

No. _____

In the Supreme Court of the United States

STACEY IAN HUMPHREYS,
PETITIONER,

v.

GEORGIA BOARD OF PARDONS AND PAROLES, ET AL,
RESPONDENTS.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA*

**APPENDIX TO THE
PETITION FOR A WRIT OF CERTIORARI**

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APPENDIX A

Order of the Supreme Court of Georgia denying
Petition for Rehearing (May 19, 2026) A1

APPENDIX B

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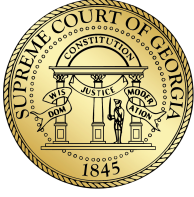
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Appendix

A



SUPREME COURT OF GEORGIA
Case No. S26D1147

May 19, 2026

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

STACEY IAN HUMPHREYS v. GEORGIA BOARD OF PARDONS
AND PAROLES et al.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Pinson, J., not participating.

SUPREME COURT OF THE STATE OF GEORGIA

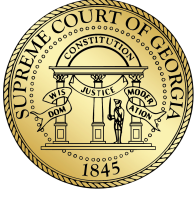
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Theresa A. Barnes, Clerk

Appendix B



SUPREME COURT OF GEORGIA
Case No. S26D1147

April 29, 2026

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

STACEY IAN HUMPHREYS v. GEORGIA BOARD OF PARDONS
AND PAROLES et al.

Upon consideration of the Application for Discretionary Appeal,
it is ordered that it be hereby denied.

All the Justices concur, except Pinson, J., not participating.

Trial Court Case No. 25CV017069

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes
of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto
affixed the day and year last above written.

Theresa A. Barnes, Clerk

Appendix C

IN THE SUPERIOR COURT OF FULTON COUNTY
 STATE OF GEORGIA

STACEY IAN HUMPHREYS,	)	
<i>Petitioner</i>	)	
	)	
v.	)	CIVIL ACTION FILE № 25CV017069
	)	
STATE BOARD OF PARDONS AND	)	JUDGE MCBURNEY
PAROLES <i>et al.</i> ,	)	
<i>Respondents</i>	)	
_____	)	

FINAL ORDER

Petitioner faces death at the hands of the State and his end is nigh. Convicted in 2007 for a double-murder, Petitioner has, after many years of post-conviction litigation, exhausted his direct and collateral appeals. The final procedural step before his execution is his clemency hearing, which has been postponed due to questions concerning the composition of the body that will consider his bid for clemency. This postponement was both self-imposed, when the Board of Pardons and Paroles (“Board”) issued an order on 15 December 2025 indefinitely suspending Petitioner’s execution, and court-imposed, when this Court entered an order on 29 December 2025 temporarily staying Defendant’s clemency hearing (and concomitantly his execution) for ninety days or until the entry of a final order in this case -- whichever came first. The final order is coming first.

Petitioner brought this action to replace two of the Board’s members (at least for his clemency hearing). His contention is that these two members -- Wayne Bennett and Kimberly McCoy -- are burdened by conflicts of interest that make their service as impartial decisionmakers

impractical if not impossible. Bennett was the Sheriff of Glynn County¹ at the time of Petitioner's trial, which meant that Bennett oversaw² security for the courtroom, for the jurors (who were sequestered), and for Petitioner. Bennett's connection to Defendant's case, while not negligible, was far more attenuated than McCoy's. McCoy was, at the time of Petitioner's trial, the Director of the Cobb County District Attorney's Office's Victim Witness Unit, which put her in close and extended contact with the families of the two murder victims, Lori Brown and Cynthia Williams, leading up to and throughout the trial. Petitioner seeks a writ of mandamus directing (1) the two "conflicted" members to recuse, (2) the Governor to appoint two temporary replacement members to fill in for the two conflicted members for Petitioner's clemency hearing, and (3) the Board to stay the execution until (1) and (2) have occurred.

In support of his demand for these changes, Petitioner relies on a constitutional provision, a statutory provision, and a regulatory provision. The meaning, applicability, and impact of these three provisions were discussed at the 15 December 2025 hearing on Petitioner's motion for temporary restraining order and more formally and thoroughly briefed over the following weeks. Benefitting from this additional briefing and more time to process the original pleadings, the Court now concludes that these provisions offer some, but not all, of the relief Petitioner seeks.

Starting with the state constitution, Petitioner insists that Article IV, Section 2, Paragraph II(d) requires all five Board members to consider *every* clemency application, such that if one member recuses from considering an application due to a conflict of interest, another must be

¹ Defendant committed his murders in Cobb County but because of the sensation surrounding his crimes, his trial was moved to Glynn County to ensure a more neutral jury pool.

² Bennett was clear in his testimony to this Court that he *saw* very little of either Petitioner or his trial. Bennett's job, as Sheriff, kept him out of courtrooms and tied up with managing a large organization responsible for running the county jail and providing courthouse security for every activity in the county courthouse, not just Petitioner's trial.

appointed (temporarily) in her stead. While a “full Board every time” approach may make good policy sense -- it ensures maximum participation in the most serious decision-making the Board will perform (and it guarantees every applicant a hearing from the same-sized body) -- that is not what our constitution demands. That subparagraph reads as follows:

The chairman of the board, or any other member designated by the board, *may* suspend the execution of a sentence of death until the full board shall have an opportunity to hear the application of the convicted person for any relief within the power of the board.

Ga. Const. Art. IV, § II, ¶ II(d) (emphasis added). Petitioner argues that this language requires each clemency application to be heard by a full contingent of five Board members. And while a five-member hearing may well be the norm³ for death penalty clemency applications, the constitution does not mandate that. The language at issue merely empowers -- but does not obligate -- the Board’s chairman (or any other member so designated) to halt an execution until “the full board” can consider the clemency application. May is not must. It would not violate this constitutional provision if the Board convened a clemency hearing with only four members (or even three);⁴ the provision simply bestows the authority to require a full five-member hearing if the chairman so decides.^{5,6}

³ Counsel for the Board acknowledged at the 15 December 2025 hearing that she was unaware of a less-than-five-member Board ever considering a death penalty commutation clemency petition.

⁴ There does need to be a majority of the Board present for the Board to transact business. O.C.G.A. § 42-9-7.

⁵ The Court is aware that another judge in this Circuit previously read Article IV, Section 2, Paragraph II(d) as mandating all clemency petitions to be heard by the full five-member Board. That ruling is neither controlling nor persuasive as that is simply not what the sub-paragraph says. In the order entered in that earlier case, the only language cited from the sub-paragraph was part of the concluding clause: “the **full** board **shall** have an opportunity to hear the application of the convicted person.” 17 June 2002 Order at 3-4, Civil Action 2002CV54604 *Fugate v. Board of Pardons and Paroles* (emphasis in Order). Taken alone, in a vacuum, that language does indeed indicate that a clemency petition must be considered by all five members. But of course we are in no such vacuum and that is only *part* of the constitutional provision. Reading it as a whole -- which we must -- the plain meaning of the sub-paragraph is that the Board’s chair *may* pause clemency proceedings until the full Board is available but is in no way obligated to do so. A quorum suffices for clemency, just as it does for any other matter the Board is considering.

⁶ Petitioner insists he has a due process right to a full Board consideration of his clemency petition. The law does not support this claim. The Supreme Court first acknowledged a death row inmate’s due process interest in state clemency

The *statutory* provision upon which Petitioner relies for relief is O.C.G.A. § 42-9-12. This code section directs the Governor, upon receipt of credible information that a Board member is unable to perform her duties “by reason of illness or other providential cause” to establish an *ad hoc* council to determine whether the Board member is in fact unable to perform her the duties. If the council confirms the Governor’s belief, the incapacitated member is suspended and the Governor is authorized to appoint a temporary replacement until the incapacity is alleviated. That is, according to Petitioner, precisely the situation in which member McCoy finds herself: she is temporarily unable to perform her duties (at least in Petitioner’s case) because of her conflict and so, the logic goes, the Governor should, pursuant to the authority vested in him by O.C.G.A. § 42-9-12, suspend her and appoint a replacement for Petitioner’s hearing.⁷

The problem for Petitioner is that O.C.G.A. § 42-9-12’s net does not cast that far. The language the legislature employed -- “by reason of illness or other providential cause” -- and the concept of incapacity simply do not fit the situation with which Petitioner is confronted. To begin with, McCoy is not incapacitated. She may have a conflict that necessitates recusal *from this case*,

proceedings in *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998). That interest, however, guarantees only “minimal procedural safeguards.” *Woodard*, 523 U.S. at 289 (O’Connor, J., concurring). Indeed, the circumstances Justice O’Connor’s opinion -- which established the binding precedent for the Supreme Court, *see Wellons v. Comm’r, Ga. Dep’t of Corr.*, 754 F.3d 1268, 1269 n. 2 (11th Cir. 2014) -- identifies in which due process would be offended are truly outlandish ones, such as (1) “a scheme whereby a state official flipped a coin to determine whether to grant clemency” or (2) “a case where the State arbitrarily denied a prisoner any access to its clemency process.” *Woodard*, 523 U.S. at 289; *see also Gissendaner v. Comm’r, Georgia Dep’t of Corr.*, 794 F.3d 1327, 1331 (11th Cir. 2015). That is not this case. Petitioner, at worst, may have a clemency hearing with four members instead of five. He will have notice of his hearing, he will be able to call witnesses (and testify himself if he so chooses), and he will enjoy the services of experienced counsel. There will be no coin-flipping. That suffices to meet the “minimal” procedural safeguards envisioned in *Woodard*, a case in which the Supreme Court found sufficient a clemency process in which the defendant was not allowed to testify, was interviewed by the parole board without his attorney present, and whose attorney could participate in the proceedings only as authorized by the board chair.

⁷ Petitioner argues the same for member Bennett, but the Court has already found that he does not labor under a conflict that necessitates either recusal or suspension. None of Petitioner’s subsequent filings with this Court has changed that determination. Bennett was persuasive in his testimony that he remembers little of the trial from twenty years ago and that the alleged episode from sentencing deliberations upon which Petitioner places so much weight in his clemency application is not a matter in which he was involved or about which he has either a substantive recollection or opinion.

but she is fully capable of performing the duties of her office, which is the standard employed in O.C.G.A. § 42-9-12.⁸ There is no debilitating illness or other “providential cause,” which is a peculiarly Georgian legal term of art that encompasses those situations over which the parties have no control -- things such as death, war, and even “high waters” (presumably flooding). *Bowen v. Savoy*, 308 Ga. 204, 206–07 (2020); *see also Carhart & Ross & Co. v. Jno. B. Ross & Co.*, 15 Ga. 186, 188 (1854). Those scenarios implicate a member’s ability to participate in *any* work of the Board, not a select few cases -- or a single one. And it is in those situations, when a member is unable to do any of her work for the Board, that the Governor is empowered under O.C.G.A. § 42-9-12 to pursue a temporary replacement member while the stricken member hopefully recovers.

McCoy has nothing from which she needs to recover. Rather, she simply needs to step away from the clemency proceedings for Petitioner. Not *abstain* from a final vote but *recuse* from the entire hearing.⁹ And that is where the regulatory provision comes into play. Pursuant to O.C.G.A. § 42-9-9(e), the Board adopted its own set of ethical guidelines in 1999, creating a set of regulations governing the conduct of Board members as well as all other employees of the agency. Among these regulations is Guideline 1.105.2, added in January 2024, which requires all employees -- including Board members -- to

make every effort to avoid even the appearance of a conflict of interest. An appearance of a conflict exists when a reasonable person would conclude from the circumstances that the employee’s ability to protect the public interest or perform public duties is compromised by personal interests. An appearance of a conflict could exist even in the absence of a true conflict of interest.

⁸ It is also found in O.C.G.A. § 42-9-13, which addresses the reinstatement of previously incapacitated members who have recovered and are “able to resume the performance of the duties of [their] office.”

⁹ In pleadings filed the day of the 15 December 2025 hearing, Respondents revealed that McCoy would be abstaining from voting on Petitioner’s petition for clemency. During the hearing, McCoy expanded on the concept of abstention by explaining that she intended to be present for the clemency hearing, that she might ask questions of witnesses, and that she would participate in deliberations -- but she would *not* be casting a vote for or against clemency. This abstention, Respondents contend, adequately addresses Petitioner’s conflict of interest concerns as to McCoy.

And when a conflict of interest arises, the instructions to that employee/member is clear:

An employee¹⁰ shall recuse himself or herself from any proceeding in which the employee has a conflict of interest or the employee's impartiality might reasonably be questioned due to the employee's personal or financial relationship with a participant in the proceeding.

Guideline 1.106.2.

Here, with Board member McCoy, we have someone who served as the State's advocate for the interests and needs of the closest family members of the two murder victims in Petitioner's case. It was apparently a job she did quite well as she became, in one family member's own words, their "rock." She sat with the families at trial, prepared them for the difficult testimony from witnesses such as medical examiners and first responders, and ensured that they were heard when victim impact statements were made. She was in many ways their guardian throughout the proceedings, both at home in Cobb County and down in Glynn County. It is plain from the record that she quite understandably formed a very close bond with both families as she did her important work of ensuring that the families were informed and as involved as they wished to be in the trial.

To put it differently -- and in terms relevant to the analysis at hand -- McCoy cannot be viewed as impartial in Petitioner's case. She was appropriately on and at the victims' side for many difficult months as this case winded its way through motions hearings, trial, and sentencing. This connection cannot be undone or wished away. Nor can her link to the victims' families be properly cabined such that McCoy could participate in all aspects of Petitioner's clemency hearing except for the final vote. Her friends and clients -- the victims' family members -- will be key players in clemency proceedings, making McCoy's presence and participation inconsistent with the Board's own regulations. McCoy is burdened with a conflict that precludes her participation

¹⁰ "Employee" is defined to include Board members. Guideline 1.104.2.

and requires recusal, as “a reasonable person would conclude from the circumstances that [McCoy’s] ability to protect the public interest or perform public duties is compromised by personal interests.”¹¹ Guideline 1.105.2. The consequence of this conflict is dictated by Guideline 1.106.2, which mandates recusal when a member’s “impartiality might reasonably be questioned due to the [member’s] personal ... relationship with a participant in the proceeding.”¹²

Petitioner enjoys a clear legal right pursuant to the Board’s own guidelines to conflict-free members of the body that will be deciding whether he lives or dies. Because McCoy does not fall into that category, she must recuse. *See Jackson Cnty. v. Earth Res., Inc.*, 280 Ga. 389, 390 (2006) (“Mandamus will issue against a public officer ...where there is a clear legal right to the relief sought”).

* * *

¹¹ This sounds more sinister than it is. This is not a finding that McCoy seeks to gain some improper commercial advantage or financial windfall by participating in the clemency proceedings. Far from it; her service on the Board is a valuable service to our entire State. However, her connections to and friendships with the victims’ families -- things that may have begun as professional responsibilities but are now personal interests -- compromise her ability to be a neutral fact-finder in an exceedingly important fact-finding event, one that determines whether Petitioner dies or lives.

¹² McCoy’s obligation to comply with the Board’s regulations is not just a condition of service as a Board member. It is also a statutory requirement, as O.C.G.A. § 45-10-1, establishing a code of ethics for government service, dictates that any person in government service must “[u]phold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.”

Accordingly, pursuant to O.C.G.A. § 9-6-20, the Court GRANTS the first of Petitioner's several mandamus requests and DIRECTS Board member McCoy to faithfully perform her official duties by complying with her agency's clear guidelines that require recusal, not abstention, when a member faces a material conflict of interest in a proceeding -- which McCoy plainly does. The Court DENIES Petitioner's mandamus request concerning Board member Bennett, who does not labor under a similarly material conflict of interest. The Court also DENIES any additional relief concerning stays or appointments to the Board. Those are decisions properly vested in the broad discretion of the Board and the Governor, respectively. They will no doubt be guided by the finality of the death penalty and the firm tradition of (if not the right to) a five-member deliberative panel in determining how best to proceed with Petitioner's case.¹³

SO ORDERED this 2nd day of March 2026.


JUDGE ROBERT C.I. MCBURNEY
SUPERIOR COURT OF FULTON COUNTY

¹³ In the midst of the parties' briefing of the issues surrounding Petitioner's request for mandamus relief, Petitioner filed a motion to unseal records from Cobb County's District Attorney's Office and for discovery. (Doc 18). Given the Court's rulings contained in this Order, that motion is now moot and so is denied. Also denied by implication is Respondents' motion to dismiss (Doc 8).

Appendix D

or legal wrong once the State has imposed this ultimate penalty. It is thus imperative that our criminal justice system take the time necessary to get each phase of the death proceedings correct. The current litigation is about getting that final step -- the clemency hearing -- correct.

In 2007, a Glynn County jury convicted Petitioner of murdering Lori Brown and Cynthia Williams in Cobb County (the trial was moved to address concerns about pre-trial publicity and its adverse impact on the Cobb County jury pool -- another expensive and time-consuming safeguard put in place to ensure that the process of seeking death was as fair as possible). In addition to finding Petitioner guilty of the two murders, the jury found not one or two but *ten* aggravating factors. Petitioner's convictions and death sentence were upheld at every appellate juncture, criminal and civil, state and federal. At each step of the statutorily imposed and constitutionally mandated process of securing a death sentence and performing an execution, the State has, as it should, taken great care to protect Petitioner's due process rights -- until now.

The final step before the State can execute Petitioner is the clemency hearing before the Board.¹ This is, as mentioned, an opportunity for Petitioner to make a last plea for leniency, to present mitigating circumstances that might, in the collective mind of the Board, merit a reduction of his sentence from death to life in prison. The Board is comprised of five members. Ga. Const. Art. IV, § II, ¶ I; O.C.G.A. § 42-9-2. Generally, a majority of the Board constitutes a quorum that allows the Board to conduct its business, O.C.G.A. § 42-9-7, although, as discussed below, the state constitution appears to require that the full Board (*i.e.*, all five members) participate in clemency proceedings involving death penalty cases. The Board's decisions to grant relief

¹ There must also be an active death warrant from the jurisdiction of the crime (here, Cobb County) for the execution to occur. Such a warrant was issued for Petitioner on 1 December 2025, authorizing execution between 17 and 24 December 2025. That warrant has expired but can be re-issued at the request of the District Attorney of Cobb County.

(clemency, parole, etc.) are purely discretionary.² *Justice v. State Bd. of Pardons & Paroles*, 234 Ga. 749, 751 (1975).

Petitioner brought this action to replace two of the Board's members (at least for his clemency hearing). His contention is that these two members -- Wayne Bennett and Kimberly McCoy -- are burdened by conflicts of interest that make their service as impartial decisionmakers impractical if not impossible. Member Bennett was the Sheriff of Glynn County at the time of Petitioner's trial, which meant that Bennett oversaw security for the courtroom, for the jurors (who were sequestered (another expensive and time-consuming measure taken to ensure Petitioner had a fair trial with jurors untainted by media coverage)), and for Petitioner. Lightning struck this Board twice: Member McCoy was, at the time of Petitioner's trial, the Director of the Cobb County District Attorney's Office's Victim Witness Unit, which put her in close and extended contact with the families of Lori Brown and Cynthia Williams. Petitioner seeks a writ of mandamus directing (1) the two "conflicted" members to recuse, (2) the Governor to appoint two temporary replacement members to fill in for the two conflicted members for Petitioner's clemency hearing, and (3) the Board to stay the execution until (1) and (2) have occurred.

Along with his petition for mandamus, Petitioner filed an emergency motion for injunctive relief to maintain the status quo while the parties litigate his petition. Argument about this emergency relief occurred on 15 December 2025, the day before the scheduled clemency hearing and two days before the scheduled execution. At the start of the hearing, the Attorney General's Office, representing Respondents, provided a copy of a 15 December 2025 Order from the Board

² Indeed, the only requirements imposed on the Board's decision-making are that it "personally ... study" the cases before it, O.C.G.A. § 42-9-20(a), and that it render its decisions in writing, signed by the majority of Board members that supported that decision, O.C.G.A. § 42-9-42(a) & (b)(2).

indefinitely suspending Petitioner's execution. No reason was given for the Order nor was any expiry proffered by counsel for the Board.³ While this took some pressure off the litigants, the urgency remains, as a new death warrant can be obtained at any time.

In pleadings filed the day of the hearing⁴, Respondents revealed that Member McCoy would be abstaining from voting on Petitioner's petition for clemency. During the hearing, McCoy expanded on the concept of abstention by explaining that she intended to be present for the clemency hearing, that she might ask questions of witnesses, and that she would participate in deliberations -- but she would *not* be casting a vote for or against clemency. This abstention, Respondents contend, addresses Petitioner's conflict of interest concerns as to Member McCoy.

Member Bennett also testified. It quickly became clear from his answers that he recalled very little of Petitioner's trial (which occurred eighteen years ago), that he was not directly involved with the day-to-day trial proceedings (or with transporting and supervising jurors to and from the courthouse and their sequestered housing location), and that he had had no substantive interactions with Petitioner, the jurors, witnesses, or the victims' families. The Court finds from the record established at the 15 December 2025 hearing that Bennett labors under no actual conflicts and that the apparent conflict -- being Sheriff at the time of the 2007 trial -- does not justify his disqualification as a participating member of the Board that eventually considers Petitioner's plea for clemency.

In considering what the status quo is *now* (which is what would be preserved by any temporary injunctive relief), the Court identifies the following relevant components:

³ Given that the death warrant has expired, Petitioner's execution will be pushed into 2026.

⁴ This is *not* a critique of the timeliness of Respondents' filings; everyone was working on exceedingly short notice. It is merely a recitation of the timeline of events.

- Most obviously, Petitioner is still alive (and still very much under a death sentence);
- The death warrant obtained on 1 December 2025 has expired;
- Member McCoy, apparently in acknowledgment of her conflict of interest, has decided to abstain from voting on clemency (but still intends to participate in all other ways during the Board's hearing); and
- Member Bennett intends to participate fully in Petitioner's clemency hearing (and there appears to be no sound basis for requiring his recusal).

Maintaining that status quo while the litigants take the time needed to work through the apparently novel issue of what should happen when a Board member labors under a gross conflict of interest seems to the Court entirely consistent with the care and thoroughness that has rightly become the hallmark of the death-seeking process in Georgia's criminal justice system. *See Gregg v. Georgia*, 428 U.S. 153, 187 (1976) ("When a defendant's life is at stake, the Court has been particularly sensitive to insure that every safeguard is observed").

Maintaining that status quo is also allowed by law. It is true that an "interlocutory injunction is an extraordinary remedy, and the power to grant it must be prudently and cautiously exercised." *City of Waycross v. Pierce Cnty. Bd. of Commissioners*, 300 Ga. 109, 110–11 (2016) (punctuation and citation omitted). It is no less true that the death penalty is an extraordinary penalty that should be prudently and cautiously imposed. In considering whether to issue temporary injunctive relief while the parties wrestle with this thorny question of Member McCoy's participation and the possible need for an interim replacement member, the Court should assess if

(1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and (4) granting the interlocutory injunction will not disserve the public interest.

Black Voters Matter Fund, Inc. v. Kemp, 313 Ga. 375, 378 (2022) (citation omitted), *overruled on other grounds by Republican Nat'l Comm. v. Eternal Vigilance Action, Inc.*, 321 Ga. 771 (2025). Because this inquiry is a balancing test, Petitioner need not prove all four factors to obtain injunctive relief. *City of Waycross*, 300 Ga. at 111.

