurance. I referred him to the GU, Genital Urinary Department, down at St. Louis Children’s Hospital as soon as possible ... and that was it. I never heard – I never got a note back from the GU people saying they went or anything.”⁶² In sixth grade Michael was referred for self-esteem classes. Ms. Lambert was ordered to take self-esteem classes with Michael. Only when ordered to do them a second time in Michael’s repeat sixth grade year were they successfully completed. The first year she and Michael only attended two of the six.

⁵⁹ *Id.*, MAT_004303.

⁶⁰ The Children’s Clinic Doctor’s Notes, February 11, 1986, MAT_037334.

⁶¹ Deposition of Gerald Wool, M.D., October 15, 2003, MAT_037942.

⁶² *Id.*, MAT_037950.

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On August 13, 1994, Dr. Wool noted Michael, 13, was small for his age. Michael was in the tenth percentile for height and weight. Wool explained that Michael was smaller and shorter than ninety percent of other boys his age. Again, on March 30, 1995, Wool noted Michael is small for his age again on March 30, 1995, August 23, 1995 and August 15, 1996. Michael's repeat sixth grade teacher, Janice Page, recalled that even in his repeat year he was very small compared to the typical sixth grader.⁶³ Corey Baker recalled in his deposition that Michael was "tiny and small."⁶⁴

School nurse records indicate Michael was seen for pinkeye, losing the crowns on his teeth at age seven, stomach aches and a persistent rash. Indeed, he was seen by the school nurse for stomach ache / nausea / vomiting alone more than twenty times between the ages of 13 and 15. The school nurse records explicitly detail malnutrition. On February 21, 1996, Michael is seen for "H/A says not eaten x2 days gave 2 pkg crackers."⁶⁵ Michael first complained to the school nurse of a rash on May 21, 1996. He complains twice more on May 24 and May 29, 1996. Patty doesn't take Michael to the doctor until June 5 at which times the doctor notes, "Has a rash on chest, arms and inner thighs. The rash does itch. Also L breast is tender and swollen. Severe contact rash."⁶⁶ 15 days later Michael was seen by the doctor the rash now persisting nearly a month. "Rash all over."⁶⁷

Nicole Tisius, Michael's cousin, testified in a deposition that, after Patty kicked Michael out in 1996, Michael moved in with her family for a short time. She testified that Michael had just a couple shirts and two pairs of jeans, and that she made fun of him for how dingy and stained his socks were.⁶⁸

Michael has a chronic history of poor dental care. School nurse records indicate he lost the crown to a front tooth in 1989 and 1990. Dr. Taylor's 2001 evaluation notes, "He had teeth missing, he said from not taking care of his teeth and from having gum infections. He said that although his father had insurance, he wouldn't give his mother the insurance card so he didn't have proper dental care during

⁶³ Deposition of Janice Louis Page, October 9, 2003, MAT_037764.

⁶⁴ Deposition of Corey Robert Baker, October 15, 2003, MAT_058230.

⁶⁵ Michael Tisius School Records, HAB_000052.

⁶⁶ The Children's Clinic Doctor's Notes, June 5, 1996, MAT_037340

⁶⁷ *Id.*, MAT_037341.

⁶⁸ Deposition of Nicole Dawn Tisius, October 9, 2003, MAT_038063.

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childhood.”⁶⁹ A Youth In Need transition plan from June of 1998 notes the need for Michael to receive dental care.

The Missouri Department of Social Services received two calls to the Child Abuse Neglect Hotline regarding Michael Tisius. Those calls were received on March 11, 1998 and May 12, 1998. The May call was from a “mandated reporter” and no additional information was available. The March call occurred after a reporter notified DSS that Michael was put out of the family home and found sleeping in a friend’s closet.⁷⁰ Michael was 17 years old at the time.

Indeed, in May 1998 Michael and his case worker scrambled to find stable housing for him. A long-term space at Youth In Need was identified but a signature from Michael’s legal guardian was required. Chuck Tisius did not return countless phone messages at home or at work from the caseworker. When Michael and Patty went to Chuck’s house to ask for his signature, Chuck told Michael he wasn’t going to sign because he believed it would cost him money and threatened to have them both arrested if they didn’t get off his property.

PRIOR EVALUATIONS:

Mr. Tisius has been previously evaluated during his adolescence, at the time of trial, and during two state post-conviction proceedings.

At the age of 15, Michael was evaluated by Elliott Phillips, M.D., a psychiatrist, on June 20, 1996. Dr. Phillips noted that Michael had impaired insight and judgment with poor impulse control. He was prescribed Paxil, an antidepressant. He diagnosed Michael with oppositional defiant disorder and depressive disorder NOS. Michael was to continue in individual psychotherapy with Diane Junge, LCSW.

Michael was treated while incarcerated at the Boone County Jail by A.E. Daniel, M.D., a psychiatrist, beginning in April 2001. Dr. Daniel testified regarding his care during a prior post-conviction hearing. Dr. Daniel diagnosed Michael with Major Depression, Single Episode. He initially prescribed Michael Paxil, then

⁶⁹ Dr. Shirley Taylor, Psychological Evaluation, July 18, 2001, MAT_060633.

⁷⁰ Department of Social Services records, March 11, 1998, MAT_006804, MAT_006806.

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Prozac, and ultimately Trazodone – discontinuing the initial two medications because of side effects.⁷¹

Dr. Shirley Taylor, a psychologist, examined Michael before his initial trial, on May 25, 2001. She prepared a written report of her evaluation dated July 15, 2001. The tests administered included: Mental Status Checklist for Adults, Peabody Picture Vocabulary Test - IIIB, Wide Range Achievement Test-3, Bender Visual Motor Gestalt Test, Millon Clinical Multiaxial Inventory - III, and the Rorschach Diagnostic. Dr. Taylor interviewed Michael and reviewed his history. Michael had teeth missing, and “he said from not taking care of his teeth and from having gum infections. He said that although his father had insurance, he wouldn’t give his mother the insurance card so he did not get proper dental care during his childhood.”⁷² His IQ was estimated to be in the High Average range, but this was based on the PPVT standard score of 105, which falls in the Average range. He scored at the eighth grade level in Reading, at the sixth grade level in Arithmetic, and at the Junior in High School level in Spelling. Based on the Bender, Dr. Taylor concluded that there was no brain damage. Her evaluation of his personality suggested that “Michael tested as sorrowful and dejected, and in intense conflict. He has experienced many life disappointments causing him to tend to withdraw from personal relationships, but he also dreads being alone and having to function on his own. While he wants to be close to others and respected by them, he has learned to anticipate being disillusioned, failing, and being humiliated.”⁷³

Dr. Taylor opined:

He has deep resentments which he typically turns inward, causing him to feel even more disconsolate and mournful. He can have irritable, gloomy moods. Because he has had such a steady diet of disappointment, he withdraws from potentially supportive persons *and thus* prompts the rejection he has learned to expect. He cannot figure out how to, gain the respect of others. He has turned against himself and feels unworthy, useless, misunderstood, unappreciated, and

⁷¹ Stipulation and Transcript of Testimony of Dr. A.E. Daniel re Psychiatric Evaluation, April 18, 2001, MAT_058175-MAT_058204.

⁷² Dr. Shirley Taylor, Psychological Evaluation, July 18, 2001.

⁷³ *Id.*

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demeaned: He believes he does not possess the attributes he admires in others, which is painful for him. At this time he believes that he deserves to be victimized and to suffer. He is insecure and troubled. He wants nurturance but also dislikes his own neediness because he finds others to be undependable in meeting his needs. He is self-pitying; feels empty and apprehensive, is sensitive to humiliation, and anticipates the worst. He feels intense fear and horror and re-experiences it residually through symptoms of intense anxiety, and probably flashbacks and nightmares as well.⁷⁴

Dr. Taylor opined that Michael suffered from the following diagnoses: Major Depression, Generalized Anxiety Disorder, and Post-traumatic Stress Disorder. He had chronic traits of Depressive Personality; Avoidant Personality, Dependent Personality, and Self-defeating Personality. She then described him as a “patsy” type personality.

Steven Eugene Peterson, M.D., a psychiatrist, evaluated Mr. Tisius for his initial state post-conviction relief proceedings on May 19 and July 19, 2003. He was seen at the Potosi Correctional Center. His evaluation included a review of records, interview of Mr. Tisius, a collateral interview of Patty Lambert, Mr. Tisius’ mother, administration of psychological tests, and a psychiatric interview of Mr. Tisius.

Dr. Peterson testified that Mr. Tisius suffered from: major depressive disorder, severe without psychotic features; childhood onset post-traumatic stress disorder; dysthymia or dysthymic disorder; a history of alcohol (a single episode of binge drinking just prior to the crime) and marijuana abuse and/ or dependence; panic attacks, and passive/aggressive or compulsive personality. The onset of major depression dated to childhood and was marked by a precipitous decline in his grades beginning in the fourth grade and persistent feelings of not wanting to live. These feelings would later lead him to active efforts to end his life including one in which he considered jumping off a bridge in St. Louis. He was started on antidepressant medication at age 15.

⁷⁴ Shirley Taylor, Psychological Evaluation, July 18, 2001, MAT_060636.

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Dr. Peterson reviewed Mr. Tisius' history further. He noted that his mother had a history of depression. He also reported that Michael's parents divorced when he was only three years old. Moreover, Michael's mother favored her eldest son, Joey Mertens, at the expense of Michael. Further, Joey, who was physically larger and stronger, frequently beat and abused Michael – and this continued until Michael's arrest. Dr. Peterson specifically testified that this trauma, as well as the abandonment of Michael by his father's, and his mother's disengagement, were "very important to the formation of [Michael's] desire for other people to rescue him, his desire for other people to make his life easier."⁷⁵ Michael was described as "a desperate child who was very helpless, very needy, very immature, not equipped to be out on his own, and [one who had] a longstanding experience of being physically abused by his brother."⁷⁶

Dr. Peterson noted that he did not find evidence of malingering, but that Michael's reasoning and cognitive abilities were quite immature for his age. At that time, his reasoning was judged to be "concrete."

Dr. Peterson also administered the Minnesota Multiphasic Personality Inventory -2 (MMPI-2) and the Personality Assessment Inventory (PAI) to Mr. Tisius. Dr. Peterson interpreted the tests as valid and reflective of dysthymia and problems with anxiety.

Dr. Peterson also testified that, while in the Boone County Jail, Dr. Daniel prescribed Prozac, Paxil and Trazodone for Michael in the treatment of depression.

Finally, Dr. Peterson's analysis of the relationship between Roy Vance and Mr. Tisius suggested that Mr. Tisius was manipulated by Mr. Vance. Mr. Tisius, because of his need for a stronger male figure, was particularly vulnerable to such manipulation. He further concluded that Mr. Tisius was experiencing diminished capacity during the planning for the attempted breakout as well as during the breakout and subsequently. Moreover, he found that Mr. Tisius was experiencing extreme mental or emotional disturbance, and acted under the substantial domination of another person, at the time of the crime, both statutory mitigators.

⁷⁵ Testimony of Steven Peterson, M.D., p. 246, MAT_041923.

⁷⁶ *Id.*, p. 258, MAT_041935.

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An independent review of the MMPI-2 suggested a protocol that is likely valid ($F-K = 8 / -14$; $F(p) = 48$; $F = 82$; $F(b) = 96$). Significant levels of depression and anxiety were indicated. Interpersonal relations were characterized by passivity and dependency and vulnerability to being taken advantage of by others. He tends to be shy, reclusive, and uncomfortable in social situations. The PAI protocol did suggest a minimal degree of exaggeration bordering on non-effortful negative distortion. Significant levels of depression were revealed. Prominent indicators of traumatic stress, anxiety, depression, hypervigilance, and social detachment were seen.

On May 19, 2003, Dr. Dennis Cowan, a neuropsychologist, completed an evaluation of Mr. Tisius. Dr. Cowan administered measures of performance validity, including the Test of Memory Malingering (TOMM), the Victoria Symptom Validity Test (VSVT), and the Reliable Digit Span index. Dr. Cowan concluded that there was “no evidence of less than optimal effort, malingering or symptom magnification.”⁷⁷ The following IQ test results were reported:

WAIS-III {IQ & Index Scores}:

	<u>Score:</u>	<u>Percentile:</u>	<u>Finding:</u>
Verbal IQ:	99	47 th percentile	Average range
Performance IQ:	107	68 th percentile	Average range
Full Scale IQ:	103	58 th percentile	Average range
{Normal/Average IQ = 90-109}			
Verbal Comprehension Index:	101	53 rd percentile	Average range
Perceptual Organizational Index:	114	82 nd percentile	Average range
Processing Speed Index:	84	14 th percentile	Low-Average range
Working Memory Index:	97	97 th percentile	Average range
{Index Scores have a mean [normal] of 100 with a 15 point standard deviation}			

The results of the Wechsler Memory Scale – III (WMS-III) were as follows:

⁷⁷ Cowan, Dennis (2003). Synopsis of Neuropsychological Testing.

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Measurement of Memory Functioning:

<u>Wechsler Memory Scale-III Scores:</u>			
	<u>Score:</u>	<u>Percentile:</u>	<u>Finding:</u>
Verbal Immediate Memory Index:	120	91 st percentile	Superior range
Verbal Delayed Memory Index:	117	87 th percentile	High-Average range
Visual Immediate Memory Index:	118	88 th percentile	High-Average range
Visual Delayed Memory Index:	125	95 th percentile	Superior range
Auditory Recognition Index:	120	91 st percentile	Superior range
Immediate Memory Index:	124	95 th percentile	Superior range
Working Memory Index:	88	21 st percentile	Low-Average range
General Memory Index:	127	96 th percentile	Superior range

The results of the Gudjonsson were as follows:

<u>Gudjonsson Suggestibility Scales</u>				
<u>Scale:</u>	<u>Patient's Score</u>	<u>Sample Mean</u>	<u>Standard Deviation</u>	<u>Findings:</u>
Yield:	0	4.6	3.0	Within Normal Limits
Shift:	1	2.9	2.5	Within Normal Limits
Total:	1	7.5	4.6	Within Normal Limits

Dr. Cowan concluded: "Patient did not "yield" or "shift"/change his answers." In other words, he maintained his thinking/responses without shifting or changing. His total suggestibility scale score suggests that the patient is not likely to be vulnerable to interrogative suggestibility.

On motor testing, Dr. Cowan observed that the "Data reveals that patient's motor speed and slightly below normal with the use of his right hand---possibly due to a previous peripheral injury to his hand."⁷⁸

Dr. Cowan concluded, based upon the tests administered, that there was "No evidence of any brain related abnormality."⁷⁹

⁷⁸ *Id.*, MAT_024062.

⁷⁹ *Id.*, MAT_024063.

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Dr. Peterson re-evaluated Michael on August 31, 2012, and October 11, 2012. At that time, he re-administered the MMPI-2 and the PAI. The profiles were consistent with depression, anxiety, low self-esteem, social discomfort, and marked social introversion.

MENTAL STATUS/BEHAVIORAL OBSERVATIONS

Michael Tisius was, at the time of the examination, a 37-year-old, slender, right-handed, Caucasian, male. He was dressed in a prison-issued, white, collared shirt, grey pants, and sandals. He had an ID badge attached to his collar. He had "close-cropped" hair and a neatly trimmed mustache and goatee. He had tattoos on his forearms. He wore a silver ring on his left ring finger. He sometimes wore glasses during the examination. He also had a complete set of dentures, noting, "I was raised like shit, so I never took care of myself."

Mr. Tisius was oriented to person, time, place, and circumstance. He was cooperative and appeared to put forth maximal effort. However, he was initially disengaged socially and somewhat "tightly wound." He became more relaxed after a discussion of an "epiphany" he had had regarding government control. He remained eager to complete the assessment. Many of his responses were quick. Throughout the assessment he displayed many extraneous motor movements, wiggling his fingers as he thought, hitting himself in the head, blinking his eyes, moving his head around before answering, rocking back and forth, and frequently bouncing his knees. He performed rapid alternating, finger-to-nose, and heel-to-shin movements within normal limits. There was no tremor present. Mr. Tisius did make several errors during the learning phase of the Luria 3-step hand movements on the right but not the left. In addition, there appeared to be some hyper-tonicity of the left arm.

His speech was normal in tone, rate, and volume. However, there was clear evidence of a stutter involving plosive sounds at the ends of words, elongation of speech sounds, and repeating words up to six, seven, or eight times – "nope, nope, nope." This stutter was less obvious during conversational speech as he would use emotional arousal and emphasis to cover the stutter. He only became animated while talking about basketball as in "The Cavs would never be where they're at...!"

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Mr. Tisius' judgment was grossly intact, and his thinking was linear. However, there was an element of paranoia in his thinking processes – focused on his beliefs that others are aligned against him. He denied current auditory and visual hallucinations or delusions. He described his mood by simply saying “I’m here.” His affect was flat and somewhat unresponsive. He denied current suicidal ideation or intent.

Facial photos were analyzed using the FAS Facial Photographic software.⁸⁰ Using a 5-point Likert scale Mr. Tisius had philtrum and upper lip ratings of 3 and was judged to lack facial features suggestive of a Fetal Alcohol Syndrome (FAS). He did however have a somewhat oddly shaped left ear with the margin rolling forward – and changes in ear structure can also be a marker for the syndrome. Moreover, it is important to recognize that the absence of facial anomalies does not mean that an individual exposed to alcohol in utero does not have the cognitive deficits associated with fetal alcohol exposure. Mr. Tisius was small for his age and that can be a marker of fetal alcohol spectrum disorders when maternal alcohol use during pregnancy can be verified.

Mr. Tisius was evaluated at the Potosi Correctional Center in Mineral Point, Missouri. The evaluation was conducted in a small but reasonably quiet and comfortable interview room. Mr. Tisius was not cuffed or shackled. No others were present during the examination. Mr. Tisius was not being prescribed any medications at the time of the examination.

⁸⁰ Astley, Susan (2012). FAS Facial Photographic Analysis Software (Version 2.0.0) Fetal Alcohol Syndrome Diagnostic & Prevention Network. See also the Lip-Philtrum Guides distributed by the University of Washington. See also Astley, S. (2004). *Diagnostic guide for Fetal Alcohol Spectrum Disorders: The 4-digit diagnostic code*. Seattle, WA.

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TEST RESULTS⁸¹

EFFORT/TASK ENGAGEMENT/PERFORMANCE VALIDITY:

Measures were used to assess for appropriate motivation and consistency of effort during the neuropsychological examination of Mr. Tisius. Such procedures provide information as to the validity of the test findings.

On the Test of Memory Malinger (TOMM), an objective performance validity test (PVT), Mr. Tisius' performance indicated an intention to perform well - he obtained a score of 100% correct on the relevant trial. He did have an invalid performance on the Validity Indicator Profile (VIP) due to inconsistency, though the analysis indicated he generally intended to perform well. His performance was rated as reflecting "good effort" on Green's Medical Symptom Validity Test (MSVT), a forced choice recognition memory task. His response style resulted in a valid profile (IR = 100%; DR = 100%; CNS = 100%; PA = 100.0%; FR = 70.0%), without evidence of symptom exaggeration or malingering. In addition, on the eight embedded validity measures administered, including Reliable Digit Span (RDS), he passed all indices.

Based upon these findings, weighing the value of the various Performance Validity Tests (PVTs) administered, and considering his history, it is my professional opinion that the results of this examination of Mr. Tisius are valid and accurately reflect his current neuropsychological and intellectual functioning.

SUMMARY INDICES:

The evaluation of Mr. Tisius was built around a core battery of neuropsychological tests known as the Halstead-Reitan Neuropsychological Battery (HRNB) and supplemented with additional measures from the Meyers Neuropsychological Battery (MNB) and other instruments. Summary indices have been developed for the HRNB to facilitate decisions regarding the presence and severity of brain

⁸¹ Scores are reported as either standard scores with a mean of 100 and a standard deviation (SD) of 15, as scaled scores with a mean of 10 and SD of 3, or t-Scores with a mean of 50 and SD of 10. z-Scores, which have a mean of 0 and SD of 1, have generally been transformed into t-Scores for consistency.

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dysfunction. On the General Neuropsychological Deficit Scale (GNDS; Reitan and Wolfson, 1993), Mr. Tisius performed within the “Normal” range (GNDS = 18; Normal range = 0 - 25). However, his Right Neuropsychological Deficit Scale (RNDS) raw score was 8 and his Left Neuropsychological Deficit Scale (LNDS) score was only 1. The difference between these two indices would possibly suggest greater dysfunction of the right hemisphere, though this is not clear from other data.

On the demographically adjusted Average Impairment Rating (AIR), his performance fell within the Above Average range (AIR = 62t). Finally, Mr. Tisius’ performance on the age-, education-, race- and gender-adjusted Global Deficit Score (GDS) fell within the Below Average range with a t-score of 40.

It was notable that Mr. Tisius’ scores incorporated into these indices varied markedly, from a high of 69t (Above Average) to a low of 10t (Severely Impaired). As a result, the indices do not give a clear picture of his actual neuropsychological functioning – merging relatively strong areas of functioning with significant deficits – averaging these disparate results. Because of these disparities it is necessary to delve into the details of his performance to understand his strengths and weaknesses.

INTELLECTUAL FUNCTIONING:

The assessment of intellectual functioning provides a context for the analysis of the domain specific neuropsychological findings that follow. Mr. Tisius’ level of intellectual functioning was assessed using the Wechsler Adult Intelligence Scale - IV (WAIS-IV).

Mr. Tisius’ performance on the WAIS-IV placed his overall level of intellectual functioning within the Average range. His Full Scale IQ, a measure of general intellectual ability, was 98, which fell at the 45th percentile rank.

Mr. Tisius’ WAIS-IV composite and factor scores were as follows:

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Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV)

Scale	Score	%ile	95% Confidence Interval	Descriptive Range
COMPOSITE INDICE				
<i>Full Scale IQ (FSIQ)</i>	98	45	94-102	<i>Average</i>
INDEX SCORES				
<i>Verbal Comprehension Index (VCI)</i>	100	50	94-106	<i>Average</i>
<i>Perceptual Reasoning Index (PRI)</i>	100	50	94-106	<i>Average</i>
<i>Working Memory Index (WMI)</i>	102	55	95-109	<i>Average</i>
<i>Processing Speed Index (PSI)</i>	89	23	82-98	<i>Low Average</i>

On the WAIS-IV factor indices, Mr. Tisius performed within the Average range on measures of verbal reasoning, visual-spatial analysis and problem solving, and working memory. He demonstrated an adequate fund of information, verbal reasoning, word knowledge, and the ability to communicate thoughts, and concept formation (*Verbal Comprehension Index (VCI) = 100*). His score fell at the 50th percentile rank. Mr. Tisius also performed adequately on tasks of non-verbal concept formation, visual perception, visual-spatial problem solving and fluid reasoning abilities (*Perceptual Reasoning Index (PRI) = 100*). He could also retain information briefly in mind in the face of distraction within expected levels (*Working Memory Index (WMI) = 102; 55th percentile rank (%ile)*). Notably, he had somewhat reduced capacity to quickly scan, sequence, and discriminate simple visual information (*Processing Speed Index (PSI) = 89; 23rd %ile*). The latter index is sensitive to many neuropsychological and psychiatric disturbances and assesses skills that focus on attention and sequentially ordering visual information related to the efficient use of other cognitive abilities.

Mr. Tisius had strengths in word knowledge and his capacity to recall semantic information and knowledge commonly acquired during one's education (*Vocabulary SS = 13; Information SS = 12*). Conversely, he struggled to use language abstractly and had significant limitations in his ability to grasp and

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explain commonly understood social contexts (*Similarities SS = 5; Comprehension SS = 5*). These discrepancies suggest strengths in his acquisition of discrete bits of knowledge but deficits in his capacity to think and problem solve using verbal fluid reasoning skills (*Verbal Fluid Reasoning Index = 76; 5th %ile*).

ACADEMIC FUNCTIONING:

The Wide Range Achievement Test, Fifth Edition (WRAT5) measures the basic academic skills of word reading, spelling, math computation, and sentence comprehension. He was able to read at the 53rd percentile rank, perform math at the 25th percentile rank, and read for comprehension at the 45th percentile rank. His WRAT-5 standard scores, percentile ranks, and grade-equivalent levels were as follows:

Wide Range Achievement Test, Fifth Edition (WRAT-5)

Scale	Score	Percentile	Grade Level	Range
Word Reading	101	53	>12.9	Average
Sentence Comprehension	98	45	>12.9	Average
Math Computation	90	25	6.6	Average
Reading Composite	99	47	N/A	Average

Note: Index scores have a mean of 100 and a standard deviation of 15.

Mr. Tisius' academic skills are generally stronger than his educational attainment would predict but consistent with his average intellectual capacity. His reading capacity was sufficient to understand written questionnaires also administered to him.

NEUROPSYCHOLOGICAL FUNCTIONING:

Mr. Tisius demonstrated a particular constellation of deficits putatively implicating deep brain structures associated with frontal-striatal and temporal lobe functions.⁸²

⁸² The striatum, or striatal region, is a deep brain structure comprising the caudate nucleus, the putamen, and the ventral striatum. It is the input region of the basal ganglia. It receives

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He demonstrated a profound degree of forgetfulness on tasks of verbal memory, marked deficits in motor programming that included motor perseveration in speech (stuttering) and movement, with associated cognitive perseverations, apparent motor impairments, significant “signal-detection” deficits across memory, attentional, and auditory processing tasks, and a severe degree of microsmia (loss of the sense of smell). In addition, there were signs of marked psychiatric impairments including severe depression, and a pattern of insecure attachment that significantly impacts his capacity for relationship, in the background of severe trauma.

Mr. Tisius also had numerous strengths that appear to be related to the overall integrity of the cortical layer of the brain. The focus of what follows will be upon these strengths and weaknesses.

Memory:

Across several measures of learning and recall, Mr. Tisius demonstrated a pattern of intact learning and immediate recall followed by retention deficits. This pattern suggests that he has problems with forgetfulness that would typically be associated with temporal lobe dysfunction. For example, on the Wechsler Memory Scale – IV (WMS-IV) Flexible Approach he was able to immediately recall both paragraph length material and visual designs quite adequately (*Logical Memory (LM) I SS = 10; Visual Reproduction (VR) I SS = 13*). Following a delay, he still retained the verbal information but had no recall of the visual designs (LM II = 10; VR II = 1). His WMS-IV Index and Primary Subtest Scores were as follows:

primarily ipsilateral (same side) input from the temporal, parietal and frontal regions. Baez-Mendoza noted, “The striatum is necessary for voluntary motor control. Research on its role in movement planning and execution uncovered its participation in cognition and reward processes.” Baez-Mendoza (2013). The role of the striatum in social behavior. *Frontiers in Neuroscience*, 10, <https://doi.org/10.3389/fnins.2013.00233>.

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Wechsler Memory Scale - IV Flexible Approach (WMS-IV Flex)

Scale	Raw Score	Scaled Score	Percentile	Range
INDEX SUMMARY SCORES				
<i>Immediate Memory (LMVR) (Standard Score)</i>	23	108	70	<i>Above Average</i>
<i>Delayed Memory (LMVR) (Standard Score)</i>	11	73	4	<i>Mildly to Moderately Impaired</i>
<i>Auditory Memory (LM) (Standard Score)</i>	20	100	50	<i>Average</i>
<i>Visual Memory (VR) (Standard Score)</i>	14	84	14	<i>Mildly Impaired</i>
SUBTEST SCALED SCORES				
<i>Logical Memory I (Scaled Score)</i>	24	10	50	<i>Average</i>
<i>Logical Memory II (Scaled Score)</i>	22	10	50	<i>Average</i>
<i>Visual Reproduction I (Scaled Score)</i>	42	13	84	<i>Above Average</i>
<i>Visual Reproduction II (Scaled Score)</i>	0	1	0.1	<i>Moderately to Severely Impaired</i>

Note: Index scores have a mean of 100 and a standard deviation of 15. Scaled scores have a mean of 10 and a standard deviation of 3.

Mr. Tisius commented, following the delayed Visual Reproduction subtest, “I wasn’t trying to remember them. I’m a little ticked off about that.” However, there is a discrepancy between the results of the current examination and that of Dr. Cowan on the Wechsler Memory Scale. Dr. Cowan administered the Third Edition of the WMS and the current administration involved the Fourth Edition. The organization of the two tests differed markedly in terms of the Index scores. The most comparable comparisons between the tests involve the WMS-III General Memory Index, which measured delayed memory capacity, and the WMS-IV Flexible Approach Delayed Memory Index (LMVR).⁸³ Dr. Cowan obtained a standard score of 127, at the 96th %ile, on the General Memory Index (GMI) – compared to the 73 on the current examination using the Delayed Memory Index (LMVR) – a very significant discrepancy. However, the WMS-III GMI was

⁸³ LMVR stands for the two subtests that comprise the index – Logical Memory II and Visual Reproduction II.

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comprised of scores from the Logical Memory II, Verbal Paired Associates II, Faces II, and Family Pictures II. In comparison, the WMS-IV Delayed Memory Index is comprised of the Logical Memory II and Visual Reproduction II subtests – overlapping with the previous version in only one subtest. It may be that Mr. Tisius had a specific failure on the Visual Reproduction subtest rather than a general failure of visual recall.

The latter could be suggested by his performance on the Rey Complex Figure Test (RCFT). On this test his visual recall appeared to be intact (Immediate Memory = 57t / 76th %ile; Delayed Recall = 61t / 86th %ile; Recognition = 47t / 38th %ile). However, there was a pattern of forgetfulness of visual information that occurred on another measure that required the recall of locations of dots displayed in a random array on a computer screen. On the Brown Location Test Mr. Tisius learned the locations adequately (*Brown Location Test Trials 1-5 Free Recall Total = 50t; 50th %ile*). However, after a distraction, his performance was then mildly impaired (*Short Delay Free Recall Correct = 35t; 7th %ile*). After 30 minutes, his performance was mildly to moderately impaired (32t; 4th %ile). This pattern implicates a pattern of forgetfulness triggered by distraction – implying less temporal lobe dysfunction and more frontal lobe dysfunction.

Forgetting of verbal material was also consistently seen on list-learning tasks. On once such task, the California Verbal Learning Test – II (CVLT-II), Mr. Tisius learned a list of 16 words across five trials. He learned effectively, recalling seven, then eight, 11, 12, and 13 words. His learning fell in the Average range (*Trials 1-5 Total = 51t; 54th %ile*). Even after an interference list he still recalled 11 words (Short Delay Free Recall = 50t). Just twenty minutes later however, he had no recall of the words (*Long Delay Free Recall = 15t; 0.02 %ile*). Moreover, he had exceedingly poor recognition of the list that reflects a failure to consolidate the words for storage (*Total Recognition Hits = 1t; 0.01%ile*). Further discussion of the pattern of failure is presented below.

On a similar list-learning task Mr. Tisius replicated this pattern of intact learning followed by a failure of recall. On the Rey Auditory Verbal Learning Test (RAVLT) he demonstrated a steep learning curve, initially recalling seven words and then after 5 trials, 14 words (*Total = 49t; 46th %ile; Learning Over Trials (LOT) = 46t; 34th %ile*). He then recalled 12 words after an interference trial (*Trial*

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6 = 57t; 76th %ile). However, 30 minutes later he could only recall three of the words (*Delayed Recall* = 24t; 0.5 %ile). Again, we see a pattern of forgetting even though he was able to recognize words from the list adequately – consistent with a retrieval deficit that is commonly associated with frontal-striatal dysfunction.

In sum, Mr. Tisius showed consistent and substantial deficits in the recall of information after a period of interference.

Motor Planning and Speech Impairments:

As noted above, Mr. Tisius displayed marked deficits in motor programming that included motor perseveration in speech (stuttering) and movement, with associated cognitive perseverations.

Mr. Tisius has a notable stutter. Craig-McQuaide et al. (2014), citing Max et al. (2004), described stuttering as “a speech disorder characterized by disruptions in speech motor behavior (repeated or prolonged articulatory and phonatory actions) that result in sound and syllable repetitions, audible and inaudible sound prolongations and broken words (*internal citation omitted*)...Repetition of sounds, syllables, and words, prolongation of sounds and blocks in speech are three classical features of stuttering.”⁸⁴ Though the mechanisms involved in stuttering are not entirely understood, there is reason to believe that dysfunction of the basal ganglia is involved. According to Craig-McQuaide et al, the basal ganglia (BG):

are known to be involved in the selection of competing voluntary motor programs (generated by the cortex and cerebellum), disinhibiting one selected motor program and simultaneously inhibiting all other competing motor programs in order to allow the execution of voluntary movements (Mink, 1996). Thus the BG do not themselves generate movements, but rather play a central role in the selection of competing voluntary movement patterns, inhibiting competing motor programs that would otherwise prevent execution of the desired movement. Degenerative disease of the BG is known to

⁸⁴ Craig-McQuaide, A., Akram, H., Zrinzo, L., & Tripoliti, E. (2014). A review of brain circuitries involved in stuttering. *Frontiers in Human Neuroscience*, 8, 1-20. doi:10.3389/fnhum.2014.00884.

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cause a number of movement disorders characterized by slow movements, involuntary muscle activity, or abnormal postures, including PD (Parkinson's Disease), dystonia, and tremor of various etiologies. There is evidence that stuttering may be a movement disorder of speech involving BG dysfunction (Alm, 2004; Max et al., 2004b).⁸⁵

Mr. Tisius' stutter became most apparent on formal testing but was present throughout the time spent with him. It was less obvious in casual speech where he seemed more readily able to compensate by using emotional emphasis to disguise his difficulty. The stutter, which can be thought of as a motor speech disorder as noted above, was marked by plosive emphasis on the initial sounds of words, by elongation of vowel sounds, and by repetitions of words. For example, on the Delis-Kaplan Executive Function System (D-KEFS) Color Word Test, he was required to name colors or read the names of colors. For "green" he might say "greeeeen." Or when naming the ink color, he might, and did, say, "green, green, green, green, green, green" even though there was only one green square. Or the word "red" would include a plosive emphasis on the terminal sound, becoming "red!!!"

However, Mr. Tisius' deficit goes beyond a simple stutter and involves a motor planning deficit. For example, on Conners Continuous Performance Test, Third Edition (CPT-3), Mr. Tisius had a very high rate of random, repetitive and anticipatory responses suggesting that he was also having difficulty controlling rapid hand movements as well (*CPT-3 Perseverations = 90t; 99th %ile; Very Elevated*). This task, a type of go-no go measure, involved pressing the computer space bar each time a letter flashed on the screen unless it was an "X," when he should not respond. Mr. Tisius also had a very high rate of incorrect responses to the "X" (*Commissions = 74t; 99th %ile; Very Elevated*). These errors indicated that he had trouble responding to the stimuli in a controlled manner and that his behavior is likely hindered by impulsivity.

There were also cognitive manifestations of this loss of control of motor planning. For example, on the CVLT-II, his recall of words was marked by numerous within-trial repetitions of words that he had previously given (*Total Repetitions = 18*

⁸⁵ *Id.*, p. 11.

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(raw); 90th; 99th %ile). Moreover, this was not an isolated finding but also manifested on an executive function measure that required him to generate designs by connecting four lines within one minute, the D-KEFS Design Fluency Test. Despite having a relatively intact performance, he made numerous design repetitions (drawing the same designs over and over (*Total Repeated Designs* = 30^t / 2nd %ile; *Percent Design Accuracy* = 23^t / 0.4 %ile). As an example, on the second trial, he accurately drew seven different designs but inertly repeated ten designs.

Given the above, the dysfluency observed in Mr. Tisius' speech extends to motor processes as well as cognition.

Motor Dysfunction

There were also indications of motor deficits implicating impairment of the frontal lobes. This determination is a bit complicated because Mr. Tisius has a history of having broken his left forearm and wrist in about 1996 and this may be contributing to poor motor performance. In addition, there are conflicting indications as to lateralization. Nonetheless, as noted above, Mr. Tisius had difficulty with the Luria 3-Step Test with the right hand but not the left – and this would be unaffected by his broken forearm. This test is a motor sequencing/planning task that typically implicates frontal lobe dysfunction and is consistent with the motor planning deficits described above. On finger tapping his left hand was notably slower than the right but still within normal limits (*Finger Tapping Right raw* = 49.8 / 47^t; *Left* = 40.2 / 41^t). His grip strength was significantly poorer on the left – but this may be due to peripheral injury (*Dynamometer Right raw* = 50.5kg / 45^t; *Left* = 40.5kg / 39^t). On a task of placing pegs in a board, Mr. Tisius performed poorly on the right side (*Grooved Pegboard Dominant* = 39^t; *Non-Dominant* = 47^t).

Discriminability:

Mr. Tisius also had difficulty accurately discriminating between correct responses and incorrect responses due to a kind of internal “noise.” Thus, he has significant “signal-detection” deficits across memory, attentional, and auditory processing tasks. In part, these deficits are a manifestation of the difficulties described above

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but extend as well to auditory processing tasks. Signal detection theory (SDT) was developed during World War II to discriminate between radar signals and noise.⁸⁶ SDT has also been applied to psychological testing and is most commonly measured with the d prime (d') statistic.

As an example of his difficulties in this arena, his performance on the CVLT-II is noted. Mr. Tisius, on recognition recall, had marked difficulties identifying words he had heard from those that were on a distractor list or were prototypical representatives of a category. For example, he indicated that he recalled the words “carrot,” “car,” and “elephant” when they were not on the list but exemplars of the categories of vegetables, ways of traveling, and animals – which were represented on the recall list. Mr. Tisius’ d prime statistic on this test was 3 ½ standard deviations below the mean suggesting severe problems in source memory that is likely to lead to confusion when trying to remember (*Total Recognition Discriminability* (d') = 15t / 0.02 %ile; *Source Recognition Discriminability* (d') = 15t / 0.02 %ile; *Semantic Recognition Discriminability* (d') = 15t / 0.02 %ile; cf *Unrelated words* = 0). Bortz et al. (2005) indicated that “Scores on the CVLT discriminability index (which reflects signal vs. noise discrimination on the recognition task), measures of proactive interference, and semantic clustering indices of the CVLT may help identify patients with dysfunction of the frontal systems.”⁸⁷

A similar finding was seen on the CPT-3 where he had difficulty discriminating X’s from other letters ($d' = 67t / 96^{th}$ %ile). Further, this same difficulty was observed on a task of discerning whether rhythmic patterns were identical or different. On this task, the Seashore Rhythm Test (SRT), Mr. Tisius performance fell in the Mild to Moderate Impairment range (*SRT correct* = 31t / 3rd %ile). On this forced choice auditory discrimination test he performed at nearly chance levels

⁸⁶ VandenBos, G. R., & Association, A. P. (2015). *APA Dictionary of Psychology*. Washington, D.C.: American Psychological Association, p. 851.

⁸⁷ Bortz, J. J., Prigatano, G. P., Blum, D., & Fisher, R. S. (2005). Differential response characteristics of patients with nonepileptic and epileptic seizures on a test of verbal learning and memory. *BNI Quarterly: The Official Journal of the Barrow Neurological Institute of Mercy Healthcare Arizona*, 12(3). Retrieved June 15, 2018, from <https://www.barrowneuro.org/education/grand-rounds-publications-and-media/barrow-quarterly/volume-12-no-3-1996/differential-response-characteristics-patients-nonepileptic-epileptic-seizures-test-verbal-learning-memory/>

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(Hit rate = 16/30; raw $d' = 0.178$ where $d' = 3$ is close to perfect and $d' = 0$ is chance performance).⁸⁸ It is of interest to note that the basal ganglia, described above, are also involved in rhythmic timing.

On additional auditory processing tasks Mr. Tisius also had difficulty discriminating words when he was required to divide his attention. On the Dichotic Word Listening Test (DWLT) his performance was mildly to moderately impaired (*Left Ear = 31t / Mildly to Moderately Impaired; Right Ear = 34t / Mildly to Moderately Impaired; Both = 25t / Moderately Impaired*). This task required him to repeat competing words presented simultaneously through stereo headphones. An identical difficulty was seen on a similar task as well (*SCAN-3 for Adolescents & Adults Competing Words Directed Ear SS = 5 / 5th %ile*).

Olfaction:

Mr. Tisius also displayed significant deficits in olfaction. The Smell Identification Test (SIT) has 40 different odors embedded into small patches. When scratched various odors are released for identification. Mr. Tisius had a severe disruption of his sense of smell (*SIT = <<< 5th %ile / Severe Microsmia*). According to Blumenfeld (n.d.), "Impairment can be due to nasal obstruction, damage to the olfactory nerves in the nasal mucosa, damage to the nerves as they cross the cribriform plate, or intracranial lesions affecting the olfactory bulbs."⁸⁹ Centrally, the sense of smell is largely controlled by the primary olfactory cortex, which is "located near the medial anterior tip of the temporal lobe."⁹⁰ However, as noted, deficits in the sense of smell may also be the result of traumatic brain injuries in which the olfactory nerves crossing into the nasal cavities are damaged. In addition, the loss of the sense of smell is often seen as a marker for dysfunction of the orbital frontal lobes.

Intact Neuropsychological Functions:

⁸⁸ VandenBos, p. 300.

⁸⁹ Blumenfeld, H. (n.d.). Neuroexam. Retrieved June 17, 2018, from <http://www.neuroexam.com/>

⁹⁰ Blumenfeld, H. (2010). Neuroanatomy through clinical cases, 2nd ed. Sunderland, MA: Sinauer, p. 829.

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Mr. Tisius also demonstrated intact neuropsychological functioning in several areas including speed of information processing, language, visual-spatial functions, and executive functioning.

Mr. Tisius often responded quickly to task demands and completed tasks efficiently though this was not always the case (*Trails A* = 54t / 66th %ile; *Digit Vigilance Time* = 50t; 50th %ile; *Conner CPT Hit Reaction Time (HRT)* = 40t / "a little fast"; *Ruff 2 & 7 Total Speed* = 50t / 50th %ile; cf *WAIS-IV Processing Speed Index (PSI)* = 89).

There were no significant language (as opposed to speech) difficulties. He was able to repeat sentences adequately, follow multi-step commands, and name objects as expected (*Sentence Repetition* = 49t / 46th %ile; *Token Test* = 57t / 76th %ile; *Boston Naming Test* = 66t / 95th %ile). In addition, there were no indications of dysgraphia, dyslexia, dyscalculia, or right-left confusion (*Aphasia Screening Test* = 54t / 66th %ile).

Visual-spatial skills were also intact. He was able to copy both simple designs such as Greek Crosses and more complex figures such as a key and detailed constructions effectively (*Rey Complex Figure Copy* = 50t / 50th %ile). He also matched and identified angles as expected (*Judgment of Line Orientation (JOLO)* = 53t / 62nd %ile).

Finally, executive functions were mostly unimpaired as well. For example, he was able to alternately sequence numbers and letters arrayed on a page without difficulty (*Trails B* = 59t / 82nd %ile). Additionally, his performance on a complex non-verbal reasoning task fell in the Above Average range (*Halstead Category Test* = 62t; 88th %ile). Moreover, on a battery of tests designed to evaluate executive functions, the Delis-Kaplan Executive Function System (D-KEFS), he demonstrated an intact capacity to generate verbal and non-verbal information, the ability to use deductive reasoning skills, intact problem solving using language, average non-verbal planning abilities, and abstract thinking skills.

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Psychiatric Status and Social Cognition

Mr. Tisius demonstrated the capacity to identify emotion in facial expression and tone of voice. On the ACS Social Cognition Test, which required him to name emotional expressions and to match scenes to tonal qualities in spoken phrases, his performance was average (*Social Perception SS = 10; Affect Naming = 8; Prosody = 11; Pairs = 11*). On the other hand, he described himself as quite socially restricted in communication, interaction, and interests. On the Social Responsiveness Scale, Second Edition (SRS-2) his scale elevations indicated deficiencies in reciprocal social behavior that was clinically significant and that was typical of individuals on the autism spectrum.

Mr. Tisius also endorsed items on self-report inventories that indicated mild levels of anxiety and severe levels of depression (*Beck Anxiety Inventory raw = 14; Beck Depression Inventory raw = 33*).

Elevations on the Trauma Symptom Inventory - 2 (TSI-2) were also prominent. The pattern of elevations indicated problems in his sense of self, significant levels of depression and anger, object relations characterized by insecure attachment with relationship avoidance, and suicidal ideation (*Self Disturbance = 65t / 92nd %ile; Depression = 71t / 98th %ile; Anger = 62t / 85th %ile; Insecure Attachment = 63t / 87th %ile; Relational Avoidance = 70t / 96th %ile; Suicidal Ideation = 60t / 86th %ile*). The manual for the TSI-2 gives the following description of elevations in the Self-Disturbance scale, that reflects:

Disturbed or altered perception of self and others (i.e., distorted relational schema), with a relative inability to access a stable, internal sense of self or identify from which to interact with the external world. This combination of difficulties may lead to ambivalent, insecure and often problematic interactions with others, a tendency to rely on other people for information about self, and a **greater susceptibility to influence by others** (emphasis added).⁹¹

⁹¹ Briere, J. (2011). Trauma Symptom Inventory-2 (TSI-2): Professional manual. Lutz, FL: PAR, p. 19.

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Mr. Tisius' appears to have an insecure attachment style. The TSI-2 manual describes the Insecure Attachment (IA) scale as follows:

The IA scale taps respondent concerns and behaviors thought to arise from early relational losses and/or parental maltreatment or unavailability, including abuse and/or neglect, inadequate empathic attunement, and frightening or frightened behavior.

This description of his behavior is of course consistent with his known history. As a result, Mr. Tisius appears to be uncomfortable in close relationships while also being needy.

Mr. Tisius also completed a brief questionnaire based on research by Kaiser Permanente looking at Adverse Childhood Experiences (ACE's), which are traumatic circumstances to which children are exposed and that have lasting impacts on development and life outcomes. Mr. Tisius endorsed five of the ten circumstances. These included having grown up in a family where he was not loved or thought to be important, being in a family that did not look out for each other, feel close, or support each other, feeling that he had no one to protect him, being the child of divorce, growing up with a person who was depressed and mentally ill, and having a household member go to prison. These features of Mr. Tisius' childhood are consistent with the above referenced trauma symptoms.

SUMMARY AND OPINIONS

Michael Andrew Tisius was convicted of the murders of Officers Leon Egley and Jason Acton on June 22, 2000. The deaths occurred during a jail escape attempt in Huntsville, Missouri. Mr. Tisius was 19 years old at the time. He was sentenced to death on October 1, 2001. Subsequently, Mr. Tisius death penalty was over-turned during state post-conviction relief proceedings. Then, during a retrial of the penalty phase, he was again sentenced to death in 2010. Mr. Tisius is currently in federal habeas proceedings. I evaluated Mr. Tisius on May 4 & 5, 2018, at the Potosi Correctional Center.

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My opinions are presented here in response to the referral questions. I hold these opinions to a reasonable degree of scientific and professional certainty.

1. Does Mr. Tisius suffer from neuropsychological dysfunction of any kind?

Yes.

2. If so, what is the nature of any such dysfunction and how does it affect Mr. Tisius' cognition and/or behavior?

As noted above, Mr. Tisius demonstrated a constellation of deficits putatively implicating deep brain structures associated with frontal-striatal and temporal lobe functions. He demonstrated a profound degree of forgetfulness on tasks of verbal memory; marked deficits in motor programming that included motor perseveration in speech (stuttering) and movement, with associated cognitive perseverations; apparent motor impairments; significant "signal-detection" deficits across memory, attentional, and auditory processing tasks; and a severe degree of microsmia (loss of the sense of smell).

Mr. Tisius has had a problem with stuttering from childhood (see the declaration of Tammy Newkirk). Though less apparent in casual conversation, the stutter became patently obvious under the stress of testing. He also appears to have had a motor perseveration on a go/no-go type of test, such that repeated motor responses were given without specificity. In other words, he has trouble responding to stimuli in a controlled manner such that his behavior can be erratic and hindered by impulsivity. There were also cognitive manifestations of this loss of control of motor planning marked by numerous repetitions of information previously presented. His observed behavior, including many extraneous motor movements, suggested tic-like behaviors.

Mr. Tisius further demonstrated difficulties with memory functions. Mr. Tisius showed consistent and substantial deficits in the recall of information after a period of interference. This pattern implicates a pattern of forgetfulness triggered by distraction. He was able to recognize words from word lists adequately but had impairments in free recall – consistent with a retrieval deficit that is commonly associated with frontal-striatal dysfunction rather than temporal lobe dysfunction.

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Mr. Tisius also has difficulty accurately discriminating between correct responses and incorrect responses due to a kind of internal “noise.” Thus, he has significant “signal-detection” deficits across memory, attentional, and auditory processing tasks. Consistent with this finding, his pediatrician noted his history of hyperactivity, fidgetiness, and jumpiness. Mr. Tisius at times also demonstrates deficits in his capacity to think and problem solve using verbal fluid reasoning skills. In other contexts, this deficit is not clear.

Based upon this pattern of deficits, one would expect Mr. Tisius to be somewhat inconsistent in his behaviors. He may also become frustrated when struggling to perform consistently. He can be vulnerable to distraction – and this is consistent with the early concerns about ADHD.

In addition to the neuropsychological deficits noted here, there were signs of marked psychiatric impairments including severe depression, and a pattern of insecure attachment that significantly impacts his capacity for relationship, in the background of severe trauma, that further impact his functional capacities. His psychiatric difficulties began during childhood and were marked by depression with withdrawal, poor school performance, irritability, mood swings, insomnia, anorexia, decreased concentration and anger. His attachment issues have made him vulnerable to manipulation and influence by those who provide attention to him.

3. Did Mr. Tisius suffer from neuropsychological dysfunction at the time of the offense? If so, how would this dysfunction have impaired his intellectual functioning or behavior?

Yes. Mr. Tisius’ deficits are long-standing and date from childhood. This is apparent when considering childhood stuttering and the early concerns about his emotional dysregulation.

It is also important to understand that I have evaluated Mr. Tisius at the age of 37. The crimes were committed when he was 19 years of age. It is well established that the brain continues to develop into the mid-20s. The frontal lobes continue to undergo processes of myelination and pruning that makes cognitive processing and decision-making more efficient and accurate. As a result, the brain of a 19-year-

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old, particularly one that is already impaired, will not process information as accurately or efficiently as someone of greater maturity.

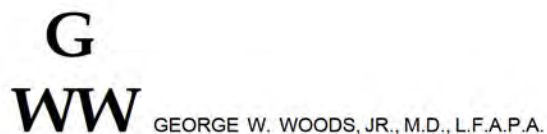
Thus, at the time of the crime, the impairments I described above likely would have had an even greater effect on Mr. Tisius' functioning and behavior.

Thank you for allowing me to evaluate Mr. Tisius. If you have questions regarding this evaluation, please do not hesitate to contact me.