A careful weighing of these factors demonstrates that pressing “pause” on the execution machinery until we answer the non-frivolous question raised by Petitioner concerning the proper composition of the Board for his clemency hearing is the correct course of action.⁵ First, there is no harm more irreparable than death. If Petitioner is executed following a procedurally flawed clemency hearing, there is no re-do any court can order. *Fait accompli*. This first factor “is the most important one, given that the main purpose of an interlocutory injunction is to preserve the status quo temporarily to allow the parties and the court time to try the case in an orderly manner.” *W. Sky Fin., LLC v. State ex rel. Olens*, 300 Ga. 340, 354 (2016) (citation omitted). As has been detailed repeatedly above, one of the core principles of Georgia’s death penalty proceedings is that they should be conducted in a careful and orderly manner, given the stakes involved -- making an order that affords the parties and the Court time to thoughtfully resolve this conflict of interest issue particularly appropriate.⁶

⁵ The Court appreciates that the parties did engage in some on-the-fly legal research and argumentation as the Court pressed both sides on the authority it might have to require an interim member to be appointed (and the many logistical steps that such an appointment might involve). It is safe to describe that conversation as productive but preliminary in nature -- and definitely not the kind of carefully researched and articulated discussion that a death penalty proceeding requires. (Again, this is not a critique of the lawyering; it was exceptional, given the time constraints that the looming execution date had placed on everyone.)

⁶ The Board may have tacitly agreed that more time is necessary to get this right. While no reason was given for the surprise suspension of the execution process that the Board issued only hours before the hearing on Petitioner’s motion, a very plausible one is that the Board, like the Court, wants to get this right -- and sorting out what that means requires more time.

The harm to the State that would be occasioned by a temporary injunction -- the second factor -- is obviously lesser but is not negligible. “[T]he State and the victims of crime have an important interest in the timely enforcement of a sentence.” *Owens v. Hill*, 295 Ga. 302, 313 (2014) (citation omitted). The families of Lori Brown and Cynthia Williams have been waiting for nearly two decades for whatever closure and healing Petitioner’s execution will bring them; injecting another delay, even if brief, keeps them from realizing that goal. But again, the test here is a balancing one, and the Court finds that the harm to Petitioner preponderates.

The third factor -- the likelihood Petitioner will prevail on the merits of his claims -- is difficult to assess because of the novelty of this situation. On purely equitable grounds, the Court finds Petitioner’s claim compelling and something that entitles him to the simple relief he seeks: a full five-member Board free of conflicts. If Member McCoy remains on the Board, participates in the hearing, and then “abstains” by simply not voting, then Petitioner would face a clemency hearing in which someone has already, before any presentation of evidence, debate, or discussion, effectively voted no. Indeed, McCoy’s non-vote has precisely the same impact as a “no” vote: it gets Petitioner no closer to a possible commutation and it limits him to only the four remaining members for a possible grant of relief. Instead, he should have five members who start the clemency process with an open mind about the outcome and an ability to vote as the evidence adduced at the hearing guides them -- just as *all* other death-sentenced defendants have had.⁷ Petitioner might still receive five no votes, but his opportunity to be heard should not be diluted.⁸

⁷ Counsel for the Board acknowledged at the 15 December 2025 hearing that she was unaware of a less-than-five-member Board ever considering a death penalty commutation clemency petition.

⁸ There is a constitutional dimension to Petitioner’s demand for a full contingent of five Board members. Section II of Article IV of Georgia’s Constitution creates the Board, defines its powers, and includes the following provision: “The chairman of the Board, or any other member designated by the Board, may suspend the execution of a sentence of death until the full board shall have an opportunity to hear the application of the convicted person....” Ga. Const.

Where the likelihood of Petitioner’s success on the merits gets murkier is in the mechanics of implementing some form of equitable relief. At the 15 December 2025 hearing, Petitioner highlighted the Board’s official policies that require members to recuse from proceedings in the face of conflicts of interest. He also identified language in O.C.G.A. § 42-9-12 that empowers the Governor to appoint a temporary replacement for a Board member who is unable to serve due to “illness or other providential cause.” Whether a conflict of interest as profound as Member McCoy’s constitutes the “providential cause” that would trigger the appointment of a temporary replacement is a question of first impression. The statute appears tailored more for a medical incapacitation (given the composition of the “council” that is convened to determine whether the member is in fact unable to perform her duties), but there is nothing in the statute that makes it facially inapplicable to Petitioner’s case. All told, the Court finds Petitioner’s argument more persuasive as to the need for (and possibility of) equitable relief resulting in a temporary replacement to Member McCoy.

The final factor is potential disservice to the public interest. The Court has already partially weighed this by considering the undeniable interest the families of Lori Brown and Cynthia Williams have in bringing to a close what must by now seem to them an endless and Byzantine set of appeals by Petitioner. There is an additional important public interest, one that strongly favors pausing the clemency proceedings until five unconflicted members can be present for Petitioner’s hearing: “the public’s interest in ensuring that reliable procedures are followed before the State imposes the ultimate punishment of death.” *State v. Fed. Def. Program, Inc.*, 315 Ga. 319, 349

art. IV, § 2, ¶ II(d). Apparently the authors of our Constitution and the voters who approved it intended for Petitioner to have a full five-member voting body considering his application for clemency -- and not a Board with one or more abstaining members. (And the Constitution even contemplates pausing the clemency proceedings until that headcount can be achieved, just as Petitioner seeks to do here.)

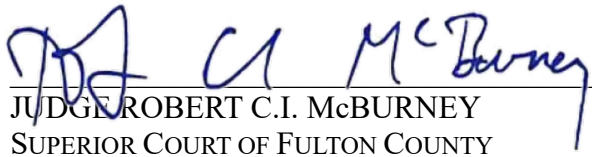
(2022); *see also Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). The reliable procedure that death penalty defendants have long pursued in their last request for leniency is a hearing before a *five*-member Board, with each member a potential “yes” vote for clemency.

Weighing all these factors, the Court finds that the proper, prudent, and protective course of action is to enter a temporary injunction that pauses the inexorable march toward execution until such time as Petitioner can be afforded the standard, constitutionally mandated clemency hearing before the *full* Board, comprised of five members who are able to participate fully in the proceedings, including the final vote on whether to grant Petition clemency or instead deny that relief and allow the death warrant (and Petitioner) to be executed.

It is hereby ORDERED that:

1. The State Board of Pardons and Paroles is enjoined from proceeding with Petitioner’s application for clemency until the earlier of the Court’s final ruling on Petitioner’s mandamus claim or ninety days from entry of this Order.
2. The Georgia Department of Corrections is enjoined from proceeding with Petitioner’s execution until the Board has held its clemency hearing for Petitioner.
3. The parties shall, no later than 19 January 2026, file any additional briefing on the question of whether and how Member McCoy can be replaced by an interim Board member for Petitioner’s clemency hearing.

SO ORDERED this 29th day of December 2025.



JUDGE ROBERT C.I. McBURNEY
SUPERIOR COURT OF FULTON COUNTY

Appendix E

1 IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA

2

3 CIVIL ACTION NO. 25CV017069

4 STACEY IAN HUMPHREYS,

5 Petitioner,

6 vs.

7 THE STATE BOARD OF PARDONS AND PAROLES,

8 JOYETTE HOLMES, Chair; WAYNE V. BENNETT,

9 DAVID J. HERRING, ROBERT MARKLEY,

10 KIMBERLY MCCOY, Members, Georgia State Board of
Pardons and Paroles,

11

12 TYRONE OLIVER, Commissioner, Georgia Department of
Corrections, and,

13 BRIAN P. KEMP,

14 Governor, State of Georgia.

15 Respondents.

16

17

18 REMOTE AND IN-PERSON EMERGENCY PETITION FOR A WRIT
19 OF MANDAMUS AND COMPLAINT FOR INJUNCTION

20

21 Before The Honorable Robert C. I. McBurney

22 Justice Center Tower

23 185 Shirley C. Franklin Boulevard Southwest

24 Atlanta, Georgia 30303

25 December 15, 2025

1:05 p.m. EST

26

27 REPORTED REMOTELY BY: Laura H. Nichols

28 Certified Realtime Reporter,

29 Registered Professional

30 Reporter and Notary Public

31

A P P E A R A N C E S

BEFORE:

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Mr. Wayne Bennett

Ms. Kim McCoy

Members

Georgia State Board of Pardons and Paroles

Doug

(Further identification via Zoom
not provided to reporter at time of
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PROCEEDINGS

December 15, 2025

1:05 p.m. EST

THE COURT: All right. Good afternoon, everyone. This is 25CV017069. I should have asked, Ms. Nichols. You are good to be taking things down?

THE REPORTER: Yes, sir.

THE COURT: Excellent. I need you to interrupt whoever is talking, myself included, if for some reason someone here is not audible or if you have got a bad reception to what is going on. Will you do that?

THE REPORTER: Yes, sir.

THE COURT: Great. Thank you. This is the matter of Stacey Ian Humphreys as the petitioner versus the State Board of Pardons and Paroles and a whole bunch of other respondents. I am going to want to get the appearances for the two sides and then we will get into this.

So I know there are a lot of lawyers for Mr. Humphreys and any number of you can talk, but really I think for the court reporter, we need those who are most likely to be talking about what we are talking about today. So why don't we handle

1 it that way and if you need your name in the record
2 for some other reason, you can let her know later
3 that hey, I was here on this day too.

4 So good afternoon. Who do we have?
5 Who is going to be speaking to the issue -- as I
6 understand the issue, it is should tomorrow's
7 clemency hearing be postponed through mandamus,
8 through whatever we are going to call it, because
9 of concerns about the composition of that board and
10 because there are always two sides to every story.
11 Is three enough for a party?

12 If two people don't participate or
13 one doesn't participate and it sounds at least like
14 one will be abstaining, which is different from
15 recusing and we will work through all that. But
16 that is what we are talking about today is the
17 viability of having the clemency hearing at 9:00
18 a.m. tomorrow morning, which is fifteen hours from
19 now, whatever the math is.

20 So who will be speaking on behalf of
21 Mr. Humphreys?

22 MS. CINO: Your Honor, I am Jessica
23 Cino from Krevolin Horst. I will be one of the
24 lawyers speaking on behalf of Mr. Humphreys.

25 THE COURT: Great.

1 MS. CINO: Thank you.

2 MR. GREENAMYRE: Zack Greenamyre,
3 also counsel for the petitioner.

4 THE COURT: Can you say your last
5 name again?

6 MR. GREENAMYRE: Greenamyre.

7 THE COURT: All right. How do you
8 envision dividing up what you are talking about?
9 One of the members of the board versus the other
10 member of the board or what is the division of
11 labor?

12 MS. CINO: We have one more person
13 talking.

14 THE COURT: Number three?

15 MS. CINO: Number three.

16 MR. GARABADU: Rahul Garabadu, Your
17 Honor. And as we see it, Your Honor --

18 MS. CINO: Go ahead.

19 MR. GARABADU: Ms. Cino will be
20 speaking to the argument, and if Your Honor will
21 hear evidence, Mr. Greenamyre and I will be
22 divvying that up depending on the witnesses that
23 may be testifying before you today.

24 THE COURT: Got it. Okay. That
25 works.

1 THE REPORTER: I need y'all to type
2 your name in chat real quick.

3 THE COURT: Yeah, so what we are
4 going to do, Ms. Nichols, so folks aren't having to
5 type and argue, is if we get your email address, we
6 will send you the style of the case, the names of
7 all the lawyers. There may be references to --
8 Mr. Humphreys has a bevy of attorneys. And so
9 there may be references to other lawyers. I don't
10 want you worrying about how do we spell this or
11 that. So if you can get an email for my staff
12 attorney, she will get you all that info.

13 THE REPORTER: Thank you.

14 THE COURT: You are welcome. And on
15 behalf of -- I am going to call it the State but I
16 know there are many moving parts to the State.

17 MS. PIPER: Yes, Your Honor, Tina
18 Piper, Senior Assistant Attorney General. I will
19 mainly be the one speaking today.

20 THE COURT: Great.

21 MS. PIPER: Conferring with my
22 colleagues, Elizabeth Crowder, Senior Assistant
23 Attorney General, as well as our Deputy Attorney
24 General, Beth Burton.

25 THE COURT: Okay. Some of us have

1 met before. So let me summarize what I understand
2 the issue to be, and then we will start with the
3 petitioner and see where we go from there. So
4 Mr. Humphreys is scheduled to be executed at 7:00
5 p.m. on Wednesday. But as is part of that process,
6 he has a clemency hearing 9:00 a.m. tomorrow in
7 front of the Board of Pardons and Paroles, which
8 consists of five individuals, the chair being
9 Ms. Holmes, and importantly to our discussion, two
10 of the members of the Board of Pardons and Paroles
11 are Mr. Bennett, who was at one point the sheriff
12 of Glynn County, and that point would include the
13 entirety of the death penalty trial of
14 Mr. Humphreys, who was indicted in Cobb County but
15 because of pretrial publicity the trial was moved
16 to Glynn, G-L-Y-N-N, County. And then-Sheriff
17 Bennett was responsible for security and
18 transportation and whatnot for that trial.

19 Another member in a strange set of
20 coincidences of the current Board of Pardons and
21 Paroles is Ms. McCoy, who happens to have been the
22 victim witness advocate for that trial, meaning,
23 from my experience, as a former prosecutor to
24 include death penalty prosecutions, someone who was
25 intimately involved with the families of the two

1 victims in that case. And so Mr. Humphreys has
2 filed a series of pleadings that bring to
3 everyone's attention what sure seems like the
4 conflict that arises when someone who was so
5 intimately involved with the victims' families of
6 Mr. Humphreys' own trial would be sitting on the
7 body that would be deciding whether he should be
8 granted clemency.

9 And I thought this is going to be a
10 fascinating debate until of course there are two
11 sides to every story. I read the respondents'
12 pleadings, and as it was represented to me, but we
13 will get all this on the record in open court,
14 Ms. McCoy is going to be abstaining, as in not
15 voting on whether Mr. Humphreys should be granted
16 clemency. So it sounds like she would be present
17 and would listen, but when it came time to vote up
18 or down on clemency, her vote would be "I abstain."

19 Mr. Bennett would be participating.
20 And the argument is that his connection to
21 Mr. Humphreys' criminal proceedings back in '07 in
22 Glynn County don't rise to the level of needing to
23 abstain or recuse or whatever we are going to end
24 up calling it. So half of the concern raised by
25 Mr. Humphreys seems to be addressed if Ms. McCoy

1 isn't voting.

2 But then, because these things are
3 never that simple, there is the discussion of can
4 you have a hearing if one person won't be voting,
5 do you need to have five voting members so that the
6 vote always adds up to five. And how do we work
7 through that or does Mr. Humphreys have a right to
8 five individuals who could, if they were so
9 inclined, vote to grant him clemency or see it some
10 disability because there will be only four people,
11 or potentially three people, if Mr. Bennett wasn't
12 going to be voting, as to whether Mr. Humphreys
13 should be granted clemency.

14 So we have got the procedural pieces
15 of what makes a quorum, is someone entitled to more
16 than the three; and also the question of should
17 Ms. McCoy and Mr. Bennett be participating at all,
18 and if so, in what way. And I am sure I have
19 missed some of the pieces, you guys are much more
20 steeped in it. But we are not here, that is what I
21 thought when I heard you have something about an
22 upcoming execution to talk about the Attorney
23 General's commitment not to execute anyone until
24 certain things were met after COVID. Apparently
25 Judge May got to handle all that in Federal

1 Court -- thank you, Judge May -- and we are focused
2 on the issue of what should happen tomorrow at 9:00
3 a.m., who should be in the room; or should nothing
4 happen and we should need to reconstitute, on a
5 temporary basis, the board so that Mr. Humphreys
6 has five people at the table, none of whom labors
7 under any conflict, real or perceived by the
8 public.

9 With that, Ms. Cino, why don't we
10 start with argument and then you can get into, you
11 know, really to flesh this out, I feel like I need
12 to ask Mr. Bennett some questions. And I still
13 want to ask Ms. McCoy questions even though she is
14 abstaining or however you guys want to proceed. It
15 is functionally your hearing, and then obviously
16 Ms. Piper and team will respond on behalf of the
17 respondents.

18 MS. CINO: Good afternoon, Your
19 Honor, I very much appreciate you hearing this on
20 an emergency basis and also being thoroughly versed
21 in the background for this. And I will say as
22 Mr. Humphreys' counsel, we are not entirely sure
23 what the position of the State is because the
24 respondents' brief is a four-person board is just
25 fine, one member can abstain, we can move forward.

1 However, and I'm not sure you are aware, roughly an
2 hour before this hearing started, there was a stay
3 of execution issued in this matter, which I think
4 we agreed potentially postpones tomorrow's clemency
5 hearing, so we are not sure of the import of that.

6 THE COURT: Talk to me. I am not
7 aware. I do not have the Humphreys --

8 MS. CINO: News to us.

9 THE COURT: -- on my phone. So I was
10 in a meeting and then I was saying I have to be in
11 court. Who stayed the execution?

12 MS. CINO: That was the Board of
13 Pardons, the State Board of Pardons and Paroles, if
14 you may, I can present this to you, because we
15 received it as we were meeting before court.

16 THE COURT: Sure. Okay. It has a
17 gold seal.

18 MS. CINO: It does. It is fancy.
19 Yeah. Okay. And while it says it is a stay of
20 execution, they have informed federal public
21 defender's office that it is also a stay of the
22 clemency hearing that is going on tomorrow.

23 THE COURT: Okay.

24 MS. CINO: So it is not occurring
25 tomorrow, but we don't know anything beyond that.

1 THE COURT: Okay. Why don't you
2 pause, but you can stay right there.

3 MS. CINO: Okay.

4 THE COURT: And Ms. Piper, fill us in
5 as much as you know. And I appreciate in
6 situations like this, things are happening real
7 time, so you may say, Judge, you know what I know.

8 MS. PIPER: Basically you know what I
9 know. There is -- I will say that there is not a
10 time for this ascension, so, you know, it is only
11 effective right now.

12 THE COURT: Okay.

13 MS. PIPER: It can go -- the longest,
14 the maximum it can go is ninety days. All right?

15 THE COURT: Could -- I'm sorry to
16 interrupt but just so I am understanding the
17 parameters. Could Chair Holmes, upon a vote of the
18 board, issue another one of these in an hour saying
19 never mind, it is unsuspended, he better be there
20 at 7:00 p.m. on Wednesday?

21 MS. PIPER: That is a really fast
22 off-the-cuff factual question for the board. I
23 need to think. Would they, you know? I can't
24 answer for the board, but I doubt that that would
25 occur.

1 THE COURT: Okay. What do you know
2 about why this happened?

3 MS. PIPER: You know, the board
4 guards its votes, and I am sure you are aware,
5 everything, official business the board does is
6 guarded zealously. It is a state secret. They are
7 not --

8 THE COURT: I do know. We have had
9 to litigate this in other cases. And why didn't
10 this guy get paroled? None of your business is
11 what we are told.

12 MS. PIPER: They are zealous in
13 protecting the privacy to afford individuals, you
14 know, the objective review that they can do.

15 THE COURT: And I respect that. I
16 didn't mean to probe in that way like hey, who
17 voted for this. I am curious if there was some
18 indication as to not who thought it was a good idea
19 or a bad idea, but we are suspending because we
20 need to do X, we need to do Y. That would give
21 everyone a better sense of, for example, do we need
22 to do this hearing, do we need to do it today or
23 would we reconvene in a week or a month and in
24 between now and then petitioners, lawyers might be
25 able to learn some information that would make

1 their argument moot or who knows. But it sounds
2 like you didn't get, along with this, a little memo
3 saying hey, here is why we did this.

4 MS. PIPER: That is correct.

5 THE COURT: Okay.

6 MS. PIPER: I will say, you know,
7 respectfully, even if they were to, as your
8 hypothetical, at any point file a new order saying,
9 you know, we are going to have a hearing on this
10 date, I think we still have to go forward with the
11 legal issue before us in court.

12 THE COURT: Okay. And from -- in
13 your experience, when they unsuspend things, do
14 they unsuspend and say we will see everyone in
15 twenty minutes for the clemency hearing or it is --
16 there's a week's notice or --

17 MS. PIPER: Yeah. I don't know that
18 I can give you an exact time frame, but it is not
19 the twenty minutes. I mean it certainly is -- you
20 know, they would get the same notice they would get
21 anyway, normally, I would think. So, you know,
22 there's --

23 THE COURT: I haven't been on death
24 row before, so I don't know what kind of notice you
25 get for hey, now is the execution date, in T-minus

1 three days is your clemency hearing or how that
2 goes.

3 MS. CINO: If I may, Ms. Smith, who
4 represents -- is the in-house counsel essentially
5 for the board is on Zoom.

6 THE COURT: Okay.

7 MS. CINO: She may have some
8 information.

9 THE COURT: Oh, right. Ms. Smith,
10 this is the Ms. Smith that one of you e-mailed to
11 say we have got an issue and nope, nope, there's no
12 issue. We are going forward.

13 MS. CINO: Right.

14 THE COURT: Ms. Smith, are you able
15 to hear us?

16 MS. SMITH: Yes, sir, I am.

17 THE COURT: Thank you for joining us.
18 Are you in a position to answer any of the
19 questions that I had, such as how do we figure out
20 why things were suspended? I bet I know the answer
21 to that, which is no, but how much notice people
22 get when the suspension is lifted?

23 MS. SMITH: So I may be able to
24 answer, Your Honor. In this instance, I don't
25 believe that there's any law regarding the amount

1 of notice a person gets when the stay or the
2 suspension is lifted. We would provide at least
3 twenty-four hours' notice, depending on whether the
4 window for execution is still open, obviously, to
5 provide counsel an opportunity to get themselves
6 and any staff that is assisting present to the
7 appointment which would likely be, like I said,
8 maybe twenty-four hours in advance of the
9 appointment date, should the stay or the suspension
10 be lifted.

11 THE COURT: But if there's supposed
12 to be a clemency hearing before the execution, then
13 I guess the execution would have to be at least two
14 days out because you would have the clemency
15 hearing in between the lifting of the suspension
16 and the execution?

17 MS. SMITH: That is correct, sir.

18 THE COURT: Okay. All right. But as
19 of right now, you don't have any information you
20 can share with the parties to this litigation as to
21 whether this is a short-term suspension, a
22 long-term suspension or we just -- we wait for the
23 next gold-sealed document?

24 MS. SMITH: That is correct, sir.

25 THE COURT: The last one?

1 MS. SMITH: I'm sorry. I don't have
2 any information as to how long the suspension will
3 last.

4 THE COURT: Okay. All right. You
5 didn't know you were going to be put on the spot.
6 Thank you for pitching in here. That is helpful.

7 Okay. We should go forward --

8 MS. CINO: We should.

9 THE COURT: -- because we don't know
10 when we will all be together again.

11 MS. CINO: Well, and the execution
12 warrant is open until the 24th and there's a
13 massive amount of logistics of getting other
14 witnesses here for the clemency hearing.

15 THE COURT: The 24th of December?

16 MS. CINO: Correct.

17 THE COURT: How does that work, an
18 execution warrant is valid for --

19 MS. CINO: A certain window. And so
20 they could potentially say hey, stay would be
21 lifted tomorrow. Clemency hearing, you know,
22 execution is on the 23rd, we are going to have a
23 clemency hearing on the 22nd.

24 THE COURT: If -- if we go past the
25 24th, then there needs to be a new execution

1 warrant?

2 MS. CINO: That is correct, Your
3 Honor.

4 THE COURT: And is that what the
5 district attorney applies for or who -- so
6 Ms. Allen out of Cobb would say all right, we have
7 to do this again, I am getting a new execution
8 warrant. But is that merely a matter -- I don't
9 mean to make it sound insignificant, but he has
10 been sentenced, so getting another warrant, some
11 judge doesn't have discretion to say I'm not going
12 to give you an execution warrant.

13 MS. CINO: That is a more ministerial
14 function, but it is also a large, over the holidays
15 especially, a scheduling function, given that there
16 are mental health experts on behalf of the
17 defendant and other individuals who have to fly in.

18 THE COURT: None of this is simple.
19 I get that.

20 MS. CINO: Exactly.

21 THE COURT: And so no one should
22 hopefully be thinking well, we will just give
23 everyone twenty-four hours' notice. I just -- I
24 want to be mindful as we are working through this
25 the significance of if something pushes past

1 December 24th, one can get another execution
2 warrant. And that is not moving a mountain. What
3 is moving a mountain is the execution and the
4 clemency hearing and being prepared for that.

5 MS. CINO: Correct, yes.

6 THE COURT: All right. So let's
7 assume that we are going forward.

8 MS. CINO: Yes. Thank you. So this
9 mandamus action is necessary because the State --
10 we will say intends to proceed at some point with
11 the clemency process that is plainly
12 unconstitutional and cannot be remedied through
13 ordinary channels. And this court does have the
14 authority to compel compliance with the Georgia
15 Constitution.

16 THE COURT: If Ms. McCoy doesn't
17 participate, and by that I am just going to say she
18 is there the whole time but she doesn't vote, that
19 is how I take abstain. Abstain would be I am in
20 the room, I might even ask some questions of
21 witnesses, etcetera. But when it is time to vote,
22 the vote is abstain.

23 MS. CINO: Yeah.

24 THE COURT: If that is the approach
25 that the board takes, which is what has been

1 represented in signed pleadings that have been
2 filed with the court.

3 MS. CINO: Yeah.

4 THE COURT: So that there's four
5 people, and I appreciate you have got concerns
6 about Mr. Bennett, we will air those out, what is
7 unconstitutional about that happening?

8 MS. CINO: That is a great question.
9 The Georgia Constitution mandates there shall be a
10 State Board of Pardons and Paroles which consists
11 of five members. And that is Article 4, Section 2.
12 And it further requires in capital cases the full
13 board have an opportunity to hear the application
14 of a convicted person. So the provision requires
15 that clemency in a death penalty case has to be
16 considered by a fully constituted five-member
17 board, not a partial one, not a conflicted one.
18 And having all five participating members, it was
19 recognized ten days ago by the board's counsel,
20 Ms. Smith, saying there has to be five members.

21 THE COURT: Well, but Ms. Smith isn't
22 the constitution, so she said what she said.

23 MS. CINO: Right.

24 THE COURT: If the constitution says
25 that five must hear it, that might explain why

1 Ms. McCoy would be given the advice of you should
2 abstain as opposed to recusing, which I would take
3 to mean I am not going to be in the room while it
4 happens. And so then four people would hear
5 Mr. Humphreys' plea for clemency, and that would be
6 inconsistent with constitutional language that says
7 the full board must hear the application. But
8 Ms. McCoy could hear it if she is abstaining, she
9 is just not voting on it. I know that sounds
10 ticky-tacky, but words have meaning --

11 MS. CINO: But they do. And sorry, I
12 don't want to interrupt you.

13 THE COURT: No, but -- so the full
14 board hears it and then Ms. McCoy says I am going
15 to abstain. I'm not to vote on this because I have
16 some conflicts that kind of hit you in the face
17 when you read about her connection to the
18 underlying case that brings Mr. Humphreys before
19 us.

20 MS. CINO: And they do. And so if
21 you even dig deeper, so the board has a policy.
22 Board Policy 1.120, that members -- it focuses
23 right on members are participating in proceedings.
24 And so the impartiality, if it is reasonably
25 questioned, they do have to abstain. But a member

1 is prohibited from participating, they are not
2 exercising their constitutional power of clemency
3 at all. And so the board cannot be
4 constitutionally whole.

5 And they make this distinction, I
6 think, if you look at Fugate, for example, which
7 this Court decided in 2002.

8 THE COURT: So we are clear, "this
9 Court" means Judge Goger.

10 MS. CINO: Judge Goger.

11 THE COURT: Not Judge McBurney, I was
12 not the judge back then. But I looked at Fugate,
13 that was in some of your pleadings.

14 Does a policy of the board constitute
15 either, and it may be both, a law that a judge
16 could issue a mandamus on you must comply with this
17 law or is it a policy and it is not a court's job
18 to enforce a policy? And if it somehow is -- well,
19 start with that.

20 MS. CINO: Okay. So I do think that
21 policies are part of what we recognize that the
22 board has to comply with. There are structures and
23 norms for a board that they have to follow,
24 especially when it comes to conflicts in this
25 specific instance, right?

1 And we are looking at what are these
2 ethical guidelines that are clear and when clemency
3 is exercised, when we are looking at participation,
4 deliberation and voting, for in these particular
5 instances. So those norms and guidelines help
6 establish when a board member, for example, is
7 conflicted, when there's an appearance of a
8 conflict and when it is the right time for that
9 board member to not be participating in a
10 procedure.

11 THE COURT: And what is the specific
12 language of the policy if I, as a board member,
13 conclude that I have a conflict, like Ms. McCoy has
14 apparently? She is abstaining. Does the policy
15 say you should abstain, does it say you shouldn't
16 participate, and then that is open to the
17 interpretation -- well, abstention means you are
18 not participating, so she has checked the box of
19 the policy, but you still have a full board because
20 all five are in the room when the clemency petition
21 is being presented.

22 MS. CINO: So -- so if you read under
23 board policy, so the first board policy that we
24 start with, which is 1.105, that the employees
25 shall make every effort to avoid even the

1 appearance of a conflict of interest. And it goes
2 on to say that it is when a reasonable person would
3 conclude from -- I feel like there's a question
4 coming.

5 THE COURT: No. No. No. With
6 Ms. McCoy, I'm glad we are not having to have the
7 argument how does someone not see the conflict
8 here.

9 MS. CINO: Okay.

10 THE COURT: And that was addressed
11 with the pleading from the respondent. So she has
12 raised her hand saying I have got a conflict.

13 MS. CINO: Okay.

14 THE COURT: And so she is going to
15 abstain.

16 MS. CINO: All right.

17 THE COURT: How is that approach to
18 her conflict inconsistent with the policy?

19 MS. CINO: So 1.106, an employee
20 shall recuse him or herself from any proceedings,
21 it isn't abstain, it is recuse.

22 THE COURT: And what is the
23 difference?

24 MS. CINO: So abstain is I still stay
25 in the room, I can listen to all of this

1 information, but I am an empty seat. I don't vote
2 on it. There's only four people who are there.
3 Recusing is generally I am taking myself out of the
4 room, I am not participating in these proceedings
5 and it is like, for example, if a judge recuses
6 from a case, we don't have an empty chair with this
7 hearing going on, we have a new judge that is
8 appointed in your stead.

9 THE COURT: Do you have any examples
10 of recusals on the board where someone said that is
11 my nephew who is coming in, and so I can't be
12 handling his request for clemency? You know what
13 they did in that case is that board member McBurney
14 leaves and they bring in board member Jones, a new
15 person, temporarily, like you are going to sit in
16 for this hearing. That is it. You don't stay on
17 the board. You are here temporarily because
18 McBurney had to recuse because it is his nephew.

19 MS. CINO: So I would love to say
20 that I did. These guidelines are relatively
21 recent, so there aren't a prime example of that
22 occurring just yet.

23 Part of -- in addition, part of some
24 of the questions that we have to introduce in
25 evidence are were you provided with these

1 guidelines in advance when you were onboarded for
2 example as a new board member.

3 THE COURT: Okay.

4 MS. CINO: Yep.

5 THE COURT: So your argument is that
6 the policy, it says you shall recuse and recusal is
7 not abstention, recusal would mean you are not even
8 in the mix. And so if Ms. McCoy is saying I have
9 got a conflict, she is not complying with the
10 policy if she merely abstains. Words mean
11 something, she should recuse, which means she is
12 not present at all, in which case you don't have a
13 full board, you have four.

14 Setting aside whether Mr. Bennett has
15 a conflict as well, you are already at a point
16 where, contrary to the constitution, the full board
17 is not hearing the application.

18 MS. CINO: Your Honor, you are making
19 my argument for me, but yes.

20 THE COURT: I just want to make sure
21 I understand it.

22 MS. CINO: That is right. That is
23 absolutely right. And if I might add, it is
24 slightly different from the argument in
25 respondents' brief where they are using quorum

1 as -- to justify that they don't need to have all
2 five members. And that is a different component of
3 this.

4 THE COURT: Okay. Are you going to
5 get to that?

6 MS. CINO: Yes.

7 THE COURT: Okay. All right.

8 MS. CINO: So part of -- respondent
9 tries to sort of, you know, use -- if there are
10 three out of five board members that are available
11 and can preside over this, then you have reached
12 the amount that you needed and we will be fine, but
13 that is simply the amount you need for quorum to be
14 able for that clemency proceeding to go forward.
15 It is not what is required and it is certainly not
16 what Fugate has stated. It doesn't negate the
17 requirement, and this is straight from Fugate,
18 which is in the next sentence that they left out of
19 their brief, it does not negate the requirement of
20 five appointed board members, members of the board
21 at all times, who are to have an opportunity as
22 required by the constitution to consider
23 applications for themselves.

24 THE COURT: This quorum, three out of
25 five would be a quorum?

1 MS. CINO: Uh-huh.

2 THE COURT: Are there rules that talk
3 about the board conducting business with a quorum,
4 or is the quorum, that is the number of votes you
5 need? I think of quorum as we now have enough
6 people in the room to conduct business. And if
7 there are any rules that talk about there being a
8 quorum, I mean it would seem to be unnecessary if
9 the constitution says you have to have everyone
10 there, then your quorum is everyone, it is not
11 three, it is not four.

12 Where does the notion of quorum come
13 from in terms of the operations of the board?

14 MS. CINO: Sure.

15 THE COURT: I know it is in the
16 respondents' brief. I got that. I don't remember
17 if they cite to, well, Rule 1.101 says a quorum is
18 enough, three you can go forward.

19 MS. CINO: So in the -- I believe it
20 is later -- one of my colleagues may bring this up
21 to me. But -- I know there is a section about as
22 long as you have got three out of five members to
23 move forward --

24 THE COURT: While you are looking,
25 let me ask a quick question.

1 (Off-the-record discussion.)

2 THE COURT: I am ready when you are.

3 MS. CINO: Thank you.

4 (Pause.)

5 MS. CINO: So the quorum, it requires
6 a quorum of a five-member board to act, which is, I
7 believe, the three out of five members to grant the
8 clemency petition.

9 THE COURT: Okay. To act as in three
10 have to vote for it or they need three in the room
11 to do it?

12 MS. CINO: You need three to vote for
13 it.

14 THE COURT: I didn't say that well.
15 You just repeated me, so I didn't say it well.

16 MS. CINO: I apologize.

17 THE COURT: No. No. No. There need
18 to be three votes in favor of X for X to occur with
19 the board, not that three people have to cast a
20 vote so that a two to one vote would actually carry
21 the day. You see the difference between the two?

22 MS. CINO: That is right. So under
23 the Georgia Constitution, you have to have -- you
24 can't, for example, if there are, let's say, just
25 four people, it can't be a two -- two to two.

1 THE COURT: That would be a tie.

2 MS. CINO: That would be a tie.

3 THE COURT: Right.

4 MS. CINO: You can't have two to two.

5 It would have to be -- it always has to be at least
6 three voting in favor of clemency. So it has to be
7 three out of the five voting for that.

8 THE COURT: But what you read to me
9 sounds like you could just have three people in the
10 room; and if they vote unanimously, that is three
11 votes and that carries the day. And if you had
12 three people in the room, two to one wouldn't work
13 because that is not three.

14 MS. CINO: Correct.

15 THE COURT: Okay.

16 MS. CINO: It has to be at least
17 three in favor of clemency.

18 THE COURT: Okay. All right. I am
19 ready.

20 MS. CINO: Okay.

21 (Pause.)

22 (Petitioner's Exhibit 11 was marked
23 for identification.)

24 MS. CINO: So Exhibit 11 attached to
25 our pleading is the Fugate order that has the

1 discussion at Page -- I believe it's Page 5 about
2 needing the fully constituted board members.

3 THE COURT: Respondents' suggestion
4 that the quorum rule anticipates a board vacancy
5 does not square with the Constitution's mandate
6 that the full board consider clemency applications.

7 MS. CINO: Okay. So the Court ruled
8 O.C.G.A. 42-9-7 -- quorum rules are established by
9 O.C.G.A. 42-9-7, and that was the same issue that
10 came up in Fugate where, again, the respondents
11 there attempted to argue that the statutory rights
12 were not violated by having four board members
13 presiding over the clemency hearing, which
14 constitutes a quorum because the quorum was
15 established by 42-9-7.

16 The court held in Fugate that
17 construing constitutional and statutory provisions
18 together, the quorum rules are applied to determine
19 just the necessary number of presiding board
20 members, given the constitutional requirement for a
21 fully constituted board, which is five members.
22 And that although only three of the board members
23 need to preside over a hearing to constitute a
24 proper quorum, this does not negate the requirement
25 of five appointed members of the board at all times

1 who are to have the opportunity, as required by the
2 constitution, to consider applications for
3 themselves.

4 And it goes on to say quorum rules
5 were established by the legislature. The people of
6 the state of Georgia voted on a constitutional
7 guarantee of five members of the Board of Pardons
8 and Paroles, hence in order to respect citizens'
9 expectations, the court must strictly construe a
10 constitutional guarantee of five board members,
11 especially in light of the possible irreparable
12 harm to the defendant.

13 THE COURT: So I guess we have sort
14 of come full circle.

15 MS. CINO: We have come full circle.

16 THE COURT: The constitution in
17 Article 4, Section 2 says that the full board, not
18 a quorum, the full board -- to me, that says all
19 five -- shall have an opportunity to hear the
20 application.

21 But Ms. McCoy is sitting in there,
22 she is hearing it. I guess your argument is to
23 what end if she is not going to vote. That is
24 honoring the word of the constitution but not the
25 spirit of the constitution. She doesn't have the

1 ability if, in her heart, the vote is X to cast
2 that vote if she is abstaining.

3 MS. CINO: Correct.

4 THE COURT: Okay.

5 MS. CINO: It has to be five board
6 members. It has to follow the constitution, and
7 you can't escape that by using 42-9-7.

8 THE COURT: Okay.

9 MS. CINO: And she can't abstain.
10 She has to recuse, and there has to be a new board
11 member.

12 THE COURT: What about Mr. Bennett?

13 MS. CINO: Mr. Bennett?

14 THE COURT: And I guess I should be
15 clearer. What I mean specifically is, help me
16 understand why then Sheriff Bennett, doing his job
17 and apparently doing it well, the trial went off
18 and there didn't seem to have been security issues
19 there, conflicts him out of being a participant in
20 the clemency hearing.

21 MS. CINO: So part of -- a large
22 chunk of the clemency process will focus on the
23 juror deliberations at the penalty phase.

24 THE COURT: People pounding on the
25 wall and crying and there was an actual hole in the

1 wall?

2 MS. CINO: Correct. And Mr. Bennett
3 was, in fact, present and around the jurors during
4 that process, which our contention -- and we would
5 like to adduce evidence from him regarding some of
6 that because it makes him privy to not just more of
7 that information but also the emotions that run
8 high during that period of time. Penalty phases
9 are incredibly difficult times of trial.

10 THE COURT: And this trial went as,
11 in Georgia, death penalty trials should, same jury
12 deciding penalty; they didn't bring in a different
13 jury. So the jurors who found Mr. Humphreys guilty
14 then labored through the sentencing phase. So
15 jurors who are getting emotional in the
16 deliberation room are the same ones who found him
17 guilty. Okay.

18 All right.

19 MS. CINO: And he also had personal
20 interaction with Mr. Humphreys as well. Obviously,
21 prisoner transport and other courtroom
22 interactions.

23 THE COURT: Okay. So you would like
24 to elicit some evidence from Mr. Bennett.

25 MS. CINO: Correct.

1 THE COURT: Ms. Piper, any issue with
2 that? I think it was Ms. Crowder maybe who reached
3 out, someone from your team reached out via email.
4 I said Zoom participation is fine if people are far
5 away. It seems like there is a factual component
6 on Mr. Bennett's side to this, what we need to as a
7 group evaluate on the conflict piece. This has
8 nothing to do with quorum and abstain and whatnot.
9 You will get an opportunity to respond to all of
10 that.

11 But I would like to hear a little bit
12 more about his connection to the trial and even
13 what he remembers about it.

14 MS. PIPER: He has stated that he
15 would.

16 THE COURT: Okay.

17 MS. PIPER: We have absolutely no
18 objection to him talking about his lack of personal
19 involvement.

20 THE COURT: Okay. I don't want you
21 to coach the witness.

22 MS. PIPER: I'm not.

23 THE COURT: Mr. Bennett, I see your
24 name on the screen. Are you able to have your
25 camera turn on and your microphone?

1 MR. BENNETT: Yes, Your Honor.

2 THE COURT: All right. So I can hear
3 you, but you are a black box. So we will need to
4 figure out how to get that camera to work. Do
5 y'all have any technically trained agents near
6 Mr. Bennett?

7 (Pause.)

8 THE COURT: Mr. Bennett?

9 MR. BENNETT: Yes, sir.

10 THE COURT: We don't have any video
11 from you.

12 MS. PIPER: The video button maybe?

13 THE COURT: Let me try this.

14 MS. PIPER: Mr. Bennett, can you see
15 us on your screen?

16 MR. BENNETT: Yes, I can.

17 THE COURT: All right. Do you have a
18 screen that has a camera?

19 MR. BENNETT: In the past it worked
20 okay, but it is apparently not functioning
21 currently right now.

22 MS. PIPER: Did you maybe
23 accidentally turn the camera off, you know, hit a
24 button or something at the top or slide the top of
25 the -- top part?

1 MR. BENNETT: Okay. Is it working
2 now?

3 THE COURT: Whoops. I just hit the
4 wrong button. Try one more time. Nope. You are
5 still a black box. You don't happen to have any
6 kids in the house? They are the ones who always
7 make things work for me.

8 MR. BENNETT: You are exactly right.
9 I wish I had a grandchild here with me right now or
10 we wouldn't have any issues.

11 MS. PIPER: Perhaps he could get in
12 on his phone.

13 THE COURT: I don't know. Some
14 people, when they get stuck like this, they will
15 dial in on a separate device, one for audio and one
16 for video.

17 MS. PIPER: Can you do that,
18 Mr. Bennett?

19 MR. BENNETT: Yes. I am going to try
20 to call my office to speak with IT.

21 THE COURT: Okay.

22 MR. BENNETT: Is that okay?

23 THE COURT: It is. So we are going
24 to take a quick break. I have two search warrants
25 I am going to quickly peruse for Investigator

1 Wilson. All right. Let me peruse these and then
2 we will get you up here.

3 THE REPORTER: Off the record?

4 THE COURT: Yes, ma'am.

5 THE REPORTER: Thank you.

6 (Whereupon, a break was had from 2:52
7 p.m. until 2:54 p.m. EST)

8 THE COURT: All right. Mr. Bennett,
9 how are you doing?

10 MR. BENNETT: I think we are ready to
11 go, Your Honor.

12 THE COURT: Great. Thank you for
13 finding a grandkid to make it work.

14 All right. I am going to have the
15 deputy swear you in, and then I think we are
16 pivoting with lawyers because Ms. Cino said she
17 doesn't do evidence. She does argument.

18 All right. But first if you will
19 raise your right hand.

20 THE DEPUTY: Raise your right hand.

21
22 WAYNE VERNON BENNETT,
23 having been first duly sworn, was examined and
24 testified as follows:

25 THE DEPUTY: Okay. You may lower

1 your hand. Please state and spell your full name
2 for the Court.

3 THE WITNESS: Yes. My name is Wayne
4 Vernon Bennett. That is W-A-Y-N-E, V-E-R-N-O-N,
5 B-E-N-N-E-T-T.

6 THE DEPUTY: Thank you.

7 THE COURT: And from where are you
8 joining us, Mr. Bennett?

9 MR. BENNETT: St. Simons Island,
10 Georgia.

11 THE COURT: Wow, we should have had
12 court with you. That is what we should have done,
13 all come join you. We appreciate your making time
14 for this.

15 Counsel?

16 MR. GREENAMYRE: Does the Court mind
17 if I sit so I can --

18 THE COURT: So long as the court
19 reporter can hear you, I am good.

20 MR. GREENAMYRE: Mr. Bennett, can you
21 hear me okay?

22 MR. BENNETT: I can.

23 MR. GREENAMYRE: All right.
24 Beautiful.

25

1 DIRECT EXAMINATION BY MR. GREENAMYRE:

2 Q. You are currently the vice chair of
3 the State Board of Pardons and Paroles, correct?

4 A. That is correct.

5 Q. And you come into this role after a
6 long and varied and successful career in law
7 enforcement?

8 A. Yes, sir.

9 Q. All right. I want to show you just
10 for the record what I believe is your bio. Can you
11 see that? First off, Mr. Bennett, can you just see
12 what is on the screen, this document?

13 A. I can. I can.

14 Q. All right. I can scroll as quickly
15 or as slowly as you would like. But does this
16 appear to be your bio on the State Board of Pardons
17 and Paroles website?

18 A. Yes, sir, it is.

19 Q. Okay. And this details some of your
20 accomplishments as a law enforcement officer,
21 including as a sheriff, correct?

22 A. That is correct.

23 Q. All right.

24 MR. GREENAMYRE: Then we would move
25 to admit this as Plaintiff's Exhibit 22.

1 THE COURT: So do you have copies to
2 give to respondents, and do you have an exhibit
3 list, because 22 -- I have Exhibits 1 through 14
4 that were part of one of your pleadings, but I
5 think they were really appendices. Oh, look at
6 this. Never mind. Binder. All right. Exhibit
7 22.

8 (Petitioner's Exhibit 22 was marked
9 for identification.)

10 THE COURT: And, Ms. Piper, are you
11 handling this part of the proceedings as well?

12 MS. PIPER: No objection.

13 THE COURT: No objection. 22 is
14 admitted.

15 (Petitioner's Exhibit 22 was received
16 into evidence.)

17 Q. (BY MR. GREENAMYRE:) Thank you,
18 Mr. Bennett. Getting into it, you were the sheriff
19 of Glynn County throughout the 2007 trial of
20 Mr. Stacey Humphreys, correct?

21 A. That is correct.

22 Q. And as we have just alluded to, the
23 trial was not held in Cobb County where the
24 offenses occurred but instead in your county, in
25 your Sheriff's Office, correct?

1 A. That's correct.

2 Q. And your office had a number of roles
3 in facilitating this trial, correct?

4 A. That is correct.

5 Q. You were responsible for courthouse
6 security?

7 A. Yeah, my -- it come under the
8 direction of my office.

9 Q. Correct. And your office was
10 responsible for housing Mr. Humphreys at the jail,
11 right?

12 A. That is correct.

13 Q. And your office was responsible for
14 transporting Mr. Humphreys to and from court each
15 and every day of a long trial, correct?

16 A. Yes, sir.

17 Q. In addition, I understand that there
18 were a couple of extra roles for the Sheriff's
19 Office due to the nature of this case. In this
20 instance, the jury was sequestered, right?

21 A. That is correct.

22 Q. And the Sheriff's Office coordinated
23 security at the hotel for the jurors, right?

24 A. Yes, sir.

25 Q. And they arranged for that housing

1 for the jury for the over a month that the trial
2 was going on?

3 A. That is correct.

4 Q. They arranged for the jury's meals?

5 A. Yes, sir.

6 Q. And they took precautions with regard
7 to the television, newspapers, visitors, telephone
8 calls that these jurors had, right?

9 A. Well, it is common practice we would
10 confer with the presiding judge to get the
11 stipulations that he or she would place on the
12 jurors, and we would abide by those rules.

13 Q. In fact, in this instance, jurors
14 were instructed or encouraged or somehow they
15 monitored, you know, to not inadvertently gain
16 access to information from the media, the newspaper
17 and television, correct?