Respectfully submitted,

DocuSigned by:
Dale G. Watson
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Dale G. Watson, Ph.D.
Forensic Neuropsychologist



GEORGE W. WOODS, JR., M.D., L.F.A.P.A.
A PROFESSIONAL CORPORATION
DIPLOMATE OF THE AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY

415 503 3959
gwoods@georgewoodsmd.com
Oakland Atlanta Evansville

June 26, 2018

Daniel E. Kirsch, Esq.
Federal Public Defender
Western District of Missouri
818 Grand Boulevard, Suite 300
Kansas City, MO 64106

Re: **Michael Tisius** (DOB 2/16/1981)

Mr. Kirsch,

Pursuant to your request, I have performed a neuropsychiatric evaluation of Michael Tisius, a 37-year-old, Caucasian male.

In order to perform this examination, I interviewed Mr. Tisius at Potosi Correctional Center on May 26, 2018. I also have reviewed numerous records, witness statements, and other case materials counsel provided me. Attached is a complete list of documents I reviewed as Exhibit A.

Referral Questions

1. Does Mr. Tisius suffer from a mental disease and/or defect?
2. Did Mr. Tisius suffer from a mental disease and/or defect at the time of the offense?
3. At the time of the offense, was Mr. Tisius under the influence of extreme mental or emotional disturbance?
4. At the time of the offense, did Mr. Tisius act under extreme duress or under the substantial domination of another person?
5. At the time of the offense, was Mr. Tisius' capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law substantially impaired?
6. At the time of the offense, how did Michael's age—in combination with any mental disease or defect—affect his behavior?

7. At the time of the offense, did Mr. Tisius' mental disease or defect affect his ability to exercise the deliberation that is a requisite element of first-degree murder (See Ex B)?

Summary of Findings

Mr. Tisius suffers from a number of neuropsychiatric and neurological disorders. Although each has symptoms that individually impair Mr. Tisius' functioning, the interaction of his multiple symptoms creates even greater impairment.

Mr. Tisius has a significant history of trauma, which resulted in the development of post traumatic stress disorder. His mother neglected him, she was verbally abusive, and she consistently undermined him emotionally. She used Mr. Tisius as a pawn in her domestic quarrels with his father. Mr. Tisius' brother physically and emotionally abused him. His brother regularly beat him and belittled Mr. Tisius. In the limited time he was present, Mr. Tisius' father was erratic and unpredictable, then he ultimately abandoned him. Mr. Tisius exhibits the core symptoms of complex trauma, i.e., avoidance, affective dysregulation, and learned helplessness.

Mr. Tisius also suffers from significant neurocognitive disorders. He has substantial motor deficits, including tics and olfactory hallucinations, which are indicative of frontal lobe dysfunction. He also presents with motor and mental inflexibility, which is known as perseveration. His delayed memory deficits point to mid-temporal lobe deficits. The frontal and mid-temporal lobe deficits demonstrate a frontotemporostratial deficit that undermines good intellectual functioning. This is particularly true in new, novel, and stressful situations.

Ms. Tisius also exhibits absence seizure activity. These are brief spells when his consciousness is impaired, which is most likely secondary to medial temporal lobe pathology. It impairs his focus, even when he is doing what he loves most – his art. These spells create significant problems in concentration, focus, and distractibility. He also demonstrates a poor ability to follow fast-moving verbal exchanges. He often loses meaning rather than being able to follow the conversations. He attempts to get "the gist" of the conversations instead of clearly understanding what is being communicated.

Finally, Mr. Tisius exhibits symptoms consistent with dependent personality disorder. His social history and personality tests corroborate a high level of suggestibility and a high potential for being groomed. His personality disorder is the key to understanding his vulnerability with Mr. Vance and his behavior in the offense for which he is charged.

Mr. Tisius suffers from neuropsychiatric, neurological and cognitive symptoms. Each one of these symptoms individually impairs Mr. Tisius' functioning; however, the interaction of these symptoms increases the severity of the presentation of his impairments. Multiple co-occurring, interacting symptoms are known as comorbid disorders. The comorbidity of symptoms is qualitatively and quantitatively different from symptoms that occur at the same time but are not interacting, i.e.,

co-occurring symptoms. Comorbid symptoms are synergistic in their impact and exacerbate each potential outcome.

Given all of his deficits, Mr. Tisius has been vulnerable to being taken advantage of all his life. His ability to effectively weigh and deliberate, sequence his thinking, understand social cues and recognize social context is impaired. This is especially true in new, novel, and stressful situations. Consequently, Mr. Tisius was extremely vulnerable to grooming by Mr. Vance.

At the time of the offense, the cumulative effect of his cognitive and environmental deficits substantially impaired Mr. Tisius' ability to reason and to conform his conduct to the law.

Qualifications

I am a licensed physician specializing in neuropsychiatry. My private practice focuses on neurodevelopmental disabilities, acquired neurocognitive disorders, cognitive impairments secondary to neuropsychiatric disorders, ethnopsychopharmacology and workplace safety. My clinical subspecialties are neuropsychiatry and consultation liaison psychiatry, which is the study of psychiatric manifestations of medical diseases and the assessment of neurodevelopmental disorders. In my clinical practice, I assess and treat individuals with a variety of medical problems with psychiatric manifestations. For the last thirty-four years, my practice has consisted of clients with developmental disabilities, traumatic brain injuries, and cognitive impairments. In addition to my clinical practice, I perform forensic consultations.

I received my medical degree from the University of Utah in 1977 and was recently selected as the 2018 Distinguished Alumnus for the University of Utah Medical Center. I completed my psychiatric residency at Pacific Medical Center in San Francisco, California, where I served as Chief Resident. The medical training I have undertaken since my residency has been geared toward a neuropsychiatric practice with an understanding of the relationships among psychiatric disorders, brain dysfunction, metabolic disruption, and endocrinological abnormalities. My medical training has been supplemented with training in neuroanatomy and neuropsychological investigation, psychopharmacology, neuroimaging, and other relevant subjects, such as sleep disorders, mental retardation, developmental disability, and dysmorphology, which is the study of structural abnormalities often related to developmental disorders.

My early medical training focused on primary care medicine as well as psychiatry. My internship at Alameda County Medical Center (Highland Hospital in Oakland, California) was not in psychiatry. I completed a rotating medical internship, which included internal medicine, infectious diseases, general surgery, orthopedic surgery, emergency medicine, and obstetrics/gynecology.

During my psychiatric residency at Pacific Presbyterian Hospital in San Francisco, California, I took specialized neurological electives at Kaiser Permanente Hospital, Oakland, California. These classes were extended, three-month clerkships, where I was assigned to the Neurology Department and conducted neurological examinations and diagnosed neurological disorders, including but not

limited to epileptiform disorders, movement disorders, headache disorders, and central nervous dysfunctions.

During the last year of my psychiatric residency, I also practiced general medicine as a family practitioner in Blythe, California. I ran Clinica De La Raza, which was developed by the United Farmworkers. After my psychiatric residency, I worked as an emergency room physician in both medical and psychiatric emergency rooms in Alameda and Contra Costa Counties in California.

I participated in a fellowship with the American Psychiatric Association and the National Institute of Mental Health in Geriatric Psychopharmacology. During the fellowship, I developed the first medical/psychiatric unit at Pacific Presbyterian Hospital. This unit administered to patients with either medical illnesses with psychiatric manifestations or psychiatric patients with severe medical illness that could not be treated effectively for their psychiatric symptoms on regular medical units. Many of these patients had neurological impairments, significant drug interactions that required diagnosis and monitoring, or unusual symptom presentations due to the multiple disorders from which they were suffering. The focus of my APA/NIMH Fellowship was Geriatric Psychopharmacology, specifically, the study of medication physiology and pharmacology, and its use in elderly populations.

I am a Life Fellow of the American Psychiatric Association. I am also a member of the Northern California Psychiatric Association, the California Psychiatric Association, the American Neuropsychiatric Association, the International Neuropsychological Society, and the American Psychological Association. I am Deputy Chairperson for the Challenging Behavior Specific Interest Research Group (SIRG). I served as Editor for the Challenging Behavior and Mental Health Special Interest Research Group (SIRG) newsletter and currently serve as Associate Editor for the Journal of Practice and Policy for Intellectual Disabilities for IASSIDD. I am the immediate past president of the International Academy of Law and Mental Health (IALMH) and serve on the Scientific and Executive Committees. In July of 2017, I was asked to continue as Secretary General of the IALMH during its amalgamation with the Institute of Ethics, Medicine, and Public Health at the Sorbonne in Paris, France.

I am a lecturer at the University of California, Berkeley – Boalt Hall, School of Law. I teach a course on Law and Mental Health with Jennifer Johnson, Esq. We also teach a continuing education webinar, "Where Mental Health Meets the Law," which has a comprehensive curriculum that tackles the evolving field of forensic mental health through Thomson Reuters West Legal Education. I am currently on sabbatical from my position as Adjunct Professor at Morehouse School of Medicine in Atlanta, Georgia, where I teach "Clinical Aspects of Forensic Psychiatry" and "Introduction to Geriatric Psychiatry".

I have published on the topics of forensic assessment of neurodevelopmental disorders, cognitive impairment in the elderly, fetal alcohol spectrum disorder, trauma, financial deception in elderly populations, comorbidity, and the death penalty.

My experience and publications, and expert witness experience are fully set forth in my curriculum vitae, attached as Exhibit C.

Relevant Social History

Family history is an important consideration in assessing an individual's psychiatric and cognitive functioning. It reveals important information about hereditary tendencies and provides environmental and cultural data. The frequent occurrence of mental illness, addiction, and suicidality throughout both sides of Michael Tisius' nuclear and extended family is remarkable. Dr. Paula Love, Ph.D., L.P.C., has prepared an extensive social history of Mr. Tisius, which I am relying upon in this report.

Mr. Tisius' parents Chuck and Patty met at Kentucky Fried Chicken. Charles Tisius and Patricia Mertens married on December 28, 1979. Chuck was 17; Patty was 19. This was the first marriage for both.

Chuck's father, a police officer, warned Chuck not to marry Patty because she was known to the Brentwood Police Department as a child prostitute and may have continued to work.

Preceding the marriage, Patty already had one child, Joseph (Joey), who had been born on August 19, 1978. On the day Chuck and Patty married, her parents returned the toddler to Patty.

On February 16, 1981, Michael Andrew Tisius was born to Chuck and Patty in Creve Couer, Missouri. Michael's father rejected him almost from birth. Michael grew up being told that his dad had wanted a daughter.

There were early signs of trouble in the Tisius family. Patty's Aunt Gloria recalls receiving a distraught phone call from Patty from a women's shelter after being hit by Chuck. In addition to domestic violence, Chuck had extramarital affairs.

The couple split up when Michael was still a baby. Chuck began basic police training in another city in June 1982. While there, Chuck continued to heard rumors that Patty was working as a prostitute.

Joey and Michael spent a great deal of their childhoods in bars. For years, Patty routinely dropped them off at the neighborhood bar and returned late at night to pick them up. When Patty was at home with her children, visitors noticed that Michael was taken care of. He often appeared hungry. His diaper was not changed regularly. They noted that Patty was not only unaffectionate, but she was harsh, almost hostile toward the little boy. She didn't engage with him or play with him. (Murphy deposition, p. 9) Michael's pediatrician described him, at this age, as a "nice little boy that looks at TV all day." (Wool Deposition, p. 16)



Chuck and Patty divorced in 1983. Their relationship was deeply contentious. They fought over child support and custody issues for more than a decade. (St. Louis Circuit Court, Cause No. 483946) Patty filed a restraining order against Chuck the same year they divorced.

Chuck remarried. Chuck's marriage to Leslie Haycock seemed to result in Chuck having more regular visits with Michael. However, Michael's relationship with his dad remained a confusing one, full of hurt and rejection.

Throughout his childhood, Michael primarily lived with Patty. Family who spent time with Michael noticed that he was gullible, timid, and always seemed much younger than his chronological age. Michael was a daydreamer. He also had episodes where he would drift off – he was not mentally alert and did not respond to his name being called. Michael appeared to family members to be developmentally delayed. He had a hard time finding his words and stuttered. Michael was embarrassed by his stuttering. Adding to his humiliation, Patty berated him for it. His grandmother, Dottie, also degraded Michael, calling him names or “stupid.”



Chuck and Leslie recalled being alarmed at Michael's condition. It was clear his hygiene was poor – he had greasy hair, ill-fitting clothing, and reeked of urine. Chuck recalled having to delouse him on a number of occasions. Michael was frequently sick.



Michael was often left alone with Joey. Joey hated Michael from a young age. Patty often told stories about the time Joey tried to choke Michael when he was a baby. Michael was significantly smaller than Joey in build and height. Joey was strong for his age and could even as a child overpower Patty. Joey began physically abusing Michael when Michael was just four or five years old. The attacks escalated when Michael was around eight or nine. Joey punched, kicked, and threw heavy objects at Michael. He often attacked him unprovoked and without warning. When Patty witnessed this, she did little to protect Michael.

Joey once knocked Michael unconscious in front of a group of neighborhood children. He first punched Michael in the head until Michael fell to the ground. Then banged his head against the ground until he lost consciousness. Michael was unconscious for several minutes. When he woke, his words were reportedly “all jumbled up.”

In addition to being under siege at home, school records indicate Michael was bullied in school. He was seen at different times for having had his chair pulled out from under him, being tripped,

being stabbed with a pen. He was later seen by the nurse after someone kicked his foot, causing him to fall on his back.

The familial relationships between Patty, Michael, and Joey, were toxic and without warmth. Family members describe them as having been like strangers living in the same house. On the rare occasion the three ate a meal together, they did so in silence and with haste.

Throughout his childhood, Michael always seemed to be looking for a loving parent figure. He asked at least three different women – Leslie Semore, Donna Hendricks, and Lilian Weinzerl – if he could call them “Mom.”

Patty was depressed. She sometimes stayed in her room for hours with the door locked, crying. Once, while driving with Michael, she commented that she could crash the car kill them both. This terrified Michael and made him wonder what he had done to make her want to kill him.



Patty engaged in obsessive rituals. Each night, she put on the same house coat, sucked her thumb, and wrote for hours on a notepad. She also had a habit of rearranging the furniture in the house – moving couches, beds, shelves, and other furniture to different locations. The family switched bedrooms at least ten times while they lived at the Hillsboro house. Patty’s mother, Dottie, did the same thing, moving the furniture in her house nearly every day. These symptoms are consistent with obsessive symptoms of obsessive compulsive disorder. Neurological obsessive compulsive disorder is a symptom of left temporal dysfunction. Her writing obsession is termed hypergraphia. Michael described a similar writing and drawing obsession, starting long before he was arrested.

Michael wrote obsessively. He left notes all over the house, on soccer balls, on his clothing, on his shoes, etc. The notes typically detailed his own feelings of self-loathing.

I'm weird I'm stupid I'm a weido I'm ugly I'm a morron nobody likes me I'm ugly I'm a dork a geekazoid I'm a slob I'm a geek nobody loves me I'm not worth a cent" [sic]

"I'm a bogis butthead, I boring kid, because everyone says I am, I have no freinds all, my mom hates me, Joey hates me, my dad, don't give a crap about me he's always saying I'm stupid I bet. I don't care about my stupid DAD! I'm scared of the ball, when someone throws it to me. I'm a big cry baby, I cry over tha littles things i'm a wimp, dumb, fag, fagit, Corey, Jamey and, E.J. can beet me up. I'm dumb because I bearly past Fourth grade because she didn't like me she put in Fith grade. Mrs. Moore passed me in sixth because she thinks i can do the work if i could i would of. so I can't. Oh! and not to get smart but I'll probly flunk sixth grade. Unless she either thinks I'm good to our just hates me to just puts me in the seventh grade The End" [sic]

Michael repeated sixth grade. When he started the year, Chuck petitioned for a change of custody. John Perry from Domestic Relations Services prepared home visit reports for both Patty's and Chuck's homes. Mr. Perry observed that the cleanliness of Patty's home as well as the boys' hygiene were lacking. He observed that Michael was not doing well and seemed very unhappy. Michael reported that Joey physically abused him.

Mr. Perry recorded that Michael desperately wanted to live with his dad, but Mr. Perry predicted he would be very disappointed by that experience. Chuck had not seen Michael in over two years, except for possibly once taking him out to eat. When asked about Chuck's absence, Michael defended him, saying Dad was really busy. Mr. Perry found Chuck insincere in his expressed desire to have Michael come to live with him. He noted that he suspected Chuck was putting Michael through the turmoil of a custody switch in order to avoid paying child support. Mr. Perry indicated neither parent was likely to provide a good environment for Michael, but found Patty's home more objectionable. Taking into account Michael's desperate wish to live with his dad, Mr. Perry reluctantly recommended the court allow Michael to live with Chuck on a trial basis for the school year. After uprooting him, Chuck sent him back to his mother.

Patty eventually married and moved in with Mark Keck in October 1996, but neither the new home nor the new stepdad were welcoming toward Michael. Mark was verbally abusive, calling Michael names like "stupid" and "ugly." Michael began increasingly spending time away from home, often wandering all day on foot and sleeping outside. If he needed to use the bathroom, he snuck into the basement and urinated in the drain.

Michael was easily manipulated by Joey, even as a teenager. Joey could goad Michael into engaging in risky behaviors such as stealing or fighting people. Joey continued his assaults on Michael. Michael sought refuge at neighbor Patty Gray's house. In testimony, she recalled Michael clutching his stomach and eluding that he wished to die. Likewise, Michael escaped to neighbors' Corey and Jamey Baker's homes, sometimes in the middle of the night. Once, Michael slept in Corey's closet and remained there all throughout the next day. Donna Hendricks' home provided a refuge for Michael during the summer of 1996.

Michael's life continued to become increasingly chaotic. He began running away. He lived with a succession of relatives, each for a short period of time before becoming homeless. He slept in the car of his girlfriend, Terra Launius, until her father invited him to stay in the house. When her father called Patty, she did not seem to care about her son. Michael did not stay long with the Launiuses before, again, becoming homeless. Michael occasionally returned to stay with Patty, but would find himself subject to Joey's violence and manipulation. Joey's violence had escalated from throwing hockey pucks to throwing knives. One witness recalled having been cut herself during such an episode. Michael once handed Joey a knife and asked Joey to kill him. On a number of occasions, Joey handed Michael knives and guns and told Michael to kill himself.

Michael was placed in a group home, Youth In Need, until mid-July 1998. A life skills assessment form Michael filled out during his intake process further supports Michael's intellectual deficits, social isolation, and lack of preparedness for independent living. When he left Youth In Need, he

was homeless again. At the time, Patty lived in her van and allowed Michael to sleep there for a few nights. Michael found refuge at his friend's house, but Stan's mental health was declining. Stan's bizarre behavior was scared Michael. Once again, he found himself with nowhere to go.

Educational History

Michael attended Kindergarten at Buder Elementary in St. Louis in 1986. His academic struggles were identified at this early age. Teachers noted his difficulty in various areas, including putting events in logical sequence, identifying days of the week, using left to right progression, measuring and weighing objects, communicating observations, solving simple picture number stories. A progress report indicated the need for improvement in 60% of learning areas. When the California Achievement Test was administered that April, Michael's average score was in the 67th percentile.

In second grade, Michael was evaluated by the Otis-Lennon School Ability Test (O-LSAT) and found to have a Deviation Intelligence quotient (DIQ) of 105. That spring, the Iowa Test of Basic Skills (ITBS) was administered. Michael's scores as reflected by the national percentile rank range from 16 (Spelling) to 50 (Math) and 51 (Reading). In third grade, his teacher noted that Michael was achieving below his grade level and behavioral problems were identified. That spring, Michael took the Missouri Mastery and Achievement Tests (MMAT) and performed very poorly.

Michael reports having struggled to keep pace with his peers. On a regular basis, he found himself deep in thought about one subject, only to realize the entire class had already moved on to the next lesson. Michael was regularly losing time and found it impossible to make sense of the learning environment. Michael's academic achievement is consistent with his neuropsychological findings-reasonable academic function coupled with poor social and adaptive functioning. His cognitive functioning undermined his native academic functioning.

In fourth grade for ADD-H, he failed many of his classes and earned D's in others. Michael's fifth grade marks, mostly D's and F's, provide continuing evidence of his struggle to perform on pace with his peers. The school considered Michael for retention that year, but he was instead assigned to sixth grade, which he failed.

In lieu of being retained at the end of fifth grade, Michael was placed in self-esteem classes. He reached out for help in those classes, disclosing to the counselors that his mother hit him with a belt and told him to lie to his caseworker and that his brother beat him. Further counseling was recommended. However, despite Michael's reports of abuse, no intervention was initiated.

When Michael failed sixth grade, he was retained and placed in Ms. Janice Page's classroom to repeat the year. His grades improved slightly with her help, but after a custody transition, Michael moved away to live with his dad. After just a few weeks, Michael's dad returned him to his mother and Michael was placed back in Mrs. Page's classroom.

At the end of seventh grade, Michael had failed a number of classes and was required to make those up in summer school in order to advance to eighth grade. The same thing happened in eighth

grade. Summer classes went slower, featured smaller class sizes, and presented material for the second time. Even so, Michael had difficulty keeping up and passed with C's and D's. In eighth grade, Michael failed every class except three: physical education, art, and School-Within-A-School, a learning support classroom.

When Michael began ninth grade, his first quarter grades were F's with one "N" in study hall. At the end of the second quarter, Michael had failing grades in World Geography, Art, English, Gen Wood Tech, Language Arts, P.E., and Algebra. His GPA was 1.425. His absences increased in frequency until, on April 24, 1997, Michael was dropped from the attendance rolls.

Medical History

Michael was seen repeatedly for earaches, apparent hearing abnormalities consistent with the language impairments he has described, bronchitis, pharyngitis, coughs, fevers, colds, runny noses, and rashes. He had scabies and ringworm. The school nurse reported having seen Michael for pinkeye, losing the crowns on his teeth at age seven. The nurse saw him over twenty times in two years for stomach aches, vomiting, and nausea.

Michael suffered chronic urinary and testicular problems as a child. At age nine, he began seeing a pediatrician for chronic bedwetting. He was prescribed Tofranil, a tricyclic antidepressant. The pediatrician noted a strong family history of bedwetting, including Michael's mother until she was in the fourth grade. Michael reported testicular pain to the school nurse at age seven. At nine, he began taking trips to the E.R. for severe testicular pain. On September 13, 1990, Michael woke up in severe pain. When Patty took him to the doctor, they recommended emergency surgery. Michael was placed under general anesthesia and underwent a cystourethroscopy, urethral dilation, and bilateral testicular fixation. Michael's testicular problems over the course of years are consistent with third trimester impact of fetal alcohol. Michael's mother failed to follow-through with Michael's recommended after care.

Two years later, he was seen again by a pediatrician, reporting on and off penile and testicular pain with urination since the operation. On October 12, 1992, Michael was admitted to the hospital. General anesthesia was administered and a urethral dilation and cystourethroscopy were performed.

On April 20, 1993 Michael was seen at Des Peres Hospital Emergency Room for abrasions on his penis. The injuries were caused by Michael being kneed in the groin. The zipper of his pants cut into his penis, causing bleeding and problems with urination.

Michael took Prozac and Paxil from approximately sixth grade until 1994. Michael reported adverse effects from both medications; Prozac made him jittery; Paxil caused gastrointestinal upset. During the time he was taking antidepressants, Michael repeatedly expressed suicidal thoughts and made at least two active attempts – once trying to jump off a bridge on the highway and once trying to cut his wrists open. He continued to take tricyclic antidepressant Tofranil for

bedwetting until age fourteen. Just before starting high school, Michael was again prescribed Paxil.

Circumstances Leading up to the Offense¹

Michael arrived in Randolph County, Missouri, at age eighteen. Preceding his arrival in the town of Moberly, he had been homeless and living on the streets for nearly four years. In Moberly, Michael had a series of temporary housing situations where he was surrounded by mental illness, substance abuse, and violence.

On May 4, 1999, Michael rented a stereo system. He pawned it on May 24. On June 23, 1999, Michael advised the rental company that he had pawned the stereo, but he intended to send the money owed. On October 7, 1999, Michael was arrested for failure to return personal property – related to the stereo. He was also charged with stealing CDs and a Calvin Klein t-shirt.

On November 1, 1999, Michael pled guilty to misdemeanor failure to return charge and was put on two years' supervised probation. On November 30, 1999, Michael pled guilty to misdemeanor stealing and was sentenced to 60 days suspended, two years' probation. Michael failed to report to his probation officer. Michael returned to St. Louis to live with his brother. On May 3, 2000, he was apprehended. Michael was booked by the St. Louis Police for outstanding warrants. He was processed and returned to Randolph County Jail.

Michael's incarceration offered Michael regular access to "three square meals a day" and showers for an extended period – something he had only experienced a handful of times during his teenage years. It gave him stability and structure. Sadly, jail was an improvement from Michael's life up to that point.

Roy Vance

Following a May 19, 2000 escape attempt from the Macon County Jail, Roy Vance was booked into the Randolph County Jail alongside Michael.

By all accounts, Roy Vance was a strong presence in Randolph County Jail. His long criminal history distinguished him from other inmates. Roy had been in and out of jail since 1991. Charges included burglary, theft, drugs and attempt to escape confinement. Inmate described Roy as conniving. He manipulated others not by intimidation but by flattery. At least one inmate used the term "alpha" to describe Roy's personality. Roy often asked for favors or assistance from other inmates. He boasted about what he could do in return.

¹ Dr. Love's social history did not include an investigation into the immediate circumstances leading up to the offense. For this section, I am relying on my interview with Mr. Tisius and my review of records, witness statements, and other case materials counsel provided me.

Roy and Michael spent a great deal of time together. Michael talked with Roy about his family. Roy learned that Michael had nowhere to live and no means of supporting himself. Roy listened to Michael. Roy asked his girlfriend, Tracie Bullington, to bring cigarettes for Roy to give to Michael. Roy complimented Michael on his artistic ability and asked Michael to create artwork he sent to Tracie and to his young daughter. Roy spoke to them both about Michael working on Tracie's father's farm. Roy had Tracie contact someone on Michael's behalf to attempt to set up an early work release for Michael.

Roy told Michael that he was facing a lengthy sentence and he openly talked about wanting to escape from his 50 year sentence. By contrast, Michael was scheduled to be released in few weeks. Roy asked Michael to help him. Roy talked Michael through the jailbreak plan repeatedly. Roy made Michael feel important. Roy told Michael that, if he did this for Roy, they would be brothers forever. He told Michael that the three of them would run off to Mexico together and be a family. He convinced Michael that he was not just a key part of the plan, but a part of Roy's new life. Witnesses describe Roy as glued to Michael. Inmate witnesses observed the troubling power dynamic between Roy and Michael.

Michael described Roy as his only friend, his "bro", his best friend after his release. Roy had instructed Michael to connect with his girlfriend, Tracie Bullington, who he was also grooming. Roy artfully developed his relationship with Tracie over several months to most meaningfully use her to his benefit. Tracie explained the effect Roy had on her.

Roy treated me like I was somebody. Looking back on everything that happened I think I, too, was vulnerable like Michael Tisius. Roy got me to trust him, share my secrets with him. He got me to open up and tell him about my marriage and about Tony. Then he used my weaknesses against me. Whatever had hurt me in the past – he became the opposite. Roy learned where I was weak and he got in there. He gave me exactly what I was looking for. He treated me like an equal. He knew how bad the physical abuse in my past relationship hurt me. He promised he would never put his hands on me. He was a very good manipulator. He promised me that we would be happy together. He said he wanted to stop using drugs. He wanted a better life. I believed everything he told me. I thought we would be together forever and everything was going to work out.

When Roy and Tracie met she was also at a low point in her life. A confluence of factors made her particularly vulnerable to manipulation. He wrote to her on June 10, 2000.

I feel like I can tell you anything well I'm scared for probably the first time in my entire life. You mean the world to me and I'm scared of losing you ... I also can't help worrying about you and I know you tell me not to but it just isn't possible ... I just wish all this shit was over with and we were back in each others arms again. I can tell you thought that if anything happens to you while I'm here I'll have to do a life sentence ... you mean more to me than I thought humanly possible and there's feelings you've brought out in me that I didn't know existed.

In the same letter Roy told Tracie he missed hearing her voice and directed her to set up a phone line at her friend Heather Douglas' under a fake name. He closed by saying "I just know I'm tired

of waiting and tired of being away from you and its time for us to be together again. You can still give this letter to them and try shit the easy way but if it doesn't work then we'll do shit the hard way." Roy wrote her the following day and asked her to pick up several things for him including a care package and loose tobacco.

While Roy was formulating his plan to escape, he manipulated Michael and Tracie, and he tried to manipulate Karl Bartholomew. Law enforcement obtained a letter Roy wrote to Karl was obtained and states the following:

Karl, I know what Tracie is talking to you about sounds crazy but if done right it could be really simple with at least an hour or two to get away. There's no button for help and the cameras don't record anything so they wouldn't even have a clue who did it. Under normal circumstances I would never ask but we're family me, you, and Tracie and need to be together as one. There isn't any of them that work here with enough heart to play hero as long as it's done right. I hate to even ask but it isn't anything that I wouldn't do for you and Carl with your situation with Betty they wouldn't give you any warning. You'd just be arrested and never see daylight again. Why let that happen when we could all be together. Think about it and if you decide to Tracie will explain the lay out. Love ya my brother, Roy. P.S. Keep your head up and your heart strong.

Tracie explained that Roy sought assistance from Karl because he feared Michael couldn't pull off the escape attempt.

As instructed by Roy, Michael contacted Tracie and asked for her assistance in returning to the Huntsville area. Tracie had also been instructed by Roy and was waiting to hear from Michael. Tracie wasn't able to come to St. Louis to pick up Michael as he had hoped. Michael scrambled and ultimately convinced his mother to drive him to a Quik Trip in Columbia, Missouri to meet her. Michael stayed with Tracie until the crime took place on June 22, 2000. Tracie provided Michael with somewhere to live, transportation, food, drugs and alcohol. Michael repeatedly passed out from intoxication. Tracie recalls that Roy gave her explicit instructions, "I was not to let Mike out of my sight." During the week leading up to the crime, Michael talked endlessly about how great Roy was, how Roy was his best friend, how much he loved Roy. He talked every day about how much he missed Roy and how excited he was to see him.

During the time that Michael was with Tracie prior to the incident, he was described as drinking alcohol, using drugs and acting erratically. Tracie described on the evenings of June 18th and June 19th Michael got drunk at Karl Bartholomew's house. On both occasions, he drank to the point of slurred speech, staggered walking, inability to walk and vomiting. Tracie explained that he "puked all over everything" and passed out in a recliner. On June 19th Tracie purchased a quarter ounce of marijuana and Mike smoked marijuana with Heather Douglas. Tracie also reported that Michael smoked marijuana on the afternoon of June 21st with Chuck Jones. Tracie recalled there was one day in which Mike isolated himself in Heather Douglas' trailer nearly the entire day. It was a warm June day and everyone else congregated outside to get fresh air and sit in the shade.

Michael's behavior on the night of the crime was strange and out of character. Witnesses report both that he was withdrawn, out-of-it, agitated and unable to calm down. Lisa Esry, who knew

Michael well, described him as shaky and jittery. Heather Gabelman described Michael's eyes as dilated. She goes on to say, "He was "jittery. He was jumpy. He just – he was moving real fast and he just seemed real nervous". Ms. Gabelman explained she spoke to him for 30 minutes that night during which time he never sat down or stopped walking around. Tracie explains his behavior on the way to the jail.

Earlier that night he was almost in a trance-like state. He just sat there very still. He was acting real withdrawn. While we were driving he was out of it – kind of depressed. He was detached. He had his hands pressed together and his eyes were closed. It almost looked like he was going to cry. I never saw him like that before. He was in that state the whole way up to Huntsville while I drove the car.

At 12:15 a.m. on June 22, Michael and Tracie returned to the Randolph County Jail, rang the doorbell and were admitted. Michael carried the pistol in his pants. Michael and Tracie told the officers they were delivering cigarettes to Roy. The two officers present were Leon Egley and Jason Acton. Michael and Acton made small talk for about ten minutes. Michael shot Officer Acton from a distance of two to four feet, killing him instantly. When Officer Egley began to approach Michael, Michael shot him. Both officers were unarmed.

Michael then took some keys from the dispatch area and went to Roy's cell. Inmate witnesses describe Michael fumbling with the keys, dropping them, being unable to place them in the lock.

Michael and Tracie fled in her car. Tracie described Michael was "freaking out". He was flinging the loaded gun around, rubbing his face and talking a lot. Tracie said much of what he said didn't make sense. Tracie threw the pistol from the car window while crossing a bridge on Highway 36. After the two passed through St. Joseph and crossed the Kansas state line, Tracie's car broke down.

After Michael and Tracie abandoned the car they walked and talked. Mike repeatedly told Tracie he was sorry. "Mike just kept saying he was sorry. He just kept saying, "Forgive me, Roy. I'm sorry. I fucked up. He was talking to me, he was talking to himself, and he just kept saying, 'Forgive me, Roy. I fucked up. Don't hate me. I tried.'" His repetition demonstrates the perseveration captured in his neuropsychological testing and social history. Tracie explained this went on until Michael saw a cop drive by and "he kind of freaked out" at which time she was able to get him to sit and calm down." Tracie said Michael "just kept rocking back and forth". She noted, "Thinking back on it, I wish I would have had some duct tape. That's a couple of hour ride listening to "I'm sorry" over and over and over again."

After dusk in the parking lot of a Pizza Hut in Wathena, Kansas, Michael and Tracie were apprehended without incident. Michael gave his name to the police and said, "I think I did something bad last night." Tracie's car and the gun were recovered later that day. After having waived his Miranda rights, Michael gave an oral and written confession to the murders.

When Michael was interrogated by Sergeant Platte and Trooper D.A. Hall on the morning of June 22, 2000, he told them, "I'm going to be completely honest." Michael told them he could

remember everything leading up to when he and Tracie entered the jail, and everything afterwards, but could not remember the ten minutes in between. This dissociative amnesia was also consistent with the affective dysregulation of the shooting, unplanned and hyperreactive. Platte told Michael it would not be possible to have forgotten. Platte told Michael to back up in time because that would assist in un-clouding his memory. Michael did so and reported that when he handed the cigarettes to the jailer, the jailer wrote Roy's name on the package. Michael reported, "I finally pulled [the gun] out, I tried to say something but I couldn't. I looked at Tracie and hoped she would stop me, but she didn't. it still seems like a dream."

Platte asked Michael if he felt bad about what he'd done. Michael replied, "Yes." He went on to say, "I remember the split second the trigger was pulled. I wasn't even aiming. It was pointed at Jason." Platte noted that Michael didn't want to pull the trigger, and everything seemed fake, like a dream. Michael added, "I just started shooting." Platte asked him why, Michael responded, "I don't know why. I don't know why I did it. I know why I went in there. I didn't tell them to do nothing." Asked what Tracie was doing at this time, Michael replied, "She was acting like she wasn't going to stop me. I wanted her to stop me."

Neuropsychiatric Mental Status

A. General Description

1. *General appearance, dress, sensory aids (glasses, hearing aid)*

Mr. Tisius was dressed in prison garb. He did not have a hearing aid and did not wear glasses. He was short in stature and noted he had gained 30lbs while incarcerated.

2. *Level of consciousness and arousal*

His level of consciousness was good. There was no evidence of delirium. However, occasionally Mr. Tisius would not answer a question. I would ask it again, and he appeared to be day dreaming. He would return to consciousness and not recall the question. He stated this phenomenon of "spacing out" was life long, occurred several times per week and more frequently when he was under stress. It is consistent with absence seizure activity.

3. *Attention to environment*

He was easily distractible.

4. *Posture (standing and seated)*

Posture was good while standing. I could not observe him walking.

5. *Gait*

I was not able to evaluate his gait. Mr. Tisius was sitting when I entered the room. I could not observe him walking, nor could I do single-foot and tandem walking examinations.

6. *General demeanor* (including evidence of responses to internal stimuli)

Mr. Tisius was anxious. There was no evidence of him responding to internal stimuli.

7. *Response to examiner* (eye contact, cooperation, ability to focus on interview process)

Mr. Tisius was cooperative. He was able to focus on the interview process; however, as noted above, he had occasional momentary lapses in responsiveness. He was able to return to consciousness, but miss the question I had asked.

8. *Native or primary language*: English

B. Language and Speech

1. *Comprehension* (words, sentences, simple and complex commands, and concepts)

His comprehension is impaired by difficulty with understanding complex language. He noted at times he could hear a person speaking, but he could not make out the words. For example, if he were talking with his wife, he might miss some of her words, but he would "get the gist" of the conversation. On testing of single word reception, he performed satisfactorily. Mr. Tisius acknowledged he often compensated when he did not understand. For example, he would tell his wife he had his headphones on and did not hear her clearly. At other times, he would "get the gist" of the conversation, yet not understand each word articulately. It is important to note he was described as having hearing problems as a child, consistent with both absence seizures and receptive language difficulties.

2. *Output* (spontaneity, rate, fluency, melody or prosody, volume, coherence, vocabulary, paraphasic errors, complexity of usage)

His language was spontaneous. It was normal in volume and there were no paraphasic errors. His language was simple.

3. *Repetition*

Mr. Tisius is perseverative. He has multiple signs of motor override, such as a stutter. On the Luria 3 Step Test, he could not stop even when he was not able to perform the task correctly, which will be discussed further below.

C. Thought

1. *Form* (coherence and connectedness)

His thought processes were tangential. He did not display flight of ideas or loose associations.

2. *Content*

Thought content was paranoid, but not delusional.

D. Mood and Affect

1. *Internal mood state* (spontaneous and elicited; sense of humor)

Mr. Tisius was depressed. His sense of humor was self-deprecating. He was negativistic and had extraordinarily poor self-esteem.

2. *Future outlook*

He is realistic about his future.

3. *Suicidal ideas and plans*

Although he has been chronically suicidal in the past, he denies current suicidal ideation. He states that his relationship with his wife has impacted his suicidal ideation significantly.

4. *Demonstrated emotional status* (congruence with mood)

Mr. Tisius' mood was consistent with his affective presentation.

E. Insight and Judgment

1. *Insight*

Insight is limited. Mr. Tisius' insight is undermined by his poor understanding of social cues and context. For example, he acknowledged it took him years to realize Vance was grooming him, even after the offense. He described Mr. Vance asking him to sign the declaration stating that Mr. Vance knew nothing of the offense, which records document was completely inaccurate. It was only after he had signed the declaration that Mr. Tisius began to have insight into being groomed by Mr. Vance.

a. *Ability to describe personal psychological and physical status*

Mr. Tisius had difficulty describing his personal psychological status. His ability to describe himself personally is impaired by his extremely poor self-esteem, which was not developed by his parents, specifically his mother. It was also compromised by the beating he received from his brother as a child. He has a better aptitude for describing his physical health.

2. *Judgment*

Mr. Tisius' judgment is defective. His insight limits his ability to accurately judge social circumstances and cues.

F. Cognition

1. *Memory*

Recent memory is satisfactory. However, Mr. Tisius' working memory was defective, and his delayed memory was significantly impaired. Delayed memory on certain memory tests administered by Dr. Watson was in the 4th percentile. On other memory tasks, Mr. Tisius was 3.5 standard deviations below the mean. Although he is able to hold memories in his mind for a short time, he is unable to recall facts and tasks he has heard several minutes to hours previously.

2. *Visuospatial skills*

Visuospatial skills were intact, most likely secondary to long standing hypergraphia. His obsessive drawing creates a practice effect, eliminating an ability to accurately examine his visuospatial skills.

3. "Executive functions"

Executive functions are those cognitive skills that allow reflection, insight, effectively weigh and deliberate, understand social cues and context, and sequence. Mr. Tisius was interviewed utilizing the Barkley Deficits in Executive Function Scale (BDEFS). Mr. Tisius demonstrated impairments in each domain, self-regulation, time management/problem solving.

Neuropsychological and Personality Testing

Dale Watson, Ph.D., administered a series of neuropsychological, effort, perceptual, intellectual, and trauma assessments to Mr. Tisius, over a 14.5 hour period. Dr. Watson commented on the significant disparity between Mr. Tisius' strengths and deficits, a disparity which appeared to, undermines Mr. Tisius in real world situations.

Mr. Tisius had strengths in word knowledge and his capacity to recall semantic information and knowledge commonly acquired during one's education (*Vocabulary SS = 13; Information SS = 12*). Conversely, he struggled to use language abstractly and had significant limitations in his ability to grasp and explain commonly understood social contexts (*Similarities SS = 5; Comprehension SS = 5*). These discrepancies suggest strengths in his acquisition of discrete bits of knowledge but deficits in his capacity to actually think and problem solve using verbal fluid reasoning skills (*Verbal Fluid Reasoning Index = 76; 5th %ile*).

Mr. Tisius' ability to sound good is compromised by his inability to grasp social contexts and use context to problem solve. His fluid reasoning skills, at the 5th%ile, demonstrate difficulty thinking through problems especially in new, novel, and stressful circumstances.

Mr. Tisius' delayed recall ability for visual memory is impaired. Although he does reasonably well on recall of verbal material, his ability to recall visual material is significantly defective. Visual memory delay is a function of the frontal striatal relationship, focusing on parts of the brain where memory is stored for recall. This deficit of delayed recall was replicated on the California Verbal Learning Test and Auditory Verbal Learning, showing real deficits in Mr. Tisius' ability to maintain memory, implicating problems with his limbic system, those parts of the brain that monitor emotional reactivity.

Mr. Tisius has perseverative motor and language movements, meaning he gets stuck repeating the same behavior or language over and over. These perseverative movements indicate neurological deficits in planning and organization.

There were also cognitive manifestations of this loss of control of motor planning. For example, on the CVLT-II, his recall of words was marked by numerous within-trial repetitions of words that he had previously given (*Total Repetitions = 18 (raw); 90th; 99th %ile*). Moreover, this was not an isolated finding but also manifested on an executive function measure that required him to generate designs by connecting four lines within one minute, the D-KEFS Design Fluency Test. Despite having a relatively intact performance, he made numerous design repetitions (drawing the same designs over and over (*Total Repeated Designs = 30 / 2nd %ile; Percent Design Accuracy = 23 / 0.4 %ile*). As an example, on the second trial, he accurately drew seven different designs but inertly repeated ten designs. (Watson report, p. 17)

Additionally, Mr. Tisius demonstrated intrusions in memory tests, adding wrong members to correct categories. His testing demonstrated multiple areas of impaired functioning surrounded

by adequate brain function, creating vulnerabilities in his overall brain function when under stressful conditions.

As an example of his difficulties in this arena, his performance on the CVLT-II is noted. Mr. Tisius, on recognition recall, had marked difficulties identifying words he had heard from those that were on a distractor list or were prototypical representatives of a category. For example, he indicated that he recalled the words “carrot,” “car,” and “elephant” when they were not on the list but exemplars of the categories of vegetables, ways of traveling, and animals – which were represented on the recall list. Mr. Tisius’ d' prime statistic on this test was 3 ½ standard deviations below the mean suggesting severe problems in source memory that is likely to lead to confusion when trying to remember (*Total Recognition Discriminability* (d') = 15t / 0.02 %ile; *Source Recognition Discriminability* (d') = 15t / 0.02 %ile; *Semantic Recognition Discriminability* (d') = 15t / 0.02 %ile; cf *Unrelated words* = 0). Bortz et al. (2005) indicated that “Scores on the CVLT discriminability index (which reflects signal vs. noise discrimination on the recognition task), measures of proactive interference, and semantic clustering indices of the CVLT may help identify patients with dysfunction of the frontal systems.” (Watson report, p. 18)

Dr. Watson’s summary of Mr. Tisius’ neuropsychological testing points out strengths, such as reading, visuospatial fields, which is most likely secondary to his artistic endeavors, and working memory. Yet, his significant deficits, perseveration, auditory understanding, impaired delayed memory, limitations in problem solving skills, and poor comprehension of social cues and contexts, undermine Mr. Tisius’ skills, rendering them vulnerable to falling apart under stress. At the time of the offense, when a plan falls completely apart, Mr. Tisius is unable to recall much of the event.

Dr. Watson also found Mr. Tisius impaired in his ability to discriminate language when he had to divide his attention. Mr. Tisius described this in my interview, he stated he had difficulty following language effectively, although he could, at times, “get the gist of the conversation.”

On additional auditory processing tasks Mr. Tisius also had difficulty discriminating words when he was required to divide his attention. On the Dichotic Word Listening Test (DWLT) his performance was mildly to moderately impaired (*Left Ear* = 31t / *Mildly to Moderately Impaired*; *Right Ear* = 34t / *Mildly to Moderately Impaired*; *Both* = 25t / *Moderately Impaired*). This task required him to repeat competing words presented simultaneously through stereo headphones. An identical difficulty was seen on a similar task as well (*SCAN-3 for Adolescents & Adults Competing Words Directed Ear SS* = 5 / 5th %ile). (Watson report, p. 19)

Dr. Watson performed additional testing of trauma symptoms and attachment style. Mr. Tisius has a significant history of trauma, as outlined by Dr. Love. The Trauma Symptom Inventory-2 also specifically spoke to Mr. Tisius’ tremendous potential for influence from others.

Disturbed or altered perception of self and others (i.e., distorted relational schema), with a relative inability to access a stable, internal sense of self or identify from which to interact with the external world. This combination of difficulties may lead to ambivalent, insecure and often problematic interactions with others, a tendency to rely on other people for

information about self, and a **greater susceptibility to influence by others** (emphasis added). (Briere, 2011)

Dr. Watson's neuropsychological testing corroborates the frontal-temporal-striatal deficits that characterized Mr. Tisius' cognitive deficits. Like a toxic stream running through relatively healthy land, Mr. Tisius' frontal temporal striatal poisons much of his healthy cognitive functioning, rendering it vulnerable to impaired functioning, especially in new, novel, and stressful circumstance.

Russell Barkley, one of the foremost experts in attentional problems and executive functioning, developed the Barkley Deficits in Executive Functioning Scale, a well-normed, self-reporting interview designed to examine executive functioning deficits. He discussed executive functioning as neurological deficits in three areas of the brain.

The frontal-striatal circuit: Associated with deficits in response suppression, freedom from distraction, working memory, organization, and planning, known as the "cool" or "what" EF network.

The frontal-cerebellar circuit: Associated with motor coordination deficits, and problems with the timing and timeliness of behavior, known as the "when" EF network.

The frontal-limbic circuit: Associated with symptoms of emotional dyscontrol, motivation deficits, hyperactivity, impulsivity, and proneness to aggression, known as the "hot" or "why" EF network. (Barkley, 2011)

Dr. Barkley recognizes the inherent difficulties of neuropsychological testing of these neurological circuits, especially as it relates to ecological validity, real world functioning. He notes three potential difficulties in determining executive functioning solely from current neuropsychological testing. Tests are often unreliable and poorly normed. They lack ecological validity and they do not correlate with executive functioning rating scales or observations. Finally, they do not predict impairments in major domains of life where executive functioning is essential. (Barkley, 2011)

Dr. Watson has identified Mr. Tisius' deficits in the frontal-temporal-striatal circuits, with difficulty in distraction, memory, organization and planning, especially in new, novel, and stressful circumstances. I administered the Barkley Deficits in Executive Functioning Scale to Mr. Tisius. The BDEFS focuses on five domains: self-management of time, self-organization/problem solving, self-restraint, self-motivation, and self-regulation. Mr. Tisius' scores ranged from the 90th percentile in self-management of time, to the 99th percentile in self organization/problem solving. The higher the score, the greater potential for impairment in real world functioning. These deficits in ecologically valid, day to day functioning are corroborated throughout Mr. Tisius' social history, in spite of average academic functioning, capturing the important difference between academic functioning and brain functioning.

Mr. Tisius demonstrated multiple frontal lobe deficits as well, including microsomia, or impaired smell function. Olfactory dysfunction may also be found in frontal lobe deficits.

The Luria 3 step task was performed by Dr. Watson and I also administered this frontal lobe task. The test is designed to evaluate sequencing ability and memory ability to follow 3 step instructions. As Dr. Watson noted, Mr. Tisius performed poorly with his right hand. Mr. Tisius performed poorly in my administration, again demonstrating poor frontal lobe function. He was able to perform satisfactorily in the Category Test, demonstrating cognitive skills that could not translate into real world executive functioning.

Personality Testing

Dr. Peterson administered personality testing to Mr. Tisius. He administered the MMPI-2 on two occasions, and the Personality Assessment Inventory.

The initial MMPI-2 showed significant psychiatric distress, and the question of malingering versus a cry for help was raised. It is noted in the MMPI, under profile validity that "Clinical patients with this profile are often confused, distractible, and have memory problems." (MMPI-2, 7/24/2003, p. 3) This MMPI-2 findings support Mr. Tisius' social history and Dr. Watson's neuropsychological findings, as well as my finds in the Barkley when it describes Mr. Tisius' interpersonal style...the passive, unassertive personality style that underlies this disorder style might be a focus of behavior change.

He appears to be quite passive and dependent in interpersonal relationships, and does not speak up for himself, even when others take advantage of him. He avoids confrontation and seeks nurturance from others, often at the cost of his own independence. He forms deep emotional attachments and seem to be quite vulnerable to being hurt. (MMPI-2, 7/24/2003, p. 4)

Anxiety Disorders and Dependent Personality Disorders are diagnostic considerations for this MMPI-2. Post traumatic stress disorder was covered under anxiety disorders at the time he took the test.

Personality Assessment Inventory on 5/29/2003

The PAI, which has a much more sophisticated approach to looking at questions of dissimulation (over and underreporting), determined Mr. Tisius' responses did not reflect malingering. However, the PAI also found him specifically with significant trauma and cognitive deficits. Results also commented on his significant dependency needs.

Profile patterns of this type are usually associated with marked distress and severe impairment in functioning...He is likely to be plagued by worry to the degree that his ability to concentrate and attend is compromised...while the Item content of the PAI does not address specific cause of traumatic stress, possible traumatic events involve victimization...He may have limited social skills, with particular difficulty in determining the normal nuances to interpersonal behavior that provide the meaning to personal relationships. (PAI, 5/29/03 p. 5-6)

MMPI on 10/11/2012

Mr. Tisius' second MMPI-2 is consistent the clinical literature supporting the MMPI as a state test rather than a trait test. This means the MMPI captures the current mental state rather than a long term picture. Mr. Tisius' profile captures his inadequacy: "individuals with passive, unasserting lifestyle are often unable to assert themselves appropriately and are frequently taken advantage of by others." (MMPI-2 10/15/2012, p.6)

PAI 8/3/2012

The 2012 PAI reflects concerns about atypical symptoms which are seen as part of Mr. Tisius' social history. He continues to have significant anxiety and poor social adjustment.

Clinical Formulation

Mr. Tisius' mental diseases and defects have affected every part of his life, including his mental state at the time of the offenses in the present case.

Mr. Tisius suffers from temporal lobe disease on both sides of his brain. It appears as though his temporal lobe dysfunction is long-standing with obsessionalism, gullibility, a deepening of affective responses, language-related disorders, and academic impairment, especially in math.

Mr. Tisius demonstrates cognitive deficits more global than his temporal lobe dysfunction. According to neuropsychological examination and social history, he has deficits in frontal and striatal functioning. His striatal deficits, as Dr. Watson discusses, connect those parts of his cortex to deeper parts of his brain, linked to his memory impairment. These deficits impair his ability to adequately weigh and deliberate, sequence his thinking and actions, and understand as well as respond to social cues. He is also vulnerable to both amnesic periods as well as dissociative episodes, periods when his perceptions of reality are altered or lost completely to memory. This vulnerability in him is neurologically mediated, due to his brain impairment, and environmentally induced, due to his chronic Post Traumatic Disorder and his absence seizures.