18 A. That would be correct.

19 Q. And the Sheriff's Office was
20 responsible for either limiting or screening
21 visitors to the jurors during their sequestration?

22 A. Normally visitors aren't allowed. In
23 some cases they are allowed to talk with their
24 families by telephone. And I do not recall exactly
25 what the stipulations were placed on that

1 particular jury.

2 Q. I may be able to show you some
3 documents to refresh your recollection. But does
4 it sound right to you that the jurors were limited
5 to phone calls of five minutes' duration that were
6 in the presence of the Sheriff's Office personnel
7 during the course of this trial?

8 A. That's correct. That's correct.
9 That is usually the normal procedure.

10 Q. All right. I want to show you
11 another exhibit, which is Exhibit 7, which is in
12 our petition.

13 (Petitioner's Exhibit 7 was marked
14 for identification.)

15 Q. (BY MR. GREENAMYRE:) And can you see
16 this?

17 A. I can see -- I would actually need to
18 enlarge it just a little bit.

19 Q. Yes, sir. And please aggressively
20 instruct me to make it bigger, go up, go down,
21 whatever you need, okay, so you can see this right.

22 A. Okay. It is pretty clear now.

23 Q. Okay. And let me know if you want to
24 read more than the first page before I go on to the
25 second page.

1 A. Okay. I'm not really familiar with
2 that correspondence as it would have gone to my
3 courthouse staff, which I believe at the time was
4 Major John Scott.

5 Q. Okay. But you would agree that this
6 letter is addressed to you, correct?

7 A. That's correct.

8 Q. And it outlines some of the, you
9 know, sharing of responsibilities between the Cobb
10 deputies and the Glynn Sheriff's Office deputies
11 during the course of this trial, correct?

12 A. That's correct.

13 MR. GREENAMYRE: And we would move to
14 admit Exhibit 7.

15 THE COURT: Any objection to
16 Petitioner's 7?

17 MS. PIPER: No objection.

18 (Petitioner's Exhibit 7 was received
19 into evidence.)

20 MR. GREENAMYRE: All right.

21 Q. (BY MR. GREENAMYRE:) I want to show
22 you another letter. All right. Can you see this
23 document? Not yet, I guess.

24 So this appears to me to be an
25 October 4th, 2007, letter from you to, it appears,

1 and correct me if I am wrong, to -- that you wrote
2 to each of the jurors in this case.

3 A. Yes, that is a standard form letter
4 that we send out to the jurors in all of our jury
5 cases that helps us evaluate our job performance
6 and things that we could do in the future to make
7 their stay a little bit more comfortable,
8 especially with the sequestered jurors, and to get
9 their input as to what could be made better in our
10 policy.

11 Q. Okay.

12 MR. GREENAMYRE: And we would move to
13 admit Exhibit --

14 THE COURT: Any objection to
15 Petitioner's 8?

16 (Petitioner's Exhibit 8 was marked
17 for identification.)

18 MS. PIPER: No objection.

19 THE COURT: And Mr. Bennett, you are
20 saying this letter, while it is customized to this
21 trial, was fairly typical outreach from your office
22 to jurors, because it looks like it is -- other
23 than explaining a few things to jurors once their
24 service is complete, you are looking for feedback,
25 what could we do better next time so that the

1 experience goes a little better for you, the juror?

2 A. Yes. As an organization, we are
3 always looking for ways to improve our services to
4 the people that we represent, and this is a tool
5 that we use to try to meet those requirements.

6 THE REPORTER: I'm sorry. Is that
7 exhibit received in evidence?

8 THE COURT: Yes, it is.

9 (Petitioner's Exhibit 8 was received
10 into evidence.)

11 THE COURT: Mr. Bennett, would you
12 say that this is typical to send out a letter like
13 this or it would just be in the longer trials, or
14 what percentage of the cases for which your team
15 provided juror security and whatnot would you send
16 out a letter like this?

17 A. Anytime that we had a sitting jury,
18 we would send out letters very much similar to this
19 one.

20 THE COURT: When you say a sitting
21 jury, meaning a jury that heard a trial, not
22 sequestered but any trial?

23 A. When they actually heard a trial.

24 THE COURT: Okay. Thank you.

25 MR. GREENAMYRE: Am I good to go,

1 Judge?

2 THE COURT: You are.

3 MR. GREENAMYRE: Okay.

4 Q. (BY MR. GREENAMYRE:) Okay. So I see
5 in this letter some set of customization or
6 tailoring to the facts here. I would imagine not
7 every jury in Glynn County is sequestered, correct?

8 A. I'm sorry. Did you say every jury is
9 sequestered in Glynn County?

10 Q. I said I would imagine that is not
11 the case, right?

12 A. That is not the case, no.

13 Q. Right. And in looking in the last, I
14 guess, full paragraph, right, it says: For you, as
15 a juror, it has been difficult being separated from
16 your daily routine with your family and friends.

17 You continue: However, you and your
18 fellow jurors have been an exemplary group to work
19 with.

20 Is that standardized language that
21 you include in every letter, or was that tailored
22 to the unique circumstances by this jury?

23 A. I would say it is pretty much
24 standard wording. However, there is, time to time
25 there are some issues that would come up during the

1 trials.

2 Q. Okay. Okay. Setting aside the --
3 you know, the correspondence to the jury, is it
4 fair to say that, from the perspective of the Glynn
5 County Sheriff's Office, this is a significant and
6 complicated undertaking for the Sheriff's Office
7 to, in addition to the day-to-day responsibilities
8 of conducting a jury trial, to, you know, deal with
9 the unique circumstances presented by a sequestered
10 jury? Would that be fair?

11 MS. PIPER: I am going to object.
12 Counsel is testifying. There's not a question in
13 there. A lot of testimony.

14 THE COURT: So I -- technically, you
15 have this person kind of on direct examination. I
16 appreciate you wanting to get through all this.
17 But you should ask him what he remembers, what his
18 connection was, etcetera.

19 MR. GREENAMYRE: And Your Honor, if
20 possible, we would like to -- you know, this is a
21 party opponent, to treat this as cross for --

22 THE COURT: Okay. No, fair enough.
23 I am thinking about who is suing whom. So okay.

24 Q. (BY MR. GREENAMYRE:) So the question
25 was just would you agree with me that this is a

1 significant and complicated undertaking for the
2 Sheriff's Office that wasn't presented by your
3 day-to-day administration of the jail and --

4 THE COURT: Meaning managing the
5 sequestered jury for a month-long trial?

6 MR. GREENAMYRE: Correct.

7 THE COURT: Okay.

8 A. It takes a considerable amount more
9 planning in doing a sequestered juror [sic], but it
10 is not beyond our ability to make sure everything
11 goes smoothly and the needs of the jurors are met
12 and keeping the presiding judge informed as to any
13 abnormalities in the jury room that we may be aware
14 of. But we -- at the time, we were quite familiar
15 with sequestered juries as well as death penalty
16 cases.

17 Q. (BY MR. GREENAMYRE:) Yes, sir. All
18 right. A couple of questions about Mr. Humphreys
19 at the jail, for his stay in Glynn County.

20 Before he got there, did you speak
21 with the Cobb County sheriff about Mr. Humphreys?

22 A. I am sure that I would have had a
23 conversation with the judge -- I mean with the
24 sheriff as well as the undersheriff, because I
25 personally knew them, to find out if there's any

1 particular needs of this inmate and just get an
2 overall view of what to expect from him or family
3 members, which is routine to do.

4 Q. Okay. What about with Judge Robinson
5 who wrote the letter that we looked at earlier to
6 you in Exhibit 7, did you ever talk with her about
7 Mr. Humphreys?

8 A. The best I recall, it was very brief
9 when she arrived at our courthouse. I'm not -- I
10 can't say verbatim what our discussion was, but I
11 was inquiring about any special needs of her court
12 as to how I needed to perform or my employees
13 needed to perform during the duration of this
14 trial.

15 Q. And were you involved in designating
16 a security classification or any specific, you
17 know, changes to standard security procedure for
18 Mr. Humphreys while he was in your detention
19 center?

20 A. We had a written protocol policy that
21 would define how the inmate would be transported,
22 would be handled and if there were any special
23 instruction from the court or from the sheriff in
24 Cobb County. And the appropriate employees would
25 take charge of that.

1 Q. Okay. And do you recall any
2 departures from standard policy and procedure that
3 were put in place for Mr. Humphreys specifically?

4 A. No, I don't.

5 Q. Did you receive any information or
6 come to any conclusions about whether Mr. Humphreys
7 posed a particular flight risk while -- you know,
8 either before or while he was in your custody?

9 A. No. Our facility was a maximum
10 security facility. My deputies and detention
11 officers are well trained, and I had all the
12 confidence that any situation that would arise,
13 that they could handle it properly and efficiently
14 and professionally.

15 Q. And if there were any departures from
16 standard policy and procedure, would that be
17 something that would ultimately be for your
18 approval?

19 A. I would be made aware of any
20 situations out of the norm, and we would discuss
21 it, of course, and take appropriate action.

22 Q. All right. I want to show you --
23 MS. CINO: May I approach, Your
24 Honor?

25 THE COURT: Sure. Something that is

1 not in the binder?

2 MR. GREENAMYRE: This is something
3 that is not in the binder.

4 Q. (BY MR. GREENAMYRE:) Okay. And this
5 is a packet of forty-six pages that were received
6 from the Glynn County Sheriff's Office about
7 Mr. Humphreys' time there. And I have got a couple
8 of questions about it.

9 MS. PIPER: I'm going to object until
10 there's a foundation laid that he has any knowledge
11 about these documents he is being asked about.

12 THE COURT: Okay. Well, they haven't
13 been tendered yet, but it sounds like you are going
14 to need to lay a foundation if you want to tender
15 them. You may be using these to refresh his
16 recollection, I'm not sure, but proceed
17 accordingly.

18 Q. (BY MR. GREENAMYRE:) Do you see what
19 is on this page right now which is Page 38 of the
20 PDF?

21 A. I see the instructions from the
22 initial agency to our office as to the history of
23 the inmate.

24 Q. Okay. And it is your understanding
25 that this is something that came from Cobb County

1 to Glynn County but not something that Glynn County
2 generated; is that right?

3 A. That's correct.

4 Q. Do y'all have -- I mean this has been
5 a number of years. It says he will be housed into,
6 looks like, DR112. Do y'all have a cell DR112?

7 A. Well, at the time we did. Actually
8 the facility no longer exists. But it was where we
9 kept people in cells -- there were cells made for
10 the individual, not to general population.

11 Q. Okay. And you would agree that this
12 document says that you must exercise extreme
13 caution with Mr. Humphreys, correct?

14 A. That is the notation in the memo.

15 Q. And later refers to him as extremely
16 dangerous?

17 A. Yes. When you are handling a death
18 penalty case, most of the verbiage in these MO --
19 memorandums of understanding with the inmate is
20 pretty standard.

21 Q. And then I want to show you on the
22 page before that, this looks like an email
23 involving Mr. Corbett, the undersheriff that you
24 referenced earlier.

25 A. That's correct.

1 Q. And in addition, you see here that he
2 refers to Mr. Humphreys as very large in stature?

3 A. Yes.

4 Q. Okay. And I want to go to the last
5 page on here. This looks like a Glynn County
6 Detention Center medical administration record. I
7 don't have any questions about the medicine here,
8 but I do have a question about this notification
9 here. It says: No female contact at all.

10 How did that come to be made part of
11 his medical records?

12 A. I really do not have a definite
13 answer for that. But considering the charges
14 against the inmate, precautions would have to be
15 taken to ensure the safety not only of
16 Mr. Humphreys but my employees as well.

17 Q. And it -- you would agree that
18 just -- where it lists where Mr. Humphreys is
19 assigned, it is DR112. Do you see that?

20 A. Yes, I do. Was there a question to
21 that, please?

22 Q. No, sorry. I apologize. I was
23 conferring with counsel.

24 All right. So what conversations do
25 you recall having with Mr. Humphreys?

1 A. I would say absolutely none. At that
2 particular time, we were housing in excess of four
3 hundred inmates. I had very little one-on-one
4 contact with the inmates, especially the inmates
5 that were in a high-custody unit.

6 THE COURT: Mr. Bennett, I am going
7 to pop in here for a second just so I can get some
8 perspective. I am familiar with a very, very large
9 Sheriff's Office being here in Fulton. And I know,
10 just from having had productive conversations with
11 our sheriff, that his organization is so large and
12 necessarily so that his answer to a question of did
13 you ever have a conversation with an inmate would
14 be invariably no because I am running -- I'm making
15 the number up -- a five-hundred-person business,
16 and if I go to the jail, it is to meet with the
17 jailer in top command. But I'm not interacting
18 with inmates in the courthouse, I'm not interacting
19 with them in transit, I am not interacting with
20 them in the jail.

21 Glynn County is smaller, but it is
22 not teeny. And so I am wondering, in the ordinary
23 course of the work you did for the thirty years you
24 were sheriff, if -- twenty years you were sheriff,
25 if you routinely had conversations with inmates?

1 A. Oh, I would have conversations with
2 inmates from time to time, but they were in the
3 lower security units. I was always accompanied by
4 staff. But the ones that are in the high-security
5 units, and I think we had approximately thirty-two
6 individual cells where they were very restricted on
7 their time outside the cell, which was only one
8 hour per day for exercise and just to be able to be
9 outside of the cell and to shower. So my time
10 going through that unit was very small except to
11 more or less inspect the area as far as the
12 condition.

13 THE COURT: Would you ever have been
14 one of the individuals directly personally involved
15 with transporting Mr. Humphreys from your jail to
16 the courthouse and back?

17 A. No, sir, not at all.

18 THE COURT: And when Mr. Humphreys
19 was in the courthouse for his trial, would you have
20 been regularly interacting with him, just checking
21 on you, Mr. Humphreys, want to make sure you are
22 okay?

23 A. No, sir, I would not.

24 THE COURT: So if you had to
25 guesstimate on fingers the number of conversations

1 you had with Mr. Humphreys, can you fit it on one
2 hand, is it two hands, do we need to get to toes?

3 A. I would say absolutely zero.

4 THE COURT: Okay. What about members
5 of Ms. Williams' or Ms. Brown's family? Those are
6 our two victims. Would you have interacted with
7 those families very regularly?

8 A. No, sir, not at all.

9 THE COURT: Okay.

10 A. Even though we are small, in that
11 courthouse, there was still regular activity in the
12 courtrooms, which we have three Superior Courts on
13 that floor where Mr. Humphreys was being tried, and
14 those courtrooms were filled on a daily basis, and
15 the public was in the rotunda and going throughout
16 the courtrooms and the Grand Jury rooms and what
17 have you.

18 THE COURT: Okay. Thank you.

19 Q. (BY MR. GREENAMYRE:) Was it the case
20 that when Mr. Humphreys' trial was going on, are
21 you saying that there was court happening in the
22 neighboring courtrooms, or was when Mr. Humphreys'
23 trial was going on, that was the only business
24 being conducted in the court that day?

25 A. No, there was other courts in

1 session. They are all individual courtrooms.

2 Q. And how often would you set foot in
3 the courtroom where Mr. Humphreys' trial was taking
4 place during the course of that trial? Would that
5 be an everyday thing, a never thing, in between?

6 A. I really couldn't put a number on it.
7 If I went into the courtroom during Mr. Humphreys'
8 trial, probably less than five times.

9 Q. And you were or your office was
10 responsible, not just for housing Mr. Humphreys but
11 also for making sure he had haircuts and clean
12 court clothes and the like?

13 A. Usually the request for haircuts and
14 personal hygiene issues, clothing, anything else,
15 usually came from the attorneys.

16 Q. Okay. But your office would be
17 responsible for making sure that those attorneys'
18 requests, providing they were reasonable, were made
19 happen?

20 A. Yes, we were self-contained. We had
21 barbers, doctors, psychologists, psychiatrists. We
22 were a city within a city.

23 Q. And during this process, even if you
24 are not having conversations with Mr. Humphreys,
25 you know, were you able to observe, you know,

1 his -- you know, his -- were you able to see him on
2 a -- throughout the course of the trial and, you
3 know, the time that he was at the jail?

4 A. I don't recall seeing him. As I
5 testified earlier, we had four hundred plus inmates
6 in our custody, and I had a lot of responsibilities
7 for the whole facility as well as my
8 responsibilities outside in the unincorporated
9 areas of Glynn County.

10 Q. So you wouldn't be able to see his
11 affect or his emotions when you were -- when he was
12 at the -- in the custody of Glynn County, either
13 when he was at the jail or when he was in the
14 courtroom; is that what you are saying?

15 A. Could you repeat that question,
16 please?

17 Q. Yeah. Were you able to just observe
18 his affect or his emotions throughout the weeks
19 that he was present with you or with your office
20 during the course of the trial?

21 A. Not as I recall. If I did, it was --
22 any sighting of his was unremarkable to me.

23 Q. You have no recollection
24 specifically?

25 A. No, I do not.

1 Q. Let's talk a little bit about your
2 office's dealing with the jurors. So we talked
3 about sequestration and some of the issues there.
4 I have got a couple of questions about the meals.
5 So I would imagine your office is on -- for some
6 meals, bringing food to the jurors?

7 A. We would bring -- we would cater in.
8 It depended on the presiding judge, if they wanted
9 to have lunch at the courthouse or if they wanted
10 to have dinner at the courthouse, that was handled
11 on a daily basis. We also would transport the
12 jurors to restaurants in our community.

13 Q. That was going to be my next
14 question. Did you ever share a meal with the
15 jurors during this process?

16 A. No.

17 Q. In reference to the judge's, you
18 know, questions earlier, you know, Glynn County is
19 not Fulton County, but it is also not a small
20 county. I imagine you, as the elected sheriff,
21 might have had some familiarity with some of the
22 jurors before their service.

23 Do you recall whether you knew any of
24 these jurors?

25 A. The information that I have been

1 reading for the past month, I saw the names, but I
2 do not -- I'm not familiar with any of the jurors.

3 Q. Okay. So you have seen the list of
4 the jurors at some point in the last month, and you
5 are saying that you don't recognize any of those
6 folks?

7 A. That's correct.

8 Q. Okay. And during the course of their
9 sequestration, you know, we talked in that letter
10 about taking precautions with newspapers,
11 televisions, visitors, phone calls. I imagine
12 sometimes that might be frustrating for the jurors
13 to have to have their lives interrupted in that
14 way.

15 Did you ever have any conversations
16 with those jurors about those frustrations, just
17 how to manage them or why, you know, all these
18 rules were in place?

19 A. I personally did not have any
20 interaction with the jurors. My staff would have
21 been exposed to any questions or requests by the
22 jurors, and if they were not already agreed upon
23 with the presiding judge, it would be forwarded to
24 the judge to get guidance on how they would like to
25 accommodate the jurors.

1 Q. Okay. And then would your -- your
2 people then report back to you what was going on
3 with the jurors during this time?

4 A. No. I had full confidence in their
5 ability to do their job professionally and the way
6 they were trained to do it.

7 Q. And then, you know, for security in
8 the courtroom, you testified you may have been in
9 the courtroom for five or so days during the course
10 of the trial. Does that sound right?

11 MS. PIPER: Object. That is a
12 misstatement of evidence.

13 Q. (BY MR. GREENAMYRE:) How -- excuse
14 me, Mr. Bennett, if I didn't recall correctly. How
15 many times would you say you estimated that you
16 were in the courtroom where Mr. Humphreys was being
17 tried?

18 A. I really can't give a positive
19 number. If I -- I think I stated I may have been
20 in the courthouse maybe five times during the time
21 period. I really do not know. I have business
22 with the judges, the DA's office and the jail from
23 time to time, and many times the courthouse would
24 be inclusive in that number five, if that was
25 during that time period.

1 Q. And at some point I understand that
2 deliberations amongst the jurors got heated. My
3 question to you is, how did you become aware of
4 that?

5 A. Probably late in the afternoon when
6 the jury -- I mean when the court was in recess.
7 But it is not unusual for jurors to have
8 disagreements, the jurors to become vocal. When
9 you are away from your family and you are living
10 with fourteen other people, twelve jurors and two
11 alternates, when you start exceeding three days, it
12 gets a little tense. But it is human nature, and
13 we deal with it accordingly. And the judge is
14 always made fully aware of the issues going on.

15 Q. Yeah. And help us understand that a
16 little bit. I understand you mentioned tension. I
17 understand that. I understand here there's
18 instances of screaming and crying in the record.
19 Were you aware that the tension escalated to that
20 point where jurors were audibly screaming and
21 crying?

22 A. I don't recall on this particular
23 case. It has been brought to my attention in other
24 cases, but it becomes pretty much routine after you
25 have been in this business as long as I had, and

1 you know how to deal with it and you take the
2 precautions, and you try to find the remedies to
3 bring everyone back in line and to proceed with
4 their assigned tasks.

5 Q. Yeah. Talk us through a little bit
6 about, based on your extensive experience, how your
7 people or you yourself would support jurors or make
8 sure that, you know, things weren't crossing a line
9 in the course of that, you know, tense
10 deliberation.

11 A. That actually would be under the
12 guidance of the presiding judge. Normally the
13 jurors would be returned to the jury box and the
14 judge would address the situation.

15 Q. In this instance, I guess at some
16 point a juror threw a punch that connected with the
17 wall of the jury room. How did you hear about
18 that?

19 A. I really didn't hear about it until I
20 read it in the lawsuit in the past few weeks.

21 Q. Okay. So depending on the
22 circumstances, you know, throwing a punch that
23 damages government property, that could be,
24 potentially, a criminal offense, right?

25 A. I'm not sure a punch was actually

1 thrown. I have not seen or had any direct
2 testimony to say that that happened.

3 Q. So that is my next question. Did you
4 or any of your people investigate what was going on
5 inside that jury room at least as far as, you know,
6 potential act of violence?

7 A. If it was determined that it was an
8 act of violence and someone was hurt or there was a
9 violation of state law, it initially would be
10 brought to the judge's attention and then we would
11 proceed from there.

12 Q. Do you know who made the repair to
13 that wall? Was that something that the Sheriff's
14 Office's personnel would have done, or was that
15 something that the court would have done, court
16 personnel?

17 MS. PIPER: I'm just going to object.
18 He has already stated he was unaware of a hole in
19 the wall in this trial, and you are asking who
20 repaired it.

21 THE COURT: Let's stay focused on
22 Mr. Bennett's potential connection to
23 Mr. Humphreys' trial, Mr. Humphreys, the victims'
24 families, the jurors.

25 Q. (BY MR. GREENAMYRE:) Were you,

1 Mr. Bennett, aware of what the source of the strike
2 within the jury deliberations was? Were you aware
3 whether it belonged to a particular juror or
4 whether it -- about their position or whether it
5 had something to do with food or family? Did you
6 know anything about that?

7 A. Could I ask you to repeat that
8 question, please?

9 Q. Yes, sir. And I apologize for asking
10 a poor question.

11 Were you aware of the source of the
12 strife within the deliberations? Was it a
13 particular -- did you know whether it was a
14 particular juror or not?

15 A. We do not get involved with the
16 deliberations of the jurors. Our job, of course,
17 is to secure and protect the jurors and have them
18 places where they need to be. We do not get
19 involved in deliberations or anything outside of
20 our scopes unless it is asked of us by the
21 presiding judge.

22 Q. And just to be clear on this, if
23 there was, in fact, a hole in the wall, would you
24 generally expect to have been made aware of that
25 as, you know, the person ultimately in charge of

1 courtroom security?

2 A. If the hole was actually made in the
3 wall, it is strictly cosmetic, and the trial is
4 more important for us to control. We can fix that
5 hole in that wall at a later date.

6 Q. But if -- if there was a punch thrown
7 that damaged the courtroom wall, would you
8 generally expect to have learned that information
9 during the trial?

10 A. If it, in fact, happened, I would
11 assume that I would have been made aware of it by
12 the staff and the staff would have been directed to
13 confer with the judge for information. And the
14 judge would advise us one way or the other as to --
15 they would like for us to proceed.

16 Q. Understood. And again just to be
17 totally clear, your testimony is you do not have
18 any recollection of receiving that report at the
19 time, right?

20 A. I do not.

21 Q. Okay. All right. Almost done,
22 Mr. Bennett. Thank you for your patience.

23 I want to come back to that letter.
24 This is Exhibit 8. And in the last bit, it says:
25 If I or any of my staff can ever be of assistance

1 to you, please do not hesitate to call.

2 Did any of the jurors call you or ask
3 for assistance in the future?

4 A. No, they have not.

5 Q. Okay.

6 A. Not that I recall.

7 Q. Sure. And did you get any responses
8 back to the survey in this instance?

9 A. As a general rule, with all the
10 letters we send out to the jurors, we get a very
11 good response back. And it is mostly constructive
12 criticisms. We do get complaints about the meals,
13 of course, and other things that we really don't
14 have any control over. But it is used as
15 constructive tool for us.

16 Q. I understand that.

17 A. It is not a direction as to where
18 they can get an answer to a question.

19 Q. Understood. And I understand that to
20 be as a general matter. Do you have any specific
21 recollection one way or the other of whether you
22 received survey responses from the jurors in
23 Mr. Humphreys' trial?

24 A. I do not. It has been quite some
25 time since that trial. And I would have to go back

1 and pull those records to see if they even exist.

2 Q. And would you be willing to share
3 those with us if they do, in fact, exist?

4 A. Would I --

5 Q. Share them with your counsel, at
6 least?

7 A. If I am directed by the courts, I
8 will be glad to share it with you.

9 Q. Okay. And so I understand from your
10 earlier testimony, it appears that you may have
11 reviewed or at least received Mr. Humphreys'
12 clemency petition already; is that true?

13 A. I have.

14 Q. Okay. And I asked a bad question. I
15 asked whether you had received and reviewed it.
16 Have you both received it and reviewed it?

17 A. I have received it, and I have been
18 making myself aware of the case through the
19 transcripts, the statements from the jurors, the
20 doctors, other attorneys. It is quite large in
21 volume, and it is taking a little time to do, but
22 it is going to be accomplished by hearing date.

23 THE COURT: When is the hearing date?

24 A. I have no clue.

25 THE COURT: Thought I would try.

1 MS. CINO: Nice.

2 Q. (BY MR. GREENAMYRE:) And I
3 appreciate your thoughtful review of that.

4 As you may be aware at this point,
5 one of the big issues in the clemency application
6 is Humphreys' team says there was a hole in the
7 wall, and maybe the other side is going to say
8 there wasn't a hole in the wall. Would you agree
9 that you have -- you are in a position to know
10 facts about that question that is not the same as
11 the other members of the board?

12 THE COURT: Your question is not does
13 he know them now, but he has the ability to learn
14 more about it?

15 Q. (BY MR. GREENAMYRE:) The question is
16 do you, Mr. Bennett, have more information that
17 might help answer that question from your role in
18 2007 in the courthouse as compared to the members
19 of the Board of Pardons and Parole who were not in
20 the courthouse in Glynn County in 2007?

21 MS. PIPER: I'm going to object
22 because he has already asked and answered about his
23 knowledge of the hole.

24 THE COURT: Right. Next question.
25 While you are thinking of your next question --

1 Mr. Bennett, when you received the clemency
2 application from Mr. Humphreys' lawyers, and all
3 you knew when you first got it is it says Stacey
4 Humphreys, did that name mean anything to you, or
5 was it not until you got into the file and, oh,
6 wait, I was here for that case?

7 A. Well, Your Honor, I actually had
8 prior knowledge just maybe a few weeks that this
9 situation was coming up before the board. And when
10 I saw his name, I recognized his name. But prior
11 to that, if you would have asked me about a trial
12 from Cobb County, I would have had to look at
13 documents to become familiar with it.

14 THE COURT: Okay.

15 Q. (BY MR. GREENAMYRE:) Mr. Bennett,
16 you have -- we have looked, and I can show you
17 again the ethical rules for the Board of Pardons
18 and Paroles. Did you receive these as part of your
19 onboarding when you came on to this board in 2024?

20 A. I was educated from the day that I
21 came onboard to this very day today as to policies
22 and procedures. And it is like any other
23 profession, it changes. And you need to be kept up
24 to date. And I feel like I have been well versed
25 on the procedures of the board.

1 Q. And you would agree that as part of
2 your role, it is important to be free from any
3 conflicts of interest, correct?

4 A. That's correct.

5 Q. As well as free from any outside
6 influences which could influence your ability to
7 perform your duties?

8 A. I perform my duties because I deal
9 with facts and evidence and to be -- my mission is
10 to be fair, honest, but firm.

11 And I take all those factors into
12 consideration in making any decision.

13 Q. And how many death cases, death
14 penalty cases occurred while you were sheriff of
15 Glynn County for your twenty-year tenure?

16 A. Well, when I was actually a Glynn
17 County policeman, I was directly involved with
18 death penalty cases where I was involved in the
19 investigation or I oversaw the investigation as
20 commander of the criminal investigative division.

21 As sheriff, I recall at least three
22 death penalty cases, and all three of those were
23 change of venue cases. They were brought to our
24 county to be tried.

25 Q. Do you recall the names of the people

1 who were on trial in those three cases besides
2 Mr. Humphreys?

3 MS. PIPER: I am going to object as
4 to relevancy.

5 A. I do not.

6 THE COURT: Stop for one second.
7 Response?

8 A. I do not recall any of the names.

9 THE COURT: Hold on, Mr. Bennett.

10 MR. GREENAMYRE: I will withdraw the
11 question.

12 THE COURT: Okay. All right.

13 MR. GREENAMYRE: Yep.

14 Q. (MR. GREENAMYRE:) And you testified
15 a moment ago that when you received the clemency
16 petition from Mr. Humphreys, you recognized his
17 name; is that right?

18 A. That's correct.

19 Q. What, if anything, did you do with
20 that information? Did you inform anyone that you
21 knew something about this case?

22 A. To the best of my information, I
23 informed our executive director as well as our
24 legal staff when I heard about the Cobb County
25 case. And I indicated that was probably the case

1 that was a change of venue brought to Glynn County.
2 And --

3 Q. Was that -- excuse me. I didn't mean
4 to cut you off.

5 A. That just turned out to be -- to be
6 so, that it was Mr. Humphreys' case coming from
7 Cobb County.

8 Q. Okay. And was that before December
9 4th when Mr. Humphreys' team reached out to
10 Ms. Smith to flag what Mr. Humphreys contends is a
11 potential conflict involving your involvement?

12 A. No, not at that time. I don't
13 believe the dates -- I really don't have any
14 information as to when Ms. Smith was notified of my
15 conversations with our executive director to my
16 participation in the trial.

17 Q. Okay. And so -- your understanding
18 is that whatever, you know, was brought to
19 Ms. Smith's attention was separate and apart from
20 you raising this issue or asking the question about
21 your knowledge of the Humphreys trial that you
22 brought up with the executive director; is that
23 right?

24 A. If I understand your question
25 correctly, I wasn't concerned at that particular

1 time of any standing that I would have in making a
2 decision on Mr. Humphreys because of all my lack of
3 participation in Mr. Humphreys' trial was minimal
4 at best.

5 Q. Okay. And this was something that
6 you just wanted to raise regardless of the limited
7 involvement; is that right?

8 A. Well, first it started out as general
9 conversation, but then as we talked about it in the
10 following weeks, I became aware that it could be a
11 point of law with the constitution, and we have
12 worked closely together in resolving that.

13 Q. Okay. And was there a point where
14 you were concerned that maybe you would not be an
15 appropriate person to decide Mr. Humphreys' case,
16 his clemency application, based on the specific
17 facts and involvement that you had?

18 A. Well, it is my thought that we need
19 to abide by the law and the constitution. And I
20 think that is why we are here today for our judge
21 to make a decision. And whatever his decision is,
22 then that is what I am going to accept and abide
23 by.

24 Q. Understood. And certainly appreciate
25 it.

1 Do you recall when this first
2 conversation took place where you raised this issue
3 with the executive director?

4 A. No, I do not.

5 Q. Was it in this month in the last two
6 weeks or was it before that?

7 A. I would say it was in the last sixty
8 days.

9 Q. Okay.

10 A. I can't pinpoint it. I am not trying
11 to be evasive. I just can't pinpoint it because I
12 have had so many conversations about so many
13 different things with our executive director.

14 Q. No. No. That is very appreciated.
15 So you can narrow it down to within
16 the last sixty days. To me that says that you
17 think it was longer than fourteen days ago.

18 MS. PIPER: I'm going to object. He
19 is badgering the witness. One, he has said he
20 doesn't know. He has been pushed into giving the
21 sixty days and he just keep pushing.

22 THE COURT: Okay. I don't think we
23 have reached badgering stage yet. But you can ask
24 this question, and then we will move on to another
25 topic. Do you need him to repeat the question?

1 A. Yeah, if you would, please.

2 Q. (BY MR. GREENAMYRE:) When you said
3 sixty days, I mean, do you think it is closer to
4 sixty days ago, thirty days ago, or do you think it
5 is possible that the first time you ever talked
6 about this with anyone was ten days ago?

7 A. It is really so difficult to say. We
8 have so many conversations not only with myself and
9 just the executive director, but as the board in
10 general. I don't document these conversations as
11 to the date and time and the length of the
12 conversation. So I cannot definitely say when and
13 where and how long these incidents took place.

14 Q. Understood. All right. So I
15 understand your representation earlier that
16 whatever the Court tells you to do, you are going
17 to do. But do you have an opinion, a personal
18 opinion, about whether you should serve as a
19 decider of Mr. Humphreys' fate in this matter,
20 based on your connection to the trial in 2007 in
21 Glynn County?

22 A. I don't believe my connection with
23 the trial has any bearing on me, as a board member,
24 making a decision from the evidence that we will
25 review and the testimony that we will hear during

1 that hearing.

2 As I mentioned before, I am a factual
3 person. I believe in the evidence and the rule of
4 law. And that is what I go by. I don't go -- I
5 can't bring in past experience from, what, eighteen
6 years ago, that would make up my mind or my
7 decision process one way or the other.

8 MR. GREENAMYRE: Thank you,
9 Mr. Bennett, for the patience and for your
10 testimony. I don't have any more questions for you
11 at this time.

12 THE COURT: Ms. Piper, do you have
13 any questions for Mr. Bennett?

14 MS. PIPER: Your Honor, if I may,
15 just a few short.

16 THE COURT: Sure. No, you may. I
17 don't -- you should go for it.

18 MS. PIPER: Thank you.

19

20 CROSS-EXAMINATION BY MS. PIPER:

21 Q. Hi, Mr. Bennett.

22 A. Hello.

23 Q. I have just a few questions
24 regarding -- and the next series of questions I am
25 going to ask are going to relate to 2007. So we

1 can just assume this is at the time of the trial.

2 Can you tell the judge, you know,
3 approximately how many deputies do you think were
4 employed by you as a sheriff in 2007?

5 A. Are you referring to actually
6 certified police officer deputies --

7 Q. Yes.

8 A. -- or are detention officers included
9 in that?

10 Q. I am referring specifically to
11 individuals who would have been certified to
12 provide court security or security to the jury.

13 A. For court security, I would say at
14 that time maybe forty-five to fifty actually
15 deputies that could be put in the position to serve
16 for transportation and security at the courthouse.

17 Q. And in your experience in 2007, was
18 it uncommon for cases to get transferred to Glynn
19 County from another county?

20 A. No. And I think that the judge
21 alluded to it earlier. It is not a bad place to
22 be. And we did have and still do have a reputation
23 of having a very secure jail and a secure
24 courthouse.

25 Q. All right. And did you ever provide,

1 yourself, provide security during anytime at any
2 time during Humphreys' trial in the courtroom?

3 A. No. It was all the duties of my
4 staff to perform those duties.

5 Q. And what about security at the
6 Holiday Inn, did you personally provide security at
7 any time during the trial of Mr. Humphreys?

8 A. No. I did not.

9 Q. And when you said you, under the
10 normal course of business, would have talked to the
11 Cobb sheriffs, I believe your exact words, to
12 discuss particular needs of an inmate, can you just
13 flesh out what you mean by particular needs, what
14 you would find out from the transferring county
15 about an inmate, typically?

16 A. The general -- the gist of the
17 conversation would have been, and probably was, of
18 anything out of the -- out of the common attitude
19 of the inmate, the -- his ability to abscond, his
20 abilities to resist and of any special needs. We
21 needed to know if he needed -- if he was ambulatory
22 and the medications he was taking, which would be
23 transferred in his medical file. But we try very
24 hard to be prepared for the inmates coming to our
25 facility so that we can properly care for them.

1 Q. And was that a routine discussion you
2 would have for any transferring inmate?

3 A. It was done that way each and every
4 time.

5 Q. All right. And speaking of each and
6 every time, I want to jump over to the letter, the
7 "how did we do" letter and ask you just a couple of
8 questions on that.

9 You indicated it was a form letter
10 that was slightly altered for each -- each of the
11 juries. Who actually altered, let's say, or
12 manipulated that form to send to each of the
13 jurors? Was that you? Did you personally
14 participate in manipulating those forms so that
15 they could go out?

16 A. Well, actually there were several
17 different forms. It depended on the type of case
18 that was heard by the jurors. Sometimes the jury
19 was only in session for hours, and sometimes for
20 weeks, and maybe on one or two occasions it
21 exceeded the thirty-day mark. So you would -- you
22 would alter the letters that would pertain to that
23 particular case.

24 Q. And did you personally alter those
25 letters? Did you go on the computer and alter

1 those letters? That is what I am asking.

2 A. I wouldn't say I would go on the
3 computer, but I would say I would have some advice
4 and some input. It just depended on the case.

5 Q. Okay. And those letters -- those
6 letters invited a response. You are soliciting how
7 did we do, you are soliciting information.

8 Do you have any recollection of
9 receiving any responses? You were asked about
10 phone calls. But do you have a recollection of any
11 written responses that related to the Humphreys
12 trial that you would have received?

13 A. No, ma'am. I do not.

14 MS. PIPER: I believe those are my
15 questions, Your Honor.

16 THE COURT: All right. Any follow-up
17 from petitioner's side?

18 MS. CINO: Just one moment, Your
19 Honor.

20 THE COURT: Okay.

21

22 REDIRECT EXAMINATION BY MR. GREENAMYRE:

23 Q. Mr. Bennett, in your tenure as a
24 board member which -- for the entirety of your
25 tenure, have you declared a conflict at any point

1 while serving on the Board of Pardons and Paroles?

2 A. No, I have not.

3 Q. Okay. Have you signed the conflict
4 awareness affidavit?

5 A. No, I have not.

6 Q. Okay.

7 A. Are you talking about in this
8 particular case or --

9 Q. In any case.

10 A. No. None.

11 MR. GREENAMYRE: Thank you.

12 THE COURT: Mr. Bennett, I have one
13 question. When you say executive director, is that
14 Ms. Smith who is the executive director for the
15 board?

16 A. Chris Barnett.

17 THE COURT: Okay.

18 A. Ms. Smith is our legal counsel.

19 THE COURT: Got it. Okay.

20 Mr. Bennett, thank you for making yourself
21 available. You are welcome to stay on the Zoom
22 session. You can -- if you know how, you can turn
23 the camera off. You are welcome to leave it on. I
24 am going to take you off the main screen, but I
25 appreciate you being present for this.

1 A. Thank you, Your Honor.

2 THE COURT: All right. Any other
3 evidence that you all want to take at this time?

4 MR. GARABADU: Yes, Your Honor, we
5 would like to call Ms. McCoy.

6 THE COURT: Why?

7 MR. GARABADU: Your Honor, up until
8 about less than twenty-four hours ago, Ms. McCoy
9 was going to be hearing the clemency application of
10 Mr. Humphreys. Overnight we found out that that
11 was not going to be the case anymore. However, in
12 order to perfect the record and to understand the
13 nature of the conflict, whether or not Ms. McCoy
14 discussed this case with others on the board and to
15 learn what exactly an abstention might mean, we
16 would like to ask her a couple of questions
17 regarding those topics.

18 THE COURT: So that would be six
19 questions, three topics, a couple each?

20 MR. GARABADU: Well, I wish I could
21 promise you it would be six questions, Your Honor,
22 but I don't know if it would be exactly that. But
23 we would like to have the opportunity to develop
24 the factual record on that piece.

25 THE COURT: Okay. I am going to hear

1 from Ms. Piper in a moment. But my thought is you
2 don't need to ask any questions about the conflict.
3 It is really clear. But it is fair -- it would be
4 fair to ask about that. I just don't think it is
5 necessary.

6 I think it is appropriate to ask
7 about what does abstention mean in your mind. Your
8 second two topics, you should explore those. How
9 do you see procedurally this working. You sit
10 there and you never say anything, or you
11 participate fully and you don't vote. So explore
12 that.

13 And your other topic of what have you
14 told others about your knowledge about the
15 Humphreys case. Those two, feel free to explore.
16 But I am going to ask you to leave the other one
17 alone, in part because you could go all day
18 establishing the conflict. It is that broad, it is
19 that deep, it is that obvious. So you don't need
20 to. Okay.

21 THE REPORTER: I don't know who is
22 speaking for the petitioner.

23 THE COURT: We will fix that. We
24 will fix that in a minute. It has always been the
25 same person. It is the third name that you have

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1 got on the list. That is Mr. Garabadu. And I will
2 have him come up to the podium in a minute.

3 But before he does that, Ms. Piper,
4 any objection to having Ms. McCoy testify about the
5 two areas? Mr. Garabadu identified three. I am
6 saying let's talk about two. Any objection to
7 that?

8 MS. PIPER: I would do a general
9 relevance. She is conflicted out, right? She has
10 said I am abstaining from the vote. You know, if
11 Your Honor would like to hear information on that,
12 I will just ask that it be limited as you have it
13 limited.

14 THE COURT: Okay. Well, great. We
15 will do it my way. Why don't you come on up.

16 And Ms. McCoy, if you could turn your
17 camera on, please. There she is. Thank you,
18 Ms. McCoy. Whoa, we don't have a deputy right now.
19 I will swear you in.

20 Raise your right hand. Do you swear
21 or affirm that the contents of your testimony will
22 be true and correct to the best of your belief and
23 knowledge?

24 That is the wrong oath. That is if
25 you had an affidavit.

1 Do you swear to tell the truth, the
2 whole truth and nothing but the truth?

3 THE WITNESS: Yes, I do.

4 THE COURT: Excellent. Let's follow
5 that one. She is under oath.

6
7 KIM MCCOY,
8 having been first duly sworn, was examined and
9 testified as follows:

10
11 DIRECT EXAMINATION BY MR. GARABADU:

12 Q. All right. Good afternoon,
13 Ms. McCoy, can you see me on one of the eighteen
14 different cameras that are in --

15 THE COURT: I can make that happen.
16 If you will move that screen a little bit, the
17 podium screen works, and then angle it up. There
18 we go. And then we will --

19 MR. GARABADU: All right.

20 THE COURT: There we go. And why
21 don't you state your name one more time for our
22 court reporter.

23 MR. GARABADU: Rahul Garabadu for the
24 petitioner.

25 THE COURT: She has already got your

1 name, so now we will go.

2 MR. GARABADU: Great.

3 Q. (BY MR. GARABADU:) Good afternoon,
4 Ms. McCoy. I am going to be asking you a few
5 questions about -- on behalf of my client,
6 Mr. Humphreys.

7 Now, Ms. McCoy, you served as
8 director of the victim witness unit for the Cobb
9 County DA's office from April of 1999 until April
10 of 2024; is that right?

11 A. That's correct.

12 Q. All right. And just to be clear, you
13 are an employee of the Cobb DA's office in that
14 role, right?

15 A. That is correct.

16 Q. So you are paid by the Cobb DA's
17 office?

18 A. Cobb County government, yes. Cobb
19 County DA's office.

20 Q. Okay. And you are appointed to the
21 State Board of Pardons and Paroles by Governor Kemp
22 effective December 1st, 2025, right?

23 A. That is correct.

24 Q. So it is your second full week --
25 going into your third full week on the job?

1 A. Yes.

2 MR. GARABADU: Now, Your Honor, I am
3 showing the witness what has been marked as Exhibit
4 2 on the screen.

5 THE COURT: Is this 2 also from your
6 binder or is it a different --

7 MR. GARABADU: It is 2 on the binder.

8 THE COURT: Okay.

9 (Petitioner's Exhibit 2 was marked
10 for identification.)

11 MR. GARABADU: It is 2.

12 Q. (BY MR. GARABADU:) I am going to
13 share my screen. Ms. McCoy, can you see the
14 document I am displaying for you right now that
15 says the State of Georgia Executive Order at the
16 top?

17 A. I can.

18 Q. All right. And do you recognize this
19 document?

20 A. I do.

21 Q. And this is a document that appoints
22 you as a member of the State Board of Pardons and
23 Paroles; is that right?

24 A. Can you scroll down so I can see the
25 remainder of the document.

1 Q. Yes. And let me know if I need to
2 zoom out too. I can do that as well.

3 A. That -- that appears to be the
4 document, yes.

5 Q. Okay.

6 MR. GARABADU: Your Honor, we move
7 Exhibit 2 into evidence.

8 THE COURT: Any objection?

9 MS. PIPER: No objection.

10 THE COURT: All right. It is still
11 official. You started as of December 1.

12 (Petitioner's Exhibit 2 was received
13 into evidence.)

14 A. Yes, sir.

15 Q. (BY MR. GARABADU:) Now, Ms. McCoy,
16 did you apply for a position on the board, or did
17 somebody reach out to you about the appointment?

18 MS. PIPER: I'm going to object to
19 relevance on this question, and we are going
20 outside the scope of the narrow topics you asked --

21 THE COURT: So you can talk to me
22 about how it is relevant, but then it is two
23 topics, it is how do you envision your role in this
24 clemency hearing, this one, Humphreys.

25 MR. GARABADU: Yes.

1 THE COURT: And what, if anything,
2 have you shared with other members of the board or
3 do you plan to share with other members of the
4 board about what you, meaning Ms. McCoy, knows
5 about the Humphreys case, trial.

6 MR. GARABADU: Yes, Your Honor. This
7 is just leading up to kind of her role on the board
8 and then we are getting to the abstention piece and
9 the communicating piece. But I just want to
10 understand, you know, how she came to be in that
11 position. If that involved other members of the
12 board, for example, that might be relevant as to
13 what Ms. McCoy might have shared with them before
14 coming on to the board. With the bar for relevance
15 being so low, Your Honor, I would ask for a little
16 leeway here.

17 THE COURT: Okay. It is a low bar,
18 you have a little leeway, but let's get to our two
19 topics.

20 MR. GARABADU: Yes, Your Honor.

21 Q. (BY MR. GARABADU:) So Ms. McCoy, did
22 you apply for a position on the board or did
23 somebody reach out to you about the appointment?
24 How did you get to be on the Board of Pardons and
25 Paroles?

1 A. I had several people reach out to me
2 asking me if I would consider the appointment or,
3 excuse me, consider being considered for the
4 appointment. I had a former elected district
5 attorney, retired district attorney, who submitted
6 my name for nomination.

7 Q. Okay. And who were the folks who
8 reached out to you about considering a position on
9 the board?

10 A. I don't -- I'm sorry.

11 Q. Go ahead, Ms. McCoy.

12 A. I don't know that I can tell you
13 everybody that asked me if I would consider being
14 nominated because some of that happened at a
15 retirement party. There were numerous people
16 there. I was asked by a retired district
17 attorney -- no, I'm sorry. That is not who I was
18 asked by.