Post Traumatic Stress Disorder

Mr. Tisius also suffered profound, chronic trauma through his childhood. His cognitive impairments created several of the causative stressors for his post traumatic stress disorder and contributed significantly to his development of inadequate and destructive coping mechanisms.

Although there was some exploration of Mr. Tisius' traumatic history at the time of trial, the social history substantiating his trauma was poorly addressed, and the impact of that trauma was underestimated and incompletely presented. Mr. Tisius' cognitive deficits were never discussed. More importantly, the relationship between Mr. Tisius brain impairment and trauma and their impact on his poor decision making before, during, and after the offense was not explained,

Furthermore, his multiple impairments impacted his ability to conform his behavior to the law at the time of the offense.

Much of the foundation of Mr. Tisius' tribulations rest on his cognitive deficits, especially what appears to be his frontotemporoatrial deficits. The impairments of Mr. Tisius' brain created a greater vulnerability to trauma. His neurologically-derived difficulties, weighing and deliberating, understanding context, making decisions, and understanding the nuanced behavior of others who are trying to manipulate him are the bases for much of the trauma he has suffered. The multiple types of trauma he has undergone are consistent with chronic trauma, not the single episode trauma simplistically described in the Diagnostic and Statistical Manuals.

The role of parents in the modulation of stress is paramount in a child's life. Mr. Tisius' parents' roles, especially his mother's role, heightened his response to his trauma rather than modulating it. Parents model appropriate responses to various stressors for children, so the child will be able to respond directly and in a manner that fits the degree of stress presented.

Although both adults and children may respond to a traumatic event with generalized hyperarousal, attentional difficulties, problems with stimulus discrimination, inability to self-regulate, and dissociative processes, these problems have very different effects on young children than they do on mature adults. For example, Pittman (1995) showed that people who developed PTSD secondary to child abuse had more profound physiological dysregulation in response to nontraumatic stimuli than people who developed PTSD as adults. In addition, interpersonal traumas are likely to have more profound effects than personal ones ... Particularly early in life, the social context plays a critical role in buffering an individual against stressful situations, and in building the psychological and biological capacities to deal with further stresses. The primary function of parents can be thought of as helping children modulate their arousal by attuned and well-timed provision of playing, feeding, comforting, touching, looking, cleaning, resting-in short, by teaching them skills that will gradually help them modulate their own arousal... In children who have been exposed to severe stressors, the quality of the parental bond is probably the single most important determinant of long-term damage. (Van Der Kolk, 1996)

These buffering qualities, such as playing and comforting, were absent in Mr. Tisius' home and life, replaced by ongoing terror of the beatings by his brother and the neglect of his mother. Michael Tisius' brain dysfunction was the substrate upon which his documented history of severe, chronic, and life altering trauma was layered.

His brain dysfunction was not presented at trial. Neither was the impact on his ability to effectively weigh and deliberate crucial decisions or his high potential for dissociative experiences at his greatest time of stress. and the need for an understanding in working with clients with brain

impairment and trauma, an understanding his attorneys could not have developed without this specific knowledge, were all missing from the defense teams' presentation to the trier of fact.

Frontotemporal striatal dysfunction

Temporal Lobe dysfunction, alternately called temporal lobe epilepsy, was described by Norman Geschwind, MD (1926-1984). A brilliant clinician and academician, Dr. Geschwind identified cardinal symptoms caused by electrical problems in the temporal lobes, those parts of the brain most central to brain functioning.

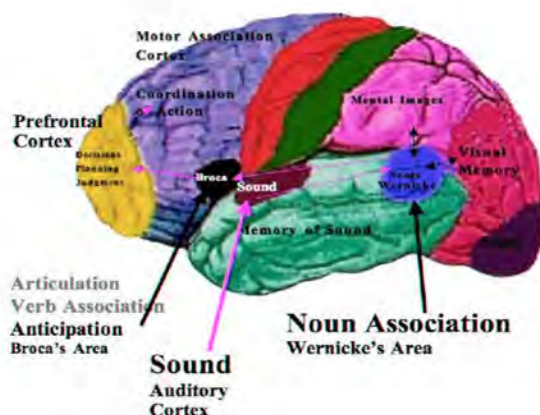
Below is an illustration of the mesial (middle) temporal lobe and the limbic system, which allows one to see how close the temporal lobes are to adjacent brain structures



The corpus callosum, the connection between the right and left hemispheres of the brain, is the thick, lighter area shown. Other structures shown are part of the limbic system, the fear, emotional recall, and initial memory circuits of the brain. Below is an illustration of this system, nestled inside the brain and abutting the mesial temporal lobe, but also connecting to the frontal, parietal, and occipital lobes, and beyond.

Dr. Geschwind understood that abnormal brain electrical activity could also manifest in behavior, rather than motor activity. He predicted that more sensitive electrophysiological techniques would identify many patients with behavioral changes who never had clinical seizures.

There are other types of defective electrical activity that occur in the brain without motor activity. Aberrant electrical activity in Broca's area, in the left side of the brain, results in difficulty understanding language or speaking for short periods of time, and may mimic day dreaming. Typically, there is no motor component to these seizures.



(CNS Forum Images 2011)

In addition to frontal lobe dysfunction, Mr. Tisius has deficits in his executive functioning. Michael Tisius' executive functioning, mediated by his frontotemporal lobes, is significantly impaired.

Dependent Personality Disorder

Mr. Tisius demonstrates symptoms of dependent personality disorder. Roy Vance's grooming, the offense itself, and subsequent belief in Mr. Vance's lack of culpability are all indicative of a pathological lack of self-esteem, a combination of the extreme trauma he suffered from as a child and adolescent and his cognitive deficits. Mr. Tisius believe that in his relationship with Mr. Vance he had finally found someone who would finally care for him, similarly to various women he encountered in his childhood who he wanted to call "Mom".

His perception was flawed. His impaired self-esteem had, not just at the time of the offense, but for his entire life, undermined his ability to be independent. The offense was not the first time he had been vulnerable to the pressures of others. His mother had scammed him. His brother beat him, abused him, and scammed him. Roy Vance scammed him. Mr. Tisius did not understand the degree to which he had been used for years. This is consistent with the significant pathology of a personality disorder.

DSM-5 characterized a Dependent Personality Disorder with the following characteristics:

1. Has difficulty making everyday decisions without an excessive amount of advice and reassurance from others.
2. Needs others to assume responsibility for most major areas of his or her life.
3. Has difficulty expressing disagreement with others because of fear of loss of support or approval. (Note: Do not include realistic fears of retribution.)
4. Has difficulty initiating projects or doing things on his or her own (because of a lack of self-confidence in judgment or abilities rather than a lack of motivation or energy).
5. Goes to excessive lengths to obtain nurturance and support from others, to the point of volunteering to do things that are unpleasant.

6. Feels uncomfortable or helpless when alone because of exaggerated fears of being unable to care for himself or herself.
7. Urgently seeks another relationship as a source of care and support when a close re-relationship ends.
8. Is unrealistically preoccupied with fears of being left to take care of himself or herself.

Michael was nineteen at the time of the offense. He was homeless. He had not completed his education or tried to get a G.E. D. He held few jobs, moved from living space to living space with no possibility of living independently. When he went to jail, he considered having three meals in jail a benefit over the life he had been living.

Tracie Bullington took over feeding and providing shelter for Mr. Tisius. There is no indication he was capable of doing so himself. He had demonstrated difficulty initiating project or doing things on his own due to a lack of self-esteem. Volunteering to break someone out of jail was completely out of character with his past minor offenses. It is an example of how his cognitive deficits resulted in extremely poor judgment.

Mr. Tisius meets the criteria for Dependent Personality Disorder. Due to his core symptoms of isolation, behavioral inhibition, and avoidance, he was cognitive and emotionally vulnerable to the grooming and exploitation by Roy Vance.

Forensic Conclusion

1. Does Mr. Tisius suffer from a mental disease and/or defect?

It is my professional opinion which I hold to a reasonable degree of neuropsychiatric certainty that Mr. Tisius suffers from post traumatic stress disorder, frontotemporalstriatal dysfunction and dependent personality disorder.

Post Traumatic Stress Disorder. Mr. Tisius experienced significant trauma and neglect as a child. His core symptoms, avoidance and behavioral inhibition are well-documented in elementary school and throughout his adolescence. Multiple personality tests documented his longstanding symptoms of anxiety, extremely poor self-esteem, vulnerability, poor social skills, and depression, which is consistent with the sequelae of post traumatic stress disorder.

Frontotemporalstriatal Dysfunction. Mr. Tisius' brain does not work effectively. He has manifestations of frontal lobe dysfunction, including microsomia (poor smell). He displayed motor problems on the Luria Three Step Test. He also had elevated scores on the Barkley Deficits in Executive Functioning Scale indicating executive dysfunction. His impairments in delayed memory are consistent with mid-temporal lobe deficits. Mr. Tisius has difficulty understanding spoken language presented in rapid succession, although he is able to understand words presented to him singly efficiently. He described attempting to get the "gist" of the conversation, rather than truly understanding what is being said. It also

appears that Mr. Tisius may have temporal lobe deficits consistent with absence seizure activity, which means short periods of loss of consciousness. Absence seizure activity is often mistaken for a lack of attention, focus, or day-dreaming. These temporal lobe phenomena are most often caused by mid-temporal lobe dysfunction or sclerosis.

Dependent Personality Disorder. Mr. Tisius exhibits extreme vulnerability and suggestibility. Both are corroborated by his social history and personality testing. Mr. Tisius' cognitive impairments, difficulty with understanding complex language, poor executive functioning, "getting stuck" mentally, and executive function deficits lead to a vulnerability to rely upon others. This is exacerbated by his complex trauma history, where no one helped him develop coping mechanisms as a child and undermined his independence. Mr. Tisius has an increased vulnerability to being groomed, which was observed throughout his life. It is evident in his relationship with his mother, who used him as a pawn for her own personal gain, and his brother, who used him to engage in criminal behaviors for his brother's profit. Grooming is the linchpin behavior in the offenses for which he is currently sentenced to death. As noted by the MMPI-2, "individuals with passive, unasserting lifestyle are often unable to assert themselves appropriately and are frequently taken advantage of by others." (MMPI-2, 10/11/2012).

Each of these symptom complexes existed long before the offense for which Mr. Tisius is currently facing the death penalty.

2. Did Mr. Tisius suffer from a mental disease and/or defect at the time of the offense?

Yes, Mr. Tisius suffered from each of these neuropsychological disorders, i.e., post traumatic stress disorder, frontotemporalstriatal dysfunction, and dependent personality disorder, at the time of the offense. His cognitive and emotional symptoms are evident in his behaviors before and during the offense.

Mr. Tisius' traumatic symptoms, particularly dissociation, were present at the time of the offense. Ms. Bulington described Mr. Tisius as trance-like prior to the offense. Mr. Vance's plan called for him to use the gun to intimidate the guards. He was supposed to corral them into a cell, so they would be unable to prevent Vance from escaping. When it was time to carry out Mr. Vance's plan, Mr. Tisius was unable to speak. He shot the gun even though it had not been part of the plan as developed by Mr. Vance. Mr. Tisius has no memory of shooting the second guard. He was unable to open the door to the cell and much of the series of events was dissociative. He described trying to speak, yet was unable to do so. He described his memories in classic dissociative terminology, as though he was in a trance or looking at a movie.

Before the offense, Mr. Vance groomed Mr. Tisius. Although he had known Mr. Vance for only a short time, Mr. Tisius saw Mr. Vance as "closer than family." He described Mr. Vance as one of the few people who paid attention to him and made him feel as though he had some worth. Mr. Tisius was unable to effectively pick up the social cues to see he was being

exploited. His lack of understanding social context is consistent with dependent personality disorder and secondary to executive dysfunction, especially his inability to effectively weigh and deliberate in new, novel, and stressful circumstances. Mr. Vance played directly to Mr. Tisius' cognitive and emotional limitations.

3. At the time of the offense, was Mr. Tisius under the influence of extreme mental or emotional disturbance?

Yes, Mr. Tisius' cognitive impairment was further exacerbated by the environmental stressors from which he was suffering. Mr. Tisius had no significant history of violence. Mr. Tisius had a sentence of 30 days. In contrast, Mr. Vance was facing 50 years. Mr. Vance groomed Ms. Bulington and Mr. Tisius to help him escape from jail. Although Mr. Tisius accepts full responsibility for his actions, the jail break was not planned by him. Mr. Tisius was homeless and penniless when he was released from jail. Mr. Vance directed Ms. Bulington to provide Mr. Tisius with a place to stay and drugs, as well as other grooming strategies. Mr. Vance recognized exactly the cognitive and emotional vulnerabilities of Mr. Tisius and exploited them.

4. At the time of the offense, did Mr. Tisius act under extreme duress or under the substantial domination of another person?

Yes. Mr. Vance befriended Mr. Tisius and groomed him to assist Mr. Vance in his escape. Mr. Vance directed Ms. Bulington to provide shelter, food, and drugs to Mr. Tisius. She also provided the weapon to Mr. Tisius. Mr. Vance developed the plan. There is a clear pattern of grooming demonstrated in the correspondence with Ms. Bulington. Mr. Vance exploited Mr. Tisius when he was at his most vulnerable.

This domination continued for years after the offense occurred. Mr. Tisius did not understand how he had been "taken" by Mr. Vance. Years later Mr. Vance approached Mr. Tisius asking him for support to the premise of Mr. Vance's habeas petition which placed the entire blame for the crime on Mr. Tisius. Even at the time of signing the declaration, he continued to believe Mr. Vance was his friend. Difficulty picking up social cues is consistent with Mr. Tisius' social history and his cognitive frontal temporal lobe dysfunction.

5. At the time of the offense, was Mr. Tisius' capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law substantially impaired?

Yes, however Mr. Tisius' capacity to conform his conduct to the requirements of the law was substantially impaired due to his difficulty picking up social cues and vulnerability to Mr. Vance's grooming. As Dr. Peterson's PAI noted, Mr. Tisius' cognitive and affective abilities were under siege, even before the offense:

Profile patterns of this type are usually associated with marked distress and severe impairment in functioningHe is likely to be plagued by worry to the degree that his ability to concentrate and attend is compromised..... while the Item content of the PAI does not address specific cause of traumatic stress, possible traumatic events involve victimization***He may have limited social skills, with particular difficulty in determining the normal nuances to interpersonal behavior that provide the meaning to personal relationships.*** (PAI on 5/29/2003, p, 5-6) (*emphasis added*).

Personality and neuropsychological testing is performed in relatively ideal conditions. One most often sees a degradation of these skills in real world activities, especially in new, novel, and stressful circumstances. (Godoy, 2003) This degradation of testing skills in the face of real world stresses is called ecological validity:

As hypothesized, inclusion of a measure of environmental cognitive demand accounted for significantly more variance in everyday executive functioning than the executive tests alone. Likewise, adding the measure of compensatory strategy use also accounted for significantly more variance than the executive measures alone. This supports the hypothesis that these variables are important to assess when trying to predict everyday executive ability. Furthermore, accounting for differences in environmental demand and compensatory strategy use improved the relationship between the executive tests and the outcome measure. When controlling for environmental cognitive demands, the executive tests were significant as a block. When controlling for compensatory strategy use, the executive tests approached significance. Thus, by controlling for the variance accounted for by these variables, the ecological validity of the group of executive tests was improved. It appears that differences in these variables can obscure the relationship between neuropsychological tests and everyday ability, as suggested by several writers. The current study provides initial evidence in support of this common belief, although more research is needed. More research is also needed to explore the mechanisms behind these relationships and which variables are most important to assess. The current study provides preliminary data to suggest that environmental cognitive demand may play a larger role than compensatory strategy use, as it provided unique variance in the prediction of everyday executive functioning. (Godefoy, 2003)

In Mr. Tisius' case, I have been able to account for environmental demand with a comprehensive social history documenting Mr. Tisius' vulnerability to grooming in other situations, his acute environmental stressors at the time of the offense, and both the personality and neuropsychological testing establishing his cognitive vulnerabilities to pathological influence.

Mr. Tisius described significant symptoms of trauma at the time of the offense. He had been groomed for weeks, yet demonstrated affective dysregulation, shooting the deputy without understanding why. He had significant dissociative amnesia, not recalling anything after the first shot. The shot itself demonstrated the hyperreactivity of trauma.

Cognitive symptoms manifested both before and after the offense. Ms. Bullington describes his "trance-like" mental state before the offense and perseveration after the

offense. Mr. Tisius' cognitive and traumatic symptoms are interwoven throughout his offense and substantially undermined his capacity to effectively reason and deliberate.

6. At the time of the offense, how did Michael's age—in combination with any mental disease or defect—affect his behavior?

Mr. Tisius was nineteen years old at the time of the offense. Neuroscientific literature documents that the normal adolescent brain is not comparable to the adult brain. The parts of the brain that are able to weigh and deliberate and to effectively pick up social cues as well as monitor judgment are not fully matured until the mid-20s. The adolescent brain is less effective picking up facial cues. Fear is often missed or mistaken for anger or confusion. (Kilgore et al., 2010)

However, those aspects of the brain that monitor fear and the imprinting of fear on behavior are operational early in life. The amygdala and hippocampus are brain structures that are fully developed at birth. These brain structures, parts of what is called the limbic system, monitor emotional responses, record those emotional responses for future use, and connect those emotional responses to other parts of the brain to be used as needed respectively. These limbic structures are exquisitely sensitive to being programmed by the behaviors and environmental impact they experience early in life. Consequently, adolescent brains are vulnerable to physical injury and chronic stressors. Adolescents tend to use the amygdala when responding to others' emotions, which results in a more reactionary, less reasoned, perception of situations than adults.

Another important difference between the adult brain and the adolescent brain is the area of emotional reactivity as compared with the areas of rational thinking that are activated in emotional circumstances. In the adult brain, the frontal lobes, areas involved in executive functioning (weighing and deliberating, sequencing, understanding social cues and context) are primarily activated in new, novel, and stressful circumstances. However, in the adolescent brain, temporal lobes and parietal lobes areas are more frequently activated in new, novel, and stressful circumstances. These areas translate input from the amygdala into emotional responses.

These differences between the normal, maturing adolescent brain and a mature adult brain are profound, as noted in recent legal findings from the United States Supreme Court on the diminished culpability of adolescents as well as the required recognition of these differences by triers of fact. Even for the normal adolescent brain, extraordinary stressors are known to impact brain functioning. The best, most recent scientific evidence corroborates that environmental stress alters brain function.

- Corticotrophin releasing factor (CRF) hypersecretion throughout life as a consequence of severe abuse in childhood and may underlie the psychopathology that follows abuse (Heim et al., 2000)

- Abuse leads to a state of chronic hyper-arousal and specific neurochemical changes which occur in the brains of abused children (Kendall-Tackett, 2000)
- The memory loss of dissociative amnesia induced by psychological stress may be the result of the toxic action of high, prolonged levels of glucocorticoids on the hippocampus (Joseph, 1999)

These states of chronic hyperarousal, which force behavioral inhibition and avoidance, and dissociative amnesia, characterize Mr. Tisius' brain and differentiate it from the normal brain. Mr. Tisius suffers from impairments in the frontal lobes. Both his olfactory dysfunction and motor problems are evidence of frontal lobes that don't work well. The Barkley results show deficits in motivation, self-monitoring, and impulsivity. Mr. Tisius also has significant deficits in delayed memory, particularly for stories.

At the time of the offense, Mr. Tisius brain deficits exacerbated those one would see in a normal adolescent brain at the time of the offense and resulted in increasingly poor adaptive functioning.

7. At the time of the offense, did Mr. Tisius' mental disease or defect affect his ability to exercise the deliberation that is a requisite element of first-degree murder?

Yes. For all of the reasons explained above, at the time of the offense, Mr. Tisius' cognitive and traumatic symptoms—in combination with his age--substantially impaired his capacity to effectively reason and deliberate and to conform his conduct to the law.

If I had been asked to testify at the time of Mr. Tisius' 2001 trial, I would have been able to identify and testify to the same findings I have made in this report. All scientific literature relied upon was available at the time of trial, except for the Barkley Deficits in Executive Function Scale; however, the understanding of executive functioning was well known within the scientific community in 2001.

Thank you for allowing me to interview Mr. Tisius.



George Woods, M.D.

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- Van Der Kolk, B. (1996) *Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society*; Guilford Press, New York, London, pp. 184-185.

Ex A: Materials

Opinions

- A. State v. Tisius, 92 S.W.3d 751 (Mo. banc 2002). [Missouri Supreme Court Opinion affirming conviction and sentence on Direct Appeal, 12/10/2002.]
- B. Tisius v. State, 183 S.W.3d 207 (Mo. banc 2006). [Missouri Supreme Court Opinion affirming Boone County Circuit Court grant of post-conviction sentencing relief, 01/10/2006.]
- C. State v. Tisius, 362 S.W.3d 398 (Mo. banc 2012). [Missouri Supreme Court Opinion affirming sentence on Direct Appeal, 03/06/2012.]
- D. Tisius v. State, 519 S.W.3d 413 (Mo. banc 2017). [Missouri Supreme Court Opinion affirming Circuit Court denial of post-conviction relief, 04/25/2017.]

Transcripts

- A. Trial Proceedings (Excluding Jury Selection) – 03/02/2001– 10/01/2001, Vol. I – IV
- B. First State Post Conviction Proceedings – 07/14/2003 – 05/24/2004, Vol I-II
- C. Resentencing Proceedings (Excluding Jury Selection) – 09/22/2008 – 09/27/2010, Vol. I-II
- D. Second State Post Conviction Proceedings, 07/16/2013-06/25/2014

Client Photos

- A. Client/Brother (Trial 2, Exhibit 1)
- B. Client, Age 4 (Trial 1, Exhibit 14)
- C. Client (Trial 1, Exhibit 15)
- D. Client, Kindergarten (Trial 1, Exhibit 16)
- E. Client, 1st Grade (Trial 1, Exhibit 17)
- F. Client, 3rd Grade (Trial 1, Exhibit 23)
- G. Client, 5th Grade (Trial 1, Exhibit 24)
- H. Client, 6th Grade (Trial 2, Exhibit 13)
- I. Client, Age 12 (Trial 1, Exhibit 27)
- J. Client (Trial 1, Exhibit 35)
- K. Client (Miscellaneous Photos)

Depositions

1. Gerald Wool, M.D. Deposition (PCR 1, Exhibit 28)
2. Florence Murphy Deposition (PCR 1, Exhibit 34)
3. Sharon Holladay Deposition (PCR 2, Exhibit 97)
4. Joan Nazzoli Deposition (PCR 1, Exhibit 21)
5. Mona Jarnagin Deposition (PCR 1, Exhibit 20)
6. Robert Smith Deposition (PCR 1, Exhibit 35)
7. Stephanie Ashley Deposition (PCR 1, Exhibit 18)
8. John Perry Deposition (PCR 1, Exhibit 23)
9. Janice Page Deposition (PCR 1, Exhibit 19)
10. Charles Martin Deposition (PCR 1, Exhibit 22)
11. Betty Mace Deposition (PCR 1, Exhibit 36)
12. Gloria Gray Deposition (PCR 1, Exhibit 37)
13. Deanna Guenther Deposition (PCR 1, Exhibit 31)
14. Lucinda Guenther Deposition (PCR 1, Exhibit 32)
15. Corey Baker Deposition (PCR 1, Exhibit 29)
16. Jamey Baker Deposition (PCR 1, Exhibit 30)
17. Donna Lee Hendricks Deposition (PCR 1, Exhibit 33)
18. Rebecca Gotheridge Deposition (PCR 1, Exhibit 41)
19. Nicole Tisius Deposition (PCR 1, Exhibit 38)
20. Donald Tisius, Jr. Deposition (PCR 1, Exhibit 39)
21. Terra Launius Deposition (PCR 1, Exhibit 40)
22. Melinda East Deposition (PCR 1, Exhibit 26)
23. Larry Best Deposition (PCR 1, Exhibit 27)
24. Lynne Silverman Deposition (PCR 1, Exhibit 25)
25. John Reichle Deposition (PCR 1, Exhibit 24)
26. Helen Riley Deposition (PCR 1, Exhibit 45)
27. James Foote Deposition (PCR 1, Exhibit 52)

Miscellaneous

1. Letters from Roy Vance to Tracie Bulington including Artwork (PCR 1, Exhibit 122)
2. Letters from Tracie Bulington to Roy Vance
3. Whisenand Report Re: 06/17/2000 Jail Visit by Tisius and Bulinger [sic] (PCR 1, Exhibit 61)
4. Whisenand Report Re: 06/18/2000 Jail Visit by Tisius and Bulinger [sic] (PCR 1, Exhibit 62)
5. 06/22/2000 Shill Report Re: 06/18/2000 Jail Visit by Tisius and Bulinger [sic] (PCR 1, Exhibit 63)
6. 06/22/2000 Voluntary Statement of Michael Tisius and Undated Letter from Roy Vance to Karl Bartholomew (PCR 1, Exhibit 79)
7. 3/6/2018 Michael Tisius' Police Statement
8. 5/5/2004 Affidavit of Michael Tisius
9. 06/22/2000 Platte Report Re: Interview of Michael Tisius (PCR 1, Exhibit 88)
10. Missouri State Highway Patrol Documents Re: Robin Russell and Handwriting Examination (PCR 1, Exhibit 83)
11. 06/27/2000 Confidential Narcotics Report Re: Evidence Seized from 1987 Mercury Cougar (PCR 1, Exhibit 58)
12. Michael Tisius' Boone County Jail – Mental Health Records (PCR 1, Exhibit 66)
13. Michael Tisius' Boone County Jail – Medical Records (PCR 1, Exhibit 65)

14. Trial Notes

Medical Experts

- A. Gerald Wood, M.D. – Deposition (PCR 1, Exhibit 28)
- B. Dr. Stephen Peterson – Stipulation and Transcript of Testimony (PCR 2, Exhibit 5), Outline of Testimony (PCR 2, Exhibit 31), Testing Materials
- C. Dr. A.E. Daniel – Stipulation and Transcript of Testimony 4/18/2001 (PCR 2, Exhibit 6)
- D. Dr. Shirley Taylor Psychological Evaluation, Testimony and Raw Data, 7/15/2001
- E. Dr. Dennis Cowan Neuropsychological Evaluation 5/20/2003
- F. Dr. Elliott Phillips Psychiatric Evaluation 6/20/1996
- G. Dr. Paula Lundberg-Love Evaluative Report 6/26/2018
- H. Dr. Dale G. Watson Neuropsychological Evaluation 6/26/2018

Medical Records

- A. Michael Tisius
 - a. 1981-01-09 The Children's Clinic Doctor's Notes 1981-02-16 St. Joseph Emergency Medical Treatment Auth
 - b. 1981-02-16 OB History Record
 - c. 1981-02-16 OB Record
 - d. 1981-02-16 Newborn physical exam record
 - e. 1981-02-16 Physician's orders newborn record
 - f. 1981-02-16 Nurses Discharge Record
 - g. 1981-02-16 Nurses Discharge Record
 - h. 1981-02-18 Birth Record
 - i. 1981-02-19 Newborn record
 - j. 1984-08-09 Medicaid Records
 - k. 1987-03-28 St. Louis History & Progress Report
 - l. 1988-0-0 Medical History Summary
 - m. 1988-09-22 Hillsboro School Nurse Report
 - n. 1990-09-13 0000-00-00 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-8
 - o. 1990-09-13 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-6
 - p. 1990-09-13 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-12
 - q. 1990-09-13 0000-00-00 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-7
 - r. 1990-09-13 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-11
 - s. 1990-09-14 Pages from MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-9
 - t. 1990-09-17 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-10
 - u. 1990-09-24 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-5
 - v. 1992-00-00 Pages from 0000-00-00 MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-4
 - w. 1992-10-12 Pages from MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-2
 - x. 1992-10-12 Pages from MedR T1 Des Peres Hospital records re MAT testicle surgery (1)-3
 - y. 1992-12-10 Doctor's Notes
 - z. 1993-04-20 Pages from MedR T1 Des Peres Hospital records re MAT testicle surgery (1)
 - aa. 1993-08-26 Hillsboro Vaccination Record for Mike

- bb. 1994-03-04 Hillsboro School Nurse Report
- cc. 1994-03-04 Hillsboro School Nurse Report
- dd. 1994-08-25 HAB Vaccination Records for Mike
- ee. 1995-0-0 HAB School Nurse Report
- ff. 1995-08-24 HAB Vaccination Record for Mike
- gg. 1995-12-07 Lab Report
- hh. 1996-02-14 Hillsboro School Nurse Report
- ii. 1996-05-10 HAB School Nurse Report
- jj. 1997-03-20 St. Mary's Patient Instruction Form
- kk. 1997-03-28 St. Mary's Ortho reports
- ll. 1997-03-28 IV Conscious Sedation Flowsheet
- mm. 1998-07-09 St. Joseph Admission Record
- nn. 1998-07-19 St. Joseph Diagnostic Imaging Reports
- oo. 1998-07-19 St. Joseph Emergency Dept Activity Limitation Slip

B. Joey Martens

- 0000-0-0 School Nurse Incident Report Re: Joey
- 1978-08-19 Hillsboro Health Info Record Mertens
- 1978-11-27 The Children's Clinic Vaccination Record for Mertens
- 1978-11-27 City of St. Louis, School Health Record Mertens
- 1988-09-15 Hillsboro School Nurse Report
- 1996-11-01 Hillsboro Incident Report

Psychological Records

- Trial 1 Exhibit 5 Handwritten Page
- Trial 1 Exhibit 7 Handwritten Page
- 1990-11-20 Revised Conner's Questionnaire-Teacher Margaret Fitzgerald
- 1992-02-06 Comtrea S.E.E. Elementary Profram Confirmation by J. Tracy Wiecking
- 1992-04-15 Comtrea Discharge Summary
- 1992-10-30 Comtrea Ltr to Patricia Tisius from Judith Rogers
- 1996-05-13 United Behavioral Systems-Initial Assessment and History
- Family Therapy Notes by Kuntz (Session 2)
- 1996-07-23 Ltr to Patricia Tisius from Diane Junge
- Family Therapy Notes by Kuntz (Session 1)
- 1996-00-00 UBS Treatment Plan/Authorization Request
- 1996-08-05 UBS Emergent/Urgent Appointment
- Family Therapy Notes by Kuntz (Session 3)
- Family Therapy Notes by Kuntz (Session 4)
- Family Therapy Notes by Kuntz (Session 5)
- 1996-00-00 UBS Treatment Plan/Authorization Request
- 1996-09-10 Ltr to UBS from Kuntz encl Treatment Plan
- 1996-09-17 Kuntz Handwritten Notes
- 1996-09-18 On-Call Report by Hoyt
- 1996-09-18 On-Call Report by Unknown
- 1996-09-18 Hospital Consultation United Behavioral Clinics
- 1996-09-18 On-Call Report by Hoyt
- 1996-09-18 On-Call Report by Unknown

1996-09-18 St. Anthony's Medical Center Eval
 1997-08-26 UBH Termination Summary
 1997-08-27 Ltr to UBH from Kuntz

Education Records

Michael Tisius

Michael Tisius' Buder Elementary School Records (PCR 2, Exhibit 25)
 Michael Tisius' Hillsboro R-3 School Records (PCR 2, Exhibit 26)
 Michael Tisius' Maplewood Richmond Heights School Records (PCR 2, Exhibit 27)
 PCR 2, Exhibit 85, Michael Tisius' Other School Records
 1986-00-00 1986-1987 SchR T1 MAT Kindergarten report card Buder elem
 1987-05-02 1987-05-02 SchR T1 MAT StL Public Schools std test scores
 1988-00-00 Hillsboro Attendance & Scholarship Record
 1988-02-19 1987-1988 SchR T1 MAT 1st Grade report card Buder elem
 1988-08-22 Hillsboro Student Info
 1988-09-20 St. Louis Public School – Mertens
 1989-01-00 Hillsboro 2nd Grade Report Card
 1990-00-00 1990 SchR T1 MAT std test scores and letter Hillsboro Elem School
 1990-00-00 Pages from 1990 SchR PCR2 MAT Hillsboro Elem std test scores original
 1990-06-05 1989-1990 SchR T1 MAT 3rd Grade report card Hillsboro R-3 Elem
 1991-00-00 1990-1991 SchR T1 MAT 4th Grade report card Hillsboro R-3 Elem
 1992-00-00 Hillsboro Mastery & Achievement Tests
 1992-00-00 Hillsboro 5th Grade Questionnaire by Michael
 1992-00-00 Hillsboro 5th Grade Writing Project
 1992-00-00 Hillsboro 5th Grade Writing Project
 1992-00-00 Hillsboro 5th Grade Report Card
 1992-00-00 Hillsboro 6th Grade Report Card
 1992-00-00 Hillsboro 6th Grade Newsletter
 1992-02-22 Hillsboro 5th Grade Collective Writing Project
 1992-03-19 Letter from Principal to Mike's parents
 1992-08-24 Hillsboro Discipline Report
 1993-00-00 SchR T1 MAT 6th grade autobiography
 1993-00-00 Hillsboro Mastery & Achievement Test 6th grade
 1993-00-00 Michael's Sixth Grade Class
 1993-00-00 Michael's Autobiography Grade
 1993-00-00 Hillsboro 6th Grade Report Card
 1993-00-00 Riverview Report Card
 1993-00-00 1993 SchR PCR2 MAT Hillsboro Middle std test scores original
 1993-03-16 Letter from Principal to Mike's parents
 1993-05-19 Letter from Principal to Mike's parents
 1993-08-26 Hillsboro Discipline Report
 1993-09-16 Hillsboro Letter from Mrs. Page
 1994-00-00 Hillsboro 7th Grade Report Card
 1994-01-20 Hillsboro Handwritten Progress Report
 1995-00-00 Hillsboro 8th Grade Report Card
 1996-00-00 Hillsboro Mastery & Achievement Test

1996-00-00 Maplewood Attendance Record
 1996-00-00 Project SLAM Overview
 1996-00-00 Hillsboro Mastery & Achievement Results 7th Grade
 1996-00-00 Hillsboro 9th Grade Report Card
 1996-04-11 Maplewood Conduct Report
 1996-06-00 Hillsboro Grade Transcript
 1996-10-04 JAMMER Student Referral Form
 1996-10-07 JAMMER Letter
 1996-10-14 Jefferson County JAMMER Truancy Program
 1996-10-14 JAMMER Info to Parents
 1996-10-15 JAMMER Mentor Report Form
 1996-10-30 Jefferson County Ltr to Mike's Mother
 1996-10-31 Hillsboro Letter from Assistant Principal
 1996-11-01 Hillsboro 9th Grade Report
 1996-11-01 Maplewood 9th Grade Report Card
 1996-11-12 Maplewood Letter from Principal
 1997-03-18 Maplewood Conduct Report
 1997-04-24 Maplewood Letter to Mike re attendance
 1998-04-28 St. Louis County Student Registration Profile

Joey Martens

1978-08-19 Hillsboro Report Card Mertens 9th Grade
 1987-00-00 Buder Report Card, Mertens
 1988-00-00 Hillsboro Attendance & Records Mertens
 1988-08-22 Hillsboro Student Info Mertens
 1989-00-00 Hillsboro Mastery & Achievement Test Mertens 7th Grade
 1993-02-15 HAB Release re Mertens
 1995-00-00 Hillsboro Mastery & Achievement Test Mertens 10th Grade

Custody Records

0000-00-00 Pages from MAT_003364-003465
 0000-00-00 CustRC PCR1 Tisius, Charles answers to interrog
 0000-00-00 Letter from Patty to Chuck
 0000-00-00 CustRC PCR1 Tisius, Chuck ltr to Lambert, Patty re med insurance 2
 0000-00-00 MAT CustRC PCR1 Lambert, Patty handwritten notes re custody child support
 0000-01-31 Letter re taxes
 0000-10-28 Attorney Contract between Shea and Patty
 1987-01-08 CustRC PCR1 Lambert, Patty ltr frm StL Co circuit court re child support
 1988-11-15 CustRC PCR1 Tisius, Chuck hearing not re child support
 1988-12-29 Court Order re child support
 1989-11-05 CustRC PCR1 Tisius, Chuck ltr to Lambert, Patty re med insurance
 1990-08-08 CustRC PCR1 Lambert, Patty food stamp job search plan
 1991-08-23 Patty's Job Search Plan
 1992-10-07 Circuit Court Chuck's petitions the court for Custody of Michael
 1992-10-07 Letter to Mike from Chuck

1992-10-14 Circuit Court Answer to Interrogatories
 1993-03-10 List of Patty's past employment
 1993-06-04 Letter from Patty to her divorce atty
 1993-08-27 Home Visit Report
 1993-09-17 Petitioner's Motion to Modify Prior Decree
 1993-09-17 Child Custody Pleadings
 1993-09-21 Letter from DSS to Patty re Mike
 1993-09-30 Letter from Patty re custody
 1993-12-07 Letter re custody
 1994-02-07 From Patty to Shea
 1994-08-18 Letter from Chuck to Mike
 1994-09-19 Letter from Patty to Charles re custody mediation

Juvenile Records

1996-05-02 Arnold Incident Record
 1996-05-02 Handwritten letter from Mike
 1996-05-21 Jefferson County Juvenile Continuation Form
 1996-05-24 Jefferson County Notice of Informal Adjustment
 1996-06-06 Hillsboro Notice of Informal Adjustment
 1996-06-21 Jefferson County Face Sheet
 1996-06-21 Hillsboro Statement of Rights

Family Services Records

1998-03-11 St. Louis County CPS Classification Screening Form
 1998-03-11 DSS FDS Incident Report
 1998-03-11 DSS Family Intervention Determination
 1998-03-11 DFS Follow up report
 1998-03-16 DSS DFS Follow up
 1998-04-11 DFS Follow up reports

Youth Services Records

0000-00-00 St. Louis County Customer Work Plan
 0000-00-00 St. Louis County Assessment Form
 0000-00-00 St. Louis County Legal Concern Form
 0000-00-00 St. Louis County Housing Concern Form
 0000-00-00 Emotional Problems
 0000-00-00 Staff Note Re: Michael
 0000-00-00 JAMMER Program Outline
 0000-00-00 Project SLAM letter
 0000-00-00 Adult Education Program Enrollment Form
 0000-00-00 YServR PCR1 MAT YIN life skills assessment
 0000-00-00 Mike Tisius Contract

0000-00-00 0000-00-00 MedR PCR1 Wool, Gerald Dr. sticky note re Fragile X (1)
 1995-11-01 JAMMER program Letter
 1996-10-14 Jefferson County Parental Interview Form
 1996-10-14 Jefferson County Juvenile Behavior Review Form
 1996-10-14 Jefferson County Hobbies and Interests Form
 1998-04-28 St. Louis County Casenotes
 1998-05-18 Youth in Need Intake Form
 1998-05-19 Youth in Need Intake Assessment Form
 1998-05-19 Youth in Need Service Contact Report
 1998-06-01 Youth in Need Initial Transition Plan
 1998-06-01 Youth in Need Meeting Notes
 1998-06-01 Youth in Need Consent Forms & Contracts
 1998-06-01 Youth in Need Release of Info Auth
 1998-06-01 Youth in Need Release of Info Auth
 1998-06-01 Youth in Need Release of Info Auth
 1998-06-01 Youth in Need Client Face Sheet
 1998-06-04 Youth in Need Meeting Notes
 1998-06-04 Youth in Need Meeting Notes
 1998-06-05 Youth in Need Meeting Notes
 1998-06-08 Youth in Need Meeting Notes
 1998-06-08 Youth in Need Counseling Session Report
 1998-06-09 St. Charles County Community College Info Form
 1998-06-11 Youth in Need Initial Transition Plan cont.
 1998-06-11 Youth in Need Meeting Notes
 1998-06-17 MO DSS Incident Report
 1998-06-22 Youth in Need First Written Warning
 1998-06-22 Youth in Need First Written Warning
 1998-06-23 Youth in Need Counseling Session Report
 1998-06-25 Center for Eye Care Exam
 1998-07-09 Youth in Need Meeting Notes
 1998-07-13 Youth In Need Meeting Notes
 1998-07-13 Youth in Need Handwritten Agreement
 1998-07-13 Youth in Need Counseling Session Report
 1998-07-14 Grace Hill Medical Visit Record
 1998-07-15 Youth in Need Written Warning
 1998-07-17 St. Louis County Change of Status Form
 1998-07-17 Dept of Human Services Customer Summary Report
 1998-07-20 Youth in Need Progress Notes
 1998-07-21 Youth in Need Disposition Form
 1998-07-22 St. Louis County Parental Approval Medical Release Form
 1999-02-02 Youth in Need Self-Evaluation Form
 1999-10-04 St. Louis County Closing Summary Report

Family History Records

- A. Family Tree
- B. Charles Lee Barnett, Sr. (Paternal Great Grandfather)
 - 1. Charles Barnett Death Certificate
 - 2. Charles Barnett Medical Examiner's Office Records
 - 3. Charles Barnett Newsclips
- C. Charles Henry Tisius (Paternal 2nd Great Grandfather)
 - 1. Charles Tisius Death Certificate
 - 2. Charles Tisius Medical Examiner's Office Records
 - 3. Charles Tisius Newsclips
- D. Walter Tisius (Paternal 3rd Great-Uncle) Newsclip
- E. Adolf Kuehl (Maternal 3rd Great-Grandfather)
 - 1. Adolph Kuehl Death Notice
 - 2. Adolph Kuehl Newsclip
- F. William F. Kuehl (Maternal 3rd Great-Uncle)
 - 1. William Kuehl Death Certificate
 - 2. William Kuehl Newsclips
- G. Charles L. Quinn (Maternal 1st Cousin, 2x Removed)
 - 1. Charles Quinn Death Certificate
 - 2. Charles Quinn Medical Examiner's Office Records
 - 3. Charles Quinn Newsclips
- H. Ralph Mertens (Maternal Great Uncle) Death Certificate

Declarations

- A. Gloria Gray
- B. Tammy Newkirk
- C. Tracie Bulington

Jail Records

- A. St. Louis County
- B. Chariton County
- C. Boone County

Prison Records

- A. MDOC Records
- B. PCR2 Exhibit 15–Michael Tisius DOC records, 2003-2010
- C. PCR2 Exhibit 16–Michael Tisius DOC Property Records
- D. PCR2 Exhibit 17–Michael Tisius DOC Medical Records 2001-2012, Part 1 of 4
- E. PCR2 Exhibit 17–Michael Tisius DOC Medical Records 2001-2012, Part 2 of 4
- F. PCR2 Exhibit 17–Michael Tisius DOC Medical Records 2001-2012, Part 3 of 4
- G. PCR2 Exhibit 17– Michael Tisius DOC Medical Records 2001-2012, Part 4 of 4
- H. PCR2 Exhibit 18–Michael Tisius DOC Records Through 2003
- I. PCR2 Exhibit 20– Michael Tisius DOC Work Records Through 2010
- J. PCR2 Exhibit 22–Michael Tisius DOC Mental Health Records 2001-2011
- K. PCR2 Exhibit 69–DOC Memo Regarding Boots
- L. PCR2 Exhibit 83–DOC Individual Confinement Records of Michael Tisius

Summaries

- Woods Chronology
- Woods Chronology and Records Digest
- Trial I Case Summary
- PCR I Case Summary
- PCR I Case Summary – Lay Witness State of Mind
- Trial II Case Summary
- 03/22/18 Social History Snapshot
- 06/22/18 Pre-crime Narrative Draft

Ex B: Definitions

At the time of the offense, R.S.Mo. § 565.020.1 (1999) defined first-degree murder as follows: “A person commits the crime of murder in the first degree if he knowingly causes the death of another person after deliberation upon the matter.”

R.S.Mo. § 565.002 (1999) defined “deliberation” as “cool reflection for any length of time no matter how brief.....”

“The deliberation necessary to support a conviction of first-degree murder need only be momentary; it is only necessary that the evidence show that the defendant considered taking another’s life in a deliberate state of mind.” *State v. Jones*, 955 S.W.2d 5, 12 (Mo. App. W.D. 1997). “A deliberate act is a free act of the will done in furtherance of a formed design to gratify a feeling of revenge or to accomplish some other unlawful purpose and while not under the influence of violent passion suddenly aroused by some provocation.” *Id.* “Deliberation may be inferred from the circumstances surrounding the murder.” *Id.*

R.S.Mo. § 552.010 (1999) defined “mental disease or defect” as follows:

The terms “mental disease or defect” include congenital and traumatic mental conditions as well as disease. They do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, whether or not such abnormality may be included under mental illness, mental disease or defect in some classifications of mental abnormality or disorder. The terms “mental disease or defect” do not include alcoholism without psychosis or drug abuse without psychosis or an abnormality manifested only by criminal sexual psychopathy as defined in section 202.700, RSMo, [FN1] nor shall anything in this chapter be construed to repeal or modify the provisions of sections 202.700 to 202.770, RSMo. [FN2]

At the time of sentencing, R.S.Mo. § 565.032.3 (2009) included the following statutory mitigating circumstances:

- (1) The defendant has no significant history of prior criminal activity;
- (2) The murder in the first degree was committed while the defendant was under the influence of extreme mental or emotional disturbance;
- (3) The victim was a participant in the defendant's conduct or consented to the act;
- (4) The defendant was an accomplice in the murder in the first degree committed by another person and his participation was relatively minor;
- (5) The defendant acted under extreme duress or under the substantial domination of another person;
- (6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired;
- (7) The age of the defendant at the time of the crime.

¹ Section 202.700 was repealed by L.1980, H.B.No. 1724, p. 503, § 1.

² Sections 202.700 to 202.770 were repealed by L.1980, H.B.No. 1724 p. 503, § 1.