19 Q. Well, let me make the question a
20 little easier for you then, Ms. McCoy.

21 Did any of the current members of the
22 Board of Pardons and Paroles reach out to you about
23 applying for the position?

24 A. No.

25 Q. Okay. I want to talk to you a little

1 bit about how the board handles clemency
2 applications generally. When the board receives a
3 clemency application, how is it processed by the
4 board?

5 A. I can't answer that question in
6 generalities because this is my third week on the
7 job, and this is the first application for clemency
8 I have seen.

9 MS. PIPER: And I am going to object.
10 That doesn't sound like one of those two topics.

11 MR. GARABADU: We are getting there,
12 Your Honor.

13 THE COURT: Boy, it is an indirect
14 way of getting there. I am going to ask you a
15 question, Ms. McCoy. Have you discussed with any
16 of the other four members of the board your
17 knowledge about Mr. Humphreys' case?

18 A. My knowledge about the case? No,
19 sir.

20 THE COURT: Okay. The way you have
21 answered my question suggests you have discussed
22 something else about the Humphreys case with the
23 other board members. What would that be?

24 A. My only discussion with any of the
25 board members has been with Mr. Bennett, and that

1 discussion was the lawsuit that was filed.

2 THE COURT: The lawsuit meaning what
3 we are doing right now?

4 A. Yes, sir.

5 THE COURT: Okay. Gosh, that is a
6 harsh name for it. No one is being sued like we
7 are going to get damages. They are doing what they
8 need to do on behalf of their client. But I guess
9 it names you, so it feels like you are being sued,
10 on your first day on the job.

11 A. Yes, sir. Eleventh.

12 THE COURT: Eleventh. But in terms
13 of substance, sitting down with the board members
14 saying, man, let me tell you about the Humphreys
15 trial, I was there, I sat with Ms. Williams' family
16 and Ms. Brown's family, nothing like that has
17 happened?

18 A. No, sir.

19 THE COURT: Okay. That is one of the
20 two topics.

21 MR. GARABADU: Yes, Your Honor.

22 Q. (BY MR. GARABADU:) Just following up
23 on that question, did you ever bring it up with the
24 ethics officer of the board about your involvement
25 in the Humphreys trial?

1 A. I discussed this with internal
2 counsel, La'Quan Smith, and with executive director
3 Chris Barnett.

4 THE COURT: Is there a separate
5 ethics officer, or is Ms. Smith effective as
6 counsel that is who you would go to saying, hey,
7 there could be an issue with the fact that I was
8 the victim witness advocate in this case?

9 A. Correct.

10 THE COURT: I want to make sure you
11 don't think, Counsel, that there is also an ethics
12 officer that Ms. McCoy didn't go to?

13 MR. GARABADU: No, no. My question
14 was whether or not Ms. McCoy consulted with
15 Ms. Smith.

16 THE COURT: Okay.

17 MR. GARABADU: It sounds like she
18 did.

19 THE COURT: Okay.

20 Q. (BY MR. GARABADU:) And Ms. McCoy,
21 when did you have that conversation with Ms. Smith?

22 A. May I look at a calendar?

23 THE COURT: You may. I guess you
24 only have eleven days to choose from.

25 A. Yes, sir. To the best of my

1 recollection, that was December 4th.

2 Q. (BY MR. GARABADU:) December the 4th?
3 And did that conversation happen right after you
4 heard that Mr. Humphreys' clemency application was
5 going to be reviewed by the board? Let me make
6 that question a little simpler.

7 When did you find out that
8 Mr. Humphreys' clemency application was being heard
9 by the board?

10 A. I found out that the death warrant
11 was signed on -- I believe it was December the 2nd.

12 Q. Okay.

13 THE COURT: Did that trigger in your
14 mind that, uh-oh, that means I am going to be
15 dealing with this because death warrant means
16 clemency hearing?

17 A. Yes.

18 THE COURT: Okay.

19 Q. (BY MR. GARABADU:) So when you heard
20 about the death warrant being signed, that was what
21 triggered your conversation with Ms. Smith?

22 A. That triggered my conversation with
23 Executive Director Barnett.

24 Q. Okay. And what did you discuss with
25 Executive Director Barnett?

1 A. That I needed to advise him that I
2 was the advocate assigned on the case back in 2007.
3 That I would await direction from the Board's legal
4 counsel as to whether or not there needed to be
5 further discussion about that, just general
6 conversation about how to proceed.

7 Q. And did you receive guidance from
8 either Mr. Barnett or Ms. Smith after that
9 conversation?

10 A. I did.

11 Q. Okay. When did you hear kind of
12 about your next steps as it related to
13 Mr. Humphreys' clemency application?

14 A. We had several conversations. I am
15 sorry, I can't tell you exact dates. I mean we had
16 conversations even deep into the weekend.

17 Q. Okay. Do you remember if this was --
18 again, eleven days to choose from. Would this have
19 been your first full week as a board member or your
20 second full week, can you remember, or was it that
21 weekend straddling those two weeks?

22 A. I'm sorry. I don't understand your
23 question.

24 Q. I guess I am just trying to ask, do
25 you remember if it was closer to your first day on

1 the job or if it was this past week?

2 A. I have had general conversations with
3 Executive Director Barnett and with Ms. Smith since
4 December the 2nd.

5 Q. Okay. And based on that
6 conversation, did either Mr. Barnett or Ms. Smith
7 tell you that you needed to recuse yourself from
8 the case?

9 A. I am hesitating because I don't
10 recall those exact words being said.

11 Q. What do you recall being said as it
12 related to your participation in the Humphreys
13 clemency application?

14 A. That I took an oath as a board member
15 of the State Board of Pardons and Paroles, that I
16 swore under oath to uphold the rules of the board,
17 that any knowledge that I might have had of the
18 case could be different from information that is
19 provided to me during the clemency hearing.

20 I had some discussions with Ms. Smith
21 about my involvement with the case. General
22 conversation about board procedures. I am sorry.
23 I don't know specifically -- those are the things
24 that I have had conversations about.

25 THE COURT: If the clemency hearing

1 were to have gone forward tomorrow at 9:00 a.m.,
2 what were you planning on doing? Were you going to
3 be in the room, in the room with headphones on, not
4 in the room? What would you be doing?

5 A. I have not had that thought, sir,
6 because I have abstained, and then this morning I
7 knew that there was a stay. So I have not had that
8 thought.

9 THE COURT: Okay. Tell me what you
10 mean when you say you abstained.

11 A. That I abstained from the vote in the
12 clemency decision.

13 THE COURT: Okay. But does that mean
14 you wouldn't be present for that particular
15 hearing, and so the other four would take care of
16 it, or you would be there but when it was time to
17 vote, you would say the word "abstain" rather than
18 yes or no or I don't know what words, grant, deny,
19 but you wouldn't be saying any of those words; you
20 would say the word "abstain"?

21 A. The only conversations that I had
22 with how that would happen was with the Attorney
23 General's Office.

24 THE COURT: Okay. I don't want to
25 get into that.

1 So you haven't reached a vision in
2 your mind as to what your participation -- this
3 will happen, there will be a clemency hearing for
4 Mr. Humphreys. And I need to understand, given the
5 lawsuit, as you called it, that is in front of me,
6 what does it mean for you to abstain. Are you
7 going to be there and do what everyone else does
8 except vote? Are you there but you sit mute? Are
9 you not there at all?

10 Those are different.

11 A. Yes, sir. My answer to your question
12 is I am going to do what the court directs me to
13 do.

14 THE COURT: You sound a lot like
15 Mr. Bennett, but I want to get it right. And I
16 might not have to direct you at all if you were
17 saying, you know, I actually get a day off from
18 Board of Pardons and Paroles work on Mr. Humphreys'
19 clemency hearing day because I'm not going to be
20 there because I'll be -- to use your word, I will
21 be abstaining, and you will be going about your
22 life in a different way.

23 But it sounds like that hasn't
24 necessarily crystalized for you what abstaining
25 means.

1 A. That is correct, sir, because I have,
2 as I told the board and the AG's office, would be
3 awaiting direction as to what I needed to do.

4 THE COURT: Okay. I appreciate that.
5 Thank you.

6 Q. (BY MR. GARABADU:) Ms. McCoy, when
7 exactly was the decision made that you were going
8 to abstain from the clemency application hearing?

9 A. Last night.

10 Q. Last night? Okay.

11 In your conversations and in your
12 considerations regarding the Humphreys clemency
13 application, did you consult the ethical guidelines
14 for the Board of Pardons and Paroles?

15 A. Will you repeat the first part of
16 that question? I apologize.

17 Q. Sure. You have indicated today in
18 court that you have spent some portion of the last
19 two weeks thinking about the Humphreys clemency
20 application and what you might do.

21 As part of those considerations, did
22 you consult the ethical guidelines of the Board of
23 Pardons and Paroles?

24 A. I read over them, yes.

25 Q. Okay. And you would be familiar with

1 them if I showed them to you right now?

2 A. Yes.

3 MR. GARABADU: Your Honor, I am
4 showing the witness what has been marked as 14,
5 which are the Board of Pardons and Paroles' ethical
6 guidelines.

7 (Petitioner's Exhibit 14 was marked
8 for identification.)

9 Q. (BY MR. GARABADU:) Ms. McCoy, can
10 you see my screen?

11 A. Yes.

12 Q. Okay. And I am going to scroll
13 through this, and you can tell me to slow down if
14 you need me to.

15 A. Can you make it larger, please?

16 Q. Yes. Is that large enough? Do you
17 need it larger?

18 A. Yes, thank you.

19 Q. Tell me if I need to go slower in
20 scrolling through this.

21 THE COURT: So that looks like it is
22 lots of pages. Are you going to go to a specific
23 spot?

24 MR. GARABADU: I am. I just want to
25 confirm that --

1 Q. (BY MR. GARABADU:) Ms. McCoy, does
2 this look like a fair and accurate copy of the
3 ethical --

4 THE COURT: Ms. Piper, you are not
5 challenging that this is not a copy?

6 MS. PIPER: No.

7 THE COURT: That is a copy.

8 MR. GARABADU: Your Honor, at this
9 time we would move to enter these ethical
10 guidelines into evidence.

11 THE COURT: Do they have an exhibit
12 number?

13 MR. GARABADU: Exhibit 14.

14 THE COURT: Exhibit 14. There they
15 are. Any objection to Petitioner's 14?

16 MS. PIPER: No objection.

17 THE COURT: Admitted.

18 (Petitioner's Exhibit 14 was received
19 into evidence.)

20 Q. (BY MR. GARABADU:) Now, Ms. McCoy, I
21 want to direct you to Rule 1.105.2, which I am
22 going to scroll to right now.

23 All right. Do you see Rule 1.105.2?

24 A. I do.

25 Q. Now, that rule notes that employees

1 should make every effort to avoid even the
2 appearance of a conflict of interest, right?

3 A. Yes. May I have one minute to read
4 this, please.

5 Q. Absolutely.

6 (Pause.)

7 THE COURT: While she is reading
8 this, question for you, Counselor. Given that
9 Ms. McCoy is abstaining, whatever that turns out to
10 mean, why are we exploring this?

11 MR. GARABADU: Your Honor, I think we
12 have heard -- we haven't quite gotten to the bottom
13 of what led to the decision to abstain. And so I
14 am trying to get a little more clarity through the
15 ethical guidelines as to what Ms. McCoy might have
16 consulted to get to that question of what
17 abstention is.

18 THE COURT: But don't you have the
19 dilemma for you that what Ms. McCoy has said is: I
20 talked to the executive director, I talked to
21 counsel, then I talked to the Attorney General.
22 And the result of that conversation was that I am
23 abstaining.

24 And so what led her to abstain was,
25 as the record stands right now, the Attorney

1 General's Office and I had a conversation, the
2 substance of which we may not explore,
3 lawyer/client. So I don't want -- I think
4 Ms. McCoy doesn't want -- not in the sense that she
5 is not wanting to give full answers, but she knows
6 that that is a privilege conversation. So you are
7 bumping up against that.

8 MS. PIPER: And I also object on
9 relevancy. But let's assume, for sake of argument,
10 there was some violation. A violation of policy is
11 not what we are talking about here.

12 THE COURT: Well, because she is
13 abstaining, whatever abstaining means.

14 MS. PIPER: Correct.

15 THE COURT: So why don't you go ahead
16 and ask your question. But I don't want poor
17 Ms. McCoy to get like, well, that is not the whole
18 thing, and I should read 1.105.3. She may feel on
19 the spot I am getting quizzed on the ethical
20 guidelines, and that's not -- I know that is not
21 what you are intending, but I just don't want her
22 to be in that position because that is not where we
23 are going with this anyway.

24 MR. GARABADU: Yes, Your Honor. To
25 be very clear, I'm not asking Ms. McCoy to breach

1 attorney-client privilege at all.

2 THE COURT: Good.

3 MR. GARABADU: What I heard in
4 Ms. McCoy's earlier answer was that she was given a
5 lot of information from Mr. Barnett, from Ms. Smith
6 that she took into consideration. She was then
7 given -- she -- it sounded like before I asked her
8 these questions, she had looked at these roles, and
9 it was only when the Attorney General conversation
10 took place -- that was what triggered the
11 abstention.

12 And so what we are trying to get to
13 the bottom of is was it the lawsuit that triggered
14 the abstention and, if so --

15 THE COURT: Then so what? Just to
16 cut to the chase, why -- how does that affect the
17 decision you want me to make, whether it was the
18 lawsuit or she had looked at, hey, I better look at
19 my horoscope today, whoops, don't commit an ethical
20 violation?

21 MR. GARABADU: Well, Your Honor, it
22 goes to the question of whether or not the
23 conflicts of interest, whether it is, in
24 Ms. McCoy's case or in Mr. Bennett's case, are
25 actually being implemented by the board.

1 THE COURT: And in a larger picture,
2 that might be something that someone might want to
3 explore. But we are here for Mr. Humphreys, and
4 Ms. McCoy has said I won't be participating, at a
5 minimum, in the vote as to clemency.

6 MR. GARABADU: Your Honor --

7 THE COURT: Why don't you ask two
8 more questions because you said you were asking
9 couples. Ask a couple of questions about this and
10 we are going to move on from the ethical guidelines
11 because Ms. McCoy has reached a point that you are
12 advocating for, at least she is not going to vote.
13 Whether she is going to not be in the room, we are
14 going to figure that out.

15 MR. GARABADU: Yes. Yes, Your Honor.

16 Q. (BY MR. GARABADU:) And in that case,
17 Ms. McCoy, I actually want to direct your attention
18 then to Rule 1.106.2, which talks about recusal.

19 All right. Ms. McCoy, can you see
20 1.106.2, the rule about recusal?

21 A. Yes.

22 Q. So Ms. McCoy, that rule talks about
23 when a board member needs to recuse themselves.
24 And it mentions the term -- right underneath that,
25 it mentions the term, it defines the term

1 "participant." And it says that: A participant
2 includes but is not limited to a person, an owner,
3 shareholder, partner, employee, or agent of a
4 business entity involved in the proceeding.

5 So recusing under that definition
6 means you can't be involved in the proceeding. Am
7 I -- is that your understanding?

8 MS. PIPER: I am going to object that
9 we are getting into having this witness who -- the
10 relevance of how -- what she defines as a word in a
11 policy as irrelevant to these proceedings.

12 MR. GARABADU: Your Honor, if I may?

13 THE COURT: You may.

14 MR. GARABADU: This goes back to what
15 the -- the daylight between recusal versus
16 abstention.

17 THE COURT: Okay. I am overruling an
18 objection. Can you scroll it up or down -- I
19 want -- there we go. Great. Okay.

20 Q. (BY MR. GARABADU:) So Ms. McCoy, do
21 you, as a member of the board, see a difference
22 between recusal, which under these definitions says
23 that you could not be involved in any proceeding,
24 versus abstention?

25 MS. PIPER: I'm going to object to --

1 recusal is not defined that way. Participation may
2 be defined a certain way, but recusal is not
3 defined in such a manner. That is misstating the
4 evidence.

5 THE COURT: When you look at 106.2,
6 Ms. McCoy -- don't roll it away -- what does the
7 word "recuse" say to you? If you felt you were in
8 a situation to which that provision applies --
9 oops, that is me, I need to recuse. What are you
10 doing, if you are recusing, tell me what it is you
11 think you are doing.

12 A. Removing myself from the situation.

13 THE COURT: That is good. But now
14 put that in concrete terms. I don't go to that
15 meeting, I don't talk about it at all, I am
16 completely walled off for that one situation, give
17 me all the other cases; or you are there with
18 everyone else, but you just -- you aren't
19 particularly participative when they are talking
20 about that case?

21 A. A recusal means completely walled off
22 from the issue at hand. However, if you continue
23 to read 1.106 .2, it says: Because of an
24 employee's personal or financial relationship.

25 That is the basis of the recusal.

1 THE COURT: Okay. I see what it
2 says. I was focused on the fourth word there,
3 "recuse," because you have said I am abstaining;
4 and you didn't say recuse, you said abstain. And
5 you can understand why I am trying to figure out
6 what does abstain mean because abstain isn't what
7 it says anywhere in the policy you are supposed to
8 do if there's a conflict. It says recuse.

9 And I don't think it is a coincidence
10 that your attorneys for the purpose of this
11 litigation, the Attorney General's Office, said you
12 would be abstaining. They didn't say recuse. They
13 are smart people. They choose their words
14 carefully, and they said you would be abstaining.
15 That is why we are going around and around on this.

16 A. Yes, sir.

17 THE COURT: All right. Any other
18 questions?

19 MR. GARABADU: Just to follow up on
20 that point.

21 Q. (BY MR. GARABADU:) So Ms. McCoy, you
22 did not believe that you had personal involvement
23 in the Humphreys trial?

24 A. I had involvement with the Humphreys
25 trial because I was the assigned advocate to work

1 that case at that time.

2 Q. So is that a yes to my question, you
3 did not think that was a personal involvement of
4 yours?

5 A. It was not a personal involvement in
6 that I was employed as a victim advocate. At the
7 time of that case, I was assigned as the victim
8 advocate in that case, and I performed my roles as
9 a victim advocate pursuant to the Crime Victims
10 Bill of Rights in that case.

11 MR. GARABADU: Your Honor, may I
12 confer with my cocounsel for a moment?

13 THE COURT: You may. Deputy Gordon,
14 could you grab this? It goes to Ms. McAdams. I
15 think she may be outside. Make sure I have got the
16 right name. Yeah, Ms. McAdams. Thanks.

17 MR. GARABADU: Your Honor, may we
18 take a five-minute break to confer and then come
19 back?

20 THE COURT: I will bet you that
21 Investigator Wilson would appreciate that because
22 then I can read his warrants and get him out the
23 door. He has learned more about abstain versus
24 recusal than he ever wanted to.

25 You all right with that, Ms. Piper,

1 if we take a few minute break?

2 MS. PIPER: Yes.

3 THE COURT: When we get back, you
4 should not have many questions left for Ms. McCoy,
5 given what we all agreed you would be exploring.

6 MR. GARABADU: The five-minute break
7 will help to --

8 THE COURT: Validate?

9 MR. GARABADU: Yes.

10 THE COURT: All right. We are off
11 the record for a few minutes.

12 (Whereupon, a break was had from 4:30
13 p.m. until 4:44 p.m. EST)

14 THE COURT: All right. Let's get
15 back on the record, please.

16 THE REPORTER: We are back on.

17 THE COURT: We are back on.
18 Excellent. Thank you, Ms. Nichols.

19 We are back on the record in the
20 Humphreys matter, and you had, you said, one or two
21 questions left.

22 MR. GARABADU: Your Honor, I have
23 even better news for you than that. I am about to
24 take my seat, and I have no further questions right
25 now for Ms. McCoy.

1 (Petitioner's Exhibit 1 was marked
2 for identification.)
3 (Petitioner's Exhibit 3 was marked
4 for identification.)
5 (Petitioner's Exhibit 4 was marked
6 for identification.)
7 (Petitioner's Exhibit 5 was marked
8 for identification.)
9 (Petitioner's Exhibit 6 was marked
10 for identification.)
11 (Petitioner's Exhibit 9 was marked
12 for identification.)
13 (Petitioner's Exhibit 10 was marked
14 for identification.)
15 (Petitioner's Exhibit 12 was marked
16 for identification.)
17 (Petitioner's Exhibit 13 was marked
18 for identification.)
19 (Petitioner's Exhibit 15 was marked
20 for identification.)
21 (Petitioner's Exhibit 16 was marked
22 for identification.)
23 (Petitioner's Exhibit 17 was marked
24 for identification.)
25 (Petitioner's Exhibit 18 was marked

1 for identification.)

2 (Petitioner's Exhibit 19 was marked
3 for identification.)

4 (Petitioner's Exhibit 20 was marked
5 for identification.)

6 (Petitioner's Exhibit 21 was marked
7 for identification.)

8 MR. GARABADU: I did have two
9 administrative things I wanted to address with you
10 just before I sat down. The first is that during
11 the break, we consulted with opposing counsel about
12 admitting Exhibits -- or stipulating to Exhibits 1
13 through 14 in that binder in front of you.

14 THE COURT: Okay.

15 MR. GARABADU: Those were attached to
16 our petition. Opposing counsel, and they can
17 correct me if I am wrong, but they have agreed to
18 stipulate to the admission of 1 through 14.

19 For Exhibits 5 and 6, they have
20 stipulated to its authenticity only, though.

21 MS. PIPER: Not to the content.

22 MR. GARABADU: Not to the content.

23 THE COURT: Got it. Which is an
24 affidavit of a last name I can't pronounce and then
25 Bandrowski, two affidavits.

1 MR. GARABADU: That's correct.

2 THE COURT: They will be made part of
3 the record of this proceeding.

4 Someone needs to get those exhibits
5 to the court reporter who will be creating that
6 record. And the respondents are not saying those
7 affidavits are accurate or correct, but yes, those
8 are the sworn affidavits of initials DAC as well as
9 initials LB.

10 MR. GARABADU: Yes, Your Honor.

11 THE COURT: Is that a fair statement,
12 Ms. Piper?

13 MS. PIPER: Yes.

14 THE COURT: Okay. Done.

15 (Petitioner's Exhibit 5 was received
16 into evidence for authenticity
17 purposes only.)

18 (Petitioner's Exhibit 6 was received
19 into evidence for authenticity
20 purposes only.)

21 MR. GARABADU: The second
22 administrative thing I wanted to mention before I
23 sat down, Your Honor, we had subpoenaed Ms. McCoy's
24 personnel file from the Cobb County DA's office. I
25 believe Cobb County ADA is in the room with those

1 records. They have not been redacted because of
2 how quickly this hearing had to happen.

3 THE COURT: Right. I think the
4 subpoena was from this morning.

5 MR. GARABADU: That's correct. And
6 so those records, as I understand it, are available
7 for you. We are not able to look at it because
8 they have not been redacted. I just mention that
9 because they are, I believe, the copy on ADA is
10 here in the courtroom. Those records are available
11 for you. But we don't know what is in it.

12 THE COURT: And given what I have
13 shared on the record about my view of the existence
14 of a conflict, do you think that there is a need
15 for me to look at those records, or should I get
16 them at least and put them in a sealed envelope so
17 that they are made part of the larger record?
18 Because I will tell you, I wouldn't likely look at
19 them to reach a judgment about the existence of a
20 conflict. That is not me then saying so what about
21 that conflict.

22 But at a minimum, the appearance of a
23 conflict. And that is really what guides this
24 analysis, how a layperson who sat through the trial
25 in Glynn County day after day seeing Ms. McCoy do

1 the amazing work that a victim advocate does, not
2 with the defendant, but with the families of the
3 victims, then seeing Ms. McCoy in the room for a
4 clemency hearing, that neutral observer would say
5 how is this the right way to do things. That
6 doesn't impute anything to Ms. McCoy. On the
7 surface, it speaks of conflict.

8 So because of that, I don't know that
9 I would look at those records. That doesn't mean
10 you can't make them part of a larger record so that
11 more powerful judges could look at it in the
12 future. But obviously that should be sealed
13 because it shouldn't be readable. Even if it were
14 redacted, it is a personnel file.

15 MR. GARABADU: That's correct.

16 THE COURT: So I am offering that up.
17 If you want to -- you don't need to get it to me,
18 you would get it to -- I don't know how we would
19 handle making it a sealed record.

20 MR. GARABADU: Your Honor, may I take
21 a moment to confer --

22 THE COURT: Why don't we do this?
23 Who has the files?

24 MR. EVANS: I do, Judge, I probably
25 should clarify. My name is Jesse Evans, we have

1 met before.

2 THE COURT: I know you, Mr. Evans.
3 I've been wondering because Mr. Evans keeps sliding
4 over so I can see him. No hiding behind the
5 lawyers.

6 MR. EVANS: For our court reporter's
7 benefit, it is J-E-S-S-E, E-V-A-N-S, and I am chief
8 assistant district attorney for the Cobb DA's
9 office.

10 THE COURT: Yes, you are.

11 MR. EVANS: There are two sets of
12 records, technically two sets of records that were
13 requested this morning. And if you deem it
14 appropriate, I can clarify what I have in my
15 possession.

16 THE COURT: So my thought is this for
17 everyone and I will get Mr. Evans' input first and
18 then petitioner's and then respondents'. Because
19 you subpoenaed them, there was a felt need for
20 them. They are not irrelevant at large. I don't
21 think I need to process them for the work I am
22 being called upon to do.

23 So unless you want to abandon the
24 request so that Mr. Evans goes home with those
25 copies and then destroys them, I will take them.

1 And then we will figure out how I can get them
2 under seal and then united with the good work that
3 Ms. Nichols is doing. I don't think they would go
4 to Ms. Nichols because they are going to be under
5 seal.

6 And so my proposal is either, one,
7 you say we abandon it based on what you said,
8 Judge. If not, okay. Then I will take them. And
9 my staff and I will figure out how to get them
10 filed under seal, under this CV number so they will
11 travel with the docket should this docket need to
12 go to the Supreme Court of Georgia or -- is there
13 one on there -- the United States. So we will do
14 that.

15 I am good with either one. The
16 Federal Defenders really want to talk.

17 MR. EVANS: Yes, I'm going to turn it
18 over.

19 MS. WELLS: (Inaudible).

20 THE COURT: You need to let
21 Ms. Nichols know who you are.

22 MS. WELLS: Hello, I am Beth Wells.
23 I am with the Federal Defender. I represent
24 Mr. Humphreys. I was the one who was responsible
25 for the subpoena, so I thought it might be easier

1 for me to address.

2 There are actually two categories,
3 and one category actually goes to Mr. Bennett. And
4 so that might be relevant to considerations the
5 Court is having. And I have not had a chance to
6 speak more at length with --

7 THE COURT: Mr. Evans.

8 MS. WELLS: -- Mr. Evans, thank you.
9 I know that he was bringing the personnel file at
10 the time we spoke this morning. He wasn't sure if
11 he would be able to get the stuff relevant to
12 Mr. Bennett.

13 THE COURT: And remind me. I read
14 the subpoena. The part for Mr. Bennett would
15 basically be communications with the Cobb DA's
16 office about the role Mr. Bennett's office, the
17 Sheriff's office, would play in connection with the
18 case?

19 MS. WELLS: Yes, Your Honor. And
20 actually it would have been -- unfortunately,
21 because the hearing has been truncated because of
22 the warrant, we were hoping to have those so we
23 could review them in our cross examination -- or
24 examination of Mr. Bennett. I don't know what is
25 in there, but we would like the Court to have them.

1 THE COURT: And Mr. Evans, you
2 mentioned you had two things, not one thing. Is
3 one of the things whatever you could find in
4 thirty-eight minutes related to Sheriff Bennett and
5 the rest is Ms. McCoy, or is it all Ms. McCoy?

6 MR. EVANS: I don't know.

7 THE COURT: Oh.

8 (Off-the-record discussion.)

9 MR. EVANS: I am closer to a
10 microphone now. The answer to the judge's inquiry
11 is I don't know whether there's any correspondence
12 between our office and Mr. Bennett in this file.

13 I received word around 8:30 this
14 morning of the existence of the subpoena. I asked
15 my staff to start looking for things. And then it
16 was only about noon that I was able to go by the
17 office to pick up what I have.

18 In one file I am certain that it is
19 Ms. McCoy's personnel file. For the benefit of
20 Ms. McCoy, who is a former colleague of mine, it
21 has not been redacted which is why we wanted to
22 make sure it is under seal because there would be
23 some personal identifying information in there that
24 she wouldn't want out there.

25 THE COURT: Sure.

1 MR. EVANS: The other file that we
2 were able to locate that might have correspondence
3 with Bennett -- I don't know because I haven't
4 looked through it, I flipped through it -- is what
5 I will call as our victim witness work product file
6 that we located with the file.

7 THE COURT: Got it. But really that
8 would be probably more connected to Ms. McCoy's
9 work as opposed to what I understood the thrust of
10 the petitioner's request was is there -- I don't
11 know why it would still be there, but communication
12 from whoever the -- was it Pat Head who was the DA
13 then?

14 MR. EVANS: That's correct.

15 THE COURT: Between Mr. Head or the
16 judge who handled the case, not that your office
17 would have communications from the judge, but Cobb
18 communication with the sheriff's team saying here
19 is what -- how this is going to work and we need
20 you to keep your eye on the jury, or I don't know
21 what -- I don't know why that would be in that
22 second collection. I appreciate your getting it.
23 I think it was the right thing to do. My guess is
24 that there's not going to be much in there either.

25 But here is my proposal. We will

1 look through the second folder that is victim
2 witness related to the trial to see if there's
3 anything related to then-Sheriff Bennett and, if
4 so, and it seems disclosable, I will get it to both
5 sides so you have got it. And we may need to
6 reopen the record in this.

7 We are under less time pressure given
8 the decision of the board from earlier today. I
9 don't think that is going to jump out of there, but
10 who knows.

11 But if there's nothing in that second
12 file that relates to Sheriff Bennett, then I am
13 just going to seal it with the other McCoy
14 documents because I think they go not quite hand
15 and glove, but it is at least like elbow and
16 shoulder because it is victim witness advocacy
17 connection to the Humphreys trial.

18 MR. EVANS: I did see some email
19 correspondence between our team that presumably was
20 collected by Ms. McCoy and kept in there that
21 involved attorneys and things like that. So it
22 wouldn't be out of the realm of the possibility
23 that maybe there's an offhand reference to Bennett.

24 THE COURT: Right.

25 MR. EVANS: But this is not the

1 entirety of our work product.

2 THE COURT: You got what you could in
3 the window you had.

4 MR. EVANS: You hit the nail on the
5 head, Judge.

6 THE COURT: I appreciate your
7 office's effort. I will take it. Well, before I
8 do that, Ms. Piper, are you all right with the
9 approach I described?

10 MS. PIPER: Given that I have already
11 heard your opinion on the relevance, yes, sir.

12 THE COURT: All right. Thank you,
13 Mr. Evans.

14 MR. EVANS: Thank you, Judge. Good
15 to see you.

16 THE COURT: Same. So we will all
17 understand, Judge Kraus, she is in Hawaii right
18 now. Right. She better bring me back a lot of
19 whatever is good in Hawaii.

20 (Off-the-record discussion.)

21 MR. GARABADU: Last administrative
22 matter, Your Honor, and then I will sit down.

23 THE COURT: Can I take Ms. McCoy off
24 the screen? All right. Don't run away, Ms. McCoy.
25 I will just take you off the spotlight right there.

1 Thanks.

2 MR. GARABADU: Your Honor, as to the
3 remaining exhibits in the binder, those are
4 Exhibits 15 through 22 -- 21, excuse me, 21, we
5 understand that opposing counsel has objections to
6 those exhibits.

7 We believe we could have entered
8 those through the direct examination of Ms. McCoy
9 had this not been a truncated proceeding. We ask
10 that it be part of the larger record because under
11 the exigent circumstances, we can't be here until
12 10:00 at night.

13 THE COURT: No, you can't. Well, you
14 can. The door locks behind you.

15 So why don't we do this, 1 through
16 14 -- is it 14, they are admitted by stipulations.
17 There are two affidavits, the affidavits, they are
18 admitted -- the respondents are not admitting to
19 their veracity or accuracy. And then 22 is also
20 admitted. That is the bio for Mr. Bennett. So
21 that will be 15 through 21 we will make part of the
22 record. I haven't looked at them. I am not going
23 to look at them.

24 (Petitioner's Exhibit 1 was received
25 into evidence.)

1 (Petitioner's Exhibit 3 was received
2 into evidence.)

3 (Petitioner's Exhibit 4 was received
4 into evidence.)

5 (Petitioner's Exhibit 9 was received
6 into evidence.)

7 (Petitioner's Exhibit 10 was received
8 into evidence.)

9 (Petitioner's Exhibit 11 was received
10 into evidence.)

11 (Petitioner's Exhibit 12 was received
12 into evidence.)

13 (Petitioner's Exhibit 13 was received
14 into evidence.)

15 THE COURT: But I will rely to
16 petitioner's team to get them to Ms. Nichols to be
17 made part of the record. But the record right now
18 is making clear, 15 through 21 are not in evidence.
19 They aren't things that I will be relying on in
20 making any of the decisions that I am being asked
21 to make. Does that address the administrative
22 concern?

23 MR. GARABADU: It does.

24 THE COURT: Ms. Piper, does that work
25 for respondents?

1 MS. PIPER: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. GARABADU: With that, I will go
4 and sit down and turn it over to my colleague,
5 Mr. Greenamyre.

6 THE COURT: Okay. Well, it was nice
7 having you up at the podium.

8 Mr. Greenamyre, what more is there?
9 We've had argument; both witnesses have testified.
10 We haven't heard anything from respondents yet.

11 MR. GREENAMYRE: I would like to ask
12 three lines of questions to Ms. Smith, which are
13 who did she communicate about McCoy with; if she
14 can give us any more guidelines about what recusal
15 versus abstention means, right, any
16 representations.

17 And in Fugate, there's a line that
18 Judge Goger found important which was whether this
19 was precedent or not, about whether the board has
20 ever conducted business like that, and I would like
21 to pose that question to her.

22 THE COURT: Whether the board has
23 ever conducted business with less than all five
24 people there?

25 MR. GREENAMYRE: And voted, yes.

1 THE COURT: And voted.

2 MR. GREENAMYRE: In a death case.

3 THE COURT: Okay. It was helpful to
4 get a preview.

5 Ms. Piper, do you have any
6 objection -- I know they weren't to specific
7 questions, but it was three topic areas. Topic
8 three seems like fair game. I am all right with
9 that insofar as Ms. Smith knows. What about the
10 other two areas?

11 MS. PIPER: I would say with respect
12 to, you know, a definition in particular that
13 Ms. McCoy has used in abstaining, they have had the
14 opportunity to question Ms. McCoy on that. It is
15 not -- what one thinks is the definition versus the
16 definition is not really relevant. A legal
17 advocates officer, that is it. She is not speaking
18 on behalf of respondents in defining this term.

19 THE COURT: Okay.

20 MS. PIPER: To get her to testify as
21 such I think would be inappropriate.

22 THE COURT: Okay. I will let you
23 explore those areas. I may close things down on
24 Ms. Smith's views on what Ms. McCoy thinks. I know
25 that is not quite how you framed it, won't be so

1 relevant. But I think it is -- given the
2 amorphousness of abstention, where we are right
3 now, I will let you ask Ms. Smith some questions in
4 that area.

5 MR. GREENAMYRE: To be clear and to
6 further preview, I am not asking questions about
7 what the definitions are but what the practical
8 effect would be when the hearing goes forward.

9 THE COURT: Okay. Well, that is
10 different, and I am all right with that. The one
11 thing, I just don't know how exactly the
12 relationship between a board member and Ms. Smith
13 works.

14 If a board member comes to her saying
15 I have got this situation, could you give me
16 counsel, is that something you are allowed to ask
17 about? In other words, is that a privileged
18 communication?

19 I am not asking you to answer that,
20 but you shouldn't be surprised if there's an
21 objection. I just don't know that the nature --
22 how you would -- what the confines or protections
23 would be for a communication that Ms. McCoy had
24 with Ms. Smith about, well, what do you think I
25 should do with this; I am new, I am reading these

1 ethical guidelines, what is your counsel.

2 MR. GREENAMYRE: Yes. And to be
3 clear, what we would be asking for in that first
4 category is what communications did Smith have
5 about the facts of McCoy with the other board
6 members. Did they know -- did she have any
7 conversations with the other board members about
8 these facts.

9 THE COURT: Okay. All right. Let's
10 see where it goes, and you are free to continue to
11 object.

12 MS. PIPER: Okay. And just for the
13 record, on Topic Number 3, I just would ask that
14 the Court circumscribe the questions to within an
15 area -- you know, what the board does and how they
16 vote and things like that is not open to the
17 public. Okay.

18 THE COURT: No. I agree. To me it
19 would be very structural. Has there been an
20 instance when only four members were in the room
21 and voted, not how did they vote, nothing like
22 that. We will both shut that down. But it would
23 be, yeah, you know what, on Tuesday it is three for
24 Tuesday, only have three people in the room. So --

25 All right. Ms. Smith, are you still

1 with us? You are. Excellent.

2 Did Deputy Gordon leave? Deputy
3 Gordon? All right. I am going to try. Raise your
4 right hand. Do you swear that you will tell the
5 truth, the whole truth and nothing but the truth?

6 MS. SMITH: I do.

7 THE COURT: Great.

8
9 LA'QUANDRA SMITH,
10 having been first duly sworn, was examined and
11 testified as follows:

12
13 DIRECT EXAMINATION BY MR. GREENAMYRE:

14 Q. Thank you. First question. Have you
15 communicated about the facts underlying McCoy's
16 potential conflict of interest with any of the
17 other four board members?

18 A. I have communicated with the chair,
19 Joyette Holmes, about the issues that have been
20 brought to our -- my attention by counsel for
21 Mr. Humphreys. I don't recall having any
22 conversations with the other board members about
23 the issue.

24 Q. Okay. You said Ms. -- who was the
25 person that you communicated with?

1 A. Holmes, Chair Holmes, Joyette.

2 Q. This was the Joyette Holmes who was
3 for a period of time the elected DA in Cobb County?

4 A. Yes.

5 Q. Okay. So if we have a situation
6 where Ms. McCoy is not recusing but she is
7 abstaining, can you give us any idea how that would
8 work from a logistical, from a practical
9 standpoint? Can you give us any guarantees about
10 what that looks like?

11 A. I think how Ms. McCoy framed it with
12 the Court is --

13 THE REPORTER: Hold on. A cough
14 obliterated what you said.

15 A. We would follow the direction of a
16 court. This is a case of first impression for
17 us -- (inaudible) based on my opinion. I have been
18 with the board since 2005 and (audio distortion) --
19 since 2010.

20 (Off-the-record discussion.)

21 THE COURT: We'll try again. So
22 Ms. Smith, you have been working with the board
23 since 2005?

24 A. Yes, sir. In my current capacity
25 since 2010.

1 THE COURT: What was your capacity
2 for the first five years?

3 A. I was Number 2 in this position, so I
4 had a predecessor who was the director of legal
5 services and ended in 2005, 2009, '10, something
6 like that.

7 THE COURT: Got it. Then you got
8 moved up to being legal counsel.

9 A. That is right.

10 THE COURT: When you say
11 unprecedented, meaning in your twentyish years in
12 working with the board, there hasn't been a
13 situation where a board member has said I have got
14 a conflict; we need to figure out what to do with
15 that?

16 A. Absolutely. In a death penalty case,
17 absolutely.

18 THE COURT: Okay.

19 A. My lights go out when I don't move.

20 THE COURT: Feel free to wave your
21 arms. I can swear you in periodically. That will
22 get your arm up.

23 Q. (BY MR. GREENAMYRE:) So again I
24 appreciate the representation that you will follow
25 what the court tells you to do, as we all will.

1 But in the absence of a court order, can you tell
2 us anything about what McCoy will do or will not do
3 in connection with this clemency hearing?

4 Is she going to be there? Is she
5 going to be allowed to talk, is she going to be
6 allowed to sigh? Can you tell us anything that we
7 can take to the bank about her involvement in the
8 absence of a court order?

9 A. Sure. My understanding is she would
10 be not -- she would not vote on the matter but be
11 present to hear the application and the information
12 presented to the board in support of and/or against
13 clemency. And that would be the extent of her
14 involvement. In addition to what you were asking,
15 would she be able to ask questions, yes.

16 THE COURT: Ms. Smith, when the
17 presentation is done, is it kind of like a jury
18 trial and the people who presented leave and then
19 the board members confer and say -- again, I don't
20 want any substance of the conversation but the
21 process, they then talk about it and take a vote in
22 private with no one present? Or do they, in front
23 of everyone else, say, all right, what do you think
24 and they raise their hand saying spare him?

25 A. So they have an opportunity to

1 deliberate collectively and then if they so choose
2 to cast their vote -- their votes are confidential
3 and private. So they would designate their votes
4 on a paper ballot and submit those ballots to me.
5 They could do that in the presence of the other
6 members or in private.

7 And once the ballots are collected, I
8 will get with the chair, and we will go through the
9 ballots and count up the ballots to determine what
10 the actual decision of the Board is.

11 THE COURT: Okay. And your vision as
12 to what abstention would mean for Ms. McCoy is that
13 she would be there for the entire presentation, she
14 could ask questions, and then when everyone leaves,
15 she could be part of the discussion, the
16 post-presentation discussion. She just -- if this
17 is one of the ballots, she wouldn't fill out one of
18 the ballots?

19 A. Yes, sir, that is my understanding as
20 of right now. That could change based on the
21 information that is indicated, as indicated, if the
22 Court decides otherwise that that would not be
23 constitutional. But as of tonight, yes.

24 THE COURT: Got it.

25 Q. (BY MR. GREENAMYRE:) And just as a

1 practical matter, can we agree that for
2 Mr. Humphreys, there's no difference in effect
3 between a vote to abstain and a vote to deny?
4 Those are, practically speaking, the same exact
5 thing for Mr. Humphreys?

6 A. I -- I'm not sure I understand your
7 question.

8 Q. Mr. Humphreys needs to get to three
9 votes to be spared, correct?

10 A. Correct.

11 Q. And so a vote to abstain is
12 effectively the same exact thing as a vote to deny,
13 from Mr. Humphreys' perspective, correct?

14 A. Correct.

15 Q. All right. The judge already got us
16 ninety-nine percent of the way here. I want to
17 direct your attention to a passage from Fugate and
18 just make sure that we are in agreement about the
19 unprecedented nature of this.

20 So Fugate says: Significant to the
21 Court, the respondents were unable to refute the
22 petitioner's contentions that there has never been
23 a death penalty clemency hearing without a full
24 five-member board, not only appointed but indeed
25 present at the hearing, or at least voting after

1 review of the record and the papers filed by the
2 parties.

3 As you sit here today, to be clear,
4 you are not aware of any death penalty clemency
5 hearing without five or more members voting; is
6 that correct?

7 THE COURT: Are you thinking or did
8 you answer and I missed?

9 THE WITNESS: I'm thinking.

10 THE COURT: All right. Keep
11 thinking. Keep thinking. I just wasn't sure if
12 there's a cough and we don't hear you.

13 A. I'm thinking. I am not aware of a
14 situation where we have had a death penalty case,
15 clemency appointment or meeting where five board
16 members were not on the board and available to vote
17 the case.

18 MR. GREENAMYRE: Thank you,
19 Ms. Smith. No other questions.

20 THE COURT: Do you have questions for
21 Ms. Smith?

22 MS. PIPER: Quickly.

23 THE COURT: Okay.

24 CROSS-EXAMINATION BY MS. PIPER:

25 Q. Hi, Ms. Smith. So if all five

1 members come to you separately, and the first three
2 vote for clemency, would you need to even have the
3 votes from the fourth and fifth member?

4 A. You do not.

5 Q. All right. And in your experience,
6 have there been occasions where three came in one
7 way or another and you really didn't look at the
8 rest or you didn't get the rest or whatever?

9 A. Yes.

10 MS. PIPER: All right. That's it,
11 Your Honor.

12 THE COURT: I follow Ms. Piper's
13 questions, but those scenarios are ones where,
14 nonetheless, all five board members were present
15 and able to vote, but it may be -- do you send up a
16 smoke signal once there's three? Because there's
17 like no point in being number four or five, because
18 five to nothing isn't any better than three to two.

19 A. So it depends, Your Honor. If all
20 five are present in the boardroom after the
21 appointment or the meeting and decide to vote then
22 and there, obviously we have our votes and they're
23 all in.

24 If they decide that they do not want
25 to vote in that manner but want to consider -- take

1 the matter under consideration privately, then a
2 deadline, a time deadline may be given or has been
3 given as to when to get the votes in.

4 And so when that deadline comes and
5 goes, then we know whether we have the three -- and
6 I will announce the -- or the chair will announce
7 to the board members that a decision has been
8 obtained and what that decision is.

9 THE COURT: Okay. Got it. All
10 right. Thank you.

11 Did you have any follow-up,
12 Mr. Greenamyre, after Ms. Piper's questions?

13 MR. GREENAMYRE: No, Judge.

14 Thank you, Ms. Smith.

15 THE COURT: Thanks, Ms. Smith.

16 THE WITNESS: You're welcome.

17 THE COURT: All right. Any other
18 witnesses?

19 MS. CINO: No, Your Honor, not at
20 this time.

21 THE COURT: All right. Any witnesses
22 from respondents?

23 MS. PIPER: No, Your Honor.

24 THE COURT: Other than the ones you
25 made available, and thank you for doing that.

1 MS. PIPER: We would ask, if there's
2 no further questions, that they be excused.

3 THE COURT: Yep. So you are welcome
4 to stay on our session. We're going to have a
5 little more argument. But if you have other places
6 you need to be, you are free to go. And thank you
7 for your work on the board.

8 What do you want to do next? I
9 guess, Ms. Cino, you had a chance to do some
10 arguing. I really haven't heard much from
11 respondents. I guess I would like to do that so
12 that we can get a sense of where they think things
13 are heading, and then we'll see if there's a need
14 for rebuttal to that. Does that work?

15 MS. CINO: We agree with that, Your
16 Honor, thank you.

17 THE COURT: Okay. Great. Thank you.
18 Ms. Piper?

19 MS. PIPER: Can you hear me okay,
20 court reporter?

21 THE REPORTER: I can.

22 MS. PIPER: Great. Thank you.

23 Since I have had the opportunity to
24 argue a little bit, I will try and keep this very
25 succinct and concise.

1 I think that as you opened up in the
2 beginning, this is a mandamus -- I mean there's a
3 TRO, but they have to show likelihood, so we're
4 going back to the merits.

5 Two issues. The first issue is the
6 abstention of voting. McCoy is out. So I feel
7 like that's been mooted. You've heard testimony
8 from Mr. Bennett. There was no personal
9 involvement.

10 THE COURT: When you say that's been
11 mooted, how do you navigate that ethical provision
12 that says recuse as opposed to the introduction of
13 the concept of abstaining, which doesn't seem to be
14 an ethical guideline?