Exhibit C

G
WW GEORGE W. WOODS, JR., M.D., L.F.A.P.A.
A PROFESSIONAL CORPORATION
DIPLOMATE OF THE AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY
415 503 3959
gwoods@georgewoodsmd.com
Oakland Atlanta Evansville

Curriculum Vitae

4200 Park Boulevard Suite #545 Oakland, California 94602	4062 Peachtree Road NE Suite D-203 Atlanta, Georgia 30319	437 South Rotherwood Avenue Evansville, Indiana 47714
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Education

1981-1982 **American Psychiatric Association/National Institute of Mental Health Fellowship** Pacific Medical Center, Geriatric Psychopharmacology, San Francisco, California

1981 **Residency** — Psychiatric - Pacific Medical Center, San Francisco, California

1977-1978 **Internship** — Medical/Surgical, Highland Hospital, Oakland, California

1977 **M.D.** — University of Utah, Salt Lake City, Utah

1969 **B.A.** — Westminster College, Salt Lake City, Utah

Leadership Positions

2017 Secretary General, International Academy of Law and Mental Health, during the amalgamation with the Institute of Ethics, Medicine, and Public Health at the Sorbonne, Paris, France

2016 Associate Editor, Journal of Policy and Practice in Intellectual Disabilities

2016 Deputy Chairperson, International Association for the Specialized Study of Intellectual and Developmental Disabilities, Special Interest Research Group(SIRG)

2015	President, International Academy of Law and Mental Health
2013	President Elect, International Academy of Law and Mental Health
2009-2013	Secretary General, International Academy of Law and Mental Health

Licenses & Certifications

2018	Licensed Physician in California, Georgia, Missouri, Washington State
2014	Certified International Association for the Scientific Study of Intellectual and Developmental Disorders Academy (IASSDD) Academy Instructor
2008	Certified Mediation Specialist, California State University, Sacramento, California
2004-2005	Interim License, Zanzibar Revolutionary Government
1992	Certified by the American Board of Psychiatry and Neurology
1979	Licensed Physician in California

Honors

2018	Distinguished Alumnus, University of Utah Medical Center
2017	Life Fellow of the American Psychiatric Association
2017	Secretary General, International Academy of Law and Mental Health
2015	President, International Academy of Law and Mental Health
2013	Keynote Speaker, Tenth Anniversary of the San Francisco Behavioral Health Court
2013	Vice President/President Elect, International Academy of Law and Mental Health
2009-2012	Secretary General, International Academy of Law and Mental Health
2009	Co-Chair, International Academy of Law and Mental Health Congress, New York University Law School
2007	Co-Chair, International Academy of Law and Mental Health Congress, University of Padua, Padua, Italy
2007	Executive Committee, International Academy of Law and Mental Health

- 1993 Outstanding Professor Award, Goodrich Program, Department of Public Policy, University of Nebraska at Omaha
- 1992 National Medical Enterprises' Outstanding Medical Director of Psychiatric, Rehabilitation and Recovery Hospitals
- 1992 Chief of Staff Award for Outstanding Service, East Bay Hospital, Richmond, California

Faculty and Professional Appointments

- 2012-present Lecturer, University of California Berkeley School of Law
- 2012 Newsletter Editor, Challenging Behaviors Special Interest Research Group, International Association for the Scientific Study of Intellectual Disabilities
- 2008 Secretary, American Psychiatric Association's Africa Action Committee
- 2003 Adjunct Professor, California State University, Sacramento, Department of Educational Leadership and Public Policy, Sacramento, California
- 2002-present Adjunct Professor, Morehouse School of Medicine, Department of Psychiatry, Atlanta, Georgia
- 1999-2004 Affiliate Professor, University of Washington, Bothell Campus, Interdisciplinary Arts and Sciences
- 1996-2000 Adjunct Professor, University of California, Davis, Department of Psychiatry, Forensic Fellowship
- 1992 Summer Faculty, North Central Educational Research Laboratory, Northeastern University
- 1986-2002 Adjunct Professor, University of Nebraska, Omaha, College of Public Affairs

Advisory Boards

- 2018 Roots Medical Clinics, Oakland, California
- 2016 Marsh Clinics, Oakland, California
- 2013 International Association of Trauma Professionals

2013	Celebrating a Decade of Behavioral Health Court, San Francisco, California, Honorary Committee
2012	Executive Committee, Challenging Behaviors Special Interest Research Group, International Association for the Scientific Study of Intellectual Disabilities
2006-present	Executive Committee, International Academy of Law and Mental Health
2004-2007	Advisory Board, Health Law Institute, DePaul University, College of Law
2004-present	Advisory Board, Human Dignity & Humiliation Studies, University of Trondheim, Norway
2004-2010	Board of Directors, The Center for African Peace and Conflict Resolution, College of Health and Human Services, California State University, Sacramento
2003-present	International Board of Directors, International Academy of Law & Mental Health

Professional Affiliations

International Neuropsychological Society, American Academy of Psychiatry and the Law, International Association for the Scientific Study of Intellectual Disabilities, Northern California Psychiatric Society, American Society of Addiction Medicine, American Psychiatric Association, Black Psychiatrists of America, American Neuropsychiatric Association, American Psychological Association, American Association for Intellectual and Developmental Disabilities

Clinical Experience & Consultation

2018	Training Evaluation Panel, Alameda County Behavioral Health Care
1983-present	Individual private practice, Bay Area, California
2016	San Francisco Police Department Crisis Intervention Training (SFPD CIT): The Brain
2015	SFPD CIT: Substance Abuse
2015	SFPD CIT: The Adolescent Brain and Cognition: Slow Down and Watch
2015	SFPD CIT: The Developing Brain
2015	Criminal Justice and Mental Health Reform. San Francisco Collaborative Courts, Collaborative Courts Training Series

2015	Complex Trauma: Effects and Intervention. San Francisco Collaborative Courts, Collaborative Courts Training Series
2014	Undoing the Damage: The Mental Health and Criminal Justice Tragedy. San Francisco Collaborative Courts, Collaborative Courts Training Series
2014	The Constitutional Implications of Ebola: Civil Liberties & Civil Rights in Times of Health Crises, University of California, Irvine Law School
2014	SFPD CIT: The Adolescent and Geriatric Brains, More Alike Than Different?
2014	Moderator; The Easy Read Project: An Investigation into the Accessibility Value of Health-based "Easy Read" Literature; Television Viewing Habits and Preferences of Adults and Young People with Intellectual Disability: A Survey Using a Talking Mats Questionnaire; Effectiveness of Computer-Based Simulations on Learning of Social and Communication Skills by Children with IDD and ASD; Social Media and Intellectual Disabilities: IASSID European Regional Congress, Vienna
2014	Risk Assessment in Neurodevelopmental Disorders, IASSID European Regional Congress, Vienna
2013	Task Force on Determination of Intellectual Disability for the Courts, American Association for Individuals with Intellectual Disabilities
2011	San Francisco Police Department Crisis Intervention Training (CIT): Suicide Assessment, Mood Disorders, Thought Disorders, and Personality Disorders
2010	Task Force on Mental Retardation and Forensic Practice, American Association for Individuals with Intellectual Disabilities
2006-2009	Projects Among African Americans To Explore Risks for Schizophrenia (PAARTNERS), Consensus Diagnosis Group, Minority Mental Health Research Group, Department of Psychiatry, Morehouse School of Medicine, Atlanta, Georgia
2006	National Consortium on Disaster Response for the Poor and Underserved, Developmental Task Force for the Minority Mental Health Professions Foundation, Atlanta, Georgia
2006	Georgia Congressional Representative Cynthia McKinney's Post-Katrina Working Task Force
1998-2004	Consultant to the Board of Directors, Crestwood Behavioral Health Systems, Stockton, California
1994-1996	Senior Consulting Addictionologist, New Beginnings Programs, San Ramon and Pinole, California
1988-1996	Individual Private Practice, Pinole, California

1994-1995	Chemical Dependency Consultant, Physicians' Advisory Committee, Alameda Contra Costa Medical Association
1990-1995	Consultant, Insomnia Division of the Sleep Disorders Center, Doctors Hospital, Pinole, California
1992-1994	Qualified Medical Examiner, Industrial Medical Council, State of California
1990-1994	Medical Director, Pain Management Program, Doctors Hospital, Pinole, California
1991-1993	Psychiatric/Pharmacologic Consultant, Triumph Over Pain (TOP Program), Kentfield Rehabilitation Hospital, Kentfield, California
1991-1993	Psychiatric Consultation, NeuroCare Corporation, Concord, California
1989-1994	Clinical Director, New Beginnings Chemical Dependency Program, Doctors Hospital, Pinole, California
1988-1993	Private Practice, Comprehensive Psychiatric Services, Walnut Creek 1983-1990: Staff Psychiatrist, Crestwood Manor, Vallejo, California
1982-1983	Medical Director, Westside Geriatric Services of Family Service Agency of San Francisco
1982-1983	Staff Psychiatrist, Villa Fairmount Psychiatric Facility, San Leandro, California
1981-1982	Assistant Director of the Inpatient Center, Director of Geriatric Services, Pacific Medical Center, San Francisco, California
1980-1981	Medical Director, Clinica De La Raza, Blythe, California
1979-1981	Emergency Room Physician, Medical Emergency Services, Fairmount Hospital, San Leandro, California

International Clinical Experience & Consultations

2017	Cognitive Factors to Financial Crime Victimization: International Academy of Mental Health, Prague
2017	From the Profession: First Concepts, Stigma, and Science. Punjab Judicial Conference, Lahore High Court and Supreme Court, Lahore, Pakistan
2017	From the Profession: First Concepts, Social History, The Mental Status Examination. Punjab Judicial Conference, Lahore, Pakistan

2016	Cultural Implications of Utilizing and Developing Neuropsychological and Intelligence Instruments. United Nations Human Rights Commission, Zomba, Malawi
2015	Neurodevelopmental Disorders: Training for Clinicians. Zomba Mental Hospital, Zomba, Malawi
2006-2008	Adjunct Professor, Makerere University, Department of Psychiatry, Kampala, Uganda
2006-present	Human Rights Committee, International Academy of Law and Mental Health, Montreal, Quebec, Canada
2006	Visiting Staff Psychiatrist, Butabika National Hospital, Kampala, Uganda
2004	Clinical Consultant, Kidongo Chekundu Mental Hospital, Zanzibar, Tanzania
2004	Scientific Committee, International Academy of Law and Mental Health
1998-2004	Technical Advisor, Documentation Committee, Operation Recovery, Kenya Medical Association
1999-2003	Advisor - the Jomo Kenyatta National Hospital, PTSD Project, Nairobi, Kenya
1998-2003	Technical Advisor- Recovery Services, Ministry of Health, United Republic of Tanzania

Clinical Lectures

2018	Psychiatry, Game Theory, and Language: A Beautiful Mind? The San Francisco Economic Roundtable
2017	Inside the Hateful Mind, The University of California Law School, Irvine
2017	Criminal Law and Mental Illness: The Rising Significance of Neuroscience in the Courts, American Psychological Association Pre-Conference Training, Washington
2017	Neuropsychiatric Aspects of Physical Disease, San Francisco Economic Round Table
2017	Culture, Science, and Justice: People of Color and the Mentally Ill as the Canaries in our Toxic Mental Health and Mass Incarceration System; Dignifying Madness: Civil Commitment, Disability Rights, and Mass Incarceration: A Symposium at UC Berkeley School of Law

- 2016 United States Congressional Briefing: Gun Violence and Trauma, Washington, DC2016: Culture, Science, and Justice: Hampton University, Hampton, Virginia
- 2016 Alcohol Related Neurodevelopmental Disorders: An Update on Diagnosis, Assessment, and Treatment, International Association for the Specialized Study of Intellectual and Developmental Disorders(IASSIDD), Melbourne, Australia
- 2016 Children and Adolescents with Developmental Disorders (Moderator); International Association for the Specialized Study of Intellectual and Developmental Disorders (IASSIDD), Melbourne, Australia
- 2016 Psychiatric Conditions and Developmental Disabilities (Epilepsy, 22q11.2 Deletion Syndrome, Potoki-Lupski Duplication Syndrome) (Moderator): International Association for the Specialized Study of Intellectual and Developmental Disorders (IASSIDD) Melbourne, Australia
- 2016 Aging and Cognition in Prisoners with Intellectual and Developmental Disabilities (Workshop): International Association for the Specialized Study of Intellectual and Developmental Disorders (IASSIDD), Melbourne, Australia
- 2016 Justice For The Mentally Ill: The ABA Criminal Justice Mental Health Standards. Disclosing Danger and Other Real-World Issues. The American Bar Association and UC Hastings Constitutional Law Quarterly and Race and Poverty Law Journal
- 2015 Moderator, Women & Mass Incarceration: The U.S. Crisis of Women and Girls Behind Bars. Bad Science. The University of California Law School, Irvine
- 2015 Neurobehavioral Assessment: Malawi Human Rights Commission
- 2014 Adolescents and the Elderly; More Alike Than You Would Expect. San Francisco Police Department Crisis Intervention Training
- 2014 Bipolar Disorder in Pregnancy: Meena Kumari, MD: George Woods, MD, Faculty Discussant
- 2013 High Prevalence of Brain Pathology in Violent Prisoners: A Qualitative CT and MRI Scan Study: Journal Club, Racquel Reid, MD, George Woods, MD, Faculty Panel
- 2013 Medical disorders that masquerade as psychiatric disorders. International Academy of Law and Mental Health, Amsterdam, Netherlands
- 2013 Does Policy Drive Science? University of California, Berkeley, Integrative Biology Course (MCB15)
- 2013 Understanding Combat-Related Post-Traumatic Stress Disorder: Andrea Brownridge, M.D., J.D.; George Woods, M.D., Faculty Discussant
- 2012 Neurobiological Effects of Trauma: DC Criminal Superior Court, Third Annual Criminal Justice Conference, Mental Illness & Treatment: Past Present & Future

- 2012 Neurodevelopmental Disorders: International Association for the Scientific Study of Intellectual Disorders, Halifax, Nova Scotia
- 2012 Diabetes and Weight Control, Moderator: International Association for the Scientific Study of Intellectual Disorders, Halifax, Nova Scotia
- 2012 Health Inequalities in Developmental Disabilities, Moderator: International Association for the Scientific Study of Intellectual Disorders. Halifax, Nova Scotia
- 2012 The Neurobiology of Trauma: San Francisco YWCA Intern Training
- 2011 Mood and Thought Disorders in Crisis Intervention: San Francisco County Sheriff's Crisis Intervention Training, San Francisco, California
- 2011 Fetal Alcohol Spectrum Disorders and the Criminal Justice System, National Press Club, Washington, D.C.
- 2011 The Epidemiology of Medicalization of Prisoners in the United States, International Academy of Law and Mental Health, Berlin, Germany
- 2011 Intellectual Disability and Fetal Alcohol Spectrum Disorder: International Academy of Law and Mental Health, Berlin, Germany
- 2011 Neuronal Plasticity: Cognitive Skills Retraining for students with Acquired Brain Injuries or Learning disabilities. College of Alameda, Alameda, California
- 2011 The Neurobiology of Trauma In Children: Lessons About Early Childhood; Families First, Atlanta, Georgia
- 2010 From the Plantations/Asylums to the Prisons: The Relationship between Humiliation, Stigma, Economics and Correctional Care for the Mentally Ill; Columbia University, Teachers College, New York
- 2010 Workshop on Transforming Humiliation and Violent Conflict representing the 16th Annual Human DHS Conference and the Seventh Workshop on Humiliation and Violent Conflict, Columbia University, Teachers College, New York
- 2010 Applying the Institute of Medicine Quality Chasm Framework to Improving Health Care for Mental and Substance Use Conditions; Morehouse School of Medicine, Department of Psychiatry, Journal Club
- 2010 Psychiatric Manifestations of Physical Disease. Morehouse School of Medicine, Department of Family Practice, Atlanta, Georgia
- 2009 Sleep Disorders in Psychiatric Practice: Morehouse School of Medicine, Department of Psychiatry, Atlanta, Georgia

- 2008 Moderator: The Impact of Mental Health Issues on Aging, Particularly as It Relates to Alzheimer's Dementia and Parkinson Disease, National Medical Association, Atlanta, Georgia
- 2008 Aging and Mental Health: What Is Wellness and What Is Pathology? National Medical Association, Atlanta, Georgia
- 2007 The Price of Leadership and the Cost of Success: Urban Leadership Program, Graduate School of Educational Leadership and Public Policy, California State University, Sacramento
- 2007 Cognitive Assessment and Curriculum, Department of Educational Policy, Urban Leadership Program, Graduate School of Educational Leadership and Public Policy, California State University, Sacramento
- 2007 Complex Disorders of Trauma and Torture: The Neurological Bases Examined Through Sleep Disorders, Padua, Italy
- 2006 Clinical Aspects of Forensic Evaluation, Makerere University, Department of Psychiatry, Kampala, Uganda
- 2006 Memory, Medications, and Aging, Crockett, California Women's Club
- 2006 Cultural Differences: Ethics or Efficacy, Mental Health, Ethics and Social Policy, University of Montreal, Quebec, Canada
- 2006 An Update on Memory Function, Grand Rounds, Morehouse School of Medicine, Atlanta, Georgia
- 2006 Moderator & Respondent (Representing Morehouse School of Medicine) Consortium for the Poor and Under-Served Cultural Factors, DePaul University School of Law and Health, Health Law Institute
- 2005 Constitutional Theory and Medical Rights, Montreal, Quebec, Canada
- 2005 Medical Diseases with Psychiatric Manifestations: Morrison and Foerster, LLP
- 2004 Diagnosis and Treatment of Malaria-Induced Altered Mental States: Kidongo Chekundo Mental Hospital, Zanzibar, Tanzania
- 2003 Law, Mental Health & Popular Culture: University of San Francisco College of Law
- 2003 Accommodating Mental Illness in the Workplace: The 28th International Conference, International Academy of Law and Mental Illness, Sydney, Australia
- 2002 Cultural & Psycho-Biological Factors In the Assessment & Treatment of Trauma: Don't Believe Everything You Thin, The Trauma Recovery Institute, West Virginia

2002	Trauma, Recovery and Resiliency, University of Washington, Bothell
2001	Understanding the Relationship Between Neuroimaging, Neuropsychology, and Behavior: National Medical Association 2001 Annual Convention and Scientific Assembly, Nashville, Tennessee
2001	The Thrill Is Gone: Keynote Address, African American History Month, Loras College, Dubuque, Iowa
2001	Disparate Access-Healthcare: University of Washington, Bothell Campus Nursing Program
2000	Anger Management: West Contra Costa Stroke and Aphasia Support Group, Doctors Hospital, San Pablo, California, 2000
2000	Race, Culture and Bioethics: American Society for Bioethics Annual Conference, Panel Discussion, Salt Lake City, Utah
2000	Globalization and Postmodernism: International Congress on Law and Mental Health, Siena, Italy
2000	Globalization and Neuropsychiatry: Answers that Transcend Culture? International Congress on Law and Mental Health, Sienna, Italy
1998	Managed Care in the Kenyan Medical Environment: Kenyan Medical Environment: Kenyan Medical Association, Aga Khan Hospital, Nairobi, Kenya
1994	Relationship Between Holidays and Mood Disorders: Doctors Hospital Pinole, CA
1994	The Role of the Mental Health Expert as a Liaison Between Chemical Dependency and Pain Management Programs: American Academy of Pain Management, Vancouver, Canada
1994	Chemical Dependency: Selected Topics: Critical Care Conference, Doctors Hospital, Pinole California
1993	Detox: The First Step to Recovery: National Medical Enterprises Management Services Division Annual Conference, Colorado Springs, Colorado
1993	Substance Use and Substance Induced Organic Mental Disorders: National Medical Enterprises Management Services Division Annual Conference, Colorado Springs, Colorado
1993	Dual Diagnosis in the Inpatient Setting- Professional Seminar, Doctors Hospital, Pinole, California
1993	Depression and Strokes: Brookside Hospital, San Pablo, California

1992	Drug Interactions in the ICU: Clinical Care Rounds, Doctors Hospital, Pinole, California
1992	Overview of Sleep Disorders: Grand Rounds, Doctor Hospital, Pinole, California
1991	Benzodiazepines: Uses and Abuses: Grand Rounds, Brookside Hospital, San Pablo, California
1990	Sleep Disorders in Schizophrenia: Quarterly Medical Staff Meeting, East Bay Hospital
1987	Afro-Centricity in Psychology: Grand Rounds, San Francisco General Hospital, San Francisco, California
1982	Geriatric Psychiatry-University of Southern California

Clinical Professional Activities

2018	University of Massachusetts Press review
2016	Associate Editor, Journal of Policy and Practice in Intellectual Disability
2015	International Journal of Developmental Disabilities
2015	Journal of Policy and Practice in Intellectual Disability
2014	Cureus Journal Review
2014	Arts and Social Sciences Journal Review
2013	Journal of Politics and Law Journal Review
2012	Research in Developmental Disabilities Journal Review
2010	American Association for Intellectual and Developmental Disabilities, Task Force on Intellectual Disability and Forensic Practice
2007-2009	Neurocognitive Committee, PAARTNERS
2004-present	Scientific Committee, International Academy of Law and Mental Health
1993-1996	Medical Privileges Committee, Doctors Hospital, Pinole, California
1993-1995	Physicians' Advisory Committee, Alameda Contra Costa Medical Association, Oakland, California

1993-1994	Board of Directors, Solano Park Hospital, Fairfield, California
1992-1993	Board of Directors, East Bay Hospital, Richmond, California
1992	Chief of Staff, East Bay Hospital, Richmond, California
1992	Chairman, Medical Executive Committee, East Bay Hospital, Richmond, California
1992	Allied Health Committee, Doctors Hospital, Pinole, California
1992	Pharmacy & Therapeutics Committee, Doctors Hospital, Pinole, California
1991-1996	Physicians' Advisory Committee, Doctors Hospital, Pinole, California (Chair, 1994-1995)
1991	Professional Activities Committee, East Bay Hospital, Richmond, California
1990	Psychiatry Committee, Chairman, East Bay Hospital, Richmond, California

Clinical Publications

S. Greenspan and G. Woods (2018). "Social Incompetence of FASD Offenders: Risk-Awareness as a Factor in Criminal Culpability." In E. Jonsson, S. Clarren & I Binnie (Eds). *Ethical and Legal Perspectives in Fetal Alcohol Spectrum Disorders (FASD): Foundational issues*, (pp/ 127-143). Cham, Switzerland: Springer Publishing.

Norton, Johnson, Woods (2016) "Burnout and Compassion Fatigue: What Lawyers Need to Know." *The University of Missouri Kansas City Law Review*.

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Norton, Woods (2015) *Interpersonal Violence: The Legacy of Trauma*. The American Bar Association's Ninth Annual Section of Labor and Employment Law Conference.

Greenspan, Harris, and Woods (2015) *Intellectual Disability Is "A Condition, not a Number": Ethics of IQ Cut-offs in Psychiatry, Human Services and Law*. *Ethics, Medicine, and Public Health*.

Woods, Freedman (2015) *Symptom Presentation and Functioning in Neurodevelopmental Disorders: Intellectual Disability and Exposure to Trauma*, *Ethics, Medicine, and Public Health*.

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Freedman, Woods (2013) *Neighborhood Effects, Mental Illness and Criminal Behavior: A Review*. Journal of Politics and Law; Vol. 6, No. 3.

Woods, Freedman, Greenspan: (2012). *Neurobehavioral Assessment in Forensic Practice*. International Journal of Law and Psychiatry.

Norton, Woods, (2012). *Secondary Trauma among Judges, Jurors, Attorneys, and Courtroom Personnel*. *Encyclopedia of Trauma: An Interdisciplinary Guide*. C. Figley, Sage Publications.
Greenspan, Switzky, Woods: (2012) *Intelligence Involves Risk-Awareness and Intellectual Disability Involves Risk-Unawareness: Implications of a Theory of Common Sense*, Journal on Intellectual & Developmental Disability. (Cited in Diagnostic and Statistical Manual, 5th Edition, online version)

Woods, Greenspan, Agharkar: (2012) *Ethnic and Cultural Factors in Identifying Fetal Alcohol Spectrum Disorders*: American Journal of Law and Psychiatry.

Bradford, Fresh, Woods: Not all Patients Are Alike: (2007) *Ethnopsychopharmacology of Bipolar Disorder in African Americans*. Psychiatric Times, February.

Abueg, Woods, Watson: Disaster Trauma;(2000) *Cognitive-Behavioral Strategies in Crisis Intervention*: Second Edition, Guilford Press, New York and London; p. 73-290.

Forensic Practice

1981-present	Psychiatric Consultant – Civil, Family Law, Criminal and Appellate Judicial Proceedings
1993-2001	Consultant – the Victims' Assistance Program, State Board of Control, State of California, Sacramento, California
1983-2000	Medical Examiner Panel – San Francisco County, Marin County and Contra Costa County Superior Courts

Forensic Professional Lectures

2018	Psychological Issues in Employment Law: Practising Law Institute, New York The Aging Workforce: Myths, Biases and Reality: Mild Cognitive Impairments and the Impact on Cognitive Functioning
2017	Psychological Issues in Employment Law: Practising Law Institute, New York
2016	Cutting Edge Issues in Employment Law: Practising Law Institute, San Francisco
2016	Aging and Cognition; Paul Hastings Global
2016	Psychological Issues in Employment Law: Practising Law Institute, 2016, New York
2015	Legal and Practical Implications of Domestic Violence in the Workplace: It's Not Just the NFL: American Bar Association Section of Labor and Employment Law 9 th Annual Labor and Employment Law Conference, Philadelphia
2015	Cutting-Edge Employment Law Issues 2015: The California Difference. Mental Health and the Law, Practising Law Institute, San Francisco
2015	Discussant, Mass Murder: Patterns in Manifestoes: Vienna, Austria
2014	ADA and Mental Disabilities: Inquiries, Exams and Accommodations, Practising Law Institute, New York, New York
2014	Psychological Issues in Employment Law 2014, Practising Law Institute, New York,
2010	The Trial of Hamlet, Morrison and Foerster, LLP, Law College, San Diego, California
2009	Treatment of Mentally Ill Offenders in the United States, Canada, and Japan; Japanese Association of Forensic Psychiatry, Tokyo, Japan
1998-2007	In Association With The National Institute of Trial Advocacy Training, Notre Dame University, South Bend, Indiana; Georgia State Law School, Atlanta, Georgia; New York University Law School, New York City, University of North Carolina Law School, Chapel Hill, North Carolina; University of Houston Law School, Houston, Texas; University of Tennessee Law School, Knoxville, Tennessee; Atlanta, Georgia; University of Texas Law School, Austin, Texas; Temple University School of Law, Philadelphia, Pennsylvania
2006	Aligning Clinical Services with Correctional Treatment, Luzira Prison, Kampala, Uganda
2006	Decision Tree for Forensic Evaluations, Butabika Hospital, Kampala, Uganda
2006	Neuropsychiatry and The Courts: The University of Texas Law School, Austin Texas

- 2002 Demystifying Emotional Damages Claims: Paul, Hastings, Janofsky & Walker, San Francisco, California
- 2000 An Introduction-Multi-Axial Assessment and DSM-IV: Second National Seminar on Mental Illness and the Criminal Law, Miyako Hotel, San Francisco, California
- 2000 Psychiatric Manifestations of Mental Disorders: Second National Seminar on Mental Illness and the Criminal Law, Miyako Hotel, San Francisco, California
- 1999 An Introduction-Multi-Axial Assessment and DSM-IV: First National Seminar on Mental Illness and the Criminal Law, Radisson Hotel, Washington, D.C.
- 1999 Physical Manifestations of Medical Disorders: First National Seminar of Mental Illness and the Criminal Law, Radisson Hotel, Washington, D.C.
- 1999 The Kenya/Tanzania Embassy Bombings: When Forensic Science, Politics, and Cultures Collide: International Academy on Law and Mental Health, Toronto, Quebec, Canada
- 1999 Research Collaboration Between East Africa and the United States: World Psychiatric Association/Kenya Psychiatric Association, First Annual East African Conference, Nairobi, Kenya
- 1999 Trauma/Resiliency In East Africa Workshop: World Psychiatric Association/Kenya Psychiatric Association, First Annual East African Conference, Nairobi, Kenya
- 1998 Mental Health Litigation and the Workplace: Sponsored by the University of California Davis Health System, Division of Forensic Psychiatry, Department of Psychiatry, and Continuing Medical Education, Napa, California
- 1998 Psychological Disabilities: Charting A Course Under the ADA and Other Statutes: Yosemite Labor and Employment Conference, Yosemite, California
- 1998 Current Trends in Psychiatry and the Law: Developing a Forensic Neuro-Psychiatric Team: CLE, Federal Public Defenders for the District of Oregon, Portland, Oregon
- 1997 The Changing Picture of Habeas Litigation: The National Habeas Training Conference, New Orleans, Louisiana
- 1997 Accommodating Mental Illness in the Workplace: Employment Law Briefing, Orange County
- 1997 Accommodating Mental Illness in the Workplace: Employment Law Briefing, Palo Alto, California

- 1997 Accommodating Mental Illness in the Workplace: Employment Law Briefing, Morrison & Foerster, San Francisco
- 1997 Psychiatric Evaluations in the Appellate Process: Emory University, Department of Psychiatry, Forensic Fellowship, Atlanta, Georgia
- 1997 So You Wait Until Discovery Is Over to Consult with a Psychiatrist? Can You Tell Me More About That? Morrison and Foerster Labor Law College, Los Angeles, California
- 1997 The Changing Cultural Perspectives in Forensic Psychiatry, San Francisco General Hospital Grand Rounds, San Francisco, California
- 1996 Evaluations of an Elementary School Child: Criminal Competency and Criminal Responsibility, Stanford University School of Medicine, Department of Psychiatry and Behavioral Sciences, Division of Child, Psychiatry and Child Development, Grand Rounds, Palo Alto, California
- 1996 Forensic Psychiatry: Cultural Factors in Criminal Behavior, Malingering, and Expert Testimony: The Black Psychiatrists of America Transcultural Conference, Dakar, Senegal, West Africa
- 1996 Dangerousness; Evaluation of Risk Assessment: Grand Rounds, Department of Psychiatry, University of California, Davis
- 1995 Violence in the Workplace: A Psychiatric Perspective of Its Causes and Remedies: The Combined Claims Conference of Northern California, Sacramento, California
- 1995 Experts: New Ways To Assess Competency- Neurology and Psychopharmacology: Santa Clara University Death Penalty College, Santa Clara, California
- 1995 Multiple Diagnostic Categories in Children Who Kill: Psychological and Neurological Testing and Forensic Evaluation: The American College of Forensic Psychiatry 13th Annual Symposium, San Francisco, California
- 1995 Mock Trial: Client Competence in a Criminal Case: Testing the Limits of Expertise, The American College of Forensic Psychiatry 13th Annual Symposium, San Francisco, California
- 1995 The Use of Psychologists In Judicial Proceedings: The California Attorneys for Criminal Justice/California Public Defenders Association Capital Case Seminar, Monterey, California
- 1994 Commonly Seen Mental Disorders in Death Row Populations: The California Appellate Project, Training Session for Legal Fellows and Thurgood Marshall Investigative Interns, San Francisco, California

- 1994 Anatomy of a Trial: Mock Trial Participant, The California State Bar Annual Convention, Anaheim, California
- 1994 Developing a Forensic Neuropsychiatric Team: The American College of Forensic Psychiatry 12th Annual Symposium in Forensic Psychiatry, Montreal, Quebec, Canada
- 1994 Responsibility in Forensic Psychiatry: Department of Criminology Faculty Seminar, University of Nebraska, Omaha
- 1994 Attorney/Investigator Workshop: Brain Function: The 1994 California Attorneys for Criminal Justice/California Public Defenders Association Capital Case Seminar, Long Beach, California
- 1994 Appellate and Habeas Attorney/Investigator Workshop: Evaluating Mental Health Issues in Post-Conviction Litigation: The 1994 California Attorneys for Criminal Justice/California Public Defenders Association Capital Case Defense Seminar, Long Beach, California
- 1993 Psychological Issues in Police Misconduct: Police Misconduct Litigation, National Lawyers Guild, San Francisco
- 1993 Neuropsychiatry, Neuropsychology and Criminal Law: Maricopa County Office of the Public Defender, Seminar on Investigation for Mitigation and Capital Cases, Phoenix, Arizona
- 1993 Working with Experts: California Appellate Project, San Francisco, California
- 1991 Forensic Psychiatry and Ethnicity-Black District Attorneys Association, National Convention

Professional Forensic Publications

Greenspan, Woods (2016) *Chapter 7 Personal and Situational Contributors to Fraud Victimization: Implications of a Four-Factor Model of Gullible Investing*. Financial Crimes: Psychological, Technological, and Ethical Issues. Dion, Weisstub, Richet. Springer Publishing.

Wood, Hanoch, Woods (2016) *Chapter 6 Cognitive Factors to Financial Crime Victimization*. Financial Crimes: Psychological, Technological, and Ethical Issues. Dion, Weisstub, Richet. Springer Publishing.

Woods, (2016) *Cognition and Aging: Impact in the Workplace*: Paul Hastings Global.

Woods, (2016) *Treat or Assess: Which Hat Should Your Expert Wear?* Practising Law Institute.

Bigler, Jantz, Freedman, Woods, (2016) *Structural Neuroimaging in Forensic Settings*, University of Missouri-Kansas City Law Review, Volume 82, No. 2. Psychiatry and Criminal Law, Contra Costa Lawyer, Volume II, No. 8, August 1998.

Mock Trial: Client Competence in a Criminal Case: Testing the Limits of Expertise, The Psychiatrist's Opinion as Scientific, The Expert's Foundation as Sufficient (1995). (Available from The American College of Forensic Psychiatry and on Audiotape)

Multiple Diagnostic Categories in Children Who Kill: Psychological and Neurological Testing and Forensic Evaluation (1995). (Available from the American College of Forensic Psychiatry and on Audiotape)

Developing a Forensic Neuropsychiatric Team (1994). (Available from the American College of Forensic Psychiatry on Audiotape)

Anatomy of a Trial (1994). (Available for the California State Bar)

Forensic Professional Affiliations

2013	American Academy of Psychiatry and the Law
1998	International Academy of Law and Mental Health

Professional Development & Corporate Services

2016	BetterManager, Expert Contributor
2016	Map1080, Big Timber, Montana, Advisory Board
2015	Grade LLC Evansville, Indiana Unified School District: Education/Neuroscience Collaboration
2015	The Science Advisors, Founding Partner
2015	Defend Your Head Corporation: Medical and Neuroscience Advisor
2014	Forefront Behavioral Telecare, LLC: Assistant Chief Medical Officer
2013	Generations in Transition: YearUp, Atlanta, Georgia
2011	Forefront Behavioral Telecare, LLC: Director of Clinical Research
2009-2010	Forefront Behavioral Telecare, LLC: Chief Medical Officer

- 2009 AgeServe Communications, LLC: Director of Research/Director of Government Programs
- 2004 Consultant, Corporate Structure, Tostan, Non-Governmental Organization, Theis, Senegal
- 2004 Toward Effective Retention Efforts: The use of narratives in understanding the experiences of racially diverse college students., Narrative Matters, Fredericton, New Brunswick, Canada
- 2003 In Association with the Council on Education in Management, Charlotte, North Carolina, Accommodating Psychiatric Disabilities: Avoiding the Legal Pitfalls of the ADA, Human Resources Conference, Palm Springs, California
- 2001-2003 Consultant, Vulcan Inc., Seattle, Washington
- 1999 In Association with Matthew Bender Legal Publishing, New York: Psychiatric Disabilities and California Workplace Requirement, With the Bar Association of San Francisco, San Francisco
- 1998 Psychiatric Disabilities under the Americans With Disabilities Act: Without Pretrial Strategy, Atlanta, Georgia
- 1998 Psychiatric Disabilities under the Americans With Disabilities Act: Without Pretrial Strategy, Los Angeles, California

Johnson Freedman Woods Education, LLC

- 2017 Criminal Law and Mental Illness: The Rising Role of Neuroscience in the Courts: The American Psychological Association, Washington, DC.
- 2012 - present An Evolution in Practice at the Intersection of Mental Health and the Law: Where Mental Health Meets the Law by Jennifer Johnson, J.D., David Freedman, Ph.D., and George Woods, M.D. of Johnson Freedman Woods Education: a comprehensive curriculum on the evolving field of forensic mental health. Thomson Reuters West Legal EdCenter

The Critical Moments Consulting Group

- 2018 Critical Moments: Creating a Diversity Leadership Community, Cascadia College, Bothell, Washington

- 2001 Part I – Responding Creatively to Cultural Diversity through Case Stories and
Part II – Strategies and Challenges for Campus-wide Diversity Project: Models of
Integrating Critical Moments, Fourteenth, Annual Conference on Race and
Ethnicity in American Higher Education, Seattle Washington
- 2001 Teaching Complex Case Stories, Faculty Development, Loras College, Dubuque,
Iowa
- 2000 Critical Moments: Creating a Diversity Leadership Learning Community, 13th
Annual National Conference on Race and Ethnicity in American Higher Education
(sponsored by the University of Oklahoma, Southwestern Center for Human
Relations Studies), Santa Fe, New Mexico
- 2000 Critical Moments: Practicum on Teaching Diversity Through Case Stories, 13th
Annual National Conference on Race and Ethnicity in American Higher Education
(sponsored by the University of Oklahoma, Southwestern Center for Human
Relations Studies), Santa Fe, New Mexico
- 2000 Improving Undergraduate Education: Teaching and Learning in the Context of
Cultural Differences, The Washington Center for Improving the Quality of
Undergraduate Education, Thirteenth Annual Conference, Seattle, Washington
- 1999 Critical Moments: Deepening Our Understanding of Cultural Diversity through
Critical Analysis, Effective Interviewing, Case Writing, and Case Teaching, The
Washington Center, Evergreen State College, Olympia, Washington
- 1999 Teaching Complex Issues with Case Studies: A Workshop for Faculty and Graduate
Teaching Assistants, University of Nebraska at Lincoln, Teaching and Learning
Center and Critical Moments Project
- 1999 Critical Moments: Writing the Stories of Diverse Students, Washington Center for
Improving the Quality of Undergraduate Education Workshop for College and
University Faculty, Administrators, Staff and Students, Evergreen State College,
Bothell, Washington
- 1999 Critical Moments: A Case Study Approach for Easing the Cultural Isolation for
Under-Represented College Students, Presented at Transforming Campuses
Through Learning Communities, National Learning Communities Conference,
Seattle, Washington
- 1993 Contextualism and Multi-Cultural Psychology-Graduate Seminar, University of
Nebraska, Omaha, Nebraska
- 1992 Curriculum and Developmental Stages-North Central Educational Research Lab,
Northwestern University

Critical Moments Publications

Diane Gillespie, Ph.D., Gillies Malnarich, and George Woods, M.D. (2006). Critical Moments: Using College Students' Border Narratives as Sites for Cultural Dialogue, In M.B. Lee (Ed.), Ethnicity Matters: Rethinking How Black, Hispanic and Indian Students Prepare for and Succeed in College. (pp. 99-116). New York: Peter Land Publishing Group.

Diane Gillespie, Ph.D. and George Woods, Jr., M.D. (2000). Critical Moments: Responding Creatively Cultural Diversity Through Case Stories; Third Edition.

(Updated June 22, 2018)



Siddhartha S. Nadkarni, MD
 Siddhartha Center for Clinical Neuroscience
 66 Park Street, Montclair, NJ. 07042
 siddhu@mindspring.com
 646-868-9999 (phone)
 909-417-1422 (fax)

Daniel E. Kirsch, Esq.
 Assitant Federal Public Defender
 Capital Habeas Unit
 Federal Public Defender
 Western District of Missouri
 1000 Walnut St., Suite 600
 Kansas City, MO 64106

Re: **Tisius**, Michael
 DOB 2.16.1981

January 11, 2023

Dear Mr. Kirsch,

I write at your request in the case of Michael Tisius. I am a neurologist, psychiatrist and epileptologist, practicing in New Jersey and holding licensure in New Jersey and New York, as well as working as an attending physician at Hackensack University Medical Center and Hackensack Meridian Medical School where I teach medical students and residents. I completed my undergraduate education at Brown University and subsequently graduated from the Miller School of Medicine at the University of Miami in 1997. Following medical school, I matriculated in the first class of the double board Neurology and Psychiatry Residency Training Program at NYU School of Medicine. This training was six years in duration and was completed in 2003. I then did a year of Clinical Neurophysiology Epilepsy/EEG track fellowship at NYU as well. Subsequently I became board certified by the American Board of Psychiatry and Neurology in both Neurology and Psychiatry. I am further board certified in Clinical Neurophysiology, Epilepsy, and Neuropsychiatry & Behavioral Neurology. I currently have a private practice half time in Montclair, New Jersey, and work at Hackensack Regional Medical Center in New Jersey half time on an inpatient Epilepsy Service. Until March of this year I had been at NYU Medical School (and Medical Center) for 25 years, where I was the Program Director of the Combined Residency in Neurology and Psychiatry, the Program Director of the Clinical Neurophysiology Fellowship, and the Program Director for the Epilepsy Research Fellowship. These posts I held for many years. I am still the Director of the Neuroscience Curriculum for the NYU Psychiatry Residency Training Program.

EXHIBIT
9

1

In preparing this report, I had the opportunity to review many records provided to me as well as meet, interview, and examine Mr. Tisius in person.

Records Reviewed:

1. Declaration of Tracie Bulington 6.19.2018
2. Declaration of Gloria Gray 5.12.2018
3. Declaration of Tammy Newkirk 6.5.2018
4. Educational Records 1986 – 1998
5. Family Tree
6. Charles Barnett Death Certificate
7. Charles Barnett Medical Examiner's Office Records
8. Charles Barnett Newsclips
9. Charles Tisius Death Certificate
10. Charles Tisius Medical Examiner's Office Records
11. Charles Tisius Newsclips
12. Walter Tisius Newsclips
13. Adolph Kuehl Death Notice
14. Adolph Kuehl Newsclips
15. William Kuehl Death Certificate
16. William Kuehl Newsclips
17. Charles Quinn Death Certificate
18. Charles Quinn Medical Examiner's Office Records
19. Charles Quinn Newsclips
20. Ralph Mertens Death Certificate
21. The Children's Clinic Doctor's Notes 1.9.1981
22. St. Joseph Emergency Medical Treatment Authorization 2.16.1981
23. OB History 2.16.1981
24. OB Record 2.16.1981
25. Newborn Physical Exam Record 2.16.1981
26. Physician's orders newborn record 2.16.1981
27. Nurses Discharge Record 2.16.1981
28. Birth Record 2.18.1981
29. Newborn Record 2.19.1981
30. Medicaid Records 8.9.1984
31. St. Louis History and Progress Report 3.28.1987
32. Medical History Summary 12.1988
33. Hillsboro School Nurse Report
34. Authorization form Testicular Surgery 9.13.1990
35. Notification form re: Testicular Surgery 9.13.1990
36. Ultrasound Report re: Testicular Surgery 9.13.1990
37. Des Peres Hospital Records re: Testicular Surgery 9.13.1990
38. Emergency Room Report re: Testicular Surgery 9.13.1990
39. Emergency Room Report # 2 re: Testicular Surgery 9.14.1990
40. Emergency Room Report # 3 re: Testicular Surgery 9.17.1990
41. Operative Report Testicular Surgery 9.24.1990
42. Des Peres Hospital Records 1992

43. Operative Report Urethral Dilatation 10.12.1992
44. Des Peres Hospital Records re: Testicular Surgery 10.12.1992
45. Dr. Still's notes - Urology 10.12.1992
46. Des Peres Hospital Records re: Testicular Surgery 4.20.1993
47. Hillsboro Vaccination Record 8.26.1993
48. Hillsboro School Nurse Report 3.4.1994
49. Dr. Still's notes - Urology 3.4.1994
50. HAB Vaccination Records 8.25.1994
51. HAB School Nurse Report 1995
52. HAB Vaccination Records 8.24.1995
53. Throat Culture Results 12.7.1995
54. Hillsboro School Nurse Report 2.14.1996
55. HAB School Nurse Report 5.10.1996
56. St. Mary Patient Instructions 3.28.1997
57. St. Mary Orthopedic Reports 3.28.1997
58. Conscious Sedation Flowsheet 3.28.1997
59. St. Joseph Admission Record 7.19.1998
60. St. Joseph Diagnostic Imaging Reports 7.19.1998
61. St. Joseph Emergency Department Activity Limitation Slip 7.19.1998
62. Dr. Gerald Wool Expert Deposition 10.15.2003
63. Dr. Stephen Peterson Stipulation and Transcript of Testimony Fall 2011
64. Dr. Stephen Peterson Outline of Testimony Summer 2003
65. Dr. A.E. Daniel stipulation and Transcript of Testimony
66. Dr. Shirley Taylor Psychological Evaluation, Testimony and Raw Data
67. Dr. Dennis Cowan Neuropsychological Evaluation 5.19.2003
68. Dr. Elliott Phillips Psychiatric Evaluation 6.20.1996 (given Paxil for Depression 15 y.o.)
69. Dr. Paula Lundberg-Love Evaluation 6.26.2018
70. Dr. Dale Watson Neuropsychological Report 6.26.2018
71. Dr. George Woods Neuropsychiatric Evaluation 6.26.2018
72. Trial 1 Exhibit 5-MAT Handwritten Page of Michael Tisius
73. Trial 1 Exhibit 7 - MAT Handwritten Page of Michael Tisius
74. Revised conner's Scale on Michael Tisius 11.20.1990
75. Contrea S.E.E. Elementary Profram Confirmation 2.6.1992
76. Contrea Discharge Summary 4.15.1992
77. Contrea Letter to Mrs. Tisius
78. United Behavioral System Initial Assessment and History 5.13.1996
79. Family Therapy Notes by Kuntz (session 2) Date unreadable
80. Letter to Patricia Tisius from Diane Junge 7.23.1996
81. Family Therapy Notes by Kuntz (session 1) 8.5.1996
82. Treatment Plan authorization 1996
83. Urgent Care Appointment 8.5.1996
84. Family Therapy Notes by Kuntz (session 3) 8.1996
85. Family Therapy Notes by Kuntz (session 4) 8/1996
86. Family Therapy Notes by Kuntz (session 5) 8.29.1996
87. Treatment Plan Authorization Request 1996
88. Letter to UBS from Kuntz with Treatment Plan 9.10.1996

89. Kuntz Handwritten Notes 9.17.1996
90. On Call Report by Hoyt 9.18.1996
91. On Call Report by Phillips 9.18.1996
92. United Behavioral Clinics Hospital Consultation 9.18.1996
93. St. Anthony's Medical Center Evaluation 9.18.1996
94. United Behavioral Health Termination Summary 8.26.1997
95. Letter to United Behavioral Health from Kuntz 8.27.1997
96. Records from Boone County Jail
97. Education Records
98. Declaration of Julie Eilers Kuchar 11.25.2020

In-Person Examination: I had the opportunity to interview and examine Mr. Tisius on 10/22/22 at 10 am, Potosi Correctional Center, (Mineral Point/Potosi, MO).

Identifying Data: 41 y.o. right-handed man (DOB – 2/16/81)

History of Present Illness: Mr. Tisius described his history and described the following events and symptoms:

1. "I do space out a lot." There are times in conversation where he is not there for a few seconds. He remembers as a kid, he would be told by teachers, parent, friends, family would say, "Why are you not listening?" He would often not remember or understand what he had heard. People get very upset with him because they think he is not listening. He also describes not comprehending what people are saying—they sound "like the adults on Charlie Brown"—where he will hear noises but not be able to make out or comprehend what folks are saying. He describes episodes of lost time, for example, where he would be drawing and listening to music and four songs would go by that he wouldn't hear or remember hearing and lost that amount of time, meanwhile automatically drawing and being spaced out. He has had episodes of a strange bad feeling that he can feel in his palms and the arches in his feet and restlessness, hyperventilation, sweating, and sometimes he has a sense of globus or like he was choking, and with that there is a rising sensation in his groin/testicles that rise into his abdomen and epigastrium. During these times his feet also itch more. Sometimes this experience clusters to four or five times a week or even a couple times a day, and then sometimes a week or two goes by before he experiences it again. The spacing out and fear/epigastric rising sensations have been present since childhood. He experienced sporadic bed wetting till age 13 or 14. He also has occasional episodes of waking up from a dream and almost wetting himself. In January of 2000, he was walking in the street on a Saturday night, had a very severe tooth pain, and the nurse gave him one Percocet that he took. It was January and cold out, and he was sweating and felt like there were needles all over his body. His sweaty sensation and feeling of needles all over him sensation lasted for some time. He stood up to light a light, fell to the ground was unconscious, and was shaking all over and had "bloody vomit" all around him afterword. He lost consciousness and had full body shaking.

2. Head injuries: In his childhood and adolescence, his brother, Joey, would “beat the shit out of me.” His mother told him that when he was a baby, Joey tried to choke him. Almost every time, the beatings involved his head, and there were multiple times where he was beaten so bad that he lost consciousness or had alteration in awareness or other neural symptoms. Once his brother punched him in the face, knocked him down, and then repeatedly banged his head on the ground until he passed out. There was another time his brother hit him in his head with a flagstone paver. He had another one where he was checked in a game and landed head-first in his left temple area, cutting his face. This was at the age of 13, and he doesn’t remember the ride to the hospital and only woke up after being in the hospital. The day he had testicular surgery he hit his head pretty hard as well. He reported that his head injuries have been too numerous for him to keep track of all his concussions.
3. He describes sound sensitivity, for example, to certain pitches that come off a television. It feels like someone is drilling in his ear. He can feel pain around his ears with this.
4. He has been depressed since a very young age, even as early as 4 years old. He was on medication (Paxil and Prozac) starting around age 12 or 13 but has not been consistently medicated.
5. He had a lot of trouble at school and many things “did not make sense to me,” even things “like 2+2 =4.” He had trouble getting it. He saw his cohorts learning things and going forward but leaving him behind because he couldn’t understand things that others could. He would constantly tell himself he was too stupid, but he did not want to let others know he felt that way. He spent the next 10 years of his life realizing he had real difficulty understanding things, and as a cover for being unable to do things he should have been able to do, he acted like he just didn’t want to do them. He reported some behavioral issues in school around the ages of 11 or 12. He was very agitated and was on the verge of “breaking down.”
6. Cognitive: As mentioned above, he had a lot of trouble trying to understand things in school and could not really pay attention. He would draw during school time. He had trouble with distractions. He said he and his friends “did stupid things” like trying BMX tricks they saw on TV, like flipping his bike over while on it. The cognitive issues were diffuse in his life, meaning that they were “with everything.” He still intermittently has receptive language issues in terms of understanding what folks are saying to him. He had a lot of trouble following the “Matrix” movie, for example, and it took others a couple hours to explain it to him. After dropping out of school at age 16, he lived in the streets from ages 16-19. He was never able to maintain employment, and he worked “very little” in this time. He is a visual artist.
7. Academic. He had failing grades and poor performance in third, fourth, fifth, sixth, seventh, eighth, and ninth grades. He had to repeat sixth grade and was required to do summer school in seventh and eighth grades. He said this was because of his difficulty comprehending his studies. He also indicated the emotional neglect and abuse and

physical abuse at home also contributed to his difficulties in school. He did not finish ninth grade.

8. He is depressed currently. He has sadness, irritability, hopelessness, and mild insomnia (early). This has been true for much of his life as mentioned above, and throughout his life he has been anxious as well, characterized by nervousness, panic attacks, and gastrointestinal upset. The first time he was suicidal was in third or fourth grade. He would get overwhelmed, and he hated himself. He said didn't want to live because he was "bringing nothing to the world" and was "worthless," and he was ready to die. He described that when he was homeless, he would go to the fenced-in dumpsters at KFC and sleep back there, or when it was very cold, he would slip under someone's car who just got home to stay warm. He has been perpetually depressed. When he took Paxil and Prozac, there was an "over-connection," like "too much energy," and he didn't feel like himself; he was edgy, fast, and racy. He described cycling moods and marked increases in energy, "trying to do everything at once" even though he could not, like an "endorphin to your brain."
9. He is generally anxious and says it "comes with the territory." But, as mentioned above, he describes a lifetime of anxiety and depression, including panic attacks.

Regarding the day of the murders, he does not have a clear recollection of what happened exactly, but he felt like it was "automatic" behavior and "dream-like," "like it wasn't real." Afterward, it didn't feel real. He was very tired and felt sleepy for several hours after he was arrested.

Past Medical History: He wondered if he has blood pressure issues. He has spells of crushing/squeezing chest pain with stabbing left axillary pain and mid-back shooting pain with a sense of panic at times associated with palpitations.

Past Surgical History: He had left testicular torsion surgery at the age of 11 in April 1992.

Family History: He reported that his mother may have had mental illness, and he believes biological dad does as well. Mental illness and suicide are very frequent in his paternal and maternal family histories.

Past Psychiatric History: He carries diagnoses of depression, PTSD, and anxiety (GAD and panic attacks). He has tried Paxil, Prozac, ddAVP, and Trazodone. He only drank one time in his life, and that was a few days before the murders. He reported consuming three glasses of Crown 7. He did smoke a lot of weed for fun when he was much younger, but then he found as he got older that it would calm him down and he was not as anxious and jittery. He never did any other drugs.

Developmental/Social History: He was born and raised in the St. Louis area. He described his childhood as "bad, and unsupportive." He feels his mother didn't have the tools to care for him. He was neglected, but he believes she tried the best she could do "with no help and with mental illness." His brother had his dad and his dad's family. His mother was neglectful about hygiene

and wouldn't make them brush teeth or take a shower, etc. He said he didn't learn how to take a proper shower until he came to prison. He did not really know how to brush his teeth or how and when to properly wash his hands. His mother did not talk to them about puberty/sex, etc. He has never really had many friends, but after being in prison, he has an ex-wife and a GF by correspondence. As mentioned above, he never maintained employment, and he was homeless from age 16 until he got into prison. During this time, he was only sporadically in touch with his mother. He has never really had a cohort of friends. He doesn't know about his developmental history in terms of when he started walking or talking. Currently, he likes watching NBA/WNBA and the Hallmark channel.

Allergies: Regarding Percocet, he reported symptoms consistent with Generalized Tonic-Clonic Convulsion. He reported getting a rash with use of Septra or Nyquil.

Medications: He did not report taking any medications currently.

Neurological Examination:

Head/Ears/Eyes/Nose/Throat: normal, atraumatic, no bruits

Neck: supple, no bruits

Cor: S1S2, no rubs/gallops/thrills/murmurs

Pulmonary: Clear to Auscultation

Neural:

Mental Status: MOCA (Montreal Cognitive Assessment) 29/30, missed one on recall

Cranial Nerves: He could not identify lemon smell with smelling agent. Left nasolabial decrease at rest. Otherwise, 2-12 normal.

Motor: 5/5 throughout, no drift/tremor. No atrophy/fasciculations.

Sensory: Intact light touch, pinprick, heat/cold, vibration, cortical sensation

Coordination: Intact

Gait: Tandem Gait intact

Romberg: negative

Release: bilateral palmomental, left more prominent than right

Conclusion: In the course of my evaluation of his case, several conditions are evident, some of which have been previously diagnosed (depression), and others of which had not yet been identified. Here are some of those conditions:

1. **Traumatic Brain Injuries.** Mr. Tisius was repeatedly beaten by his brother in childhood and beaten by his mother as well. He also was beaten up by other kids in

school. He has sustained several concussions with alteration in neural function, too numerous to count. These injuries are known to produce frontal and temporal lobe deficits, which are evident in Mr. Tisius's case. Deficits arising from dysfunction in these realms involve judgment, planning, emotional regulation, salience prediction, disinhibition, motivation, assessing threat, and comportment.

2. **Epilepsy.** Mr. Tisius suffers from epilepsy. He has had at least one convulsion, and he described several spells consistent with focal epilepsy. This is an undiagnosed and untreated condition in his case. His spells are consistent with epilepsy arising from the temporal lobe of his brain. Temporal Lobe Epilepsy creates spells/seizures that involve dissociation, autoscopia, olfactory hallucinations, and episodes of loss or alteration in consciousness and automatic behavior ("automatisms"). Dissociative spells/seizures impair a person's mental state but do not always involve whole-body shaking or visible convulsions. In the commission of the murders, many of the dissociative elements were present, and it is likely that he was seizing prior to and on the day of the crime and in its commission. In a state of active seizure, it is impossible to access parts of the brain that are important for judgment and appropriate behavior.
3. **Depression.** Documentation to early childhood reveals a long-standing history of mood disorder and depression, for which he was treated at times in his life (Paxil, Prozac, psychotherapy). He is currently actively depressed.
4. **Complex PTSD.** He has suffered trauma from a young age. His mother was neglectful and abusive, and his brother regularly beat him. He has elements of hyperarousal, re-living, and marked anxiety.
5. **Neurocognitive Disorder.** Mr. Tisius has several cognitive impairments including memory difficulties, frontal deficits, like perseveration, abstraction, executive dysfunction. These deficits likely reflect repeated head injuries on a vulnerable substrate, as well as longstanding untreated epilepsy.

To a reasonable degree of medical certainty, Mr. Tisius is brain injured in multiple ways, and that the extent and severity of this injury are profound. The deficits that arise from these conditions markedly hamper his ability to make appropriate decisions, understand the consequences of actions, and appreciate the criminality of his conduct or conform his conduct to what the law requires.

Mr. Tisius was 19 years old at the time of the offense. Current medical research establishes that brain development, particularly in areas used in decision-making, judgment, and impulse control, continues into a person's 20s. This research also shows that in times of intense emotional arousal, the brain of a typical 19-year-old functions more like younger adolescent than an adult. Because Mr. Tisius was only 19, and because his social history is replete with factors known to impair brain development as well as evidence of cognitive deficits, it is likely that at age 19 and particularly in emotionally stressful circumstances, Mr. Tisius's brain functioned more like a younger adolescent than an adult brain.

The available evidence also indicates that at the time of the offense specifically, Mr. Tisius's brain was substantially impaired. His social history and neuropsychological testing show that he has deficits in the frontal and temporal areas of his brain. My neurological evaluation of him establishes that he suffers from epilepsy, which is a brain disorder. His behavior at the time of the offense is consistent with brain dysfunction due to epilepsy. In light of his deficits and dysfunction, the emotionally arousing circumstances of the offense, science establishing the immaturity of a 19-year-old brain, and that Mr. Tisius was only 19 at the time of the offense, I find to a reasonable degree of medical certainty that Mr. Tisius's ability to use appropriate decision-making during that time of intense stress was substantially impaired. Furthermore, his social history and prior evaluations show that he was extremely vulnerable to being taken advantage of by Roy Vance, and all available accounts indicate that Mr. Vance did in fact use Mr. Tisius's vulnerability and immaturity to Vance's advantage.

Sincerely,



Siddhartha S. Nadkarni, MD

SC99938

Electronically Filed - SUPREME COURT OF MISSOURI - January 13, 2023 - 07:46 PM

Missouri Form		JUDGE'S DOCKET SHEET		CASE NUMBER
				CR100-13FX
IN THE CIRCUIT COURT OF	MACON	COUNTY,	CIRCUIT	DIVISION
		TRIAL JUDGE RONALD M. BELT	DATE FILED 2-18-2000	
		ATTORNEY(S) FOR PLAINTIFF(S)		
STATE OF MISSOURI		MIKE FUSSELMAN		
Plaintiff(s)				
VS.		ATTORNEY(S) FOR DEFENDANT(S)		
ROY DALE VANCE COV CR599-1535F OCN 99098143		---TOM MARSHALL--- THOMAS H. WILSON MARK WILLIAMS		
Defendant(s)				
NATURE OF ACTION/CHARGE(S)		TRIAL DATE	CONTINUED TO	
CT. I-BURGLARY-CLASS C FELONY				
CT. II-STEALING-CLASS C FELONY				
CT. III-RECEIVING STOLEN PROPERTY-CLASS C FELONY		CONTINUED TO	CONTINUED TO	
DATE		DOCUMENTS FILED/ACTION TAKEN IN CASE		
2-18-2000	TRANSCRIPT received and filed on Change of Venue from Randolph County.			
	Hearing date set for 2-23-2000 at 1:00 P.M.			
2/22/00	APPLICATION FOR WRIT OF HABEAS CORPUS AD PROSEQUENDUM			
2/22/00	WRIT OF HABEAS CORPUS AD PROSEQUENDUM, filed by Prosecutor.			
2/22/00	ORDER, signed by Judge Belt.			
2/22/00	CERTIFIED COPY OF ORDER, sent to Randolph County by fax. HANDED TO MACON COUNTY SHERIFF.			
2/23/00	<i>Comes St by P.A. Fusselman. Comes by in person and counsel Tucker. Case continued to 3/2/00 at 1:00 P.M. Oral request for D.R. denied. 10% authorization on condition he leave with his mother, supervision by St. Rd. Curfew 6:00 P.M. to 8:00 A.M.</i>			
2-23-2000	ORIGINAL ORDER and WRIT OF HABEAS CORPUS Filed by Judge Belt.			
2-24-2000	Bond posted in the amount of \$1,500.00 cash by Lauretta Vance			

LOCKWOOD CO., INC. ATCHISON, KANSAS A-777 MO

EXHIBIT
10

STATE OF MISSOURI vs.

ROY DALE VANCE

CR100-13FX

Page No. 2

2-28-2000 BAIL BOND Filed.

3/8/2000 Comes State by Fesselman Comes Def in person and w. the counsel.
 Case set for trial 5-1-2000 at 8:30 + jury for 9:00 A.M.

4/12/2000 APPEARANCES: STATE: Rudolph P.A. Fesselman
 DEFENDANT: in person and with Counsel Marshall
 STATE FILES AMENDED INFORMATION: YES ☐ NO ☒
 STATE AMENDS BY INTERLINEATION: YES ☐ NO ☒
 FORMAL ARRANGEMENT: WAIVED ☒ PLEA: GUILTY ☒ NOT GUILTY ☐
 BARGAIN: YES ☒ NO ☐

THE COURT FINDS THAT THE PLEA WAS/WERE MADE VOLUNTARILY, KNOWINGLY, INTELLIGENTLY, WITH AN UNDERSTANDING OF THE NATURE OF THE CHARGE AGAINST THE DEFENDANT AND THE RANGE OF PUNISHMENT POSSIBLE.

SENTENCE: ORDERED ☒ WAIVED ☐

Continued to 5-24-2000 at 1:00 P.M. for sentencing
 5-19-00 Defendant ^{10/78} by not dealing with mother. Mother
 surrendered Def. Ten percent w. withdrawn.

*** 5-17-2000 SURRENDER DEFENDANT TO CUSTODY OF MACON COUNTY JAIL filed by Lauretta Vance

** 5-17-2000 ISSUED BOND CHECK REFUND in the amount of \$1,500.00 to Lauretta Vance

5/24/00 LETTER FROM DOC filed.

5-24-2000 Comes State by Fesselman Comes Def in person and counsel
 Tuckers Continued to 6/28/2000 at 1:00 P.M. Bond reduction denied

6-28-2000 Comes State. Comes Public Defenders office and announces conflict

and that state office should appoint new Counsel within week. Continued
 to 7-12-2000 at 10:00 A.M.

7-7-2000 ENTRY OF APPEARANCE Filed by Thomas Budesheim ~~XXXXXXXX~~ Attorney for Defendant

7-10-2000 MOTION FOR CONTINUANCE Filed by Attorney for Defendant.

7/12/00 COMES STATE BY P.A. BICKHAUS. COMES DEFENDANT IN PERSON AND WITH COUNSEL.

MOTION FOR CONTINUANCE SUSTAINED CASE SET 8/9/00 AT 1:00 P.M.

Style of Case		Page No. 3
STATE OF MISSOURI vs. ROY D. VANCE		Case Number CR100-13FX
DATE	DOCUMENTS FILED/ACTION TAKEN IN CASE	
7/21/00	APPLICATION OF WRIT OF HABEAS CORPUS AD PROSEQUENDUM filed by P.A. Fusselman.	
7/21/00	<i>Witnesses are under filed</i>	
8/19/00	<i>Concise St. Leg. Assn + P.A. T. Ouel. Concise definition person and with Concise P.S. reviewed. Defendant Motion to withdraw plea to Court III is sustained.</i>	
	JUDGMENT GRANTED. DEFENDANT <u>Vance</u> SENTENCE TO	
	COUNT 1: <i>Typist + Dept + Correction</i>	
	COUNT 2: <i>Typist + Dept + Correction</i>	
	COUNT 3: <i>plea with drawn</i>	
	SENTENCES TO RUN: CONSECUTIVELY _____ CONCURRENTLY <input checked="" type="checkbox"/>	
	CREDIT GRANTED FOR TIME SPENT IN JAIL AWAITING DISPOSITION. JUDGE <i>12M</i>	
	CRIME VICTIMS COMPENSATION FUND OF \$ <u>46</u>	
	APPLICATION FOR PAROLE: SUSTAINED _____ DENIED <input checked="" type="checkbox"/>	
	DEFENDANT REMANDED TO CUSTODY OF SHERIFF. SHERIFF GRANTED	
	HE GUARD IN TRANSPORTING DEFENDANT <u>Vance</u>	
	RECEPTION CENTER OF STATE DEPARTMENT OF CORRECTIONS.	
	DEFENDANT ADVISED OF HIS RIGHT TO PROCEED UNDER SUPREME	
	RULE 24.033 _____ OR 29.15 _____. AFTER INTERROGATION, COURT FINDS:	
	PROBABLE CAUSE OF INEFFECTIVE ASSISTANCE OF COUNSEL	
	JUDGMENT TO STATE PER FORM FILED <i>YSL</i>	
	<i>Court III is set for trial 2.22-01 at 8:30 and jury ordered for 9:00 AM</i>	
8-18-2000	REQUEST FOR DISCOVERY filed by Attorney for Defendant.	
9-7-2000	STATES REQUEST FOR DISCLOSURE filed by P.A., Fusselman.	
	STATES ANSWER TO REQUEST FOR DISCOVERY filed by P.A., Fusselman.	
10/16/00	Notice of Appointment of Mark L. Williams as counsel for defendant	
10-30-2000	MOTION TO WITHDRAWN filed by Attorney Budesheim, Attorney for Defendant	
11-6-2000	ENTRY OF APPEARANCE filed by Attorney for Defendant, Mark Williams	
11-15-2000	MOTION TO WITHDRAWN Filed by Attorney for Defendant	

IN THE CIRCUIT COURT OF RANDOLPH COUNTY, MISSOURI
AT MOBERLY
DIVISION ONE

State of Missouri

Plaintiff

vs.

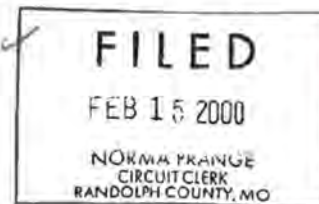
Case No.: CR-5-99-1535-F

Roy Dale Vance

Defendant.

DOB: 05-18-73

SSN: [REDACTED]



FELONY INFORMATION

The Prosecuting Attorney of the County of Randolph, State of Missouri, charges:

COUNT I

That the defendant, in violation of Section 569.170, RSMo., committed the class C felony of burglary in the second degree, punishable upon conviction under Section 558.011.1(3) and 560.011, RSMo., in that on or about December 15, 1999 at about 6:00 PM through December 16, 1999 at about 6:45 AM, in the County of Randolph, State of Missouri, the defendant, acting alone or in concert with another or others, knowingly entered or remained unlawfully in a building located at 1616 Schueneman Street, Moberly, Missouri, possessed by Foundation Recovery Systems, for the purpose of committing the crime of stealing therein; and

COUNT II

That the defendant, in violation of Section 570.030, RSMo., committed the class C felony of stealing, punishable upon conviction under Section 558.011.1(3) and 560.011, RSMo., in that on or about December 15, 1999 at about 6:00 PM through December 16, 1999 at about 6:45 AM, in the County of Randolph, State of Missouri, the defendant, acting alone or in concert with another or others, appropriated the following items:

Hilti demolition hammer	\$900-\$1,000
Craftsman tool box on wheels, red in color, three large drawers, nine small drawers	\$500
Craftsman stackable tool box,	\$250
two big drawers and six small drawers	\$350-\$400
DeWalt 18 volt drill/saw combination	\$800
Miller Arc Welder	\$1,500
Lincoln Mig Welder	\$100
Delta Bench Grinder	\$800
B & D Concrete Saw, worm driven	\$800
Milwaukee Concrete Saw, worm driven	\$30
Craftsman Combination wrench set	\$2,500 (\$500 each)
Five halogen lights, small	\$350
Milwaukee Sawzall	\$500 (\$250 each)
Two power paint guns	

Two DeWalt right angle hand grinders	\$700 (\$350 each)
Two sump pumps	\$2,000 (\$1,000)

of a value of at least seven hundred and fifty dollars, which property was in the possession of Foundation Recovery Systems, and defendant and another or others appropriated such property without the consent of Foundation Recovery Systems and with the purpose to deprive Foundation Recovery Systems thereof; and therein; and

COUNT III

That the defendant, in violation of Section 570.080, RSMo., committed the class C felony of receiving stolen property, punishable upon conviction under Section 558.011.1(3) and 560.011, RSMo., in that on or about December 17, 1999, in the County of Randolph, State of Missouri, the defendant, acting alone or in concert with another or others, with the purpose to deprive the owner of

Hilti demolition hammer	\$900-\$1,000
Craftsman tool box on wheels, red in color, three large drawers, nine small drawers	\$500
Craftsman stackable tool box, two big drawers and six small drawers	\$250
DeWalt 18 volt drill/saw combination	\$350-\$400
Miller Arc Welder	\$800
Lincoln Mig Welder	\$1,500
Delta Bench Grinder	\$100
B & D Concrete Saw, worm driven	\$800
Milwaukee Concrete Saw, worm driven	\$800
Craftsman Combination wrench set	\$30
Five halogen lights, small	\$2,500 (\$500 each)
Milwaukee Sawzall	\$350
Two power paint guns	\$500 (\$250 each)
Two DeWalt right angle hand grinders	\$700 (\$350 each)
Two sump pumps	\$2,000 (\$1,000)

retained such property, of a value of at least one hundred and fifty dollars, knowing or believing that it was stolen.


Mike Fusselman - MBE#35603

STATE OF MISSOURI)
SS
COUNTY OF RANDOLPH)

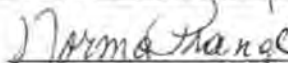
Mike Fusselman, Prosecuting Attorney of the County of Randolph, State of

Missouri, being duly sworn upon oath says that the facts stated in the above Information are true according to his best information, knowledge and belief.



Mike Fusselman - MBE#35603

Subscribed and sworn to before me this 15 day of February, 2000



Judge/Clerk of the Circuit
Court of the County of
Randolph, Missouri
Division One

WITNESSES:

Jeff Martin

Todd Meyer

Troy Link

Kenna Neese

Mark Arnsperger

Richard Lockett

Macon Flea Market

Foundation Recovery
Systems



IN THE CIRCUIT COURT OF MACON COUNTY, MISSOURI

MACON COUNTY CIRCUIT COURT DIV. 1

Judge or Division: HADLEY E. GRIMM-CIRCUIT		Case Number: CR100-13FX	
		Offense Cycle No.: 99098143	
State of Missouri		Prosecuting Attorney/MO Bar No.: MIKE FUSSELMAN 35603	
Defendant: ROY D. VANCE		vs. Defense Attorney/MO Bar No.: MARK WILLIAMS 39355	
DOB: 5-18-73 SSN: [REDACTED]			
<input checked="" type="checkbox"/> Pre-Sentence Ordered <input type="checkbox"/> Pre-Sentence Waived			

FILED
APR 18 2001
JUDITH A. ROBERTS
Circuit Clerk & Ex-Officio Recorder
(Date File Stamp)
Date of offense for each count
CT. III-DECEMBER 16, 1999

Sentence and Judgment

Count No. ALREADY SENTENCED Charge	Count No. ALREADY SENTENCED Charge	Count No. III Charge RECEIVING STOLEN PROPERTY								
<input type="checkbox"/> Misdemeanor <input type="checkbox"/> Felony Class <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> Unclassified On the above count, it is adjudged that the defendant has been: <input type="checkbox"/> Found guilty upon a plea of guilty <input type="checkbox"/> Found guilty by a jury/court <input type="checkbox"/> Dismissed/Nolle pros/found not guilty	<input type="checkbox"/> Misdemeanor <input type="checkbox"/> Felony Class <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> Unclassified On the above count, it is adjudged that the defendant has been: <input type="checkbox"/> Found guilty upon a plea of guilty <input type="checkbox"/> Found guilty by a jury/court <input type="checkbox"/> Dismissed/Nolle pros/found not guilty	<input type="checkbox"/> Misdemeanor <input checked="" type="checkbox"/> Felony Class <input type="checkbox"/> A <input type="checkbox"/> B <input checked="" type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> Unclassified On the above count, it is adjudged that the defendant has been: <input checked="" type="checkbox"/> Found Guilty upon a plea of guilty <input type="checkbox"/> found guilty by a jury/court <input type="checkbox"/> Dismissed/Nolle pros/found not guilty								
<p>The court finds beyond a reasonable doubt that the defendant is a:</p> <table border="0"><tr><td><input type="checkbox"/> Persistent Sexual Offender (558.018 RSMo)</td><td><input type="checkbox"/> Prior Offender (558.016 RSMo)</td></tr><tr><td><input type="checkbox"/> Prior Drug Offender (195.295 and 195.296 RSMo)</td><td><input type="checkbox"/> Persistent Offender (558.016 RSMo)</td></tr><tr><td><input type="checkbox"/> Persistent Drug Offender (195.295 RSMo)</td><td><input type="checkbox"/> Class X Offender (558.019 RSMo)</td></tr><tr><td><input type="checkbox"/> Dangerous Offender (558.016 RSMo)</td><td><input type="checkbox"/> Not Applicable</td></tr></table> <p>on APRIL 18, 2001. The court:</p> <p><input checked="" type="checkbox"/> Informs the defendant of verdict/finding, asks the defendant whether (s)he has anything to say why judgment should not be pronounced, and finds that no sufficient cause to the contrary has been shown or appears to the court.</p> <p><input checked="" type="checkbox"/> Defendant has been advised of his/her rights under Rule 24.035/29.15 and the court has found</p> <p style="padding-left: 40px;"><input type="checkbox"/> Probable cause <input checked="" type="checkbox"/> No probable cause</p> <p>To believe that defendant has received ineffective assistance of counsel</p>			<input type="checkbox"/> Persistent Sexual Offender (558.018 RSMo)	<input type="checkbox"/> Prior Offender (558.016 RSMo)	<input type="checkbox"/> Prior Drug Offender (195.295 and 195.296 RSMo)	<input type="checkbox"/> Persistent Offender (558.016 RSMo)	<input type="checkbox"/> Persistent Drug Offender (195.295 RSMo)	<input type="checkbox"/> Class X Offender (558.019 RSMo)	<input type="checkbox"/> Dangerous Offender (558.016 RSMo)	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Persistent Sexual Offender (558.018 RSMo)	<input type="checkbox"/> Prior Offender (558.016 RSMo)									
<input type="checkbox"/> Prior Drug Offender (195.295 and 195.296 RSMo)	<input type="checkbox"/> Persistent Offender (558.016 RSMo)									
<input type="checkbox"/> Persistent Drug Offender (195.295 RSMo)	<input type="checkbox"/> Class X Offender (558.019 RSMo)									
<input type="checkbox"/> Dangerous Offender (558.016 RSMo)	<input type="checkbox"/> Not Applicable									

<p>On count I-ALREADY SENTENCED, the Court:</p> <p><input type="checkbox"/> Sentences and commits the defendant to the custody of _____ for a period of _____. Sentence to be served _____</p> <p style="padding-left: 40px;"> <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive with _____ </p> <p><input type="checkbox"/> Suspends execution of sentence. Defendant is placed on probation for a period of _____ under the supervision of _____ based on the conditions set forth in the order of probation.</p> <p><input type="checkbox"/> Suspends imposition of sentence, defendant is placed on probation for a period of _____ under the supervision of _____ based on the conditions set forth in the order of probation.</p> <p><input type="checkbox"/> Fines the defendant \$ _____. The court stays \$ _____ with the remainder due by _____</p>		
<p>On Count II-ALREADY SENTENCED, The Court:</p> <p><input type="checkbox"/> Sentences and commits the defendant to the custody of _____ for a period of _____. Sentence to be served _____</p> <p style="padding-left: 40px;"> <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive with _____ </p> <p><input type="checkbox"/> Suspends execution of sentence. Defendant is placed on probation for a period of _____ under the supervision of _____ based on the conditions set forth in the order of probation.</p> <p><input type="checkbox"/> Suspends imposition of sentence. Defendant is placed on probation for a period of _____ under the supervision of _____ based on the conditions set forth in the order of probation.</p> <p><input type="checkbox"/> Fines the defendant \$ _____. The court stays \$ _____ with the remainder due by _____</p>		
<p>On count III, the Court:</p> <p><input checked="" type="checkbox"/> Sentences and commits the defendant to the custody of STATE DEPARTMENT OF CORRECTIONS for a period of 7 YEARS. Sentence to be served _____</p> <p style="padding-left: 40px;"> <input checked="" type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive with WITH COUNTS I & II. </p> <p><input type="checkbox"/> Suspends execution of sentence. Defendant is placed on probation for a period of _____ under the supervision of _____ based on the conditions set forth in the order of probation.</p> <p><input type="checkbox"/> Suspends imposition of sentence. Defendant is placed on probation for a period of _____ under the supervision of _____ based on the conditions set forth in the order of probation.</p> <p><input type="checkbox"/> Fines the defendant \$ _____. The court stays \$ _____ with the remainder due by _____</p>		

<p>The court further orders:</p> <p><input checked="" type="checkbox"/> The clerk to deliver a certified copy of the judgment and commitment to the sheriff.</p> <p><input checked="" type="checkbox"/> The sheriff to authorize one additional officer/guard to transport defendant to division of adult institutions.</p> <p><input checked="" type="checkbox"/> That judgment is entered in favor of the state of Missouri and against the defendant for the sum of \$ 46.00 ALREADY ENTERED for the crime victims compensation fund.</p> <p><input checked="" type="checkbox"/> Judgment for the State of Missouri and against the defendant for appointed counsel services in the sum of \$ 150.00.</p> <p><input checked="" type="checkbox"/> Costs taxed against DEFENDANT</p> <p><input type="checkbox"/> Costs Waived</p> <p><input type="checkbox"/> The following special conditions of probation:</p> <p><input type="checkbox"/> Other, see attached.</p>	<p><input type="checkbox"/> §217.785 RSMo Missouri Post Conviction Drug Treatment Program</p> <p><input type="checkbox"/> Non-Institutional <input type="checkbox"/> Institutional</p> <p><input type="checkbox"/> §217.362 RSMo Court Ordered Substance Abuse Program</p> <p><input type="checkbox"/> §217.378 RSMo Regimented Discipline Program</p> <p><input type="checkbox"/> §217.777 RSMo Community Corrections Program for Intensive Supervision</p>
<p style="text-align: center;">(Seal of Circuit Court)</p> <p style="text-align: right;">Case heard by: Judge <u>HADLEY E. GRIMM-CIRCUIT</u> Division</p> <p>I certify that the above is a true copy of the original Judgment and Sentence of the court in the above cause, as it appears on record in my office.</p> <p>Issued on <u>APRIL 23, 2001</u> <u>JUDITH A. ROBERTS</u> <u><i>Paula Carson</i></u></p> <p style="text-align: center;">Date Clerk Deputy Clerk</p>	



IN THE CIRCUIT COURT OF MACON COUNTY, MISSOURI

Judge or Division: RONALD M. BELT-CIRCUIT		Case Number: CR100-13FX
		Offense Cycle No.: 99098143
State of Missouri	Prosecuting Attorney/MO Bar No.: MIKE FUSSELMAN 35603	MACON COUNTY CIRCUIT COURT DIV. I FILED AUG 09 2000 JUDITH A. ROBERTS Circuit Clerk & Ex-Officio Recorder
Defendant: ROY D. VANCE	vs.	
	Defense Attorney/MO Bar No.: THOMAS BUDESHEIM 36543	
DOB: 5-18-73 SSN: [REDACTED]		
<input checked="" type="checkbox"/> Pre-Sentence Ordered <input type="checkbox"/> Pre-Sentence Waived		Date of offense for each count DECEMBER 15, 1999

Sentence and Judgment

Count No. I Charge BURGLARY <input type="checkbox"/> Misdemeanor <input checked="" type="checkbox"/> Felony Class <input type="checkbox"/> A <input type="checkbox"/> B <input checked="" type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> Unclassified On the above count, it is adjudged that the defendant has been: <input checked="" type="checkbox"/> Found guilty upon a plea of guilty <input type="checkbox"/> Found guilty by a jury/court <input type="checkbox"/> Dismissed/Nolle pros/found not guilty	Count No. II Charge STEALING <input type="checkbox"/> Misdemeanor <input checked="" type="checkbox"/> Felony Class <input type="checkbox"/> A <input type="checkbox"/> B <input checked="" type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> Unclassified On the above count, it is adjudged that the defendant has been: <input checked="" type="checkbox"/> Found guilty upon a plea of guilty <input type="checkbox"/> Found guilty by a jury/court <input type="checkbox"/> Dismissed/Nolle pros/found not guilty	Count No. III Charge RECEIVING STOLEN PROPERTY <input type="checkbox"/> Misdemeanor <input checked="" type="checkbox"/> Felony Class <input type="checkbox"/> A <input type="checkbox"/> B <input checked="" type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> Unclassified On the above count, it is adjudged that the defendant has been: <input type="checkbox"/> Found Guilty upon a plea of guilty <input type="checkbox"/> found guilty by a jury/court <input type="checkbox"/> Dismissed/Nolle pros/found not guilty
XX STILL PENDING		
The court finds beyond a reasonable doubt that the defendant is a: <input type="checkbox"/> Persistent Sexual Offender (558.018 RSMo) <input type="checkbox"/> Prior Offender (558.016 RSMo) <input type="checkbox"/> Prior Drug Offender (195.295 and 195.296 RSMo) <input type="checkbox"/> Persistent Offender (558.016 RSMo) <input type="checkbox"/> Persistent Drug Offender (195.295 RSMo) <input type="checkbox"/> Class X Offender (558.019 RSMo) <input type="checkbox"/> Dangerous Offender (558.016 RSMo) <input type="checkbox"/> Not Applicable		
on AUGUST 9, 2000. The court: <input checked="" type="checkbox"/> Informs the defendant of verdict/finding, asks the defendant whether (s)he has anything to say why judgment should not be pronounced, and finds that no sufficient cause to the contrary has been shown or appears to the court. <input checked="" type="checkbox"/> Defendant has been advised of his/her rights under Rule 24.035/29.15 and the court has found <input type="checkbox"/> Probable cause <input checked="" type="checkbox"/> No probable cause To believe that defendant has received ineffective assistance of counsel		

<p>On count I, the Court:</p> <p><input checked="" type="checkbox"/> Sentences and commits the defendant to the custody of STATE DEPARTMENT OF CORRECTIONS for a period of 7 YEARS. Sentence to be served</p> <p style="margin-left: 40px;"> <input checked="" type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive with COUNT II. </p> <p><input type="checkbox"/> Suspends execution of sentence. Defendant is placed on probation for a period of _____ under the supervision of _____ based on the conditions set forth in the order of probation.</p> <p><input type="checkbox"/> Suspends imposition of sentence, defendant is placed on probation for a period of _____ under the supervision of _____ based on the conditions set forth in the order of probation.</p> <p><input type="checkbox"/> Fines the defendant \$ _____. The court stays \$ _____ with the remainder due by _____.</p>
<p>On Count II, The Court:</p> <p><input checked="" type="checkbox"/> Sentences and commits the defendant to the custody of STATE DEPARTMENT OF CORRECTIONS for a period of 7 YEARS. Sentence to be served</p> <p style="margin-left: 40px;"> <input checked="" type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive with COUNT I. </p> <p><input type="checkbox"/> Suspends execution of sentence. Defendant is placed on probation for a period of _____ under the supervision of _____ based on the conditions set forth in the order of probation.</p> <p><input type="checkbox"/> Suspends imposition of sentence. Defendant is placed on probation for a period of _____ under the supervision of _____ based on the conditions set forth in the order of probation.</p> <p><input type="checkbox"/> Fines the defendant \$ _____. The court stays \$ _____ with the remainder due by _____.</p>
<p>On count _____, the Court:</p> <p><input type="checkbox"/> Sentences and commits the defendant to the custody of _____ for a period of _____. Sentence to be served</p> <p style="margin-left: 40px;"> <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive with _____ </p> <p><input type="checkbox"/> Suspends execution of sentence. Defendant is placed on probation for a period of _____ under the supervision of _____ based on the conditions set forth in the order of probation.</p> <p><input type="checkbox"/> Suspends imposition of sentence. Defendant is placed on probation for a period of _____ under the supervision of _____ based on the conditions set forth in the order of probation.</p> <p><input type="checkbox"/> Fines the defendant \$ _____. The court stays \$ _____ with the remainder due by _____.</p>

<p>The court further orders:</p> <p><input checked="" type="checkbox"/> The clerk to deliver a certified copy of the judgment and commitment to the sheriff.</p> <p><input checked="" type="checkbox"/> The sheriff to authorize one additional officer/guard to transport defendant to division of adult institutions.</p> <p><input checked="" type="checkbox"/> That judgment is entered in favor of the state of Missouri and against the defendant for the sum of \$ 46.00 for the crime victims compensation fund.</p> <p><input type="checkbox"/> Judgment for the State of Missouri and against the defendant for appointed counsel services in the sum of \$</p> <p><input checked="" type="checkbox"/> Costs taxed against DEFENDANT</p> <p><input type="checkbox"/> Costs Waived</p> <p><input type="checkbox"/> The following special conditions of probation:</p> <p><input type="checkbox"/> Other, see attached.</p>	<p><input type="checkbox"/> §217.785 RSMo Missouri Post Conviction Drug Treatment Program</p> <p><input type="checkbox"/> Non-Institutional <input type="checkbox"/> Institutional</p> <p><input type="checkbox"/> §217.362 RSMo Court Ordered Substance Abuse Program</p> <p><input type="checkbox"/> §217.378 RSMo Regimented Discipline Program</p> <p><input type="checkbox"/> §217.777 RSMo Community Corrections Program for Intensive Supervision</p>
<p>(Seal of Circuit Court)</p> <p style="text-align: right;">Case heard by: Judge <u>RONALD M. BELT-CIRCUIT</u> Division</p> <p>I certify that the above is a true copy of the original Judgment and Sentence of the court in the above cause, as it appears on record in my office.</p> <p>Issued on <u>AUGUST 14, 2000</u> <u>JUDITH A. ROBERTS</u> b. <u>Paula C. Roberts</u></p> <p style="text-align: center;">Date Clerk Deputy Clerk</p>	

Factual Summary:

Officers learned of the theft of approximately \$10,000 in tools and equipment from Foundation Recovery Systems during the evening of December 15 or early morning of December 16. The owner made a report the following morning to Moberly Police. The owner indicated that several employees had been causing concern recently because of their frequent discussions regarding substance abuse. Upon learning of their conversations, the owner explained to them that he was considering drug testing at the workplace. With that said, these particular employees, including Roy Vance, quit. This was within a week of the burglary.

A flea market in Macon called the Moberly police department on December 17, 1999 and reported that they had received an unusually large sale of tools and equipment from two individuals from the Moberly area. They obtained the license number on the vehicle these two individuals were driving and gave the information to police. The license checked to Richard Lockett. Lockett's vehicle was stopped about 2:15pm on December 17, 1999. Lockett was taken to the Moberly police department where he was mirandized and interrogated concerning his involvement. He acknowledged that Vance had previously been employed at Foundation Recovery Systems, that Vance quit, then subsequently approached Lockett about burglarizing the business. He accompanied Vance and assisted in the burglary during the evening of December 15, morning of December 16. They sorted through the property and took some to St. Louis with Myra Lockett, his mother, to dispose of it and sold same to a relative for \$220. They took other property to the flea market in Macon, Missouri. Several items were still in his truck and recovered by officers.

This document is attached and incorporated by reference to the felony complaint in this matter, CR-5-99-1532, as though more fully set forth therein.

An application for a search warrant was filed with the Associate Circuit Judge on December 18, 1999 for a search of a residence where Vance was staying. An informant came forward and explained that Vance told her property hidden next to a stove in the basement of the residence was stolen. The property was subsequently recovered by officers and identified as stolen from Foundation Recovery Systems.



Declaration of Julie Eilers Kuchar
Pursuant to 28 U.S.C. § 1762

I, Julie Eilers Kuchar, pursuant to the provisions of 28 U.S.C. § 1762(2), declare as follows:

1. I am over the age of eighteen (18), of sound mind, and competent to testify regarding all matters below.
2. I am an investigator with the Federal Public Defender-Capital Habeas Unit for the United States District Court, Western District of Missouri.
3. I have worked as an investigator or sentencing specialist for twenty-two (22) years. I began my career as an alternative sentencing specialist with the Missouri State Public Defender ("MSPD") System in 1998, then became a mitigation specialist within MSPD. In 2006, I became an investigator with the Federal Public Defender's office in Kansas City, Missouri. In 2017, I transferred to the newly created Capital Habeas Unit ("CHU").
4. In my capacity as an investigator for the CHU, I was responsible for investigating CHU client claims, including Mr. Michael Tisius ("Tisius").
5. I interviewed several witnesses related to claims raised in Mr. Tisius' petition for habeas corpus relief. All these interviews were conducted face-to-face where I explained to each witness who I was and who I represented before they made any of these disclosures. I have included the dates, locations, and relevant details regarding each interview below. If there are direct quotations below, then that indicates an exact quote from the witness himself. Mr. Keith O'Connor — counsel for Mr. Tisius — sometimes accompanied me and participated in these

interviews. The instances when Mr. O'Connor was present are noted below by the initials, "KO'C." My recollections are as follows:

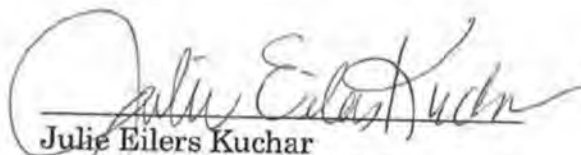
- A. Thomas Antle — interviewed April 19, 2018, in Moberly Missouri, outside his mobile home (KO'C present and participating). Mr. Antle said Mr. Roy Vance ("Vance") and Tisius had a "tight" relationship. Vance was braggadocious; telling people how much meth he could cook and sell, bragging about his numerous jail/prison escapes. Vance was manipulative: he "played games with people to get what he wanted. If he wanted it he would get it. He didn't give a fuck." Vance used flattery to get what he wanted. Mr. Antle described Vance and Tisius' relationship as "weird," and that Tisius was "glued" to Vance. Antle described Tisius as small, and the second youngest inmate in Randolph County jail. Vance used Antle to unwittingly send a coded message to Tracie Bulington through Antle's mom. Antle said, "Vance used me because I was young and small." Antle gave a deposition to Tisius' first trial lawyers regarding the botched jail break from Randolph County jail. He was never interviewed again by any member of any subsequent Tisius legal team until Mr. O'Connor and I met him.
- B. James Foote — interviewed April 20, 2018, in Moberly, Missouri, outside his home (KO'C present and participating). Vance told Mr. Foote that he was going to serve 45-50 years for his recent jail break out of Macon County jail. Foote said Vance requested Tisius draw a picture for Vance's daughter as a gift, which led to a bond whereby the two were close. Foote heard Vance explain to Tisius about getting in touch with Vance's girlfriend Tracie Bulington when Tisius was released. Though Foote doubted the sincerity of the

statements, he heard Vance planning the jail break with Tisius and he heard Vance explain to Tisius that they were going to Mexico afterwards to enjoy their money, have drinks and live large. As Mr. Foote doubted the reality of this plan, he was surprised that Tisius believed it. Foote also described Tisius as young and small. Lastly, he was awestruck by how quickly Vance manipulated Tisius, because they were only around each other for approximately a month. Foote gave a deposition in the first collateral attack proceeding, and testified similarly there, calling Vance “manipulative” and “in control” of the jail. He was not called as a witness at resentencing, and was never interviewed by any member of the Tisius legal team again until Mr. O'Connor and I met him..

C. Derek Freese — interviewed April 16, 2018, at Moberly Inn and Suites, Moberly, Missouri (KO'C present and participating). Mr. Freese was incarcerated at the Macon County jail when Vance escaped. Mr. Freese and Mr. Vance were then moved to Randolph County at approximately the same time, though Mr. Freese was moved for unrelated reasons. Freese observed Vance to be “pretty well settled in the system,” referring to the criminal justice system and prison culture. Freese said Vance bragged to him about how Jesse James broke out of the Macon County jail too. Freese said Vance carried the aura an inmate possesses after serving lengthy prison sentences. Freese observed Vance’s “subtle influence” over younger inmates. Freese equated the atmosphere to that of pack animals with Vance as the alpha dog. Freese had never spoken to any member of any Tisius legal team until Mr. O'Connor and I met him..

D. Gerado Arteaga — interviewed June 15, 2018, at the Sunrise Hospital and Medical Center, in Las Vegas, Nevada. Mr. Arteaga hired Tisius to work for him at Dairy Queen when Tisius was homeless. Arteaga allowed Tisius to stay with his family, fed him meals, and let him babysit his young son. Arteaga remembered Tisius as “a skinny little kid, never violent, I felt safe with him caring for my son.” Tisius stayed off and on with him, but moved along when he started staying with girls who worked at Dairy Queen. Tisius was already at Randolph County jail when Arteaga arrived. When he arrived, “Roy already had him — there wasn’t nothing I could do.” Arteaga used the phrases, “Roy programmed Mike,” “Roy was very organized,” and “Roy had a way with words.” Looking back he feels badly he didn’t do something to stop Vance taking advantage of Michael, saying “Poor young, kid!” Arteaga acknowledged Vance was definitely an older and more experienced inmate than most, and in particular, Tisius. Arteaga often saw Tisius and Vance on the yard whispering. Tisius told him they were talking about trying to plan an escape. Arteaga did not think Mike would ever do anything but admitted, “Roy was promising him things he couldn’t deliver.” Arteaga had never spoken to any member of any Tisius legal team until I met him..

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Julie Eilers Kuchar", is written over a horizontal line.

Julie Eilers Kuchar
Investigator, Capital Habeas Unit
Federal Public Defender's Office
Western District of Missouri
1000 Walnut Suite 600
Kansas City, MO 64106
Phone: (816) 471-8282
Julie_Eilers@fd.org

Declaration of Tracie Bulington

Pursuant to 28 U.S.C. § 1746

1. My name is Tracie Bulington. I am currently incarcerated at Chillicothe Correctional Center. I have been in the custody of Missouri Department of Corrections since my conviction. I've been here in Chillicothe since 2003. Michael Tisius and Roy Vance are my co-defendants. All three of us are serving time from an incident in Huntsville, Missouri where two correctional officers were killed.
2. I was born in Indiana. My family and I moved back and forth from Missouri and Indiana when I was a kid. That was in part because of health problems I had and in part because we wanted to be near family. As an adult the doctors have determined that I have a lung condition which played a part in all the health problems I had as a kid. But when I was a kid I went through a lot of testing to try and figure out why I was so sick. The doctors have since learned it is genetic. My dad and my brother have lung problems as well.
3. I didn't graduate from high school. My oldest child was born when I was eighteen. I then had two more kids. I went back and got my GED. Over the years I worked in nursing and in trucking. I struggled as a single parent with three kids. One of my children was sick when he was born. That took a real toll on me. At times my work schedule has had a negative impact on my kids. I didn't have control over the number of hours I was required to work at the nursing home. My kids suffered because I wasn't there.
4. Both my ex-husband and ex-boyfriends were physically abusive to me. I left my husband, Robert Walls, after he threw me onto our waterbed and dislocated my hip. He hurt me so bad I had to go to the hospital. My boyfriend Tony Murry went off into a

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blind rage once. I finally left him after he wrapped his hands around my throat and threatened to kill me.

5. At the time of the crime Roy Vance was my boyfriend. We had been together a few months. I met him at my friend Helen Riley's apartment about three months before the crime happened. Helen was dating Karl Bartholomew at the time and Roy was his friend. Despite the fact that we had only been together a short time I loved Roy very much.
6. I met Roy after my relationship with Tony Murry ended. I had been with Tony Murry for several years and I was at a low point in my life. When I met Roy my self-esteem was gone and I was lost. I wasn't working at the time and I was struggling financially. I was trying to get back on my feet. Early in 2000 Tony and I got into an argument and I was charged with assault. I had that hanging over my head too. My three children were living in LaPlata, Missouri with my mother and father. I spent some time out there with them but I was also spending time in Macon, Missouri, with my friend Helen Riley. It was when I was staying with her that I met Roy. We all hung out at Helen's apartment. I saw Roy, Karl and Helen smoke meth and marijuana and drink at her apartment during that time.
7. When I met Roy my kids were still young. They were all under the age of ten. Roy also had a family. He had a little girl with Stacey Lancaster. Her name is Kirsten. She was still in diapers when the crime happened. Roy got me to talk about my family. He talked to me about his daughter. There was a period when Roy and I were happy. We sometimes spent time with his daughter. Other times we took my kids places – horseback riding or to the park. Roy treated me like I was somebody. Looking back on everything that happened I think I, too, was vulnerable like Michael Tisius. Roy got me to trust him,

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share my secrets with him. He got me to open up and tell him about my marriage and about Tony. Then he used my weaknesses against me. Whatever had hurt me in the past – he became the opposite. Roy learned where I was weak and he got in there. He gave me exactly what I was looking for. He treated me like an equal. He knew how bad the physical abuse in my past relationship hurt me. He promised he would never put his hands on me. He was a very good manipulator. He promised me that we would be happy together. He said he wanted to stop using drugs. He wanted a better life. I believed everything he told me. I thought we would be together forever and everything was going to work out.

8. Before Roy got arrested there were red flags I ignored. Roy told Kirsten's mom, Stacey Lancaster, he was on his way to get her and he never showed up. Instead he and a friend went out to steal copper wires for cash. Stacey called me and I had no idea what to say to her. Another time after Roy found out he was wanted he took off and left me alone with Kirsten. I had never been alone with her before and I had no choice but to go to Stacey's and explain why I had the baby by myself. Roy told me he was working when we got together. I assumed he had a legitimate job. I know now that he didn't. That was a lie too. I only found out after he was picked up that living with his mom was one of the stipulations of his release. He never told me that either. Roy partied a lot. We hung out at his friend's trailer and Roy drank and smoked meth and marijuana there. I occasionally smoked meth and pot with Roy too.
9. Roy's drug use got worse. Both of us were using. Neither of us were sleeping or eating like we should. Roy's mom got upset with him and she told the cops he wasn't living with her as he had been ordered to do as part of his release. A warrant was put out for Roy's

arrest and at that point we were on the run. Around this time Roy came up with the scheme to cook meth. His friend Christopher Knapp got involved. I gave Roy the money he needed to buy supplies and I drove him and Chris out to an abandoned house.

10. After some time had gone by Roy was picked up and held in Macon County. Later in May I was picked up on a Failure to Appear from Macon County. This was over that assault case involving Tony. Because I was a female inmate I was housed in Shelby County. Around that same time Roy was charged with attempting to escape from the Macon County Jail. The police said he tried to dig himself out. While I was held at Shelby County a deputy from the Macon County Sheriff's Office interviewed me about Roy. He also asked me questions about Roy's friend Christopher Knapp. They were doing an investigation into the manufacturing of meth. They told me Roy had already given a statement. I talked with the police about what I knew. It scared me. I didn't want to go to prison on a big drug case and I didn't want to be seen as someone who was a snitch. Roy was locked up and when I released I was out on my own. I feared for my safety. That was at the end of May 2000. Roy told me he was trying to work a deal so that both of us could get out of the area and build a new life together. It was around this time I started staying mostly at my friend Heather Douglas' house. I didn't feel safe and I worried about my kids' safety.
11. After Roy was arrested and moved to the Randolph County Jail he made a lot of demands of me. It was a 45 minute drive for me and Roy regularly insisted I bring him stuff. He told me to bring his daughter Kirsten in to see him. Roy insisted I bring cigarettes, coffee and underclothes up to the jail for him. He had me contact people on his behalf and do other things for him. Roy called me all the time. That was expensive too. I wasn't working

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at the time. My only source of income was my kids' child support. I spent a lot of that money doing things for Roy.

12. More and more Roy talked about how he had to get out of jail. Roy tried to escape from Macon County. While he was there he asked me to put hacksaw blades in a bible for him. Roy tried to work as an informant for the Sheriff's Office. Roy tried to talk to his parole officer about an early release. He asked me to contact a judge on his behalf. Roy started asking me if I had access to a gun. It came up in conversation after conversation. Roy was insistent. Roy had some crazy idea to plant a gun in the rec area. Roy told me to set up a phone at somebody else's house. Roy gave me another inmate's name, date of birth and social security number to do it. Roy was fixated on getting out of jail.
13. Then Roy started talking to me about Mike. It started off with cigarettes. I remember thinking that Roy was going through an awful of cigarettes. I asked Roy about it and he said he was giving them to Michael. Roy said Michael was someone he knew. He said they had been in county before. Roy sent me drawings Michael had done. Roy told me that Michael had a bad home life. Roy wanted me to find Mike a job so that he could get work release. Roy came up with a scheme where we could tell the sheriff or the prosecutor that Mike was working for my dad on the farm. Roy gave me a number and I called and asked about it. I called back a second time and was told the request was denied.
14. Roy continued to talk about Michael getting released from Randolph County Jail. He called me and was agitated and depressed because Mike was finally released but he got picked up and transported back to St. Louis on a hold. Roy almost gave up hope when he learned Mike had left the area. Just a day or two later Mike called over to Karl's house and then he spoke to me at Heather's place. Roy had given him the names and phone

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numbers of different people where he could try and reach me. Roy's mood changed entirely when he heard that Michael got in touch with me. He became excited and happy. Mike wanted me to drive out there to pick him up. There was no way my car could make it. Then Mike called again and he asked me if I could meet him in Columbia. I agreed to do that. Mike said he would know who I was because Roy had given him a photograph of me and Roy had also given him a description of my car.

15. In just the short amount of time I was with Mike I learned a lot about him. When I went to court I wasn't asked about how he was a person. I feel strongly that Michael doesn't deserve to be on death row. It was clear from the moment I met Michael that Roy had gotten into that kid's head. Michael was only 19 years old when the crime happened. Mike was childlike. Even for his age he wasn't mature. Roy manipulated Michael. He knew that Michael was looking for love. He knew Michael was looking for a father figure. Roy got to know Michael and then brainwashed him. Roy got the kid to open up and he became what Mike needed. The way Mike talked about Roy – he idolized him. The same way a kid would with their dad. I've had time now to reflect on everything that happened. Roy was smart. He didn't pick Michael by accident. He chose him because he was easy to manipulate. It was Roy's goal to get into that kid's head. And he did it. I've heard that Roy has continued to manipulate Michael since they've been in state custody. That didn't surprise me one bit.

16. Michael and I only spent a few days together but during that time he was always talking about Roy – how good Roy was to him, how Roy would do anything for him. He was a kid. He just rambled on. I just let him talk. He seemed misguided, lost. Just as soon as I picked Mike up he started talking about the plan to get Roy out. Mike used phrases and

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made statements that I had heard Roy say. Mike used the terms “bunk and junk” and “play hero”. Those were terms Roy had said to me over and over again. A lot of what he said Roy had shared with me before. Mike talked about signals – socks meant a no-go, cigarettes meant a go – something like that. Roy had said that we were supposed to wait until a specific officer was working. It started that night but it continued over the next few days – Mike idolizing Roy. Mike went on and on about how Roy was good to him and had been there when he was down or needed something. Mike talked to me a little about his family – that they had a bad relationship. Mike’s face used to light up when he was able to talk to Roy. It made him happy. He was uplifted. Mike said that once we were able to get Roy out of jail he would have his friend with him. Mike told me he missed Roy and couldn’t wait for him to get out. Mike was constantly talking about Roy. Every day it was ‘I can’t wait to see him.’ Roy had talked about all of us going to Mexico. Michael talked about that too. The way Mike talked about Roy was very different than the way Roy talked about him. When I picked up Michael in Columbia he had a duffle bag and a gallon jug. That was it. It was on me to see to it this kid was taken care of. Roy told me to always keep an eye on him – to never let him out of my sight – but because he had nothing more than the shirt on his back it fell to me to pay for food and anything else he needed too.

17. Roy’s relationship with Karl Bartholomew was also all about manipulation. Karl was older than us. He served a lot of time in prison and was naïve. He didn’t acclimate well when he was released. Karl was living with his elderly mother when we knew him. Karl was gullible and Roy took advantage of that. Roy told Karl he was going to get something like 50 years in prison. Roy exaggerated so that Karl would agree to help in the way that Roy wanted. Karl was an alcoholic and Roy used to take money from Karl to go out and buy

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him alcohol. Karl was on house arrest so he couldn't go himself. Just like with me and Mike, Roy got Karl to trust him, he learned what Karl cared about and what he needed and Roy used that to his advantage. If you wanted to manipulate someone Karl would have been a good target. Roy got Karl talking about taking off his ankle bracelet and taking off with him too. For a time Roy hoped Karl would play a part in getting him out of prison too.

18. Mike and I spent most of our time at Heather Douglas' apartment. Mike liked to play video games and talk on the CB radio. Mike drank alcohol and smoked marijuana too. He got sick from drinking when we were together. He drank with Karl one night. It made him sick. He looked green and threw up everywhere. He also passed out in my mom's recliner one night. Mike was the type of kid that was looking for acceptance. The way he acted around other people – he was someone who wanted to be liked.
19. Roy and I communicated by phone, letter and in prison visits. In the letters Roy sent me he seemed scared and alone and that above all else he wanted me to be happy. Roy said he wanted to be with me. The letters, poems and drawing Roy sent me made me feel like I was what was most important to him.
20. During the time leading up to the crime Mike never made me feel unsafe or like he posed any kind of threat to me. I left him alone at my mom's house so clearly I wasn't worried about him. There was another time before the crime happened when Mike isolated himself at Heather's trailer. It was really hot inside Heather's trailer so everyone but Mike was hanging out outside – trying to stay cool under a tree or sitting at a table. Mike stayed in that hot uncomfortable trailer by himself. He was there almost all day. I didn't know how to respond to Michael when he was in that state so I just left him alone.

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21. Mike's behavior the night we drove to the jail was strange to me. Earlier that night he was almost in a trance-like state. He just sat there very still. He was acting real withdrawn. While we were driving he was out of it – kind of depressed. He was detached. He had his hands pressed together and his eyes were closed. It almost looked like he was going to cry. I never saw him like that before. He was in that state the whole way up to Huntsville while I drove the car.
22. After the crime happened Mike was freaking out. He was waving the gun around. He wasn't trying to hurt me but he was flinging it around – near the side of my head. Mike was panicked – it was like he was on an adrenaline rush. The gun was still loaded at that point. Mike was talking a lot. Much of what he said didn't make any sense. Mike was rubbing his face. He said, 'Oh my god, what did I do? What just happened?' Mike repeated over and over again that he was sorry that it didn't work out. He hoped that Roy wasn't mad at him. Mike was angry at himself that he couldn't find the right keys to get him out.
23. After the crime happened I was devastated. I lost everything I had ever cared about. I was held in Audrain County Jail. I now know how much pain I've caused other people, including my family. I've had time now to think about the crime and the aftermath. I never wanted to see Michael get the death penalty for what happened. To this day when I think about what happened and what Roy did I get ^{upset} ~~up~~ and angry. I cry. I feel a great sense of betrayal. I've never felt like I've had an opportunity to share what I observed in terms of how Roy affected Michael – how totally brainwashed he was. I had never seen anything like it. Had I been asked I about the information contained in this declaration by any of

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the lawyers working on Michael Tisius' behalf in the past I would have shared what I know.

Had I been asked I would have been willing to testify on his behalf.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.

Tracie Bulington
Signature

6-19-18
Date

TB

IN THE SUPREME COURT OF MISSOURI

In re MICHAEL ANDREW TISIUS	§	
	§	
Petitioner,	§	
	§	
v.	§	No. SC99938
	§	
DAVID VANDERGRIFF,	§	THIS IS A CAPITAL CASE
Warden, Potosi Correctional	§	
Center,	§	
	§	
Respondent	§	

REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

At the time of offenses, Mr. Tisius was 19; he was not an adult. Nor did his brain function like an adult brain, as all the medical science in this case, including Dr. Peterson’s within-subject repeated design study of Mr. Tisius’s behavior spanning almost 20 years, “one of the most powerful research methods when studying human behavior[.]” shows. Ex. 13 (Bigler report), p. 5.

The state concedes that medical science shows that the same youthful and immature characteristics that categorically exempt 16- and 17-year-olds from the imposition of the death penalty are present in 18- to 20-year-olds. Resp. at 14. This concession shows there is no scientific reason to make a legal distinction between the culpability and responsibility of a 17-year-old versus a 19- or 20-year-old.

The state merely asserts that the science on which Mr. Tisius relies is not new and that it was considered by the United States Supreme Court in *Roper v. Simmons*, 543 U.S. 551 (2005). Resp. at 6, 8-9. However, the American Psychological Association, which consists of “more than 133,000 researchers, educators, clinicians, consultants, at all stages of their careers, as well as students[,]” has confirmed that the state is patently incorrect. Ex. 14 (*APA Resolution on the Imposition of Death as a Penalty for Persons Aged 18 Through 20, Also Known as the Late Adolescent Class* (Aug. 2022)), p. 1. Although “some research on continued neurobiological development after 17 was published prior to the *Roper* decision,” new research—which could not have been even available to the United States Supreme Court in *Roper v. Simmons*, 543 U.S. 551 (2005)—shows that the same youthful and immature characteristics that categorically exempt 16- and 17-year-olds from the imposition of the death penalty are similarly present in 18- to 20-year-olds. *Id.* at 1-2.

Even so, the state posits, Mr. Tisius cannot now challenge the rule of *Roper* limiting the Eighth Amendment’s protection against the imposition of the death penalty only to persons under age 18 because *Roper* limited the protection only to those under age 18. However, this Court’s jurisprudence in *State ex rel. Simmons v. Roper*, 112 S.W.3d 397 (Mo. banc 2003) squarely permits Mr. Tisius’s categorical challenge, and the state concedes that this

Court in *Simmons* permitted a similar bright line challenge.¹ Even so, the state further asserts, this Court can no longer conduct the evolving standards of decency analysis to evaluate this Eighth Amendment claim. But the state ignores that since *Roper*, numerous United States Supreme Court opinions considering a potential categorical exemption to the death penalty have assessed whether the evolving standards of decency permit the imposition of the death penalty for a certain class of offenders. Section II, *infra*, at 11. Even the opinion of this Court on which the state relies recognizes the vitality of the evolving standards of decency analysis. *Id.* Thus, binding precedent of this Court and the United States Supreme Court forecloses each argument the state makes with respect to Mr. Tisius's categorical claim.

Finally, the state incorrectly asserts that this Court cannot hear the as-applied portion of Mr. Tisius's claim because previous post-conviction litigation raised the claim that Mr. Tisius could not be executed because of his "mental age." In the resolution of that prior claim, this Court explained that "mental age" is not the criterion for death penalty eligibility; biological age provides the criterion for death. *Tisius v. State*, 519 S.W.3d 413, 431 (Mo. banc 2017). Thus, as this Court found, Mr. Tisius did not raise a biological

¹ This Court is the highest Court in the State of Missouri, and *Simmons* shows that this Court is not the powerless lackey the state suggests it is.

age claim during his prior post-conviction proceedings. *Id.* He could not have, because the national consensus on which Mr. Tisius relies did not exist at the time of his post-conviction proceeding. This Court's jurisprudence squarely establishes that under these circumstances, a petitioner has cause for not raising the claim earlier, habeas corpus provides a potential avenue for relief, and the fact that the petitioner did not bring the claim in a prior proceeding does not bar this Court from considering such a claim in a habeas corpus action. Section III, *infra*, at 13-19.

The state's position is devoid of merit. This Court has jurisdiction to hear this claim and should do so. Rather than contest the expert testimony and the consensus of the science conclusively supporting Mr. Tisius, the state merely challenges the credibility or weight of the experts and the evidence. The material facts supporting Mr. Tisius's petition, if true, entitle Mr. Tisius to relief. However, because the state disputes whether these facts are true and what weight to accord them, this Court should appoint a special master to conduct fact-development procedures. Upon full consideration of the facts, this Court should grant the relief Mr. Tisius requests.

ARGUMENT

I. THIS CLAIM IS BASED ON A NATIONAL CONSENSUS THAT DID NOT EXIST AT THE TIME OF MR. TISIUS'S RESENTENCING TRIAL.

The state incorrectly asserts that the scientific evidence Mr. Tisius relies on “shows that nothing much has changed since *Roper*.” Resp. at 14. On the contrary, as explained in Mr. Tisius’s petition at 17-19, the American Psychological Association has confirmed that since the *Roper* decision, “much more extensive research has been conducted in developmental science . . . that significantly adds to the quantity and quality of existing scientific knowledge.” Ex. 14, p. 2. This research shows that “the same youthful and immature characteristics that apply to categorically exempt 16- and 17-year-olds are similarly present in 18- to 20- year olds, rendering them less culpable and less susceptible to any deterrent value of the death penalty, thus failing to further the penological goals of retribution and deterrence.” *Id.* at 1. The state concedes that these conclusions are “widespread” in the medical community. Resp. at 14.

Moreover, as the petition further explains, since *Roper*,

- a majority of the states no longer have the death penalty;
- in six states in which the death penalty remains on the books, the states have effectively abandoned the practice of executing persons for offenses committed before they were 21 years of age;

- in four other states that currently have death-sentenced, under-21 defendants, the states have not actually sentenced or executed any under-21 defendants in a long time;
- at least one state circuit court recently held the death penalty was disproportionate punishment for offenders under the age of 21;
- since *Simmons* there has been a marked decline in death sentences and executions in the 18-20 age group across the country;
- the average of executions of late-adolescent offenders has dropped to just under three per year;
- 24 states have extended juvenile court jurisdiction to age 21;
- over 3000 new and amended laws reflect the country's recognition of the limited capacity of those under 21 for decision-making in highly stressful and emotionally arousing circumstances;
- the Department of Justice has recognized the emergence of state court programs developed for people between the ages of 18 to 25 years that reflect a nationwide, growing, and nonpartisan recognition of the need to protect late adolescents from the full brunt of criminal penalties; and
- young adulthood has become nationally recognized as a distinct and special developmental phase of life that may require differential treatment in the justice system.

Pet. at 19-27. This evidence did not exist at the time of *Roper*. Thus, the state's suggestion that nothing has changed since *Roper* is both disingenuous and flatly incorrect.

Furthermore, at the time of his resentencing, Mr. Tisius did not have, and could not have had, Dr. Peterson's within-subject repeated design study of Mr. Tisius's behavior spanning almost 20 years. Ex. 13, p. 5. Nor did he have medical confirmation of his own immature brain, seizures,² and other brain dysfunction.

The state suggests this Court recently rejected a similar claim in *Johnson*, No. SC89168. Resp. at 10-11. But since this Court's order in *Johnson* was unexplained, the issue deserves this Court's full attention. A substantial difference between Mr. Tisius's case and that of Mr. Johnson's is that Dr. Peterson saw Mr. Tisius then, and two decades later has seen him now. Dr. Peterson's within-subject repeated design study of Mr. Tisius's

² The state suggests that the medical evidence confirming Mr. Tisius's seizure disorder is "highly suspect" because according to the state, the evidence is inconsistent with the evidence presented during the resentencing hearing. Resp. at 7. However, the state admits, at least implicitly, that the neurologist who examined Mr. Tisius considered the circumstances of the offense, the prior evidence in the case, and Mr. Tisius's medical history before reaching his conclusions. *See id.* (citing Ex. 9, pp. 8-9 (describing Mr. Tisius's symptoms of epilepsy)); Ex. 9, p. 4 listing reported symptoms consistent with epilepsy); *id.* at 2-4 (listing sources reviewed). In any event, because the state asks this Court to make a credibility finding regarding whether Mr. Tisius in fact suffers from a seizure disorder, this Court should appoint a special master to decide this factual dispute.

behavior spans almost 20 years and is “one of the most powerful research methods when studying human behavior[.]” Ex. 13, p. 5 (emphasis added).

The state next argues that the certiorari denial in *Johnson* is a merits denial by the United States Supreme Court. Resp. at 11. Any Supreme Court practitioner knows a denial of certiorari is not a determination of the merits. *Atlantic Coast Line R. Co. v. Powe*, 283 U.S. 401, 403-04 (1931) (citing *United States v. Carver*, 260 U.S. 482, 490 (1923)).

Mr. Tisius’s claim relies on new information, and the state’s suggestion that it does not is factually incorrect and wholly disingenuous. These new sources show that under contemporary standards of decency, this Court should treat Mr. Tisius as a juvenile, not an adult, for the purposes of determining whether Mr. Tisius is eligible to receive the most severe and irrevocable punishment available for acts committed when he was 19.

II. BINDING PRECEDENT ESTABLISHES MR. TISIUS’S RIGHT TO BRING THIS CLAIM AND TO RELY ON THE NATION’S EVOLVING STANDARDS OF DECENCY IN SUPPORT.

The state’s assertion that binding precedent forecloses this claim lacks merit. The state concedes that in *Simmons*, this Court was “reviewing the United States Supreme Court’s holding in *Stanford v. Kentucky*, 492 U.S. 361 (1989).” Resp. at 10. *Stanford* had established a bright line “against the execution of those who were 16 or 17 years old at the time of their crimes.”

Id. (quoting *Simmons*, 112 S.W.3d at 399). The state further concedes that Mr. Simmons was able to challenge that bright line in this Court. *Id.*

Both this Court and the Supreme Court have acknowledged that when the scientific and societal bases supporting the setting of a specific categorical age no longer support that cutoff, then it is appropriate for courts to revisit and extend that age cutoff. *Simmons*, 112 S.W.3d at 407 (explaining that this Court “has the authority and the obligation to determine the case before it based on current . . . standards of decency, not those that existed 14 years ago when the last categorical age restriction against the death penalty was enacted.”);³ *see also Roper*, 543 U.S. at 574. Thus, as the state’s concessions show, this Court’s binding precedent establishes Mr. Tisius’s ability to challenge the bright line against the execution of only those who were younger than 18 at the time of their crimes.

Similarly, binding precedent supports the use of the evolving standards of decency test to determine whether 19-year-olds facing the most severe punishment available should be treated as juveniles instead of adults. Both the Supreme Court and this Court have applied this test in the exact same

³ The state contends, without citation to any authority other than *Simmons*, that this Court’s finding in *Simmons* that the Court “has the authority and the obligation to determine the case before it based on current . . . standards of decency” is “wrong.” Resp. at 10. Of course, the state’s disagreement with this Court’s binding precedent does not invalidate that precedent.

context of assessing restrictions of the imposition of the death penalty due to biological juvenile characteristics, *see Roper*, 543 U.S. at 574; *Simmons*, 112 S.W.3d at 407-13, and none of the cases the state cites have abrogated the use of this analysis to assess the propriety of a categorical exemption to the death penalty.⁴

The state's argument that the evolving standards of decency test has been abrogated is highly disingenuous. Unlike this case, none of the three cases the state cites involves the determination of whether the Eighth Amendment permits a death sentence for a particular category of offenders.⁵ Furthermore, although *Bucklew* indicated that the Court may not supplant the decisions of the people and their representatives, Mr. Tisius has shown that since *Roper*, the people and their representatives have enacted over 3000

⁴ The state seems to suggest that this Court should not engage in the evolving standards of decency inquiry announced in *Trop v. Dulles*, 356 U.S. 86, 101 (1958) because *Trop* was a plurality opinion. Resp. at 12. However, as discussed on p. 11, *infra*, since *Roper*, several United States Supreme Court majority opinions analyzing a potential categorical exemption to the death penalty has assessed whether the evolving standards of decency permit the imposition of the death penalty for a certain class of offenders. In fact, even the case from this Court the state cites, *Willbanks v. Department of Corrections*, 522 S.W.3d 238, 241 (Mo. banc 2017), recognizes the propriety of the evolving standards of decency test: "When reviewing whether a punishment is cruel and unusual, 'courts must look beyond historical conceptions to the evolving standards of decency that mark the progress of a maturing society.'" (quoting *Graham v. Florida*, 560 U.S. 48, 58 (2010)).

⁵ The state cites *Baze v. Rees*, 553 U.S. 35, 47 (2008); *Glossip v. Gross*, 576 U.S. 863, 869 (2015); *Bucklew v. Precythe*, 139 S. Ct. 1112, 1122-23 (2019). Resp. at 11.

new and amended laws reflect the country's recognition of the limited capacity of those under 21 for decision-making in highly stressful and emotionally arousing circumstances.

Since *Roper*, the Supreme Court has regularly employed the evolving standards of decency test in its Eighth Amendment jurisprudence regarding eligibility for the death penalty or life without parole. *See, e.g., Moore v. Texas*, 581 U.S. 1, 12 (2017) (explaining that to enforce the Constitution's protection of human dignity, courts look to the evolving standards of decency that mark the progress of a maturing society); *Hall v. Florida*, 572 U.S. 701, 708 (2014) (same); *Miller v. Alabama*, 567 U.S. 460, 469 (2012) (same); *Graham*, 560 U.S. at 58 (same); *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (same).⁶ Recently, the Court again explained, "in deciding whether the

⁶ The state seems to be arguing that because "*Furman v. Georgia*, 408 U.S. 238, 242 (1972), invalidated the death penalty on the idea that the 'Eighth Amendment 'must draw its meaning from the evolving standards of decency. . .'", but the Supreme Court in *Glossip v. Gross*, 576 U.S. 863 (2015), later determined that capital punishment is constitutional, the "evolving standards" test no longer applies, and courts "no longer rely on indicators of public opinion to overrule death sentences." Resp. at 11-12. However, the claim at issue does not request that this Court invalidate the death penalty in all circumstances. Rather, it merely asks this Court to decide whether the Eighth Amendment permits the imposition of a death sentence for a particular category of offenders. As the cases cited above establish, even after the Supreme Court held in *Gregg v. Georgia*, 428 U.S. 153, 169 (1976), that "the punishment of death does not invariably violate the Constitution," the Supreme Court and this Court have continued to consider evolving standards of decency in evaluating whether the execution of a certain category of

Eighth Amendment permits a death sentence for a particular category of offenses or offenders, the Court has looked to evolving societal standards of decency and has also rendered its own independent judgment about whether a death sentence would aptly serve the recognized purposes of criminal punishment in certain categories of cases.” *United States v. Briggs*, 141 S. Ct. 467, 473 (2020).

Thus, the state’s suggestion that the evolving-standards-of-decency standard no longer applies to a court’s determination of whether the Eighth Amendment permits a death sentence for a particular category of offenses or offenders is directly contrary to Supreme Court precedent. This Court must apply that standard here.

Finally, with respect to whether Mr. Tisius has shown a national consensus, the state’s argument is unpersuasive. Mr. Tisius is not required to show that other states with an active death penalty scheme ban the executions of 18- to 20-year-olds, Resp. at 12, particularly when Mr. Tisius has shown that society—through state legislative action and court programs—recognizes that due to the brain immaturity of 18- to 20-year-olds, 18- to 20-year-olds require differential treatment in the justice system from

offenders violates the Eighth Amendment’s prohibition against cruel and usual punishment.

adults. Pet. at 19-27. In any event, Mr. Tisius has shown that at least one other state has recognized that because of the similarities between 17-year-olds and 18- to 20-year-olds, the death penalty is a disproportionate punishment for offenders under the age of 21. *Commonwealth v. Bredhold*, No. 14-CR-161, 2017 WL 8792559 (Fayette Cir. Aug. 1, 2017). Pet. at 22.

Medical science shows, and the state concedes, that the same youthful and immature characteristics that categorically exempt 16- and 17-year-olds from the imposition of the death penalty are present in 18- to 20-year-olds. Resp. at 14. Thus, the logic underpinning *Roper*, (as well as this Court's opinion in *Simmons*), applies equally to 18- to 20-year-olds. Contemporary standards of decency prohibit the imposition of the death penalty for 19-year-old offenders, and Mr. Tisius's death sentences are unconstitutional. This Court did the right thing in *Simmons* and there is no reason not to do the right thing here.

III. MR. TISIUS'S PRIOR POST-CONVICTION APPEAL DOES NOT BAR THIS HABEAS CORPUS ACTION.

This same analysis applies to Michael Tisius individually. The state does not challenge the authorities establishing that the Eighth Amendment has as much force when applied to the unique circumstances of an individual as when applied to an entire category of offenders because the same

“substantive rule of law” governs both a categorical claim and an as-applied claim. *Bucklew v. Precythe*, 139 S. Ct. 1112, 1127-28 (2019). Thus, the evolving-standards-of-decency standard applies to Mr. Tisius’s as-applied challenge as well as his categorical exclusion challenge.

However, the state blatantly mischaracterizes the as-applied aspect of Mr. Tisius’s claim as an attempt to relitigate this Court’s decision on appeal of Mr. Tisius’s denial of post-conviction relief. Resp. at 5-6. On the contrary, the current claim has not previously been presented to any court. The evidence on which this claim relies did not even exist at the time of Mr. Tisius’s post-conviction appeal, and although previous litigation raised the claim that Mr. Tisius could not be executed because of his “mental age,” that claim is not the same as the biological-age exemption claim at issue here. As this Court explained in its resolution of that claim, “mental age” is not the criterion for death penalty eligibility. *Tisius*, 519 S.W.3d at 431. Rather, biological age determines death penalty eligibility. *Id.*

The claim raised here is that no one who commits the offense of murder at the biological age of 19, including Mr. Tisius, can constitutionally be executed. As this Court previously recognized, that claim was not before it in Mr. Tisius’s post-conviction appeal. *Id.*

The state’s reliance on *State ex rel. Strong v. Griffith*, 462 S.W.3d 732 (Mo. banc 2015), is misplaced. In *Strong*, this Court determined that (1) the

petitioner did not state a legally cognizable claim for habeas corpus relief because he raised claims that could have been raised in prior proceedings but were not for reasons internal to the defense, and (2) although a state habeas action was the proper vehicle for a petitioner to challenge his competency to be executed, the petitioner did not contend that he was incompetent to be executed. *Id.* at 738-39. In any event, *Strong* did not overrule *Simmons*.

In *Simmons*, this Court explicitly rejected the state's argument that Mr. Simmons had waived his right to raise his state habeas claim asserting that his biological age rendered him ineligible for the death penalty by not previously raising the claim in prior proceedings. *Simmons*, 112 S.W.3d at 400-01. The Court held that because the Eighth Amendment protection in question "would deprive the state of the power to impose the punishment of death on such a person[,] like intellectual disability or incompetency, and because the evidence establishing the national consensus against the execution of such a person did not previously exist, the "the usual waiver rules [did] not apply." *Id.* This Court further determined that because this ground for relief had the effect of making Mr. Simmons ineligible for the death penalty, this Eighth Amendment prohibition was retroactive to cases on collateral review. *Id.* at 401. This Court subsequently reaffirmed that usual waiver rules do not apply to retroactive Eighth Amendment prohibitions: "Although prisoners are generally required to raise

constitutional claims on direct appeal or in a post-conviction proceeding, a defendant has cause for failing to raise such claims where a new constitutional rule may be applied retroactively on collateral review.” *State ex rel. Carr v. Wallace*, 527 S.W.3d 55, 59 (Mo. banc 2017).⁷

Here, as in *Simmons*, the national consensus on which Mr. Tisius relies did not exist at the time of his post-conviction proceeding.⁸ Thus, there was no reason internal to the defense for not raising this claim in a prior post-conviction proceeding and Mr. Tisius has cause for not raising the claim earlier. *Simmons*, 112 S.W.3d at 400-01; *Carr*, 527 S.W.3d at 59; *Reed v. Ross*, 468 U.S. 1, 16 (1984) (“[W]here a constitutional claim is so novel that its legal basis is not reasonably available to counsel, a defendant has cause for his failure to raise the claim in accordance with applicable state procedures.”); *see also Tisius*, 519 S.W.3d at 431 (explaining that at the time of Mr. Tisius’s resentencing, “any objection to the imposition of the death penalty based on *Roper* would not have been meritorious in this case.”). Thus,

⁷ Assuming for the sake of argument that *Strong* potentially poses a barrier to this claim, (which it does not), *Carr*, as a later decision of this Court finding that a defendant has cause for failing to raise a claim asserting a new constitutional rule that may be applied retroactively on collateral review, controls.

⁸ Mr. Tisius filed his amended petition for post-conviction relief on November 29, 2012. PCR 2 L.F. at 120.

as in *Simmons* and *Carr*, the “the usual waiver rules [do] not apply.”

Simmons, 112 S.W.3d at 401.

Furthermore, as *Simmons* shows, particularly when the national consensus on which a petitioner relies for his claim that his age renders him ineligible for the death penalty did not exist at the time of his post-conviction proceeding, the proper vehicle for asserting the ineligibility claim is a state habeas corpus action. *Simmons*, 112 S.W.3d at 397, 400-01. This Court again found as the cornerstone of its Eighth Amendment analysis in *Carr* that “[h]abeas corpus relief is the final judicial inquiry into the validity of a criminal conviction and functions to relieve [prisoners] whose convictions violate fundamental fairness[, and a] prisoner is entitled to habeas corpus relief where he proves that he is ‘restrained of his . . . liberty in violation of the constitution or laws of the state or federal government.’” *Carr*, 527 S.W.3d at 59 (quoting *State ex rel. Clemons v. Larkins*, 475 S.W.3d 60, 76 (Mo. banc 2015)).

This Court in *Strong* similarly recognized that when an execution eligibility challenge is based on present circumstances, habeas corpus is the proper vehicle for bringing such a challenge. *See Strong*, 462 S.W.3d at 739. And in *State ex rel. Amrine v. Roper*, this Court found that because of the concern of wrongful executions, “it is incumbent upon the courts of this state to provide judicial recourse to an individual who, *after the time for appeals*

has passed, is able to produce sufficient evidence of innocence to undermine the habeas court's confidence in the underlying judgment that resulted in defendant's conviction and sentence of death[,]” and the writ of habeas corpus is the appropriate means for the assertion of such a claim. 102 S.W.3d 541, 547 (Mo. banc 2003) (emphasis added).

This Court's precedent establishes that the Court has jurisdiction to hear this state habeas action, and Mr. Tisius did not waive this claim by not presenting it in prior proceedings. *Strong* does not bar this petition for habeas corpus relief.

This Court should grant relief. As Dr. Peterson's within-subject repeated design study of Mr. Tisius spanning almost 20 years shows, as well as the evaluations conducted by Drs. Wood, Love, Watson, and Nadkarni, at age 19, Mr. Tisius had an immature brain that did not function like an adult brain. Dr. Erin Bigler, an expert on brain development, concurs that Mr. Tisius suffered from an immature brain at the time of the offense:

[R]ecent medical science confirms that the brain of a 19-year-old is not fully mature, and particularly in emotionally stressful situations, a 19-year-old brain does not function like an adult brain. Furthermore, as outlined by all of the exceptionally credentialed experts who have examined Mr. Tisius or commented on his case, he has underlying brain dysfunction, objectively demonstrated.⁹

⁹ Dr. Bigler further states, “It is unfortunate that no neuroimaging studies have been performed on Mr. Tisius to further explore the issues

Ex. 13, p. 10. Even the officer who took Mr. Tisius's statement recognized Mr. Tisius's relative immaturity. In a deposition in Mr. Tisius's federal habeas corpus case, Missouri Highway Patrol Officer Michael Platte noted: "He looked like a 19-year-old kid. That would be the best way I could describe him. Actually, he may have even looked younger than 19." Ex. 15 (Platte Deposition), p. 56. Mr. Platte's memory is strikingly accurate, as confirmed by Mr. Tisius's Missouri Department of Revenue ID photo.



Mr. Tisius was not an adult at the time of the offenses. This Court should not treat him as if he were. Under contemporary standards of decency, Mr. Tisius death sentences are unconstitutional.

raised above." Ex. 13, p. 10. The additional fact development procedures Mr. Tisius requests could include this neuroimaging.

CONCLUSION

The material facts supporting Mr. Tisius's petition, if true, entitle Mr. Tisius to relief. However, because the state disputes whether these facts are true, this Court should order fact-development procedures. *See, e.g., Woodworth v. Denny*, 396 S.W.3d 330 (Mo. banc 2013) (appointing a special master for fact development under Rule 68.03); see also Rules 91.15 and 91.17; Mo. Rev. Stat. § 532.310. Upon full consideration of the facts, this Court should issue a writ of habeas corpus, vacate Mr. Tisius's sentences of death, and remand with instructions that Mr. Tisius be sentenced to life imprisonment without possibility of parole.

Respectfully submitted,

/s/ Elizabeth Unger Carlyle
 ELIZABETH UNGER CARLYLE
 Carlyle Parish LLC
 6320 Brookside Plaza #516
 Kansas City, Missouri 64113
 (816) 525-6540
 elizabeth@carlyleparishlaw.com
 Missouri Bar No. 41930

/s/ Keith O'Connor
 KEITH O'CONNOR
 Keith O'Connor, LLC
 PO Box 22728
 Kansas City, MO 64113
 Mo Bar No. 63134
 816-225-7771
 Keith@keithoc.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing pleading electronically with the clerk of the court, and that it was served by e-mail upon Asst. Atty. Gen. Andrew Crane, andrew.crane@ago.mo.gov on February 6, 2023.

/s/ Elizabeth Unger Carlyle
Elizabeth Unger Carlyle

Erin David Bigler, Ph.D.
A Professional Corporation
Diplomate in Clinical Neuropsychology
American Board of Professional Psychology

February 2, 2023

Daniel E. Kirsch
Assistant Federal Public Defender
Capital Habeas Unit
Federal Public Defender
Western District of Missouri
1000 Walnut St., Ste. 600
Kansas City, MO 64106

RE: Michael Tisius

Dear Mr. Kirsch:

You have contacted me to review the records concerning Michael Tisius, with a particular emphasis on providing additional information from what is in his various neurologic, neuropsychiatric, neuropsychological, and social history reports that are already in the record. I will specifically focus on issues associated with brain maturation. It is my understanding that neuroimaging is not available on Mr. Tisius and therefore, I will not be able to speak specifically on what neuroimaging findings might be able to show, but rather what we know from the perspective of developmental neuroscience. I have not seen Mr. Tisius and therefore, the narrative that follows is based on my background and experience.

I am Professor Emeritus at Brigham Young University, where during my full-time academic appointment I held an Endowed Chair, all outlined in the attached vita. I am also Adjunct Professor of Neurology and Psychiatry at the University of Utah and Research Associate in the Department of Radiology, also at the University of Utah. At Brigham Young University, I developed and directed the Brain Imaging and Behavior Laboratory from 1990 - 2018 when I retired. I was also part of the core faculty that developed BYU's Magnetic Resonance Imaging Research Facility (MRIRF) and was the first Director of this research center at BYU. I have spent my career integrating neuroimaging with behavior, assessed through traditional methods of neuropsychological, psychological testing and cognitive neuroscience. I have published extensively in the area of child brain development. Recently, I authored a chapter titled, "Brain and Social Development in Childhood" in the *Wiley-Blackwell Handbook of Childhood Social Development*, Third Edition, edited by Peter K. Smith and Craig H. Hart, 2022. Also, there are other brain development studies and research writings present in the vita as well. This chapter details many of the questions you have raised concerning brain development in Mr. Tisius.

Primary Mailing Address: PO Box 1968, Provo, UT 84603-1968
Primary Express Mail Address: 455 South 1220 West, Provo, UT 84601
(801) 368-9865 or (801) 374-8536 Fax: (801) 374-1072

Secondary Mailing Address: PO Box 979, Somerset, CA 95684
Secondary Express Mail Address: 3281 Corral Trail Road, Somerset, CA 95684

EXHIBIT
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Daniel E. Kirsch
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The following records were received and reviewed:

- Stephen Peterson, M.D.
- James E. Aiken/James Aiken & Associates
- Laurence Steinberg, Ph.D.
- Paula Lundberg-Love, Ph.D.
- Dale Watson, Ph.D.
- George Woods, M.D.
- Siddhartha Nadkarni, M.D.
- Declaration of Julie Eilers Kuchar
- Declaration of Tracie Bulington

I will review each one of the major clinical consultation and assessment reports from Mr. Tisius and then I will return to a discussion concerning brain development and maturation, specific to Mr. Tisius, but first some general principles of brain development. There is a tremendous amount of basic as well as clinical research on this topic. I direct you to the National Library of Medicine (pubmed.gov) where there are nearly 30,000 articles on using MRI and other methods of neuroimaging to study brain development. What I review in my report is all evidence-based and reflects the contemporary understanding of brain development, where brain development is on a continuum. A 19-year-old brain is not fully mature. As outlined in an August 2022 American Psychological Association (APA) Resolution (APA Resolution on the Imposition of Death as a Penalty for Persons Aged 18 Through 20, Also Known as the Late Adolescence Class), the same brain-based youthful and immature characteristics of 17-year-olds are similarly present in 19-year-olds. The impairment of this immaturity is particularly profound when a late adolescent, such as 19-year-old, is in the midst of an emotionally stressful situation.

Figure 1 is from the classic neuroimaging-brain developmental study from 2000 by Courchesne et al. ("Normal brain development and aging: Quantitative analysis at in vivo MR imaging in healthy volunteers"). Since this study is in healthy, age-typical individuals in a cross-sectional design, various head/brain size plots can be made as shown below.

The top left image is the familiar head circumference (HC) measurement. The newborn head has to be small to pass through the birth canal. However, note that HC and brain volume (upper right image) both show rapid development, where the brain develops so rapidly that it reaches 70-80% of its normal size just within the first year of life. This dynamic growth continues on and by 8-10 years of life, head size and overall brain size approximate ultimate brain growth. The real story about brain development is in the two lower panels. Gray matter, which contains neuronal cell bodies, dendrites and synaptic connections, peaks early but then a pruning process begins, as we are all born with more neurons than what is ultimately needed. This occurs from evolutionary influences and that prior to modern medicine there were many more hazards with the birth process and brain injury. In contrast, there are dynamic changes in white matter volume, which reflects myelin integrity and brain connectivity.

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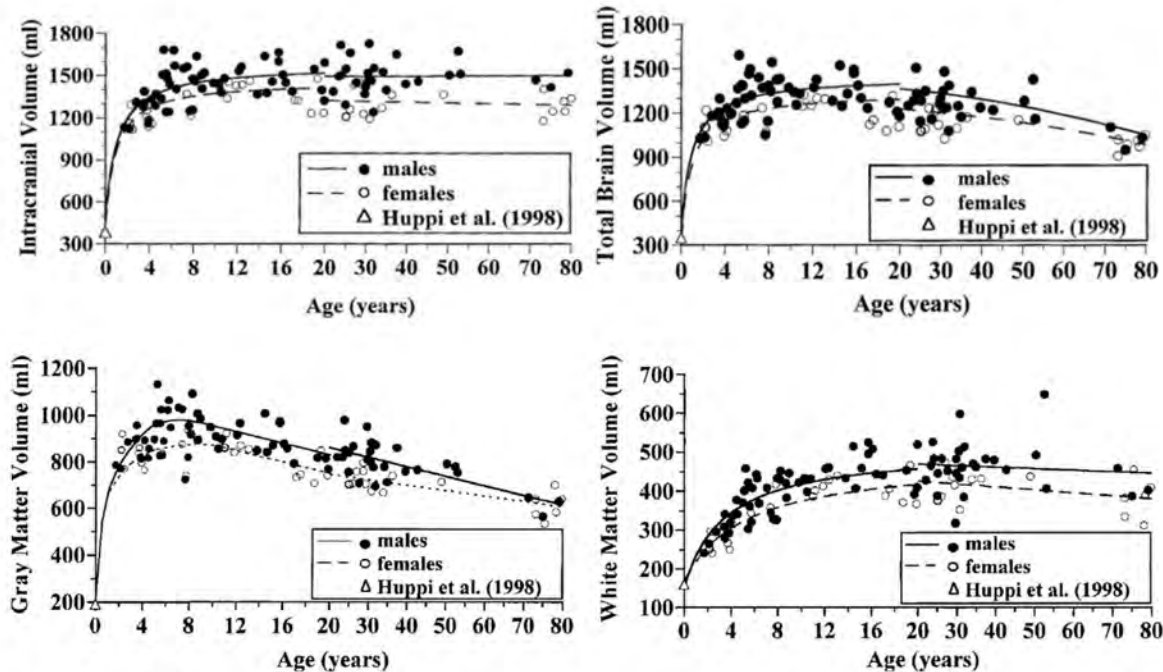


Figure 1.

Just from what is shown in Figure 1, these plots objectively show that brain maturation extends over a long period of time. From a neuroimaging and brain development perspective, 18-20 year-olds are still in the midst of dynamic gray matter pruning and white matter connectivity growth. There are other neuroimaging techniques that demonstrate this even better, such as MRI-based cortical thickness plots, diffusion tensor imaging (DTI) studies focused on white matter development and integrity as well as functional connectivity (fc) network mapping constructed from functional MRI studies. Figure 2 is from Somerville [Neuron. 2016 Dec 21;92(6):1164-1167. doi: 10.1016/j.neuron.2016.10.059], another classic review of brain imaging findings in brain development. The title of this review is "Searching for signatures of brain maturity: What are we searching for?" In Figure 2, using the aforementioned quantitative measures, the plots are based on age-related findings. Note in the right-hand figure that frontal lobe cortical thickness is the last to reach asymptote. The frontal lobe is critical in terms of emotional control, executive decision making, and overall social-emotional development.

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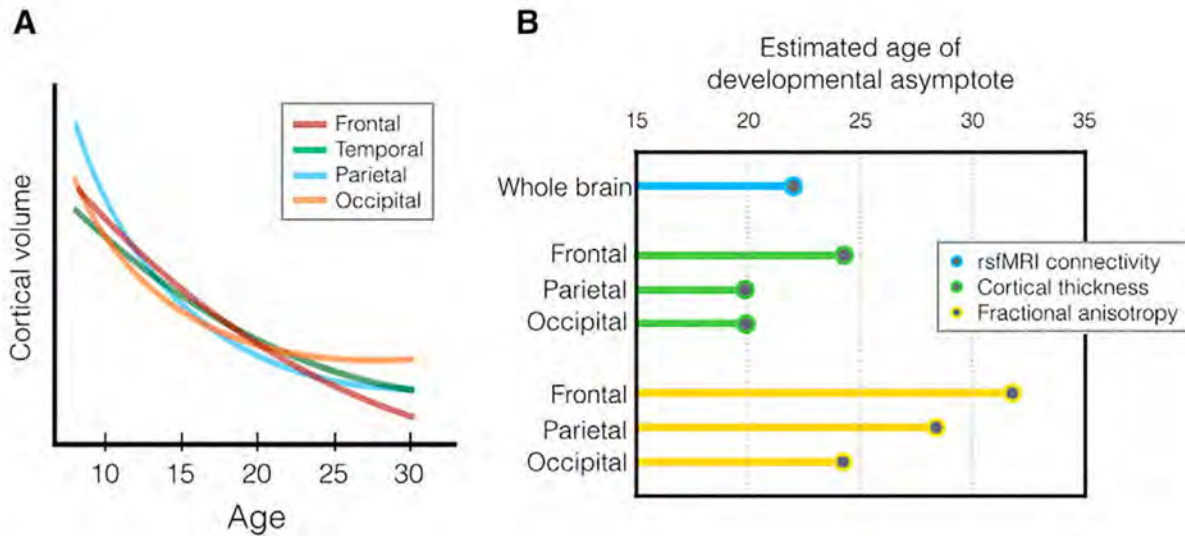


Figure 2.

Figure 3 is from Becht et al. [Modeling individual difference in brain development. *Biol Psychiatry*. 2020 Jul 1;88(1):63-69. doi: 10.1016/j.biopsych.2020.01.027] and is another neuroimaging review, with two illustrations presented in the figure below. All of these studies demonstrate that the brain and neural networks are dynamic and extend well into the 20's and 30's. From a brain imaging and neurodevelopmental perspective, there is no real distinction from a 17-year-old and a 19-year-old brain. In response to the question of a 17- or 19-year-old brain, as demonstrated in all of the plots in these three figures, the 17- to 19-year-old brain is still very much a work-in-progress.

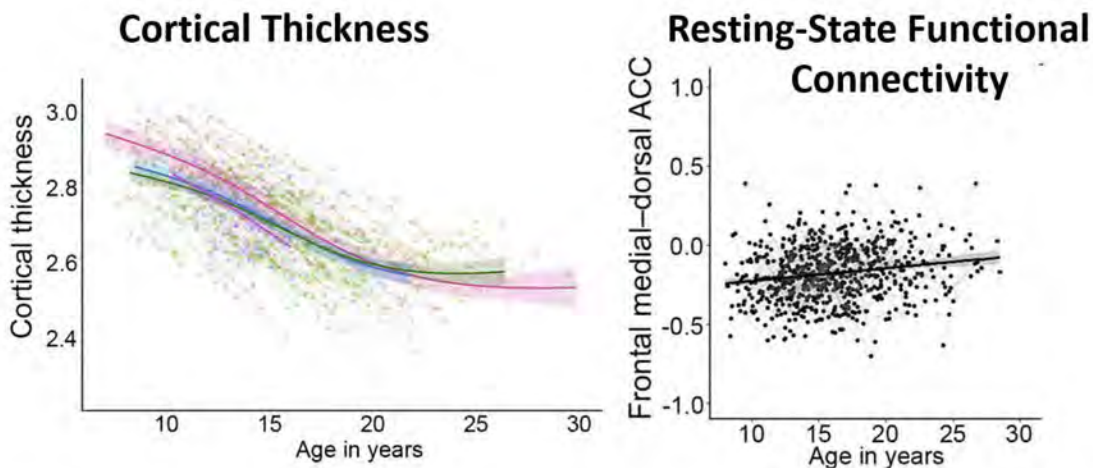


Figure 3.

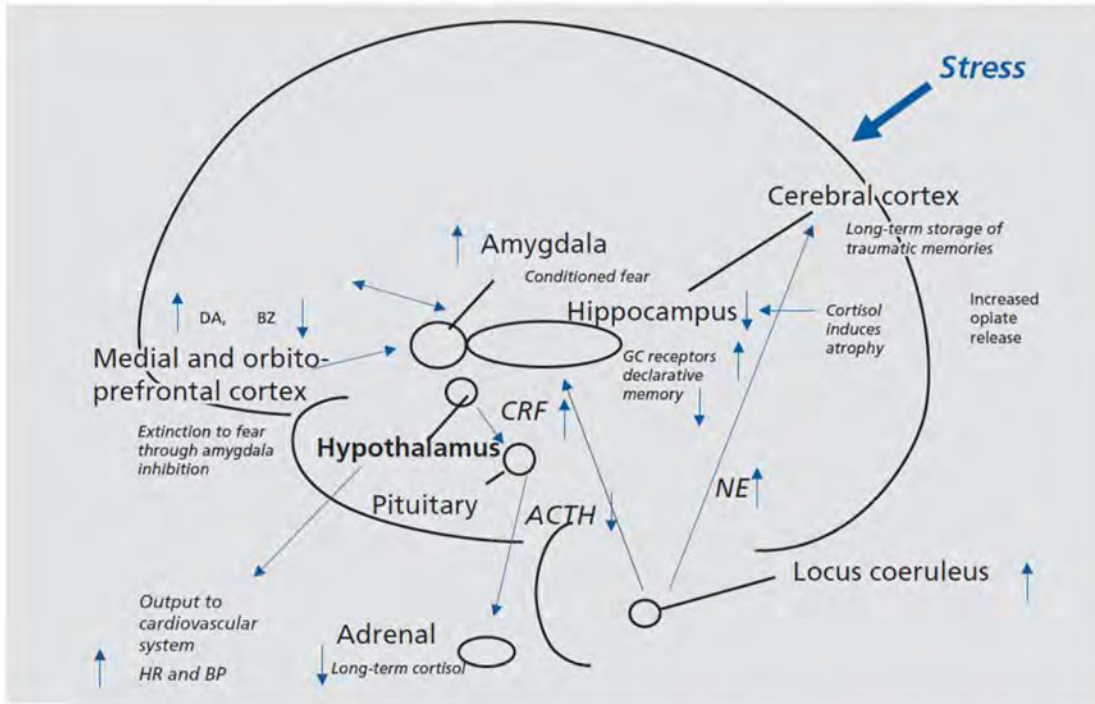
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Turning to the clinicians, the expert consultants who interviewed/examined Mr. Tisius are all highly qualified experts. Stephen E. Peterson, M.D. is a board-certified psychiatrist who initially examined Mr. Tisius, as outlined in his report, in 2003 and then again in 2012, with most recently reassessing Mr. Tisius in August of 2022. From the standpoint of a research design, this is a within-subject repeated design, which happens to be one of the most powerful research methods when studying human behavior. Dr. Peterson reviews extensive background history, as well as integrates the concomitant neuropsychiatric exam by George W. Woods, M.D., along with the neuropsychological testing performed by Dale G. Watson, Ph.D., and the expert report of Paula K. Lundberg-Love, Ph.D., concerning Adverse Childhood Experiences (ACE). Dr. Peterson accurately reviews the neuropsychiatric literature concerning brain development and its association with ACE factors. From a DSM-V perspective, he issued the following diagnoses: Post-Traumatic Stress Disorder (F43.10) Childhood Onset, Persistent Depressive Disorder (F34.1) and Dependent Personality Disorder (F660.0) with Compulsive Features.

As stated above, Mr. Tisius was seen by George Woods, M.D. who, in 2018, indicated that Mr. Tisius met criteria for Dependent Personality Disorder and likewise reviewed Dr. Watson's assessment, along with his own physical examination, which allowed him to conclude the following: "It is my professional opinion which I hold to a reasonable degree of neuropsychiatric certainty, that Mr. Tisius suffers from Post-Traumatic Stress Disorder, Frontotemporal Striatal Dysfunction and Dependent Personality Disorder." There is an entire neurobiology and neurodevelopment analysis of these types of personality disorders, especially in terms of compulsive features. Dr. Woods accurately reviews and characterizes the pathoanatomic features that contribute to these disorders.

One area to add is the understanding of stress influences on the brain, especially in terms of post-traumatic stress disorder (PTSD). Below is a diagram, shown in Figure 4 from Bremner [Traumatic stress: effects on the brain. *Dialogues Clin Neurosci* . 2006;8(4):445-61. doi: 10.31887/DCNS.2006.8.4/jbremner]. Note that all experts discuss and or infer limbic system dysfunction, from multiple etiologies in Mr. Tisius. There is an extensive literature on the neurobiology and neuroimaging abnormalities in PTSD. Much of this is because of the military influence on PTSD clinical research and brain imaging as summarized in the review by Malikowska-Racia & Salat and the illustration below in Figure 5 ("Recent advances in the neurobiology of posttraumatic stress disorder: A review of possible mechanisms underlying an effective pharmacotherapy." Malikowska-Racia & Salat. *Pharmacological Research*. 2019, Vol 142, p. 30 – 49, <https://doi.org/10.1016/j.phrs.2019.02.001>). While this illustration shows combat, the threatening stimuli can be from all of the things discussed in the expert reports, particularly the repeated physical beatings that Mr. Tisius was exposed to. Just replace the explosions and threats on the left of the illustration with what has been discussed in the reports by Drs. Peterson, Woods and Lundberg-Love and occurred in Mr. Tisius's history.

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Lasting effects of trauma on the brain, showing long-term dysregulation of norepinephrine and cortisol systems, and vulnerable areas of hippocampus, amygdala, and medial prefrontal cortex that are affected by trauma. GC, glucocorticoid; CRF, corticotropin-releasing factor; ACTH, adrenocorticotropic hormone; NE, norepinephrine; HR, heart rate; BP, blood pressure; DA, dopamine; BZ, benzodiazepine; GC, glucocorticoid

Figure 4, from Bremner.

Recent advances in the neurobiology of posttraumatic stress disorder:
 a review of possible mechanisms underlying an effective pharmacotherapy



Figure 5, from Malikowska-Racia and Salat.

Dr. Woods' conclusions are based, in part, on the testing performed by Dale Watson, Ph.D., wherein that evaluation indicated underlying neurologic dysfunction. Furthermore, Mr. Tisius was seen by a neurologist, Siddhartha S. Nadkarni, M.D., who also observes soft neurologic signs in his examination, as did Dr. Woods, which likely reflect residuals from aberrant problems in brain development. Dr. Nadkarni also diagnosed Mr. Tisius with a history of traumatic brain injuries, where he indicates "Mr. Tisius was repeatedly beaten by his brother in childhood and beaten by

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his mother as well. He was also beaten by other kids in school. He sustained several concussions, with alteration in neuro function too numerous to count. These injuries are known to produce frontal and temporal lobe deficits, which are evident in Mr. Tisius' case." He also diagnoses Mr. Tisius with epilepsy, stating the following: "Mr. Tisius suffers from epilepsy. He had at least one convulsion and he describes several spells consistent with focal epilepsy. This is an undiagnosed and untreated condition in his case." Dr. Nadkarni also goes on to diagnose depression, complex PTSD, and/or cognitive disorder. I have written extensively on the topic of traumatic brain injury and neuropsychiatric sequela summarized in the textbook I co-authored with Dr. Victoroff titled "Concussion and Traumatic Encephalopathy" (2019, Cambridge University Press). Clinical research summarized in this textbook discusses the underlying neuropathology from sustaining a concussion and the increased rate of neuropsychiatric sequela.

In both Dr. Woods' evaluation, as summarized in his June 26, 2018 report, as well as Paula K. Lundberg-Love, Ph.D., they provide basic neuroanatomic illustrations concerning the diagnostic findings in Mr. Tisius' case. I concur that those illustrations that they provide, and their discussion therein, are important in understanding child brain development and the effects on ACE and brain maturation. In addition, I refer you to Teicher et al. [The effects of childhood maltreatment on brain structure, function and connectivity. *Nat Rev Neurosci*. 2016 Sep 19;17(10):652-66. doi: 10.1038/nrn.2016.111] and the two illustrations in Figures 6 and 7, which show anatomical areas that are particularly vulnerable to ACE effects. It should be evident that from a pathoanatomical and neurobiological perspective that there is major overlap of vulnerable brain injuries associated with various neuropsychiatric disorders, stress, PTSD, TBI and ACE factors. In other words, in the realm of neuropsychiatric disorder, there seems to be a final common path related to the expression of emotional dysregulation, which involves frontal and temporal lobe regions, in particular, in association with limbic and striatal areas of the brain. Given that ACE factors have been established to have occurred during Mr. Tisius' childhood developmental experiences, it is likely that his brain was even more immature at age 19 than a typical 19-year-old.

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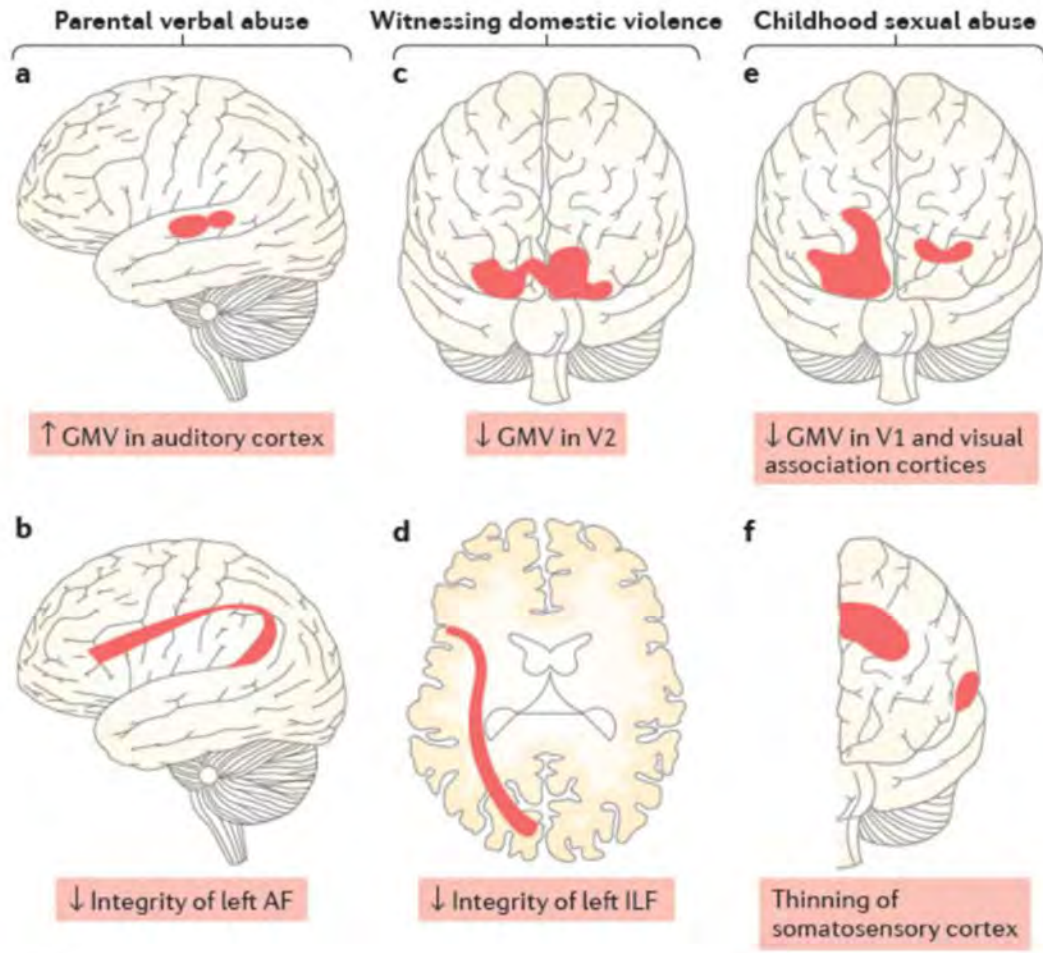


Figure 6.

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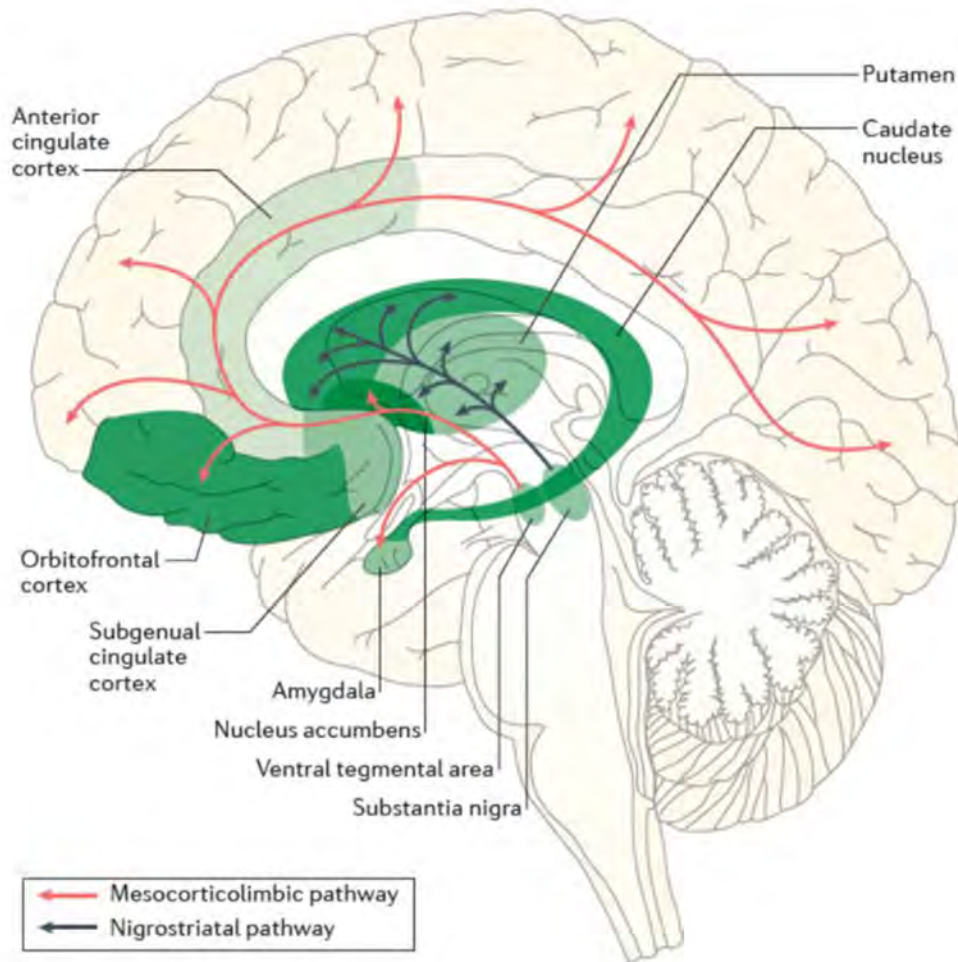


Figure 7.

An affidavit is presented by Laurence Steinberg, Ph.D. Dr. Steinberg is an exceptionally well-known, internationally recognized scholar in brain, cognitive and social-emotional development. Every point made by Dr. Steinberg is an accurate reflection of established, evidence-based factors influencing the developing child. I agree that particularly under emotionally arousing conditions, the brain of an 18- to 20-year-old does not function like an adult brain.

Independent of ACE factors, acute psychosocial stress changes brain structure (Uhlir et al. "Rapid volumetric brain changes after acute psychosocial stress." *Neuroimage*. 2023 Jan;265:119760. doi: 10.1016/j.neuroimage.2022.119760). I mention this because it just underscores how pervasive stress factors may be on brain structure.

There have been long-standing studies showing the ill effects of maternal alcohol and substance abuse, as thousands of peer-reviewed studies are in the clinical literature, summarized at the

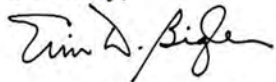
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National Library of Medicine. However, recent neuroimaging studies have even shown that maternal-to-fetal effects extend to maternal depressive effects during pregnancy change brain structures in offspring. (Donnici et al. "Prenatal depressive symptoms and childhood development of brain limbic and default mode network structure." Hum Brain Mapp. 2023 Jan 24. doi: 10.1002/hbm.26216). The Donnici et al. study demonstrated particular relationships with the amygdala. The amygdala, and associated limbic structures, as mentioned in several of those who have examined Mr. Tisius, are critical for emotional regulation. In the study by Demers et al. ("Maternal adverse childhood experiences and infant subcortical brain volume." Neurobiol Stress. 2022 Sep 23;21:100487. doi: 10.1016/j.ynstr.2022.100487) they observed the following: "Maternal ACEs are associated with both newborn amygdala volume and subsequent infant negative emotionality. These findings linking maternal adverse childhood experiences and infant brain development and temperament provide evidence to support the intergenerational transmission of adversity from mother to child."

What is also apparent in the record was that Mr. Tisius was small; smaller than his younger brother. I am not sure from what is reviewed by the various experts who examined Mr. Tisius if as a child it was ever explored that he had any deficiency in pediatric growth hormone, but as Zhou et al. ("Alterations in brain structure and function associated with pediatric growth hormone deficiency: A multi-modal magnetic resonance imaging study." Front Neurosci. 2023 Jan 6;16:1043857. doi: 10.3389/fnins.2022.1043857) have shown, those with pediatric growth hormone deficiency not only experience the physical-body growth issues, but there are widespread changes in the development of the cerebral cortex as well as subcortical areas. Whether this applies to Mr. Tisius is unknown, but raised as a potential factor to be considered.

In summary, recent medical science confirms that the brain of a 19-year-old is not fully mature, and particularly in emotionally stressful situations, a 19-year-old brain does not function like an adult brain. Furthermore, as outlined by all of the exceptionally credentialed experts who have examined Mr. Tisius or commented on his case, he has underlying brain dysfunction, objectively demonstrated. It is unfortunate that no neuroimaging studies have been performed on Mr. Tisius to further explore the issues raised above. Should there be a need, I will elaborate on any and all points made in my review of the record.

Sincerely,



Erin D. Bigler, Ph.D.
 Professor Emeritus of Psychology and Neuroscience,
 Brigham Young University
 Utah License #116117-2501
 California License #27509
 Texas License #21600
 Hawaii License #PSY1019

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APA RESOLUTION on the Imposition of Death as a Penalty for Persons Aged 18 Through 20, Also Known As the Late Adolescent Class

AUGUST 2022

WHEREAS APA is the leading scientific and professional organization representing psychology in the United States; with more than 133,000 researchers, educators, clinicians, consultants, at all stages of their careers, as well as students among its members.

WHEREAS APA is dedicated to fairness, inclusion, diversity, and to the improvement of the human condition overall, as individuals and as a society, through the development and application of the psychological sciences.

WHEREAS APA is aware of the U.S. Supreme Court (SCOTUS) decision in *Roper v. Simmons* (543 U.S. 551, 568 2005) and notes that the APA *amicus curiae* brief submitted in this case was relied upon and cited often and favorably by SCOTUS in arriving at this landmark decision.

WHEREAS in this same *Roper* decision, SCOTUS reiterated and reinforced that death as a penalty must be limited to those persons who commit a narrow category of the most serious crimes and whose extreme culpability makes them eligible to be sentenced to death, as the most severe of punishments and most extreme application of the authority of the state (*Roper v. Simmons*, 2005).

WHEREAS in deciding *Roper v. Simmons*, SCOTUS held that adolescents involved in the criminal justice system and under 18 years of age are categorically less culpable than the average criminal, and subsequently ruled that application of death as a penalty to persons under 18 at the time of the offense is unconstitutional.

WHEREAS the conclusion of lesser culpability was based upon three primary findings by the *Roper* court: First, juveniles possess a lack of maturity and an underdeveloped sense of responsibility; second, adolescents who are involved in the criminal justice system are more vulnerable/susceptible to negative influences, such as peer pressure and other outside pressures; and third, the character of adolescents is not as fully formed as that of adults.

WHEREAS APA concludes, based on the current state of the psychological and related developmental sciences, that although the principal reason these three primary findings by the *Roper* court are true and accurate is the level of maturity (or immaturity)

of major brain systems at age 17, there is no neuroscientific bright line regarding brain development that indicates the brains of 18- to 20-year-olds differ in any substantive way from those of 17-year-olds (e.g., Bigler, 2021; Casey, Simmons, Somerville, & Baskin-Sommers, 2022; Gur, 2021).

WHEREAS assuming the commission of a crime by a member of the late adolescent class that qualifies as a statutorily defined death-eligible offense, the same youthful and immature characteristics that apply to categorically exempt 16- and 17-year-olds are similarly present in 18- to 20- year olds, rendering them less culpable and less susceptible to any deterrent value of the death penalty, thus failing to further the penological goals of retribution and deterrence.

WHEREAS neuroscientific research demonstrates brain development at age 17 has not become static and there is significant, ongoing brain development in the "late adolescent class" (Somerville, 2016). While some research on continued neurobiological development after 17 was published prior to the *Roper* decision, the question of whether members of the late adolescent class (ages 18 to 20) should be eligible for death as a penalty was not before SCOTUS at the time of the *Roper* decision and thus was not considered.

WHEREAS federal law previously officially recognized the "developmental period of childhood and adolescence" as extending past the age of 17 in binding legislation as early as 2000, extending by law the developmental period of childhood and adolescence to encompass the period up to age 22 (PUBLIC LAW 106-402—OCT. 30, 2000 114 STAT. 1683, the Developmental Disabilities Assistance and Bill of Rights Act of 2000).

WHEREAS as of 2013, the *Diagnostic and Statistical Manual of Mental Disorders* (5th ed.; DSM-5; American Psychiatric Association, 2013) eliminated the age-18 cutoff for the expression and diagnosis of some developmental disorders, recognizing that the developmental period extends to age 18 and beyond.

WHEREAS consistent with this recognition of the extended nature of the developmental period, in 2021, the 12th edition of the American Association of Intellectual and Developmental Disabilities (AAIDD) Manual increased the age of onset criterion

for the diagnosis of intellectual disability (a neurodevelopmental disorder) from age 18 to age 22 (AAIDD, 2021).

WHEREAS much more extensive research has been conducted in developmental science in the years since several of these notable policy changes were enacted, and since the *Roper* decision, that significantly adds to the quantity and quality of existing scientific knowledge.

WHEREAS developmental neuroscience, including research on both the structure and function of brain development, establishes that significant maturation of the brain continues through at least age 20 (e.g., Bigler, 2021; Gur, 2021; McCaffrey & Reynolds, 2021; Somerville, 2016), especially in the key brain systems implicated in a person's capacity to evaluate behavioral options, make rational decisions about behavior, meaningfully consider the consequences of acting and not acting in a particular way, and to act deliberately in stressful or highly charged emotional environments, as well as continued development of personality traits (e.g., emotional stability and conscientiousness) and what is popularly known as "character" (e.g., Casey, Simmons, Somerville, & Baskin-Sommers, 2022; Casey, Taylor-Thompson, Rubien-Thomas, Robbins, & Baskin-Sommers, 2020; Harden & Tucker-Drob, 2011; McCaffrey & Reynolds, 2021; Roberts et al., 2006; Steinberg et al., 2018).

WHEREAS these brain regions are often referred to as executive control systems and include (but not exclusively) the prefrontal cortex and its connections throughout the brain. There is significant development of these brain systems that continues beyond the age of 20 (e.g., Somerville, 2016).

WHEREAS in the context of capital cases where death is a potential penalty, which typically involve crimes that have occurred in situations of high emotional arousal, it is especially noteworthy that current developmental science documents that during emotionally arousing situations, this late adolescent class responds more like younger adolescents than like adults (Figner et al., 2009; Cohen et al., 2016; Steinberg et al., 2008; Icenogle et al., 2019) though — like younger adolescents — show cognitive capacity similar to adults when not under pressure or heightened emotional arousal (Figner et al., 2009; Icenogle et al., 2019; Steinberg et al., 2008).

WHEREAS in considering youth who display more extreme behaviors (e.g., callousness, low empathy), there is emerging empirical evidence of change in the developmental course of these traits, even without intervention. Although a small group of youth show persistently high trajectories of extreme behaviors, the majority who initially show extreme behaviors exhibit decreasing patterns during development (Baskin-Sommers et al., 2015; Hawes et al., 2014).

WHEREAS the fact that neurobiological development in key brain systems associated with behavioral and emotional control continue after the age of 18, determining whether the nature of

the crimes committed by members of the late adolescent class and the level of culpability that should be ascribed to them truly constitutes the "worst of the worst" is inherently unreliable. Given the continued psychological development of these group members, predictions about their rehabilitation potential and likely future actions are equally unreliable. There is clear evidence of prolonged development far beyond the age of 17 and into the mid-20s, so that the psychological capacity of members of the late adolescent class to exercise a mature sense of responsibility, and to resist outside pressures is still very much in process (Steinberg et al., 2018). The significant structural and functional changes in the brain at this time corroborate these findings (e.g., Somerville, 2016).

WHEREAS it is clear the brains of 18- to 20-year-olds are continuing to develop in key brain systems related to higher-order executive functions and self-control, such as planning ahead, weighing consequences of behavior, and emotional regulation. Their brain development cannot be distinguished reliably from that of 17-year-olds with regard to these key brain systems (Cohen et al., 2016).

WHEREAS numerous lawmakers, governmental officials, and regulators have recognized multiple ages as demarcation points for independent decision-making and access to forms of employment, positions of authority and public trust, independent decision-making for various lifestyle, medical, and recreational events, and there are currently more than 3,000 laws and government regulations restricting the behavior and actions of persons under the age of 21 years in force in the United States (e.g., see review by Meggitt, 2021) that prohibit those under age 21 from engaging in such diverse activities as: legalized purchases of alcoholic beverages, legalized purchases of marijuana, legalized purchases of tobacco products (19 states); obtaining work as a Federal Marshall, FBI agent, or armed Treasury agent; to engage in blasting or the use of explosives, including operating a fireworks display; to obtain a license to carry a concealed handgun; to obtain a credit card without a cosigner; to act as a foster parent; to serve in the State legislature (32 states); to obtain various professional licenses; nine states require all persons under 21 to wear a helmet when riding a motorcycle; as examples among the more than 3,000 such laws. Such legislative and regulatory precedents also make it reasonable to make distinctions related to crime and punishment in the 18- to 20-year-old population; indeed, some states do so now with regard to retaining juvenile jurisdiction, as well as variables such as inmate housing as a function of age and sentencing restrictions and review. As of this writing in July of 2022, this trend is continuing with more states and local jurisdictions increasing the minimum age to purchase tobacco and also firearms from 18 to 21 years. Much of this restrictive legislation and regulations consider the issues of decision-making in highly stressful and extremely arousing circumstances (sometimes referred to as issues of decision-making during hot-versus-cold cognition) but other laws appropriately grant increasing rights to this age group when evaluating the maturity required to make careful/considered choices such as about personal health care,

voting, and other matters that need not to be made, and typically are not made, rashly in emotionally volatile circumstances as are the criminal actions that make such youth currently eligible for death as a penalty.

WHEREAS the Society for Black Neuropsychology, the Hispanic Neuropsychological Society, and the Asian Neuropsychological Association have concluded that racial factors significantly influence criminal justice system decision-making, resulting in disparate conviction rates, wrongful convictions, and levels of punishment (Ghandnoosh, 2015; Gross, Possley, & Stephens, 2017; Mitchell & MacKenzie, 2004; Nellis, 2016; Rucker & Richeson, 2021; Sentencing Project, 2013; Spohn, 2017; Sweeney & Haney, 1992) across common racial groupings in the United States. Racial factors also affect the system of death sentencing in the United States, where Black persons are perceived as more “deathworthy,” evaluated more unfavorably by capital jurors, and are more likely to be sentenced to death and to be executed than their White counterparts, especially when their victims were White (Baldus, Woodworth, Zuckerman, & Weiner, 1998; Beckett & Evans, 2016; Eberhardt, et al., 2006; Keil & Vito, 2006; Lyman, Baumgartner, & Pierce, in press-2022; Lynch & Haney, 2011; Phillips & Marceau, 2020), contributing to minorities’ overrepresentation on death row. For example, as recently as 2014, the proportion of Black people on death row was more than three times the proportion of Black people in the national population (Ford, 2014); current statistics demonstrating continued over-representation also can be found at the Death Penalty Information Center website, <https://deathpenaltyinfo.org/>; as well as individual states’ websites, such as the Texas Departmental of Criminal Justice website, where, as of July 1 of 2022, 45.7% of all death row inmates were designated as “Black” (http://www.tdcj.texas.gov/death_row/dr_gender_racial_stats.html), while in 2020, only 12.2% of the general population of Texas is designated as Black.

WHEREAS Black youth are punished more harshly than Whites (Morris & Perry, 2016) and significantly more likely to be perceived incorrectly as older and more responsible (Goff, et al., 2014), and therefore more likely to be treated as if they were adults in criminal proceedings in general. In combination, these race-based differences in treatment impact members of the late adolescent class, placing Black youth more at risk of facing and receiving the death penalty compared with their White peers. In fact, a recent analysis shows that non-White (Black, Hispanic, and “Other”) members of the late adolescent class (20 years old or younger at the time of their crime) represent approximately two-thirds of persons in that age group who are sentenced to death, as opposed to a little more than half of non-Whites who were 21 years or older who received death sentences. Moreover, since *Roper*, the racial disproportion in the 18-to 20-year-old late adolescent class has increased, with more than three-quarters of the non-White members of the late adolescent class sentenced to death as opposed to 20% of Whites (Baumgartner, 2022), clearly demonstrating the disproportionately biasing effects, as a function

of age, of minority racial status on the LAC when death is sought as a penalty.

WHEREAS in addition to the strong biasing effect of gender of the defendant on whether prosecutors seek death as a penalty (e.g., Shatz & Shatz, 2011), victim race and gender also affect who is sentenced to death (e.g., Baumgartner, Grigg, & Mastro, 2015; Baumgartner, Johnson, Wilson, & Whitehead, 2016; Pierce, Radelet, & Sharp, 2017).

WHEREAS psychological science research also indicates that members of the LGBTQ+ community and those with nontraditional sexual orientations are dealt with more harshly in their interactions with the criminal justice system, including harsher sentencing (Movement Advancement Project, 2016; Nadal, 2021).

WHEREAS historically, SCOTUS has emphasized death as a penalty should be reserved for persons whose crimes and culpability represent the “worst of the worst” (e.g., *Roper v. Simmons*, 543 U.S. 551, 568 2005; *Kennedy v. Louisiana*, 554 U.S. 407, 420, 2008; *California v. Brown*, 479 U.S. 538, 541, 1987) and, given its extreme severity and finality, that the penalty of death is qualitatively different from any other sentence (e.g., *Woodson v. North Carolina*, 428 U.S. 280, 305, 1976; *Lockett v. Ohio*, 438 U.S. 586, 604, 1978). SCOTUS has repeatedly acknowledged that this qualitative difference between death and other penalties calls for a greater degree of reliability when the death sentence is imposed (*California v. Brown*, 479 U.S. 538, 541, 1987).

WHEREAS a review of the scientific literature as noted above indicates that death as a penalty for the late adolescent class is typically based on unreliable determinations of members’ current culpability status and even more unreliable predictions of their future potential.

THEREFORE, BE IT RESOLVED that based upon the rationale of the *Roper* decision and currently available science, APA concludes the same prohibitions that have been applied to application of the penalty of death for persons who commit a serious crime at ages 17 and younger should apply to persons ages 18 through 20. The same scientific and societal reasons as given by the *Roper* court in banning death as a penalty for those under the age of 18 apply to the late adolescent class.

THEREFORE, BE IT RESOLVED that it is clear death as a penalty is not applied equally and fairly among members of the late adolescent class. In addition, extraneous factors such as race, ethnicity, and gender (of both the defendant and the victim) influence the discretionary decisions of prosecutors to seek and their success in obtaining death verdicts for defendants who are members of the late adolescent class. When considered in conjunction with neuroscientific evidence of the degree of continuing development of key brain systems that remains to be accomplished in the late adolescent class, these and other status variables act to create biases and prejudices that lead to a higher probability of error by

triers of fact in death penalty cases. In combination, these factors render the application of the death penalty to members of the late adolescent class inherently more unreliable and morally abhorrent in a developed society that is concerned with equality, generally and specifically, in legal justice for all.

THEREFORE, BE IT RESOLVED that APA calls upon the courts and the state and federal legislative bodies of the United States to ban the application of death as a criminal penalty where the offense is alleged to have been committed by a person under 21 years of age.

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF MISSOURI
3 MICHAEL TISIUS,)
4 Plaintiff,)
5 vs.) Case No.
6 CINDY GRIFFITH,) 4:17-cv-00426-srb
7 Defendant.)
8
9
10 VIDEOCONFERENCE DEPOSITION OF MICHAEL PLATTE
11
12 TAKEN ON BEHALF OF THE PLAINTIFF
13
14 August 27, 2020
15
16
17
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2	WITNESS:		PAGE:
3	MICHAEL PLATTE		
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5	Examination by Mr. Crane		77
6	Examination by Mr. O'Connor		78
7			
8	E X H I B I T S		
9	NUMBER:	DESCRIPTION:	PAGE:
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13	Exhibit 5	Platte Lead Report	68
14	Exhibit 6	Evidence Custody Receipt	67
15			
16	REPORTER'S NOTE: No Exhibit 3 was used. The exhibits		
17	were attached to the original transcript.		
18			
19			
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21			
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

MICHAEL TISIUS,

Plaintiff,

vs.

CINDY GRIFFITH,

Defendant.

)
)
) Case No.
) 4:17-cv-00426-srb
)
)
)

9 VIDEOCONFERENCE DEPOSITION OF MICHAEL
10 PLATTE, produced, sworn, and examined remotely on
11 August 27, 2020, before Kelsie E. Kaufman, CCR, within
12 and for the State of Missouri, in a certain cause now
13 pending in the United States District Court for the
14 Western District of Missouri, between MICHAEL TISIUS,
15 Plaintiff, vs. CINDY GRIFFITH, Defendant; on behalf of
16 the Plaintiff.

1 A P P E A R A N C E S
2
3 BY VIDEOCONFERENCE APPEARING FOR THE PLAINTIFF:
4 Mr. Keith O'Connor
KEITH O'CONNOR, LLC
5 110 West Ninth Street
Suite 200
6 Kansas City, Missouri 64105
816.225.7771
7 keith@keithoc.com
and
8 Ms. Elizabeth Carlyle
CARLYLE PARISH, LLC
9 6320 Brookside Plaza
Suite 516
10 Kansas City, Missouri 64113
816.525.6540
11 elizabeth@carlylparishlaw.com
and
12 Mr. Laurence Komp
Mr. Daniel Kirsch
13 FEDERAL PUBLIC DEFENDER KANSAS CITY
818 Grand Boulevard
14 Suite 300
Kansas City, Missouri 64106
15 816.471.8282
laurence_komp@fd.org
16 daniel_kirsch@fd.org
17 BY VIDEOCONFERENCE APPEARING FOR THE DEFENDANT:
18 Mr. Andrew Crane
MISSOURI ATTORNEY GENERAL'S OFFICE
19 207 West High Street
Jefferson City, Missouri 65101
20 573.751.3321
andrew.crane@ago.mo.gov
21
22 Court Reporter by Videoconference:
Kelsie E. Kaufman, CCR
23 Alaris Litigation Services
1608 Locust Street
24 Kansas City, Missouri 64108
816.221.1160
25 1.800.280.3376

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1 IT IS HEREBY STIPULATED AND AGREED by and between
2 counsel for the Plaintiff and counsel for the
3 Defendant that this deposition may be taken in
4 shorthand by Kelsie E. Kaufman, a Certified Court
5 Reporter and Missouri Notary Public, and afterwards
6 transcribed into typewriting; and the signature of the
7 witness is expressly waived.

8 * * * * *

9 (Deposition commenced at 11:03 a.m.)

10 THE COURT REPORTER: This is Kelsie
11 Kaufman, and I am a Missouri and Kansas certified
12 court reporter. This deposition is being taken
13 remotely and those participating in this deposition
14 today are attending variously in person, via phone, or
15 via videoconference, with the witness appearing from
16 his home in Mexico, Missouri.

17 The attorneys participating in this
18 proceeding acknowledge their understanding that I am
19 not physically present with the witness and that I
20 will be reporting this proceeding remotely. They
21 further acknowledge that in lieu of an oath
22 administered in person, the witness will verbally
23 declare their testimony in this matter under penalty
24 of perjury. The parties and their counsel consent to
25 this arrangement and waive any objections to this

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1 manner of proceeding. Counsel, please indicate your
2 individual agreement verbally on the record by stating
3 your name and that you stipulate to these terms, after
4 which I will swear in the witness and we may begin.

5 MR. O'CONNOR: Keith O'Connor on behalf of
6 the movant, Michael Tisius, and I agree.

7 MR. CRANE: Andrew Crane for the
8 respondent, and I also agree.

9 MICHAEL PLATTE,
10 being first duly sworn, testified under oath as
11 follows:

12 EXAMINATION

13 BY MR. O'CONNOR:

14 Q. Good morning, sir. How are you?

15 A. I'm doing great, sir.

16 Q. How many people pronounce your last name
17 correctly?

18 A. Counting me, one. No, there's a few people
19 that have known me for several years that can, but
20 that's it. Everybody else pronounces it Platte.

21 Q. Yeah, when we were talking with Mr. Hall
22 last week, and he said Platte, I was like, Is he
23 messing with him, but apparently he's not. So if I
24 mispronounce your name, please know I'm like every
25 other person in the world except for you.

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1 A. Not a problem, sir.

2 Q. Could you please state and spell your name
3 for the record.

4 A. Sure, it's Michael M-I-C-H-A-E-L, middle
5 initial is W, and the last name is Platte. That's
6 spelled P as in Paul, L-A-T-T-E.

7 Q. And, Mr. Platte, I know that you've
8 testified before. Have you ever given a deposition
9 before?

10 A. Many a time.

11 Q. So you're aware of kind of the rules of a
12 deposition?

13 A. I am, sir.

14 Q. Okay. I'm going to go through them with
15 you even though that you know them just so that we're
16 on the same page. Okay?

17 A. Very well, sir.

18 Q. So a deposition is sworn testimony just
19 like it is in court. The big difference is that the
20 judge isn't here. Does that sound right to you?

21 A. Yes, sir.

22 Q. Okay. And sometimes it may be confusing
23 whether or not I'm asking a question. So let's talk
24 about that. If I ask a question that's confusing, I
25 want you to stop me and correct me. Okay?

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1 A. Yes, sir.

2 Q. And you're doing a great job of it already,
3 and I know that you're going to keep it up, but you
4 have to verbalize answers by saying "yes" or "no" or
5 "maybe" or giving a full answer; does that sound
6 right?

7 A. Yes, sir.

8 Q. And I know that we all can kind of fall
9 into our typical patterns of speech where we say
10 "uh-huh" or "huh-uh," but if you do that, I'm going to
11 just correct you. I know it's annoying, but I'm going
12 to correct you.

13 A. You're fine. Yes, sir.

14 Q. If I ask you a question and you answer it,
15 we're going to assume that you understood the
16 question. Okay?

17 A. Yes, sir.

18 Q. And any answer that you give, we want it to
19 be the full, complete, truthful answer. Okay?

20 A. Yes, sir.

21 Q. Now, I know we had a little bit of a
22 technological glitch in getting the exhibits for the
23 deposition to you today, but it's my understanding
24 that you have all six of them now; is that correct?

25 A. Yes, sir.

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1 Q. And you were able to open them?

2 A. Yes, sir, finally.

3 Q. Okay. Have you ever done a Zoom before?

4 Have you used this technology before?

5 A. No, sir. Don't have much need for it on a

6 farm.

7 Q. I didn't know. I know a lot of families

8 since the pandemic has hit have been using it as a way

9 to stay connected with people. So my congratulations

10 to you that this may be your first and only time

11 dealing with this.

12 A. We can hope.

13 Q. Okay. Now, one of the cool things that you

14 can do on Zoom is I can actually show you my computer

15 screen. So we're going to do that a couple of times

16 and now is going to be the first time that we do it,

17 but I'm going to show you what's marked as Exhibit 1.

18 Okay. Can you see that now on your screen?

19 A. Yes, sir.

20 Q. Okay. Is this the subpoena for you to

21 appear today?

22 A. Yes, sir.

23 Q. Okay. And did you receive that subpoena?

24 A. Yes, sir.

25 MR. O'CONNOR: I'd move to admit

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1 Exhibit No. 1.

2 MR. CRANE: No objection.

3 Q. (By Mr. O'Connor) Now, Mr. Platte, would
4 you agree with me that down here in this production
5 area, it compels you turn over basically anything that
6 you would have in this case, records, recordings,
7 reports, any objects generated or used in connection
8 with the interview of Mr. Tisius; does that sound
9 right?

10 A. Yes, sir.

11 Q. And do you have anything to turn over?

12 A. I have absolutely nothing except what
13 you've sent me, basically. I also requested a copy of
14 the Michael Tisius interview that was done in Kansas
15 from the Missouri State Highway Patrol so I would have
16 that to review.

17 Q. Okay. Great. And we'll get there in
18 just --

19 A. A copy of -- okay.

20 Q. Yeah, no, you're fine.

21 MR. O'CONNOR: Were we talking over each
22 other too much there, Kelsie?

23 THE COURT REPORTER: Just a little.

24 Q. (By Mr. O'Connor) That's my fault. I
25 should be better at this because I've done it enough

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1 times now, but I just try to view it as, like, a radio
2 show where we have to be a little bit comfortable with
3 pauses. So you were saying that you requested the
4 copy of the report of the Tisius interview; is that
5 correct?

6 A. Yes, sir, and a copy of his notification
7 and waiver of rights, if you can see that, and then
8 just a copy of the report. That's what I've got.

9 Q. And we're going to get there in just a
10 second because I've got that marked as Exhibit 2, but
11 you didn't take any personal files with you?

12 A. No, sir.

13 Q. Okay. Now, what is your current
14 occupation?

15 A. Retired, gentleman farmer, motorcycle
16 rider, that's about it.

17 Q. Did you say "gentleman farmer"?

18 A. Yes, sir. Yes, sir, that means I sharecrop
19 with my neighbor and I cash in on my pasture ground.

20 Q. That's fantastic. Tell me about -- how
21 long have you been retired?

22 A. I retired from the highway patrol on
23 March 1, 2011. So nine and a half years.

24 Q. Tell me about how long you were with the
25 state highway patrol.

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1 A. I was with the patrol for 28 years and
2 three months.

3 Q. Do you have any other jobs --

4 A. It just seemed longer.

5 Q. You said it seemed longer?

6 A. Yes, sir. Yes, I've had three other law
7 enforcement jobs. I worked as a Canton city police
8 officer when I was a junior and senior in college. I
9 stepped in at Curryville, Missouri, for about two
10 months just because they were without a chief of
11 police and a city officer, and that was in, I think,
12 September and October of 1982 just before the highway
13 patrol academy started, and then I also worked at the
14 city of Macon as the assistant chief of police from I
15 believe it was September of 2014 until April 1st
16 of 2017.

17 Q. Okay. So --

18 A. Not that I had to go back to work, but I
19 wanted to go back to work.

20 Q. My mom did the same thing when she retired.
21 She retired, she unretired, she reretired. So just so
22 I've got --

23 A. I am done in law enforcement.

24 Q. So just so I've got your chronology right,
25 first KCPD as a senior in college, then Coffeyville,

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1 Missouri, then state highway -- say it again?

2 A. It was Canton, C-A-N-T-O-N, and that's
3 where Culver-Stockton College is located.

4 Q. Okay. So I'll start over.

5 A. The second was Curryville. Okay.

6 Q. So KCPD, then Canton, then Curryville, then
7 state highway patrol -- I see you shaking your head.
8 I'll finish the question -- then retired, then Macon;
9 is that right?

10 A. You're correct except for KCPD. You're
11 correct except for KCPD. I never worked for Kansas
12 City PD.

13 Q. Okay. Got it. I just misheard it. You
14 said Canton PD and I thought you said KCPD.

15 A. Correct.

16 Q. Great. In all of those different places
17 that you worked for, had you ever been disciplined
18 while you were on the job?

19 A. Highway patrol used to take away hours for
20 car crashes, so I guess you could say yes.

21 Q. You would agree with me this is a pretty --
22 maybe the most common thing an officer can be
23 disciplined for?

24 A. Is car crashes?

25 Q. In my experience, it is.

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1 A. That's the only thing I got disciplined for
2 was a car crash.

3 Q. Okay. And so they would reduce your hours
4 as punishment for getting into an accident?

5 A. Back in the old days back when I first came
6 on, they would take away leave days so you had to work
7 an extra nine hours. So if you lost two days, you
8 lost two leave days and worked 18 more hours, two
9 nine-hour shifts. So I probably --

10 Q. Did it matter --

11 A. -- worked 30 -- I'm sorry.

12 Q. No, it's funny. Did it matter who was at
13 fault in the accident?

14 A. Yes, the accidents were basically stupidity
15 on my part. The first one I can think of that I lost
16 two leave days for was for driving too fast for a
17 call, losing control, and centering a tree in the
18 middle of my hood.

19 Q. Why did you leave the force?

20 A. Why did I leave the force? I was eligible
21 to retire.

22 Q. Okay.

23 A. I come from a family of very short-livers.

24 THE COURT REPORTER: I'm sorry, what?

25 THE WITNESS: Short-livers. They don't

1 have long lives, very much longevity. My mom died
2 at 58, my dad died at 63. So I wanted to experience
3 every bit of retirement I possibly could.

4 Q. (By Mr. O'Connor) How old are you?

5 A. Sixty-one and almost 62. I'll be 62 in
6 December.

7 Q. Before today's deposition, you indicated
8 that you reached out to the state highway patrol to
9 get your report. Who else have you spoken to prior to
10 today's deposition?

11 A. Well, my wife because she received the
12 phone call from, I believe, Elizabeth first, and she
13 didn't have my number, but she had Cindy's number
14 somehow. I've also talked to David Hall, and I can't
15 think of anybody else.

16 Q. Who did you speak to at the state highway
17 patrol in order to request the records?

18 A. Her name was Ronda Shoush, and that's
19 spelled S as in Sam, H as in Henry, O as in ocean, U
20 as in union, S as in Sam, H as in Henry, and she is a
21 secretary there; she used to type reports. She didn't
22 have anything to do with the typing of this report,
23 but she used to type reports for us, and now she's the
24 senior secretary. I think she's, like, number two on
25 the food chain, as they say.

1 Q. Can you tell me about the conversations
2 that you had with David Hall?

3 A. Well, I take it back, there was one other
4 person. The AG called me probably about two weeks
5 before Elizabeth Carlyle called me and told me that
6 you guys may be contacting me about doing a
7 deposition. So I forgot about him. I called Dave
8 Hall to ask him if he got a subpoena because I knew he
9 was involved with the Tisius interviews and was
10 probably one of the lead investigators with me in
11 doing a lot of the things connected with Tisius, and
12 that's about it. That, and Dave and I are very close
13 friends, so we talked about family and things like
14 that as well.

15 Q. So the conversation with David Hall about
16 today's deposition, was it limited to trying to find
17 out if he had also been subpoenaed?

18 A. Right, and that would have been probably
19 two and a half weeks ago, maybe, and he said he hadn't
20 received a subpoena yet, but had been contacted and
21 had one forthcoming.

22 Q. What have you reviewed prior to today's
23 deposition?

24 A. The only thing I have reviewed prior to
25 today's deposition would be the notification and

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1 waiver of rights that I showed you a moment ago that I
2 believe you said was Exhibit 2, and the report on
3 Michael Tisius interview that Dave Hall and I
4 conducted in Doniphan County, Kansas, back in June
5 of 2000.

6 Q. I'm going to go ahead and show it to you.
7 Okay?

8 A. Okay.

9 Q. So I'm going to show you Exhibit 2. One
10 second, sorry. Okay. Here we go. Are we talking
11 about the same thing? I'm going to start scrolling
12 down, but there in the -- sort of the title, it's
13 titled "Interview of Michael Tisius," would you agree
14 with me on that?

15 A. Yes, sir.

16 Q. And I've actually combined these things,
17 the waiver of rights, there's also a photograph, I'm
18 going to scroll all the way down. If you go down
19 to -- if you go down to page 9, there's a photograph
20 of Mr. Tisius in here, then page 10 of Exhibit 2,
21 that's the notification and waiver of rights you were
22 speaking of?

23 A. Yes, sir.

24 Q. Does this look familiar to you?

25 A. Yes, sir.

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1 Q. And that's the combined documents of your
2 report, the waiver, Mr. Tisius's written statement and
3 a photograph; does that sound about right?

4 A. That is correct. I don't have his
5 photograph, though, I don't believe. Let me go back
6 and check through.

7 Q. Should be page 9 of Exhibit 2.

8 A. Well, I haven't looked at Exhibit 2, but
9 yeah.

10 Q. Okay. I'm going to move to --

11 A. It's on my phone. I can pull it up. Okay.

12 MR. O'CONNOR: I'm going to move to admit
13 Exhibit 2.

14 MR. CRANE: No objection.

15 Q. (By Mr. O'Connor) I know that you printed
16 off the report, and it's just a little different from
17 what I've labeled as Exhibit 2, but we can work
18 through it if you have any questions or you want to
19 clarify anything. Okay. So don't worry about it.

20 A. Okay.

21 Q. All right. Who --

22 A. And I didn't -- just for the record, I did
23 not print off the reports. The only report I have
24 that's printed off is the patrol report that I got
25 from the highway patrol.

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1 Q. That's fine.

2 A. The rest of them I've just got downloaded
3 on my phone.

4 Q. That's perfectly fine, and if you want me
5 to put it up on the screen at any time so you can look
6 at it, you can have as much time as you want. Okay?

7 A. Very good, sir.

8 Q. Who prepared the report? So when I'm
9 talking about Exhibit 2, I'm talking about the meat
10 and potatoes of it. Who prepared the actual narrative
11 of what transpired in that interview?

12 A. I did, sir.

13 Q. Now, I know earlier you said you spoke with
14 Ronda at the attorney general's office and you said
15 she didn't prepare this report. Was the secretary
16 involved in the composition of this report?

17 A. No, sir.

18 Q. Did you have an assistant who worked for
19 you?

20 A. Yes, David Hall worked with me on this
21 investigation. Actually, there were several people
22 that worked with me on this investigation, but David
23 Hall was with me when I conducted the interview.

24 Q. And just to clarify, when I say
25 "assistant," I'm kind of referring in this instance to

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1 someone who would be more like a secretary. Did you
2 have any sort of support staff that would work with
3 you?

4 A. No, sir. I typed the report, and then in
5 this particular case, the violent crimes support unit
6 had been activated, VCSU, and they're the ones who
7 compiled the reports, and basically what they do more
8 than anything is they don't change any of the
9 narrative. They check for grammar, punctuation, and
10 pretty it up a little bit, I guess.

11 Q. So tell me about the VCSU. What is that?

12 A. V as in Victor, C as in Charles, S as in
13 Sam, U as in union. That's violent crime support
14 unit. That's actually a division of the division of
15 drug and crime control, and they're kind of like a
16 mobile major case squad as far as compiling reports.

17 Q. What would they do?

18 A. They would compile reports, and if we had
19 something we wanted run in the computer or whatever as
20 far as driving records, criminal histories, things
21 like that, they could do that.

22 Q. Who was part of this unit? I'm not talking
23 about names. What I'm talking about is police,
24 secretaries? Who is in this unit?

25 A. They are civilian employees of the Missouri

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1 State Highway Patrol, and they're assigned in the Jeff
2 City area -- or, I should say they were assigned in
3 the Jeff City area. I have no idea if they even still
4 have the VCSU anymore because when I retired from
5 patrol, I separated from the highway patrol. I don't
6 stay in close contact with a lot of the intergoings or
7 the interworkings of the agency anymore.

8 Q. Could you tell me a little -- you used the
9 word "civilians." What do you mean by that?

10 A. Noncommissioned personnel. They would be
11 similar to secretaries or analysts maybe would be a
12 good choice of words.

13 Q. So would you send them a draft of your
14 report, a final version of your report? How do they
15 work in this process?

16 A. When the VCSU was activated, they actually
17 come to the scene, which in this particular case, the
18 scene was in Huntsville. We write the reports
19 after -- well, we are assigned a lead because we
20 operate this under a major case squad concept
21 obviously because there's multi-jurisdictions. We at
22 that point in time will be assigned a lead, finish
23 that lead, write the report before we're assigned
24 another lead, and then we go on from there. So they
25 have the -- I guess they would call it a rough draft

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1 because like I said, they check the punctuation,
2 spelling, grammar, things like that. They do not
3 change substance. They just make it more professional
4 and hopefully they didn't have to make too many
5 changes on mine because I tried to do my best.

6 Q. So when you hand them this draft that
7 they're going to beautify, how do you give it to them?
8 Do you e-mail it? Do you hand them a paper copy of
9 it?

10 A. I don't remember how we did it back then,
11 to be honest. I would say it was probably a
12 combination of the two. If they're there present, we
13 can actually download it onto a thumb drive and hand
14 it to them, print it out, whatever. Most likely it
15 was on a thumb drive from what I remember. I don't
16 remember the -- I don't remember this specific case
17 whether thumb drives were in play at that point in
18 time or if that was later on in my career before I
19 retired.

20 Q. Was there a shared computer system that all
21 of the people who worked for the state highway patrol
22 had access to if you composed a document that someone
23 else who worked there could also access it?

24 A. We would have access to it, but that would
25 be back at troop headquarters, and as far as anyone

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1 else having access to what we did as far as our work
2 product, I'm sure that someone in the information
3 systems could or something like that, but no, as far
4 as a secretary or whatever, until it was actually
5 submitted, no one had access to it, from what I
6 understand in computers --

7 Q. Okay. So just --

8 A. -- which I'm computer illiterate.

9 Q. -- that I've got it clear, you're not
10 entirely sure whether or not you put it on a thumb
11 drive or handed an actual physical hard copy, but you
12 believe it was one of those two things?

13 A. Yes, that would be correct, sir, and like I
14 say, 20 years ago it's hard for me to remember back
15 exactly those things. So I cannot recall that.

16 Q. What computer processing software would you
17 use when you were typing up your reports? Microsoft
18 Word, MS, Linux?

19 A. Whatever the patrol had. I think it was
20 Word Perfect, though. I'm not computer literate. So
21 you're talking to someone who is a very non-IT kind of
22 guy.

23 Q. So you're just pecking those reports out?

24 A. Pretty much, and that's hard to do with
25 these meat hooks.

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1 Q. But just so we're clear, it wasn't uploaded
2 to some system, as you recall it?

3 A. No, sir.

4 Q. Did you have a desktop computer, a laptop,
5 what did you use?

6 A. In 2000, I had -- actually, I had both. I
7 had access to a desktop at Troop B headquarters and I
8 also had a laptop. I believe that was in 2000 we
9 would have had those. I don't remember what year we
10 got our laptops.

11 Q. Where is Troop B located?

12 A. Troop B is located 308 Pine Crest Drive,
13 Macon, Missouri.

14 Q. When you were working on this case, you
15 were all over the place, and we'll get there, but were
16 you working mostly out of Troop B, or were you on the
17 road typing up these reports too?

18 A. I would have either been at Troop B typing
19 reports or at a desk area because I am not -- well, I
20 wasn't a road officer at that point in time. I was
21 assigned strictly to the criminal investigation
22 division. So as far as me typing on the road, that
23 wouldn't happen. It would be at a desktop somewhere.
24 Whether I typed it at Huntsville or typed it at
25 Troop B, I have no idea.

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1 Q. How would you -- how would you go through
2 the process of drafting these reports? What was your
3 process?

4 A. Okay. I guess once the lead was completed,
5 we'll use Tisius' interview, for one, once that
6 interview was completed, the notes were placed down
7 and I typed off the report from the notes.

8 Q. Would you --

9 A. I hope I answered the right question.

10 Q. No --

11 A. I hope I answered your question.

12 Q. That was exactly what I was looking for.
13 So thanks for shoring up a bad question. Would you
14 rely exclusively on your notes, or would you use other
15 people's notes in the compilation of your reports?

16 A. In this particular case, if Dave Hall was
17 with me and took notes, I would use both sets of
18 notes.

19 Q. You mentioned that after you kind of had
20 gotten this to a rough draft stage, you turn it over
21 to the VCSU. Would you also share that report with
22 Hall?

23 A. He would have access to it because I --
24 chances are he would have proofread it before I
25 submitted it to make sure I had all my punctuation and

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1 didn't miss any keystrokes somewhere and make a
2 mistake.

3 Q. Make sure the meat hooks --

4 A. So he would have had access to that.
5 That's right.

6 Q. How would he have access to it?

7 A. He would have access to it because at the
8 point in time when it would be turned in, we would
9 keep a copy of it there local to work off of, and then
10 once the report was finalized, they would be shredded,
11 the work copy, as we called it.

12 Q. Are you referring to a --

13 A. Because sometimes -- okay. Let me back up
14 and straighten this out a little bit. I think I can
15 clarify this for you.

16 Q. Okay.

17 A. The reports may or may not be finalized for
18 a month or two because of the number of reports that
19 VCSU would have to compile. You know, if you've
20 got 20 officers on something working, you've got 20
21 different reports coming in, it's going to be tough
22 for them to get everything completed. So we always
23 kept the draft, if you will, until the final product
24 came out, and then the draft would be shredded because
25 a lot of times, you would have a preliminary hearing

1 or something else would come up that you would want to
2 refer to your notes, look back, and I could say then
3 that for sure, he was read his -- Mirandized and
4 signed his acknowledgment at 1:30 in the afternoon.
5 So. . .

6 Q. Thanks for clarifying. When you said he
7 had access to it then, you're referring to a hard
8 copy?

9 A. Right, that would be correct, a hard copy.

10 Q. And you said that you would shred the rough
11 draft after it became -- after there was a finalized
12 report that came out after VCSU had completed it?

13 A. That is correct.

14 Q. What about your notes that you took, what
15 would you do with those?

16 A. Those would have been shredded right after
17 the draft itself had been completely typed up and sent
18 in.

19 Q. Why would you destroy your notes?

20 A. They weren't needed anymore. It would be
21 like a grocery list. You go to the store, you get
22 your milk, your eggs, your potatoes, you throw it away
23 and discard it. It's not needed anymore, because
24 everything that's in the report would have been in the
25 notes.

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1 Q. Is that --

2 A. And the report that was done 20 years ago
3 is accurate.

4 Q. Is that a policy of the state highway
5 patrol to destroy your notes after you've written the
6 report?

7 A. I don't know if that's a policy of the
8 patrol, but it's just common practice of the patrol
9 and any law enforcement agency that I've ever worked
10 for as far as that goes, and I think it was probably a
11 prosecuting attorney that always suggested that
12 because that cuts down on disclosure and things like
13 that to keep track of. It becomes a paper chase.

14 Q. Did that prosecuting attorney also tell you
15 that any memorialized statement is discoverable in the
16 state of Missouri?

17 A. Well, I'm sure he did. Notes are just
18 that, though, they're notes. It's not really a -- a
19 document, if you will. It's not an important
20 document.

21 Q. So you think that you've been told that
22 those notes are discoverable?

23 A. Once charges have been filed or once
24 it's -- yeah, it can be if you still have the notes,
25 but like I say, once the report is written or

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1 shredded, they're gone.

2 Q. So you're aware that they're discoverable,
3 and despite that fact, you destroyed your notes in
4 this case?

5 A. I always destroyed my notes once a report
6 was written. Once there has been charges, then it
7 becomes discoverable from what I understand.

8 Q. But he was charged that day, wasn't he,
9 sir?

10 A. I don't know when he was charged. I don't
11 recall what date exactly. I think there was a warrant
12 that went out for basically a stop and hold for
13 suspicion of murder, but I don't know that he was
14 actually officially charged until he got back to
15 Missouri. I don't know that for a fact. You'd have
16 to talk to the prosecutor or judge.

17 Q. Sure. But you were in law enforcement for
18 nearly 30 years, right?

19 A. Thirty-three total.

20 Q. Would you agree with me that if somebody is
21 in a different state, you have to extradite them?

22 A. Yes, sir.

23 Q. And in order --

24 A. Or if they waive extradition.

25 Q. True, and in order to extradite someone,

1 there needs to be a warrant, right?

2 A. Governor's warrant, yes, sir, that's
3 correct.

4 Q. So wouldn't you say it was highly likely
5 when they waived extradition, that there was the
6 extradition process that took place in this case?

7 A. I'm not exactly sure how extradition works
8 in that respect. If someone waives extradition, I
9 believe they can come back willingly, if you will.
10 They've waived their right to fight the case of coming
11 back home.

12 Q. Okay. But the point -- we'll look at
13 Officer Walker's report that will maybe refresh your
14 recollection of the timeline of this whole thing, but
15 you would agree with me that Officer Walker's report
16 says pretty point-blank that by the time you and Hall
17 came to Kansas, there was already a warrant for
18 Mr. Tisius's arrest in Missouri for murder in the
19 first degree?

20 A. That's what his report said, yes, sir.

21 Q. You would have no reason to dispute that if
22 that's what his report says?

23 A. No, sir.

24 Q. Okay.

25 A. But, again, I was in the air for over an

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1 hour, and I had left probably I'm guessing sometime
2 around 11:00 in the morning, and that's just a guess,
3 I can't tell you the exact time we started flying out.
4 I know we had to make arrangements to get our aircraft
5 to fly us from I believe we left from Moberly and then
6 flew to Kansas.

7 Q. And I'm going to get there. We're going to
8 talk to you about that. I'm just not quite there yet.
9 Could you tell me the names of the people that you
10 worked with in the VCSU?

11 A. I don't recall who was there, to be honest.
12 I don't remember who was assigned there. I worked
13 with them several times down through the years and I
14 would be afraid to guess which ones that was there
15 because I wouldn't want to call someone's name out and
16 be wrong. So I don't recall who was actually working
17 with the VCSU at the time in Huntsville.

18 Q. How many people worked in the VCSU?

19 A. At that point in time, four, I believe.

20 Q. Four?

21 A. I believe that's correct, four. I wouldn't
22 swear to that, but I think it was four.

23 Q. Okay. Who were those four people who
24 worked in the VCSU?

25 A. You're asking some tough questions. Van

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1 Godsey, I believe, was in charge of it. Van Godsey.
2 I believe at that time, it was Rhonda LeCuru. I
3 cannot recall the other two people. I'm sorry.

4 Q. Could you do your best --

5 A. I can't remember (audio distortion).

6 Q. I'm sorry, I keep speaking over you. Could
7 you finish what you were saying right there?

8 A. I'm not sure who the other two were. I
9 don't recall their names.

10 MR. O'CONNOR: I don't know if it was hard
11 for you, Kelsie.

12 Q. (By Mr. O'Connor) You broke up just a
13 little bit when you were saying the names of the
14 people. Could you just to the best of your ability
15 say those two people's names again and spell them?

16 A. Van, V-A-N, Godsey, G-O-D-S-E-Y. Rhonda,
17 R-H-O-N-D-A, LeCuru, and I think it's spelled capital
18 L, little E, capital C-U-R-U, maybe. It's either
19 U-R-U or U-R-E, I'm not sure, and the other two
20 people, I cannot tell you off the top of my head what
21 their names were. That's been 20 years ago.

22 Q. Okay. I appreciate that. Do you have an
23 independent recollection of the interview of
24 Mr. Tisius?

25 A. Yes, sir.

1 Q. Has reviewing the report kind of helped
2 refresh it even a little bit better?

3 A. Yes, sir.

4 Q. Okay. So I want to kind of run through the
5 quick hits of your day that day bringing us up to
6 speed to where the interview takes place. Okay. So
7 bear with me for just a second.

8 A. Okay.

9 Q. From what I can tell from your reports,
10 that early morning hour, you responded to the crime
11 scene itself, to the Randolph County jail. You spent
12 your early morning hours with the bodies, with
13 Mr. Acton and Mr. Egley, and I think you helped with
14 the transportation of one of them; does that sound
15 right?

16 A. Yes, sir, I believe that's correct.

17 Q. And then the next activity I have for you
18 in the case is flying to Doniphan County, Kansas, to
19 interview Mr. Tisius. Does that timeline sound right,
20 or did you do something in the interim?

21 A. Without looking at the complete report, I
22 couldn't tell you if I did something else. I know
23 that when I first arrived on scene, though, I assisted
24 with the walkthrough and made some suggestions on what
25 to do and what not to do. As far as what those

1 suggestions were or whatever, I couldn't tell you
2 specifically. I know we talked about jailers -- not
3 jailers, the deputy that saw it, Willy, I believe his
4 name is, White. I hope I'm right on his name. I
5 don't have the report with me. He needed to be
6 interviewed. I didn't have anything to do with that.
7 Also, we talked about the inmates that all needed to
8 be interviewed. You know, we just discussed the mode
9 that the investigation should continue in, what steps
10 needed to be taken, one of which was to secure the
11 bodies until such time as a coroner could arrive,
12 which I took responsibility for because they had
13 several officers there at the scene already, and if I
14 did anything else between that and securing the
15 aircraft transportation, I don't recall what it would
16 be without looking at the entire report, which is
17 probably 5- or 600 pages.

18 Q. Well, I'm not trying to pull a "gotcha."
19 I've looked through the whole report. I honestly
20 think that that's what you did that day. I just
21 wanted to know if you remembered doing something else
22 that we didn't hear about?

23 A. Not that I recall. If it's --

24 Q. Can you tell me --

25 A. If it was important, there would have been

1 a report written on it. I mean, if there was
2 something that someone else had written a report on, I
3 would have written a report.

4 Q. Thank you for adding that. When you said
5 that you helped with the walkthrough, what is a
6 walkthrough?

7 A. It's basically a primary survey of the
8 scene where you look through -- try and identify
9 evidence, try and identify things that would be
10 important to be seized, secured, processed, et cetera,
11 and also steps to be taken during the investigation.

12 Q. Okay. I don't want to put words in your
13 mouth, but just so I understand, it's kind of like a
14 preliminary assessment of a crime scene?

15 A. Yes, sir, that's what we called the primary
16 survey.

17 Q. A walkthrough?

18 A. Yes, sir.

19 Q. Okay. Now, ultimately, do you -- is part
20 of a crime scene documenting it?

21 A. Yes, sir. We usually on something that's
22 this horrific, we'll do video, stills, diagrams, et
23 cetera.

24 Q. And were all of those things done in this
25 case?

1 A. To the best of my knowledge, I did not work
2 the scene, so I would say yes.

3 Q. Now, when you responded to the scene, what
4 were your responsibilities when you showed up?

5 A. Actually, I didn't have any responsibility.
6 There had been nothing dictated to me at that point in
7 time. I met with the first officers on scene.
8 Obviously with the patrol, if you're the first officer
9 on scene, you're the lead officer. That's the way we
10 always worked it. So whoever is there first has
11 responsibility to take charge of the investigation.
12 So I didn't have responsibility until I got there, and
13 I met with the officers who were present, and then I
14 went -- like I said, did the walkthrough with them and
15 left to go be with the bodies.

16 Q. Who was that officer who was in charge?

17 A. Sergeant, at that time -- he's retired now,
18 he's 71 or 2 years old now, but Randy King was in
19 charge. He was the first responding officer from the
20 division of drug and crime control, and I reported to
21 him right off the bat, and he and I conferred. We had
22 worked together for, oh, probably eight years at that
23 time and we just bounced ideas off one another.

24 Q. He was with highway patrol?

25 A. Yes, sir. Sergeant Randy King.

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1 Q. There were other agencies that were there
2 when you responded, I imagine?

3 A. Yes, sir, there were several officers
4 from -- the Randolph County Sheriff's Office were
5 there. I believe there was an officer or two from the
6 Moberly Police Department, and I know that we also
7 involved the Macon County Sheriff's Office as well,
8 but they didn't respond down that I recall.

9 Q. Any other law enforcement agencies involved
10 besides the four that we've talked about?

11 A. Not at that point in time. As far as
12 whether or not we actually brought in others, the
13 major case squad, I don't recall without looking at
14 all the reports, to be honest.

15 Q. When did you take on heightened
16 responsibilities in this case?

17 A. Probably from the time I showed up, so to
18 speak, because like I said, I worked with Randy
19 from -- for eight-plus years, Randy King for
20 eight-plus years and even though he might be in
21 charge, we valued each other's opinion. Just like if
22 I showed up someplace first and he would get there, it
23 was kind of a -- we valued each other's opinion.

24 Q. So it was a good collaborative colleague?

25 A. Yes, sir. He and I were -- actually worked

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Exh. 1

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1 together very closely and became very good friends.

2 Q. Now, this is one thing I'm confused on.

3 Did you ever become the lead detective? Was there
4 ever a lead detective in this case?

5 A. The true lead would have been Randy King
6 because he was the first officer on scene.

7 Q. And so you were never promoted to, like,
8 lead detective?

9 A. He was in charge. No, we didn't have a
10 lead detective, so to speak. We -- like I say, Randy
11 and I had a relationship that we worked very closely.
12 As a matter of fact, I ran the unit myself for several
13 years and that's the way I ran it. If you were a
14 slick-sleeved trooper and you were first on the scene,
15 that was yours and I would take directions from you.
16 You would tell me what you wanted me to do. Now,
17 granted, we would talk about things, collaborative
18 effort. Like, Mike, I'd like for you to go interview
19 Mike Tisius, I would like for you to interview Tracie
20 Bulington, or whatever, and I've got a little thing
21 that keeps popping up that says my internet's
22 unstable. So I'll just warn you in case I lose you.

23 Q. Just a metaphor for 2020, my friend.

24 A. Yeah, I'll go along with that.

25 Q. Thanks for clarifying that because that's

1 one thing I never really understood on the case.

2 Okay. So at some point in time, you travel to Kansas,
3 right?

4 A. That is correct, sir.

5 Q. How did that come about? Is it a situation
6 where King told you, Okay, I want you to go talk to
7 Tisius, you know, that they responded to the BOLO,
8 he's in Doniphan County?

9 A. I don't remember how we found out or -- I
10 don't recall exactly when we found out or how we found
11 out, but nine times out of ten, if there was a serious
12 interview that needed to be conducted, I was the guy
13 that they called on to do them. So just by my
14 experience as an investigator, my experience as a
15 polygraph examiner, those things come into play. They
16 said, you know, You're definitely the one we want to
17 send, and so I went. As a matter of fact, I probably
18 volunteered and said, Hey, I'll take it, and that's
19 just, you know, a guess, but I would have probably --
20 I mean, I did it all the time. I'll do the interview.

21 Q. Was that sort of your specialty at the
22 highway patrol?

23 A. Well, with the polygraph training that I
24 had, yes, it made it a specialty, if you will.

25 Q. What kind of training did you have before

1 the interview of Mr. Tisius in interview techniques,
2 interrogation techniques?

3 A. Other than polygraph school, I've never had
4 any formalized training in interview and
5 interrogation. It was done -- you know, when I was in
6 the patrol academy, we might have had 16 hours' worth
7 of training, at the most. I never went to the Reid
8 school or anything else. It's just that -- what I
9 learned through polygraph, I guess, would have got me
10 to the point where I was kind of the lead interviewer
11 when it come to it.

12 Q. So you're familiar with the Reid technique,
13 but no formal training?

14 A. That is correct, sir.

15 Q. Have you read any materials about the Reid
16 technique?

17 A. Oh, I'm sure I've read something because I
18 know that there's the nine steps, and everybody that
19 ever talks about interview talks about the Reid
20 technique as being the one that law enforcement, you
21 know, should apply to -- should adhere to, not apply
22 to, sorry.

23 Q. Objection, we're not going to allow -- I'm
24 kidding. Go ahead.

25 A. No, that was it. I mean, that's just -- we

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1 were taught, you know, the nine steps of the Reid
2 technique is basically the things that law enforcement
3 should adhere to.

4 Q. Would you incorporate some of those things
5 into your interviewing style, or did you already have
6 a formed style at that point that you didn't really
7 deviate from?

8 A. Every interview is different. There is no
9 set style. In talking to you, I might talk one way or
10 take a different approach than I would with Larry or
11 Elizabeth or Kelsie, even, whoever. Every interview
12 is going to be different. So you have to treat people
13 and talk to people in that manner. Does that make
14 sense to you?

15 Q. Completely. I couldn't agree with you
16 more. You've got to deal with what you're dealing
17 with. Did you use a polygraph in the examination of
18 Mr. Tisius?

19 A. No, sir. There was no polygraph ever given
20 to Mr. Tisius or anyone in the case that I can recall,
21 and honestly, with me doing the interview of Tisius --
22 with me doing the interview of Mike Tisius, I would
23 not run the polygraph anyway because I'm too closely
24 associated. As a polygraph examiner, you have to be
25 absolutely 100 percent neutral, no preconceived

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Exh. 1

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1 notions of guilt or innocence.

2 Q. And so you're saying that you shouldn't
3 have done that with Mr. Tisius why?

4 A. No, that's not what I said, sir. Let me
5 back up and make sure I clarify this. I said that had
6 a polygraph been necessary for Mr. Tisius, I would not
7 have been the one to do that polygraph simply because
8 I had already talked to Mr. Tisius, he confessed to
9 the crimes; therefore, I have a preconceived notion.
10 Therefore, I myself as a polygraph examiner would
11 refuse to do that polygraph because a polygraph
12 examiner should have no preconceived notions, should
13 be absolutely 100 percent neutral of guilt or
14 innocence.

15 Q. That makes sense. I appreciate the
16 clarification. I think what messes me up is when the
17 polygraph happens in the timeline. When would a
18 polygraph --

19 A. There never was a polygraph administered in
20 this investigation whatsoever. There was no one
21 polygraphed that I know of.

22 Q. Understood. I'm just asking generally. I
23 think that's where we're speaking different languages.
24 As a polygraph examiner, would you come in after
25 police had already talked to a suspect, or would it be

1 the first contact?

2 A. It would be after. The reason being is as
3 a polygraph examiner, you need to know the basic
4 details of the investigation. As a matter of fact,
5 the more you know about it, the better job as a
6 polygraph examiner you can do. So the person would
7 have had to have been interviewed prior, there had to
8 have been a question of whether or not they had done
9 it, and then a polygraph examiner could be requested
10 to come in to verify the victim's statement, the
11 suspect's statement, whoever's statement.

12 Q. Just out of curiosity, why did you guys fly
13 to Doniphan County?

14 A. It was faster.

15 Q. It seems to be a theme with you, with the
16 car crashes and the flying airplanes. You like to get
17 things done quickly?

18 A. It's not so much I want to get things done
19 quickly, but when you have a suspect in custody, the
20 longer you wait, the harder it is to get a confession,
21 to actually get to the truth of the matter. People
22 are more apt to talk to you early on, whereas if they
23 sit in a jail cell with someone for six months, all
24 the jailhouse lawyers and things like that get
25 involved, if you will. So I have always found that

1 the sooner you talk to a suspect, the better off you
2 are.

3 Q. How long is the -- how long is the flight
4 from Macon or Huntsville, wherever you took off to
5 Doniphan County?

6 A. Best guess was probably -- because I don't
7 recall exactly, but I'm saying it was probably an hour
8 to an hour and a half. I don't know what time we took
9 off. I don't know what time we landed. I don't
10 recall those things.

11 Q. Before you -- before you flew there, you
12 were aware he was in custody, though; is that right?

13 A. That is correct. I would not have flown
14 there if -- well, obviously we wouldn't have known
15 where they were if they hadn't called to say, Hey,
16 we're in Doniphan County, Kansas, now and we have your
17 two people.

18 Q. And you just said that the reason to fly is
19 in your experience, it's easier to elicit a confession
20 the sooner you get there?

21 A. Yes, the sooner you talk to a suspect or --
22 and I shouldn't say suspect. The sooner you talk to a
23 victim, a suspect, a witness, the more apt you are to
24 get a more complete and honest or at least accurate
25 recollection.

1 Q. Were you aware -- let me clarify. When
2 were you made aware that Ms. Bulington had been spoken
3 to by law enforcement in Kansas? Did you know before
4 the flight? Did you know when you landed?

5 A. I really don't recall that. I'm thinking
6 that it was when we landed, but I'm not sure. I don't
7 recall that.

8 Q. Who was on the flight?

9 A. There would have been three of us in the
10 plane. The pilot would have been a Sergeant Rodney --
11 James Rodney Appleberry and David Hall who was a
12 trooper at the time and then me, who was a sergeant at
13 the time.

14 Q. What kind of conversations did you and
15 Trooper Hall have on the flight?

16 A. Limited because our plane -- I think it's a
17 small Cessna and -- I don't know, they may have
18 changed four different planes since then, but I think
19 at the time it was a small Cessna. So it would have
20 been very limited conversations because they're noisy.
21 Even though you've got earmuffs on and microphones,
22 they don't always work the best, and it would have
23 been just little trivial things, I guess, we'd talk
24 about as far as, you know, reviewing -- I shouldn't
25 say trivial, that's not a good word. About different

1 questions we needed to ask, et cetera, things like
2 that, if any conversation at all because I don't
3 really recall a conversation, per se, but that would
4 be a standard procedure, if you're going to talk at
5 all, it would be about the investigation and the
6 interviews, the questions we need to ask and get
7 answered.

8 Q. So you would agree with me if you're going
9 in to do an interview or an interrogation, pretty
10 common to game plan before you go in there?

11 A. Well, it was very simple for Dave and I.
12 When it come to doing an interview, I'm going to be
13 the lead interviewer. Dave will sit there and take
14 notes. I will take notes as well. Dave will not ask
15 a question or interject unless I ask him if he's got
16 anything to add or has a question to ask. The reason
17 being is you want the person you're talking to to
18 focus in on one thing and one thing only, that's the
19 person who is asking the questions and doing the
20 talking. You don't want to confuse someone. You
21 don't want to try to trick someone by doing that.
22 That's why it's always the standard that I will do the
23 interview, and when I ask you, Do you have anything to
24 ask that I've missed or whatever, that's when he would
25 talk, but there would not be -- he would not jump in

1 and ask a question on top of my question unless I made
2 it known that I was, you know, ready for him to do
3 that.

4 Q. Was this working relationship sort of a
5 known factor when you went into the Tisius interview,
6 your and Hall's?

7 A. Yes, that's -- Dave and I had worked
8 together for at this point in time, three or
9 four years. I don't remember what time -- when he
10 came into the unit, but we had worked together, and
11 even when he was a road officer, we had worked
12 together some, and yes, that was the way it always
13 was. Unless it was -- if he was the primary
14 investigator, I might let him -- he might -- I
15 shouldn't say "let," that's the wrong choice of words
16 because we always worked as a team. If he was the
17 lead investigator, he would maybe take the lead in the
18 interview, and then he would do the same for me, like
19 ask me, Do you have any questions to ask, because it
20 didn't matter who the lead interviewer was, the other
21 guy did not answer a question -- or ask a question
22 unless he was asking me to or wanted me to or if we
23 missed something. That's just common courtesy. You
24 let the lead interviewer do his thing, ask the
25 questions, because, again, like I say, you do not want

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1 to confuse, you don't want to complicate things. You
2 just want the person you're talking to, whether it be
3 a victim, suspect, or witness, to focus on the lead
4 interviewer.

5 Q. Thank you. What conversations do you
6 recall having prior to interviewing Mr. Tisius?

7 A. Specific conversations, I couldn't tell you
8 one. It's been 20 years ago.

9 Q. Let's work through it. So you don't recall
10 any specific conversation on the airplane because it
11 was noisy and the headphones and the microphones don't
12 work so hot; is that right?

13 A. That is correct.

14 Q. You land in Kansas and you go to the
15 Doniphan County Sheriff's Office; is that right?

16 A. I believe that is correct.

17 Q. Now, you're not sure if you found out at
18 the airport or when you got to Doniphan County, but at
19 some point, somebody tells you, We've already talked
20 to Tracie Bulington?

21 A. Okay. Yeah, try that again. You kind of
22 broke up. The internet connection is unstable.

23 Q. Sure. No worries. Thanks for
24 interjecting. Any time you can't hear a question or
25 you don't understand something, please interject. My

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Exh. 4

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1 question is this, you don't remember a conversation on
2 the airplane, but you get off the airplane, you drive
3 to Doniphan County, you don't know when you find out,
4 if it's the airport or at Doniphan County Sheriff's
5 Office, but you find out at some point Tracie
6 Bulington has already been interviewed by Kansas law
7 enforcement?

8 A. That is correct. I do not recall when I
9 learned that Tracie had been spoken with.

10 Q. Would you agree with me that it is highly,
11 highly likely you found that out before you spoke to
12 Mr. Tisius?

13 A. Oh, yes, before I talked to Tisius, yes. I
14 knew it going in.

15 Q. And what -- what did you know then? Going
16 into that interview with Mr. Tisius, what did you know
17 from what had been disclosed to you about what
18 Ms. Bulington had admitted in her interview?

19 A. I guess what you're asking is what briefing
20 I had received from the Doniphan County Sheriff's
21 Office, the PD officers who were involved, right?

22 Q. (Nods head.)

23 A. Okay. Just want to make sure I clarified
24 that. I knew that she had told them that the car had
25 overheated and broke down somewhere on I -- just off

1 of US 50 -- or Highway 50 and that he pushed the car
2 off the road, that she had talked about Roy Vance and
3 Michael Tisius, and I believe she had pretty well laid
4 out what all had happened that night of -- was it
5 June 21st into the morning of June 22nd, I believe,
6 does that sound right, the dates, of 2000?

7 Q. Yes. Anything else?

8 A. Not that I recall.

9 Q. Do you recall --

10 A. Oh, and that the car had been recovered as
11 well. The car had been recovered as well.

12 Q. Thank you for repeating. You saw from our
13 eyes, we were like, What's he saying now?

14 A. Sorry.

15 Q. You're fine. You're fine. Do you recall
16 them telling you that Tracie told them that Michael
17 was the shooter?

18 A. I believe I knew that beforehand anyway
19 because of the interviews that were done at the jail.
20 I think the deputy had seen the weapon in Tisius's
21 hand, and I would assume that Tracie had told -- and,
22 again, I haven't read the complete reports, but I
23 assume that Tracie had told Kansas authorities as well
24 as she had told me that Tisius was the shooter because
25 I interviewed Tracie at a later time.

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1 Q. Right. And we'll get there. Okay. Now,
2 the people who interviewed Tracie Bulington, Chief
3 Dick and Brian Walker, they were present at the
4 interview of Mr. Tisius; would you agree with that?

5 A. Yes, sir.

6 MR. CRANE: I'm sorry to interrupt, Keith,
7 but could we take, like, a 5-minute break soon? If
8 you want to finish up a line of questions, that's
9 fine, but I just need to take a break real quick.

10 MR. O'CONNOR: No, let's just take a break
11 now and we'll come right back to where we are.

12 MR. CRANE: All right. Back in 5 minutes
13 then.

14 (Recess.)

15 Q. (By Mr. O'Connor) We're back on the record
16 Mr. Platte. Just to remind you, you're still under
17 oath. Okay?

18 A. Yes, sir.

19 Q. Okay. So where I left off was that Officer
20 Dick and Officer Walker, they were present during
21 Mr. Tisius's interview, and you said "yes." That's
22 the last question we were really on.

23 A. Correct.

24 Q. And you've already told us what you recall
25 them telling you about what Ms. Bulington told them?

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Exh. 1

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1 A. Correct.

2 Q. And you knew going into the interview of
3 Mr. Tisius that he was very likely the shooter from
4 the information you had received from Officer White at
5 the scene?

6 A. Correct. I did not speak to Officer
7 White -- Deputy White myself, but I was -- that
8 information was provided to me.

9 Q. When did Kansas law enforcement let you
10 know that their interview of Ms. Bulington was
11 tape-recorded?

12 A. I can't recall if it was before I talked to
13 Tisius or after.

14 Q. Would you agree with me that you knew that
15 day that they told you while you were there in Kansas?

16 A. Yes, sir.

17 Q. Can you describe for us the room where
18 Mr. Tisius was interviewed?

19 A. My best recollection would be that it was
20 probably about 10 foot wide, 16 foot long, had some
21 file cabinets in there, a desk, maybe a couple desks,
22 I believe, in there.

23 Q. How many chairs?

24 A. It's what I would call -- it's what I would
25 call the report room. What they call it or not, I

1 think they call it a booking room or something like
2 that, but -- because I saw the diagram, and to me it
3 looked like a report room where you would sit down and
4 write reports or something of that nature.

5 Q. I'm going to bring up on the screen
6 Exhibit 4 that I think you're referring to. Would you
7 agree with me that this is a sketch that is made of
8 that booking room and it was made by Archie Sullivan;
9 does that sound right?

10 A. A little more.

11 Q. I think I can rotate it, but where the hell
12 is the rotate button?

13 A. I got a good enough look at it. It's good
14 enough. Yes, that would appear to be the area. It
15 looks like it's 11-4 by -- oh, by 14-11. So I was
16 pretty close in 10 by 16, I guess.

17 MR. CRANE: Just for the record, the
18 question is compound. There's also the part about
19 Archie, and I think you said "Sullivan," but I think
20 his name is Sutherland. We've talked about that
21 before, and he's been deposed, just for the record.

22 MR. O'CONNOR: Thanks for clarifying that.

23 Q. (By Mr. O'Connor) So would you agree with
24 me Exhibit 4 is Archie Sutherland's cover letter and
25 then the booking photo -- or excuse me, the

1 measurements of the booking room itself?

2 A. Yes, sir.

3 MR. O'CONNOR: I'd move to admit Exhibit 4.

4 MR. CRANE: No objection.

5 Q. (By Mr. O'Connor) So I know that you
6 described the actual measurements of the room, but
7 anecdotally, how would you describe it, big, small,
8 medium?

9 A. It was a lot bigger than my interview room
10 back at Troop B. It wasn't a huge room. Like I
11 say, 11 by 15, so it's not a huge room, but it's
12 pretty good size.

13 Q. What -- how many chairs were in that room?

14 A. There was at least five. As far as whether
15 there was empty chairs, I couldn't tell you.

16 Q. Okay. We've spoken to other witnesses in
17 the case, and they told us there's only one chair in
18 that room and that the four law enforcement officers
19 were all standing. Would you dispute that
20 recollection?

21 A. Most definitely. Myself and Dave Hall were
22 sitting, as was Mr. Tisius. As far as what the other
23 two were doing, I don't know. They could have been
24 sitting on a desk or whatever, but they were seated
25 and out of the way off at this far end.

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1 Q. Do you recall what time of day the
2 interview took place?

3 A. Yes, sir. It was shortly after 1:00. I
4 believe I met with Mr. Tisius at about 1:25,
5 maybe 1:20 in the afternoon.

6 Q. And how long -- in the afternoon. Thank
7 you. And how long did it take place?

8 A. I don't recall.

9 Q. Could you ballpark it for me? Was it
10 something that was 30 minutes, three hours, over an
11 hour, under four hours?

12 A. I believe it was less than an hour, but I
13 wouldn't -- I couldn't absolutely put a number on it,
14 but I believe it was less than an hour.

15 Q. And just so we're clear --

16 A. To my recollection.

17 Q. And just so we're clear, the interview took
18 place in that booking room that I showed you as
19 Exhibit 4 at the Doniphan County Sheriff's Office?

20 A. That is correct.

21 Q. What did Mr. Tisius look like when you
22 interviewed him?

23 A. Looked like as in how he was dressed? How
24 he was -- what -- I'm really not sure I'm following
25 what you're wanting to know.

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Exh. 1

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1 Q. I'll take anything that your recollection
2 brings to mind, his physical appearance, his emotional
3 state. What did he look like?

4 A. Okay. That's fair enough. He looked like
5 a 19-year-old kid. That would be the best way I could
6 describe him. Actually, he may have even looked
7 younger than 19. Wearing whatever the jail suit was
8 that they had him dressed out in.

9 Q. Do you remember what color?

10 A. No, sir, I don't. Even if I did remember,
11 I wouldn't be able to tell you because I'm about half
12 color blind.

13 Q. How are you getting through this world with
14 your meat hooks and your color blindness?

15 A. I'm telling you, it's tough. It's tough.

16 Q. Do you remember if he was handcuffed during
17 the interview?

18 A. Oh, I can tell you for sure he was not
19 handcuffed during the interview because that's one
20 thing I always do. I never talk to anyone that's
21 handcuffed. If they are handcuffed when they're
22 brought in, I take the handcuffs off because I want
23 them to feel comfortable. I want them to be able to
24 talk and express themselves, and it's hard to express
25 yourself if your hands are tied to your belly button

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1 or whatever. You need to be able to move your hands
2 and -- because I talk with my hands, as you do too as
3 well.

4 Q. They say it's a sign of intelligence.

5 A. We are two very intelligent individuals
6 then.

7 Q. So you've already stated that you were the
8 one who was -- you were in charge of the interview; is
9 that right?

10 A. I was the primary interviewer, yes, sir.

11 Q. Did you ask Hall and -- well, excuse me,
12 clearly you asked Hall to be present, but did you ask
13 Walker and Dick to be present during the interview?

14 A. No, sir.

15 Q. Why were they in the interview if you, as
16 the lead, didn't ask them to be in it?

17 A. Well, I was in their house. I could not
18 ask them to leave. That would not be good form, as
19 they say. My standard practice is that the only
20 people involved -- of course, I'm talking about when
21 I'm in my own house, so to speak, my own interview
22 room or whatever. The only people present are the
23 interviewers and the person being interviewed, whether
24 it be the suspect, victim, witness, whoever, because
25 again, it's a focus thing. I want them to focus on me

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Exh. 1

423a

1 as the person asking the question. I don't want them
2 to be distracted.

3 Q. So is that why there were so many people in
4 the interview?

5 A. Yes. If I had had my druthers, it would
6 have been two of us, myself, Dave Hall, and then
7 Mr. Tisius, the interviewee.

8 Q. Was the interview of Mr. Tisius recorded in
9 any way, audio or video?

10 A. No, sir.

11 Q. Why was it not?

12 A. Well, at that time, it wasn't required by
13 highway patrol or law, and quite honestly, it's not
14 like we had a lot of time to run up to Troop B to grab
15 our recording stuff and get there to actually record.

16 Q. Did you have recording equipment on you?

17 A. Negative.

18 Q. Is that something that was common in your
19 practice, that you wouldn't carry any sort of
20 recording equipment with you?

21 A. No, sir, we always kept some in Troop B
22 headquarters. Unfortunately, when you hear in the
23 middle of the night when you're dead asleep that two
24 jailers have been shot and killed, you don't always
25 take the time to stop by troop headquarters and pick

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1 up items that you may or may not need. Because you
2 never know what you are or aren't going to need. In
3 this case, I obviously didn't stop at Troop B
4 headquarters and pick anything up.

5 Q. Were you aware when you interviewed
6 Mr. Tisius that Ms. Bulington's interview that had
7 happened before Mr. Tisius's had been audio recorded?

8 A. Like I said, I don't remember if they told
9 me before or after the interview that Bulington's
10 interview had been recorded. I have no idea if they
11 told me before or after I had talked to Tisius.

12 Q. Were you aware that --

13 A. It's been 20 years.

14 Q. Sorry. What was that last part?

15 A. It's been 20 years. So that's one detail I
16 really can't recall when I found out before or after.

17 Q. Do you recall Mr. Walker telling you that
18 he had a recording device on him that day?

19 A. No, I do not recall that.

20 Q. Do you recall Mr. Walker telling you that
21 he was the one that audio recorded Tracie Bulington's
22 interview?

23 A. No, I do not recall that.

24 Q. Would it be common practice for someone to
25 interview a -- or record an interview if they weren't

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1 the lead detective?

2 A. I think you're asking if you're not -- and
3 I may be wrong in this, but the way I took your
4 question is you're asking if it would be common
5 practice for an outside agency to interview someone on
6 an investigation you were working; is that correct?

7 Q. Not exactly, but go ahead and answer that
8 question.

9 A. Then, no, it wouldn't be unless you
10 requested and had some facts of the investigation
11 beforehand, and for all I know, the officers from
12 Kansas may have been talking to someone back in
13 Missouri while I'm flying out there. I have no idea,
14 but under normal circumstances, no, you wouldn't
15 expect someone else to do an interview of something
16 that was a case that you were investigating.

17 Q. So the question I was trying --

18 A. Did I answer your question?

19 Q. So the question I was trying to ask is
20 let's take this as a given, Walker had an audio
21 recorder on him, and Walker was present during the
22 Tisius interview. Obviously, he could have recorded
23 the Tisius interview. I'm saying do you recall him
24 recording the Tisius interview?

25 A. No, I do not.

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1 Q. Do you remember where Mr. Walker was in the
2 room during the interview?

3 A. No, sir, I did not focus on him. I
4 focussed on Mr. Tisius.

5 Q. I know you previously testified that you
6 and Hall took notes during the interview. What about
7 Chief Dick, what about Brian Walker, did they take
8 notes?

9 A. I have no idea, sir. No recollection.

10 Q. So you don't recall them giving you any
11 notes?

12 A. No, sir.

13 Q. And you don't recall those notes finding
14 their way into that rough draft report that you
15 invariably turned over to VCSU?

16 A. No, sir.

17 Q. Okay.

18 A. I don't.

19 Q. Okay. And I think we've gone over this
20 before, but your notes and Hall's notes have been
21 destroyed; is that right?

22 A. That is correct, sir.

23 Q. Okay. I want to show you a part of
24 Exhibit 2. If you want to, it's your report. That's
25 what we're going to talk about for a second.

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1 A. Okay.

2 Q. I'm going to go to page 3 of your report.
3 I believe it's called Paragraph 6. Do you see this?

4 A. Yes, sir, starts on the bottom of page 2.

5 Q. Yeah, so the -- right. So you've got --
6 here's the first page of the report, that's got
7 Paragraphs 1 and 2, then 3 through 5 are on page 2,
8 and then page 3 starts at Paragraph 6; does that sound
9 right?

10 A. Well, actually, on my copy, page 2 at the
11 very bottom, and I'll hold it up first so you can see
12 it, starts off with your lead statement.

13 Q. Okay. Why don't we --

14 A. Or the lead paragraph.

15 Q. Just so we're on the same page and for the
16 purposes of the record, why don't you just look at the
17 screen and we'll just go off of that. Okay?

18 A. Sure.

19 Q. Okay. So you see this little gap here,
20 that's the difference between page 3 and page 3, and
21 right at the top of page 3, we've got Paragraph 6 and
22 it starts, "I asked Tisius." Am I reading that
23 correctly?

24 A. Yes.

25 Q. Okay. Now, I'm going to scroll down

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1 slowly, but as I scroll down, would you agree with me
2 that this is written in a question-and-answer style?

3 A. Yes, sir.

4 Q. Okay. So that was the end of page 3, now
5 we're on page 4; is that right? And we're still
6 question-and-answer style; would you agree with me?

7 A. Yes, sir.

8 Q. Okay. Now we're on to page 5, still
9 question-and-answer style?

10 A. Correct.

11 Q. All right. Now we're to page 6, still
12 question-and-answer style?

13 A. Yes, sir.

14 Q. And then at the very end of page 6, you see
15 Paragraph 7, and that's when we stop the
16 question-and-answer stuff?

17 A. Right.

18 Q. Does that sound right?

19 A. Yes, sir.

20 Q. Okay.

21 A. Yes, sir.

22 Q. How was that section of the interview
23 notated?

24 A. I asked the question and he wrote -- and he
25 told me an answer and then I wrote it up.

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1 Q. And you said you didn't have a laptop on
2 you that day, right?

3 A. That is correct.

4 Q. And so when you -- you used the handwritten
5 notes to create this final report?

6 A. That is correct, sir.

7 Q. So your handwritten notes -- it's your
8 testimony that your handwritten notes feature, what,
9 four pages of question-and-answer style verbatim;
10 that's how your note-taking went?

11 A. Close to verbatim, I'm sure. I'm sure I
12 missed a word or two in there, but as close to
13 verbatim as possible, and also while I was looking at
14 the written report -- or the written report as I was
15 just looking through it real quick, on his written
16 statement, he initiated his written statement at 2:34 p.m.
17 Therefore the interview would have had to have lasted
18 less -- or about an hour, give or take, because the
19 actual interview started at 1:34, to be exact, from
20 looking at the waiver of rights that he signed.

21 Q. Okay.

22 A. So he was interviewed for less than --

23 Q. Your earlier testimony that I had said that
24 you thought the interview started at about 1:25 p.m.
25 Now having looked at your report and your recollection

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1 being refreshed, now you think that it started at 1:34
2 and ended around 2:34; does that sound right, give or
3 take?

4 A. Well, the actual interview started from the
5 time I met him, I guess, because I would have met him
6 at about 1:25. He signed his acknowledgment of the
7 rights at 1:30, and then at 1:34, he signed the waiver
8 of rights, and then at 2:34, he started his written
9 statement. If you look at the very top of his
10 voluntary statement, you'll see on 6/22/2000 at 2:34 p.m.
11 in Troy, Kansas. So the -- from the time he signed
12 off on the waiver, which is his written permission to
13 talk to me, basically, to the time he starts his
14 written statement is one hour. So the interview had
15 to have lasted a little bit less than an hour, and I
16 thought maybe an hour, hour and a half at the most, so
17 I was right on.

18 Q. Thanks for clarifying. Would you be
19 willing to send us that copy of the report that you're
20 working off of since we have this discrepancy?

21 A. Actually, I think you'll have the -- should
22 have the exact same report, but somehow your pages
23 don't line up quite like ours do.

24 Q. Yeah, and that's what I get.

25 A. If you want to give me an address, I can

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1 mail it to you.

2 Q. Yeah, I think that that would just be
3 easier if you would send it to us so we could clarify
4 any of these sort of pagination issues.

5 A. Okay.

6 THE WITNESS: Mr. Crane, do you have an
7 objection to that, or do you want to do that, or do
8 you want me to do that?

9 MR. CRANE: No, I mean, you can feel free
10 to mail it to him. I'm sure he'll make sure to get it
11 to me. It's nothing he doesn't have. I'm sure the
12 pagination is probably just formatting stuff, but
13 there's no reason to not let him check it out and make
14 sure.

15 A. All right. I've got no problem with that.
16 Give me an address -- e-mail me an address and I'll
17 put it in the mail tomorrow because mail comes by in
18 about another 20 minutes or so.

19 Q. (By Mr. O'Connor) Sounds good. Continuing
20 on. Now, you know you found out at some point that
21 Ms. Bulington's interview was recorded. My question
22 to you is this, do you know what happened to the
23 recording of Tracie Bulington's interview?

24 A. I believe it went to the AG's office.
25 Didn't they send that to the AG's office for

1 transcribing? I'm not 100 percent sure, but I think
2 that's what happened.

3 Q. Yeah. I'm going to share my screen with
4 you. This is Exhibit 6 that I sent to you. Would you
5 agree with me here there's a receipt on page 2 of
6 Exhibit 6 from Jim Dick saying he shipped it via FedEx
7 to the Missouri Attorney General's Office?

8 A. Yep, on August -- or no, on July 25, 2001,
9 so it would have been a year after the --

10 Q. You can finish.

11 MR. O'CONNOR: I'm going to move to admit
12 Exhibit No. 6.

13 MR. CRANE: No objection.

14 Q. (By Mr. O'Connor) Okay. Now, you
15 conducted the interview of Tracie Bulington the second
16 time she was interviewed; is that right?

17 A. Yes, sir, I believe it was the second time,
18 as far as I know.

19 Q. Okay. I'm going to show you that exhibit.

20 A. Assuming you're counting Kansas -- okay.
21 Are you counting the Kansas -- okay.

22 Q. Yeah, I'm counting the Kansas one as the
23 first one and your interview as the second one. Were
24 there other ones I don't know about?

25 A. Not to my knowledge, I don't know. I can't

1 say one way or the other. If somebody interviewed
2 her, there would be a report on her. If there was
3 another interview of her, it would have been
4 documented somewhere.

5 Q. Is this a report you drafted, sir?

6 THE COURT REPORTER: And make sure to refer
7 to the exhibit number.

8 MR. O'CONNOR: Thanks, Kelsie.

9 Q. (By Mr. O'Connor) Mr. Platte, Exhibit No. 5,
10 is that the report you wrote, sir?

11 A. Yes, sir.

12 MR. O'CONNOR: I'm going to move to admit
13 Exhibit 5.

14 MR. CRANE: No objection.

15 Q. (By Mr. O'Connor) Now, the very first
16 sentence here in your narrative in Part 1 mentions
17 that Ms. Bulington's interview was tape-recorded; is
18 that right?

19 A. That is correct, sir.

20 Q. Okay. So we know that Tracie Bulington's
21 first interview was recorded; is that right?

22 A. Yes, sir.

23 Q. We know that Tracie Bulington's second
24 interview was recorded; is that right?

25 A. No, sir, because if you look at this very

1 last sentence in Paragraph 1 of the narrative, it
2 says, "This interview was a follow-up to an interview
3 on June 19th at the Boone County Courthouse in
4 Columbia, Missouri." So this narrative here would
5 have been the third interview because apparently she
6 was interviewed twice, once on June 19th and once on
7 June 22nd.

8 Q. I appreciate you catching that and that way
9 we'll make sure we get it right. So your earlier
10 answers when you and I were operating under the
11 auspices of it being her second interview, what we
12 both meant was her third interview; is that right?

13 A. That would be correct, sir.

14 Q. Did you talk to Tracie when she was in
15 Kansas?

16 A. No, sir, I did not -- we did not attempt an
17 interview in Kansas. We took her into custody,
18 received custody from Doniphan County, and I believe
19 corporal -- or Trooper Hall at the time rode back with
20 her in a patrol car while I took Mr. Tisius.

21 Q. Okay. How did you guys get cars in Kansas
22 since you flew?

23 A. The highway patrol sent two vehicles over
24 to pick us up once we had decided that -- or once we
25 discovered that they had waived extradition.

1 Q. And do you recall having any conversations
2 with Mr. Tisius on the ride back?

3 A. Nothing about the investigation. It would
4 have been all low-key general conversation.

5 Q. So back to what we were talking about
6 before. Tracie Bulington's first interview was
7 recorded, Tracie Bulington's third interview was
8 recorded; is that correct?

9 A. That is correct.

10 Q. And this is a case where VCSU was called in
11 because it was a big case, right?

12 A. Yes, sir.

13 Q. So why was Mr. Tisius's interview not
14 recorded?

15 A. I didn't have any equipment with me.

16 Q. Have you done any work on this case since
17 the original trial in 2001?

18 A. I definitely doubt it. I couldn't say
19 that, but definitely doubt it. I'm pretty sure that
20 there was just a final written report about he was
21 convicted and that was it.

22 Q. Did -- now, when we were looking at that
23 Exhibit 2, which is your report, and that photograph
24 of Mr. Tisius that's been up a few times -- do you
25 want me to show it to you again? I have a couple

1 questions about it. Do you want to see it again?

2 A. Sure.

3 Q. Okay. So this is Exhibit 2, and this
4 should be page 9, this photograph. So I'm just
5 curious, who generated this photo?

6 A. I have no idea.

7 Q. Was it -- do you know if it was
8 generated --

9 A. It doesn't look like a booking photo. It
10 looks more like a driver's license photo than a
11 booking photo, but I wouldn't -- I don't know.

12 Q. Well, it certainly at the bottom says it's
13 from the Department of Revenue, which would probably
14 back up that thought process, but do you know if it
15 was generated before or after the interview?

16 A. I have no idea. It could have been done
17 while I was flying across Kansas. It could have
18 happened while I was flying to Kansas.

19 Q. Okay. Moving along. Still we're in
20 Exhibit 2; still we're sharing the screen. This is
21 page 10. What's this form?

22 A. This is the -- I think it's called an
23 SHP354C notification and waiver of rights.

24 Q. And what is that in plain speak?

25 A. This is basically a written form that we

1 have where we advise the person of their
2 constitutional Miranda rights, you have the right to
3 remain silent, et cetera, et cetera, et cetera.

4 Q. And this is a Missouri form?

5 A. Yes, sir, this is the highway patrol form.

6 Q. Were you aware that Mr. Tisius had already
7 been Mirandized by Kansas officials?

8 A. I don't recall that. I don't recall --

9 Q. Why would you --

10 A. -- anybody saying that.

11 Q. Sorry for interrupting. Why not use a
12 Kansas form?

13 A. Because I was a Missouri trooper.

14 Q. Now, you mentioned earlier in your report
15 that after you showed him this notification and waiver
16 of rights forms, you also explained it to him in
17 simpler terms. That's the language you used in your
18 report, simpler terms. Could you walk us through
19 that? How would you reduce this down to somebody to
20 explain what their Miranda rights are?

21 A. Okay. What I would do is I would go right
22 down through the line reading all of it from where it
23 says "before you ask any questions" all the way down
24 to "you also have the right to stop answering at any
25 time until you talk to a lawyer," that would be all

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1 verbatim I would read that directly, and then before I
2 actually have them sign off, I'd say, Basically what
3 this means is this is strictly a voluntary
4 conversation. I've got to document everything that
5 happens in here today. Anything that you say or I say
6 or anything that either one of us does, I will be
7 documenting. So, therefore you will see me take
8 notes. I want you to know that you have a right to
9 have an attorney with you right now or any time you're
10 with me. If you want to talk to an attorney, all's
11 you have to do is say, Michael, I want an attorney.
12 We'll stop right there, give you the opportunity to
13 call anybody you want as far as an attorney.

14 Now, if you cannot afford to hire an
15 attorney, though, there are some free legal aid
16 services that are available to you. Okay. Now, if
17 you decide you want to answer questions right now, you
18 can stop two questions from now, five minutes from
19 now, an hour from now, or not even talk to me at all.
20 Now do you understand these rights as I've just
21 explained them to you because I wanted to put this in
22 as simple of terms as I possibly can. It's very
23 important for me that you know that my job as a member
24 of the patrol is for me to protect your rights as much
25 as anybody else's.

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1 Q. And is that --

2 A. If that sounds like pretty much a preamble,
3 that's exactly what I said to everybody back in the
4 day.

5 Q. Is that what you told Mr. Tisius?

6 A. Yes, that's -- again, that's not verbatim
7 because it's been, like, nine years and a half since
8 I've done anything like that, but yes, that's the gist
9 of it. That's what the simpler terms mean.

10 Q. Okay. I'm moving on now. Still on
11 Exhibit 2, but I'm going down to pages 11 and 12.
12 Does this look familiar to you right here?

13 A. Yes, sir, this is the voluntary statement
14 that was authored by Mr. Tisius and provided to Dave
15 Hall.

16 Q. And I am scrolling down as we're looking
17 through this, but it looks like it's about a page and
18 a half, and then it has this kind of squiggly line at
19 the bottom of it; does that sound right?

20 A. Yes, sir.

21 Q. Do you recall Mr. Tisius writing this
22 document?

23 A. Yes, sir.

24 Q. Is that his handwriting as you observed it?

25 A. I wasn't looking over his shoulder, but

1 yes, sir.

2 Q. Can you explain to me kind of the mechanics
3 of him writing this? Are you in the room with him
4 while he writes it? Is he at a desk?

5 A. Yes, he's sitting at the desk that was in
6 the diagram that was drawn up by -- I believe, it was
7 Archie Sutherland, I believe that's who drew up the
8 diagram. I don't recall. But yes, he was sitting at
9 the desk. I may have excused myself to go potty or
10 something like that. I don't know, but I was in there
11 as he started, and then when he finished, because I
12 think if you scroll up some more, you'll see where a
13 witness signature, my name will be on there somewhere.
14 Keep --

15 (Unreportable crosstalk.)

16 THE COURT REPORTER: I didn't catch either
17 one of what you said.

18 Q. (By Mr. O'Connor) Go ahead, Mr. Platte.
19 You can keep going, Mr. Platte.

20 A. Scroll down towards the very bottom and
21 you'll see my signature there as a witness, I believe.
22 Keep going. Yep, there I am on the bottom left as a
23 witness.

24 Q. So you would agree with me that --

25 A. David Hall's name is on the right.

1 Q. You would agree with me that the last two
2 pages of Exhibit 2, it states that it was given -- at
3 the very top of the voluntary statement, it says that
4 it was -- it says, "I am giving this statement to
5 David A. Hall," and lists his ID number, and then at
6 the bottom, the last page, page 12, the written
7 statement is witnessed by both Mr. Hall and yourself?

8 A. That is correct, sir.

9 Q. And was this copied from another writing,
10 or did he do it straight on this form?

11 A. Straight on the form.

12 Q. Okay. Mr. Crane is going to ask you some
13 questions and I may have a couple of follow-ups, but
14 one thing that I always ask people is oftentimes I
15 don't ask the right question. Sometimes I'll talk to
16 witnesses and there will be something that they want
17 to share with me and I just haven't asked the right
18 question. You've obviously been incredibly
19 forthcoming and we appreciate it today. Is there some
20 topic I haven't touched on that you feel like we need
21 to know?

22 A. Not that I can think of. I will tell you,
23 though, that that's a book out of my page. That's
24 what I always ask people at the end of interviews, is
25 there something I should have asked that I didn't.

1 **Very good.**

2 **Q.** It's our hand gestures.

3 **A.** It must be that hand talking thing.

4 **Exactly.**

5 MR. CRANE: All right. Are you ready for
6 me now, Keith?

7 MR. O'CONNOR: Yeah, go for it, Andrew.

8 MR. CRANE: All right. I only have maybe
9 one or two brief questions.

10 EXAMINATION

11 BY MR. CRANE:

12 **Q.** When you were talking with Mr. O'Connor
13 earlier about the process of making your notes into a
14 report, just to clarify, when you're drafting your
15 report, how much information do you transfer from your
16 notes into the report?

17 **A.** Everything. If it was important enough to
18 write down in a note, it's important enough to go into
19 a report.

20 MR. CRANE: All right. That's the only
21 question I have. Thanks.

22 MR. O'CONNOR: Underwhelming, Andrew. Been
23 here for an hour and --

24 MR. CRANE: Well, I don't talk with my
25 hands as much. So. . .

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1 EXAMINATION

2 BY MR. O'CONNOR:

3 Q. Mr. Platte, I just have one question that I
4 thought of. You said the reason why you didn't bring
5 a cassette or a tape recording device to the
6 interrogation was because you were on the move, you
7 were going fast, but you did bring your own forms. So
8 how did you have your own forms with you if you were
9 in this, you know, frenzied response, but you didn't
10 have an audiocassette recorder?

11 A. That's an easy question. I also have
12 statement forms in there as well, but in my binder, it
13 was an open -- a two-sided binder, if you will. The
14 right-hand side had notebook paper, the 8-and-a-half-by-11
15 legal pad, and in the left side I've always got
16 notification and waiver of rights, statement forms,
17 consent to search forms, anything that was
18 important -- or I shouldn't say anything that was
19 important, but the most important things that I would
20 use in the spur of the moment.

21 Q. And so in that binder -- I'd like to
22 conceptualize it as a Trapper Keeper, but in that
23 binder, there was no audio recording equipment?

24 A. No, it's just a two-sided notebook, leather
25 notebook that opens up, just like a folder that you

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1 would have in high school or whatever.

2 MR. O'CONNOR: Can I have just like 5 quick
3 minutes with cocounsel and then we'll be done?

4 MR. CRANE: Yep.

5 (Recess.)

6 Q. (By Mr. O'Connor) I just want to remind
7 you that you're still under oath. I just have some
8 closing questions for you. I know you felt
9 comfortable to correct me at times. Did you ever feel
10 like you didn't understand a question?

11 A. No, sir.

12 Q. Did you feel --

13 A. If I did, I asked.

14 Q. That was my follow-up. Did you feel
15 comfortable correcting me if you didn't understand a
16 question?

17 A. Yes, sir.

18 Q. And you did it a handful of times
19 throughout the deposition?

20 A. Yes, sir.

21 Q. Have all of your answers been complete and
22 accurate and honest?

23 A. To the very best of my recollection, yes,
24 sir.

25 Q. Okay. So the last thing is what you want

1 to do with the deposition itself. You can waive
2 presentment, which is where you say, I'm sure Kelsie
3 typed all of this right, or you have the right to
4 review the deposition for typographical errors and
5 things like that, and what my advice to you is do
6 whatever you want.

7 A. I'm good with it.

8 Q. Do you want to waive?

9 A. Yes, I'll waive. I'm sorry, I'm good with
10 it. Kelsie looks so professional, I can't help but
11 waive.

12 MR. O'CONNOR: Thank you very much, sir.
13 That concludes the deposition today.

14 THE COURT REPORTER: What would you like
15 for the transcript?

16 MR. O'CONNOR: PDF.

17 MR. CRANE: Electronic.

18 (Deposition concluded at 1:02 p.m.)
19
20
21
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23
24
25

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1 CERTIFICATE OF REPORTER

2

3 I, Kelsie E. Kaufman, a Certified Court
4 Reporter within and for the State of Missouri, do
5 hereby certify that the witness whose testimony
6 appears in the foregoing deposition was duly sworn by
7 me; that the testimony of said witness was taken
8 remotely by me to the best of my ability and
9 thereafter reduced to typewriting under my direction;
10 that I am neither counsel for, related to, nor
11 employed by any of the parties to the action in which
12 this deposition was taken, and further that I am not a
13 relative or employee of any attorney or counsel
14 employed by the parties thereto, nor financially or
15 otherwise interested in the outcome of the action.

16

17

18 Kelsie E. Kaufman, CCR

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Phone: 1.800.280.3376

Fax: 314.644.1334

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