15 MS. PIPER: There's a couple of
16 things. One, I think as lawyers, we are very
17 cognizant, words matter, so I would say, you could
18 look straight up to a Black's Law definition of
19 abstain and a Black's Law definition of recuse and
20 follow those, but I think also in terms of a board
21 member who is not an attorney, they may be morphing
22 those together and understanding those together.

23 Do you know what I'm saying? As a
24 board member, you're like, oh, well, abstaining,
25 I'm not voting, that is what I have to do to avoid

1 this conflict.

2 THE COURT: Sure. But it was your
3 brief that said abstain.

4 MS. PIPER: Correct.

5 THE COURT: Ms. McCoy did not
6 introduce the term into the process.

7 MS. PIPER: Correct. And, you know,
8 I would say that is a declination to vote, a
9 removal of yourself from the vote, not a complete
10 absence from the proceedings.

11 THE COURT: So if she is present but
12 can't possibly vote for clemency to a point that
13 petitioner's lawyers made, then doesn't
14 Mr. Humphreys walk into that room with fewer
15 chances to get three votes? He has to bat seven
16 fifty instead of six hundred. And doesn't that
17 change the dynamic in a way that's not fair?

18 MS. PIPER: Well, that presumes, you
19 know, that a vote is going to go in a particular
20 way. But that's not what -- the question is does
21 he have a legal right to that.

22 THE COURT: You're right.

23 MS. PIPER: Not what are his chances,
24 what are his odds, do his odds go up this way or go
25 down that way. The question is does he have a

1 legal right to it, and we submit he doesn't.

2 THE COURT: Okay.

3 MS. PIPER: Back to the rules --

4 THE COURT: Your position would be he
5 has a legal right to a quorum, which is three.

6 MS. PIPER: A quorum, that is
7 correct.

8 THE COURT: If he walked in the room
9 and there's only one person, that's not going to
10 work.

11 MS. PIPER: Correct.

12 THE COURT: If for whatever reason I
13 were to find, gosh, Mr. Bennett, you are
14 disqualified as well. The five times you may have
15 been in the courtroom over the course of a
16 month-long trial, that's too much.

17 MS. PIPER: Correct.

18 THE COURT: So you also have to
19 abstain. There would still be three people who
20 could vote, and that's a quorum, and that's the
21 right that Mr. Humphreys enjoys is having a quorum?

22 MS. PIPER: Yes, Your Honor.

23 THE COURT: Okay.

24 MS. PIPER: All right. And I can --
25 you know, I think our brief is pretty clear and

1 lays out -- I want to just address that policy one
2 quick time.

3 THE COURT: Uh-huh.

4 MS. PIPER: And I think I've already
5 said this. You certainly could argue that -- I
6 just don't think that, you know, a written policy
7 that the board adopts modifies at will, changes at
8 will, rises to a level of requirement that the
9 constitution is, right, that -- there's a
10 difference.

11 And the constitution, if we look
12 at -- and I'll just go straight to the heart of
13 what they're pinning this whole linchpin on, the
14 constitutional provision, I think it's Article 4,
15 Section 2, Paragraph 2(d), you know, the chairman
16 of the board, blah, blah, blah, may suspend the
17 execution until the full board shall have an
18 opportunity to hear the application of the
19 convicted person for any relief within the power of
20 the board.

21 It does not -- first of all, it's not
22 mandatory. It's you may, right? And that -- when
23 we say "may," words matter, it's prefatory, it's
24 not mandatory, right? There's discussion there,
25 but it's also the full board have an opportunity.

1 It says nothing to the declination of
2 availing themselves to vote, right? It just
3 doesn't -- it doesn't speak to that. There's
4 heavy, heavy emphasis on a case that is nonbinding,
5 that really if you look at the holding, what Fugate
6 stands for at most is you've got to have five
7 members appointed. That's what the constitution
8 requires. We have that here. That hasn't changed.

9 And, you know, I just -- in our brief
10 it hasn't been really talked about much today so I
11 want to kind of go there and then hear from you
12 what you would like to hear from me.

13 The relief they sought, they seek, I
14 mean, not only is there no clear legal right for
15 that relief, there is no legal authority to get
16 there. There are five members appointed. The
17 constitution gives you five, that's it. No less,
18 no more.

19 The governor can't appoint someone to
20 fill any role of a member who's abstaining.

21 THE COURT: Because that would make
22 six.

23 MS. PIPER: Because that would make
24 six.

25 THE COURT: I'll tell you what I've

1 wrestled with. The way it works with the judicial
2 qualifications commission, the hearing panel, so
3 the body that would handle the trial of a judge,
4 has three members.

5 Every once in awhile the member may
6 have a conflict. I did because they were figuring
7 out what to do with a judge on our municipal court.
8 And the rules are real clear, you can't be the
9 hearing officer or the chair of the hearing panel
10 for a judge who's from your circuit.

11 But that didn't mean we went forward
12 with two, it meant that the chief justice appointed
13 another judge to fill the judicial position of the
14 three-member hearing panel.

15 I don't know that that's all -- it's
16 certainly not in the constitution, none of that is
17 spelled out in the rules. But it was we have to do
18 something, because what is in the rules, what is in
19 the policy is if you have a conflict, you recuse.
20 I thought I could be fair, but it doesn't matter.
21 It's a structural conflict. We're in the same
22 circuit, so I shouldn't be in that group.

23 So they find a judge from another
24 circuit, she parachutes in and she handles it.
25 Technically did we have four people on the hearing

1 panel at the time? You could count and maybe, but
2 one was interim while one was recused and not
3 functioning as a hearing panel member. Isn't that
4 how it would work here?

5 MS. PIPER: No.

6 THE COURT: No. That was a quick
7 answer.

8 MS. PIPER: I appreciate that that is
9 a system that you have legal authority to do under
10 the JQC. That is not the case here. The
11 constitution is very clear, the law is very clear
12 about what authority the governor has with respect
13 to that board.

14 And he has three different scenarios
15 where he gets to play, you know, remove for cause,
16 remove because they're incompetent, or they're
17 very, very incapacitated, unable to perform.
18 There's no other legal mechanism for him to just
19 like slide someone in there.

20 THE COURT: He appoints everyone
21 on -- it's not like some of these government
22 agencies where the president of the Senate appoints
23 one and the speaker of the house -- the governor
24 appoints all five members.

25 MS. PIPER: That is correct. They do

1 have to be confirmed.

2 THE COURT: But the governor is the
3 selector or propounds the nominees for each?

4 MS. PIPER: That is correct. And I
5 guess just to finish kind of where I was and got
6 excited and moved around --

7 THE COURT: Sorry.

8 MS. PIPER: I think at most, Fugate
9 stands for that proposition that, you know, you
10 have to have five members elected. So even, you
11 know -- and as we've set out, the law very clearly
12 establishes -- and it's in our brief, you know,
13 under 42-9-7, a quorum is all that's needed to,
14 quote/unquote, legally transact the business of the
15 board.

16 You know, that includes the board's
17 business of ruling on a clemency application. That
18 is the board's business.

19 So even -- even if two abstain, we
20 have a quorum. And under Georgia law, the minimum
21 number that we need for a quorum to conduct the
22 legal transaction of the board's business, which
23 here is review of a clemency application, is met.

24 And unless you have further
25 questions, we'll incorporate -- rely on our briefs.

1 THE COURT: I do have a question.

2 MS. PIPER: Okay.

3 THE COURT: Is there something in the
4 law that says the governor could not appoint an
5 interim board member?

6 MS. PIPER: Well --

7 THE COURT: Or what you're saying is
8 it says these are the three -- you can do it in
9 three instances, because you've removed someone,
10 someone resigns -- I don't know what the third one
11 would be.

12 But because the law is silent about,
13 well, you know, if someone says because there's a
14 policy that says you should do this, I need to
15 recuse from this one -- let me ask it in a
16 different way.

17 What if three people had to recuse?
18 Then just there's no clemency hearing? You can't
19 do it?

20 MS. PIPER: In that hypothetical?

21 THE COURT: That's my hypothetical.

22 MS. PIPER: Your hypothetical.

23 THE COURT: Three people are
24 recusing, what do we do?

25 MS. PIPER: I would think that the

1 governor would be faced with a decision on whether
2 he would seek resignation of one if he needed to
3 replace one.

4 THE COURT: So that someone would
5 actually have to quit?

6 MS. PIPER: Well, here's the thing
7 about the executive branch, okay? Typically, you
8 have authority that is granted by the legislature.
9 And it extends no further than that authority.

10 THE COURT: At least in Georgia
11 that's how it works.

12 MS. PIPER: Which is, yeah, either
13 directly or by implication.

14 There is not anything that I've seen
15 that would say by implication he has this
16 authority.

17 THE COURT: Okay. We're clearly at
18 this liminal space in any scenario, I don't know
19 how you would have three people who had a recusal,
20 but it comes up, and then what do you do? Because
21 you need a quorum, which would mean you need three,
22 and you don't, you only have two.

23 But the answer wouldn't be, well,
24 then we're just not going to give you a clemency
25 hearing. It's too bad that your situation was so

1 high profile that three people recused.

2 MS. PIPER: Hopefully our board would
3 never be comprised in such a manner to face that
4 question.

5 THE COURT: All right.

6 MS. PIPER: Thank you.

7 THE COURT: Thank you. This was
8 dropped on your office with exceedingly short
9 notice. And that's not a knock on petitioners.
10 Everything is rushed. But you guys, it's always
11 fire drills, and it's still well put together, so
12 thank you.

13 MS. PIPER: I can't take credit for
14 that. It was a team effort.

15 THE COURT: I figured it's not just
16 one person but that the team continues to deliver.
17 So thank you.

18 Ms. Cino, or anyone else at the table
19 of five, but please identify who you are if you're
20 talking.

21 MS. CINO: Yes.

22 THE COURT: What do we do with
23 the you can't have six, you can only have five?
24 And really what has to happen is that Ms. McCoy
25 should recuse and not participate in any way,

1 because there really ought to be a chance to have
2 five people to convince and not four because it
3 really wouldn't matter what your team said.

4 It's impossible to convince
5 Ms. McCoy -- that's the wrong way to put it. It's
6 impossible to get a yes to clemency vote from
7 Ms. McCoy because she's not voting, and she
8 shouldn't vote.

9 But then I agree with Ms. Piper, it's
10 not right to say, well, now not only does he have
11 to bat seven fifty, but factually he has one fewer
12 opportunity to convince someone to get a yes to
13 clemency vote.

14 MS. CINO: Right, which --

15 THE COURT: But you can't have six
16 members.

17 MS. CINO: You cannot have six
18 members, you have to have five. But under 42-9-1,
19 the governor has the opportunity, if he receives
20 information deemed to be reliable, member of the
21 board by reason of illness or other providential
22 cause is unable to perform the duties of the
23 office, he gets to appoint somebody new, and it
24 doesn't have to be subject to the legislature
25 confirming it. I mean, if the legislature is

1 not --

2 THE COURT: Someone new who forever
3 replaces the person who's providentially
4 unavailable?

5 MS. CINO: So this is the part under
6 D. Any such appointment, if it's made at a time
7 when the Senate is not in session, can be effective
8 at interim. It can be interim.

9 THE COURT: Okay.

10 MS. CINO: The legislature is not in
11 session right now.

12 THE COURT: But what if it is?
13 Assume for a minute there's some master chess
14 players here. I guess, though, after the 24th you
15 have to get a new warrant.

16 But anyway, there's a new execution
17 warrant that's secured and now it's time to have
18 the hearing, and it's March 10th. The legislature
19 is in session. And Ms. McCoy is going to remain
20 providentially unavailable for purposes of your
21 client's clemency hearing. What then?

22 He has to go to the legislature to
23 get an interim appointment, or bizarrely interim
24 appointments are only available when the
25 legislature is not in session?

1 MS. CINO: Well, no. There is a
2 whole process that is set out -- if we start with
3 Section A, he has to call a counsel to be --

4 THE REPORTER: I'm sorry. I can't
5 hear you.

6 MS. PIPER: I'm sorry, and I
7 didn't -- 42-9 --

8 MS. CINO: No. No.

9 MS. PIPER: That's what I'm asking.
10 I can't hear what you're referring to.

11 MS. CINO: Sure. O.C.G.A. 42-13-2.

12 THE COURT: Hold on. Now you've
13 pivoted. You had said 42-9-1. Was that a miscite
14 or both statutes --

15 MS. CINO: I'm sorry. It's 42-9-12.
16 My apologies.

17 THE COURT: So neither.

18 MS. PIPER: 42-9-12?

19 MS. CINO: 42-9-12. My apologies.

20 THE COURT: Got it. That's okay. I
21 just wanted to make sure we're reading the right
22 statute.

23 MS. CINO: Yeah.

24 THE COURT: All right. 42-9-12.

25 MS. CINO: 42-9-12. Governor

1 receives information. Somebody is unable to
2 perform duties of the office. He shall call a
3 counsel composed of the Medical Association of
4 Georgia, president of the State Bar of Georgia,
5 commissioner of public health to determine if that
6 individual is not able to perform duties. He can
7 appoint some other member. And it operates as a
8 temporary suspension.

9 THE COURT: Okay.

10 MS. CINO: It's just a temporary
11 suspension.

12 THE COURT: Okay. So 42-9-12. I'll
13 have to explore that. But you made it seem like it
14 was contingent upon the legislature not being in
15 session.

16 MS. CINO: So it --

17 THE COURT: I don't mean to put you
18 on the spot. I'm going to read it and I'm going to
19 give people a chance to respond to that.

20 MS. CINO: I was looking it up as she
21 was stating that we can't have a sixth person. But
22 because it does say -- let's see. Ah, if the
23 Senate is in session, it has to go through the
24 Senate. If they're not, it's at interim, and
25 that's the statute.

1 THE COURT: But if they're in
2 session, it goes through the Senate for them to
3 approve the interim person or it's a completely
4 different piece?

5 It's the same concept. Someone is
6 providentially unavailable, and if they're not in
7 session, then the governor plus this board would
8 decide, here's our interim replacement.

9 But if someone is providentially
10 unavailable, I broke my leg and it's really painful
11 and I can't come, we've got to do the clemency
12 hearing, they can draft a substitute, and either
13 it's Senate approved if they're in session or it's
14 special board approved if they're not in session?

15 MS. CINO: So it seems to indicate
16 that it is interim, because then part E says during
17 the period of incapacity of the member of the
18 board, the member shall be entitled to receive
19 compensation and other benefits so --

20 THE COURT: Okay. I'm going to have
21 to get cozy with 42-9-12.

22 MS. CINO: 42-9-12.

23 THE COURT: All right.

24 (Off-the-record discussion.)

25 MS. CINO: They're an interim seat no

1 matter what.

2 THE COURT: Okay.

3 MS. CINO: And either there's an
4 appointment process out of legislative session or
5 in.

6 THE COURT: Understood. Other things
7 you wanted to add?

8 MS. CINO: Other things I do want to
9 add. If I can share a PowerPoint.

10 THE COURT: How long is the
11 PowerPoint?

12 MS. CINO: Twelve slides.

13 THE COURT: What's it about?

14 MS. CINO: Just detailing the Georgia
15 constitution and the -- well, I can just briefly
16 summarize. How about that?

17 THE COURT: Excellent.

18 MS. CINO: Does that make -- yeah,
19 it's late.

20 I want to state -- earlier you asked
21 for a hook on the ethical guidelines. So O.C.G.A.
22 45-10 -- 45-10-3 does impose mandatory duties on
23 employees, on our officials. And that's where the
24 hook is. They have to follow their ethical
25 guidelines. That's a statutory provision.

1 THE COURT: All right.

2 MS. CINO: I also want to talk about
3 the abstention. Abstention does not fix the
4 problem.

5 Abstention means we effectively have
6 Mr. Humphreys starting one vote down, a no vote.
7 And that is not constitutionally effective. It
8 means Mr. Humphreys already has one vote going in
9 that's no. And the constitution states that it has
10 to be five votes.

11 And I know they want to really parse
12 the words and say meaningful deliberation, as long
13 as she's not voting, we fulfill our requirement for
14 five. But under O.C.G.A. Section 42-9-20, in all
15 cases in which the chairperson of the board or any
16 other member designated by the board has suspended
17 the execution, which has occurred, of a death
18 sentence to enable the full board to consider and
19 pass on the same -- consider and pass on the same,
20 that sounds like a vote -- it shall be mandatory
21 that the board act within a period not exceeding
22 ninety days from the date of the suspension order.

23 And I realize that's about the ninety
24 days, but it contemplates that they are passing on
25 that. They're not sitting there and listening and

1 simply occupying a seat.

2 THE COURT: Okay. That was a good
3 summary of the PowerPoint. I don't know what was
4 in the PowerPoint, but it was a lot faster than
5 twelve slides. Thank you.

6 MS. CINO: And then finally there is
7 one last part, which is Fugate. We are in the
8 Fugate situation right now. There are only four
9 members because the abstaining member can't vote.
10 And Fugate requires to have that fifth vote -- not
11 a fifth person, a fifth vote.

12 And it's very, very important because
13 clemency is so different.

14 THE COURT: Why is clemency
15 different, meaning because the outcome of a failure
16 to get clemency is fairly profound?

17 MS. CINO: If Mr. Humphreys has an
18 execution -- let's say they restart that clock
19 tomorrow. We're going for a clemency hearing.
20 There's an execution. Whether it's Thursday,
21 Friday or next week within the warrant period, the
22 next day we can't wake up and say, oops, we got it
23 wrong.

24 There has never been four people
25 voting -- they said that themselves, at least since

1 2005, there hasn't been four people with a vote and
2 just to know -- just going in one vote down. That
3 seems ridiculous to say we're going to start that
4 today.

5 And Fugate stated a fifth board
6 member -- the opportunity to present a case is
7 unique and firmly rooted in the criminal justice
8 system when it comes to clemency.

9 A fifth board member might be
10 persuaded by the petitioner's case and may well be
11 able to move others on the board to favorably
12 consider a reprieve. It cannot be discounted that
13 fifth vote, that fifth member. That's all I want
14 to say.

15 THE COURT: All right. Thank you.
16 Ms. Piper?

17 MS. PIPER: Very short.

18 THE COURT: That's okay. You have
19 listened mostly this afternoon. So if there's one
20 very short thing or some short thing you want to
21 share, let's do it.

22 MS. PIPER: All right. I would like
23 to point out incapacitation, providential cause do
24 not in -- anyway, we're shoehorning conflict in
25 there. It's just not applicable.

1 And then I would like to, again, you
2 know, the fifth may -- the fifth may talk them into
3 clemency, the fifth may talk them all into not
4 giving clemency. That's all speculation.

5 And it doesn't matter, because at the
6 end of the day, yes, death is irreparable, but he
7 has no right beyond what the State of Georgia has
8 provided him in his application for clemency.

9 So you can't say he's harmed if we
10 are -- if we are providing that option as dictated
11 by the mandates of the constitution and state law.
12 That's all.

13 THE COURT: Okay. Thank you.

14 MS. CINO: Your Honor, can I add one
15 more thing? Sorry. It's very quick.

16 THE COURT: Okay.

17 MS. CINO: That suspension can be
18 lifted at any point. So the TRO is incredibly
19 important for the ninety-day stay for them to
20 appoint somebody new, that -- if they lift that
21 suspension, we have to go right into clemency
22 proceedings, and we don't even have the witnesses
23 ready to go. That thing is not occurring tomorrow.
24 We don't know when it's happening and we will not
25 be prepared.

1 THE COURT: Let me ask a little bit
2 more about that, and you don't need to worry about
3 responding to that. That is an important point,
4 just different from what we have been focusing on
5 because you or your colleagues have brought it up
6 several times. Because I have never been to a
7 clemency hearing. Apparently it is not just one
8 witness saying, hey, show some compassion. It
9 sounds like you have a whole host of people you
10 intend to call, and they were lined up for 9:00
11 a.m. tomorrow.

12 MS. CINO: Right.

13 THE COURT: So there are people like
14 landing at Hartsfield right now who are going to
15 have a great dinner and then be told to get back on
16 the plane because nothing is happening.

17 MS. CINO: I will let my colleagues
18 speak more about --

19 THE COURT: Well, I don't, because
20 it's 5:40, want to get into all the blocking and
21 tackling involved. Help me understand, it is not
22 just the lawyers and then Mr. Mom saying he was a
23 good kid or he was an abused kid. It sounds like
24 there are many, many, many moving parts. So being
25 told, hey, let's do it next Monday instead isn't

1 necessary -- as much notice as possible is critical
2 to get all the people there.

3 MS. CINO: Absolutely. It is mental
4 health professionals. It is character witnesses,
5 it is the lawyers. But it is a large moving
6 machine. It is almost like a mini litigation
7 trial.

8 THE COURT: How much notice did you
9 have that the clemency hearing was going to be at
10 9:00 in the morning tomorrow?

11 MS. WELLS: Your Honor, this is --
12 (Off-the-record discussion.)

13 THE COURT: You know how it works in
14 here.

15 MS. WELLS: Beth Wells. We got the
16 warrant December 1st, and we were caught off guard
17 by it because for things not relevant to this court
18 today, we then had to quickly move to get people
19 brought here. It is right before Christmas which
20 has made things incredibly difficult.

21 THE COURT: Okay. But my question is
22 you were able -- so tomorrow is the 16th. So in
23 basically two weeks, through Herculean efforts, you
24 were able to get everyone there. Anything shorter
25 would be even more difficult to do.

1 MS. WELLS: Yes, sir.

2 THE COURT: Got it. Do the way the
3 warrants work, that they could apply for a new one
4 and -- hold on one second.

5 (Pause.)

6 THE COURT: Could you get a -- you
7 wouldn't obtain it. But could the district
8 attorney obtain a warrant that -- I'm making the
9 dates up, but because the 24th is when this one
10 expires. So what would happen, they could
11 unsuspend, that the board could on the 22nd say we
12 unsuspend, clemency hearing is tomorrow, the 23rd
13 and execution is Christmas Eve 7:00 p.m. because
14 the warrant expires at midnight on the 24th, that
15 is procedurally permissible?

16 MS. WELLS: They could unsuspend the
17 minute we walk out of this courtroom.

18 THE COURT: Okay.

19 MS. WELLS: And they have unsuspended
20 a day after they have entered the order suspending.
21 We have had that happen.

22 THE COURT: In other cases?

23 MS. WELLS: Yes.

24 THE COURT: Okay. Got it. So this
25 is -- you are flying blind as to what is going to

1 happen.

2 MS. WELLS: Yes. That is why we are
3 requesting the TRO --

4 THE COURT: The TRO.

5 MS. WELLS: Or at least to the extent
6 of not having an execution under this warrant until
7 the court rules.

8 THE COURT: Got it.

9 MS. WELLS: Thank you.

10 THE COURT: Okay. You're welcome.
11 It is a new set of mechanics.

12 Okay. So I need to get Ms. McCoy's
13 records filed under seal. That is one part of that
14 document, set of documents. I will look through
15 the other part to see if there's anything that
16 needs to be disclosed that relates to Mr. Bennett.

17 And then there's the question about
18 the TRO just to maintain the status quo, which
19 today the status quo is that the execution or the
20 warrant is suspended. And that is the status quo
21 that a TRO would maintain.

22 But the more fundamental ruling is
23 when there is a clemency hearing, who is the a -- a
24 dais, I don't know how they say it. Is Ms. McCoy
25 up there, are there only four people there, or are

1 there five people and it involves this interim
2 appointment?

3 Okay. Anything else from petitioner?

4 MS. CINO: No, Your Honor, thank you.

5 THE COURT: From the respondents?

6 MS. PIPER: Just one housekeeping.

7 THE COURT: Uh-huh.

8 MS. PIPER: I think I heard that you
9 understood this. I just wanted to make sure you
10 did. The order from the Board as to the suspension
11 has to be lifted before any warrant can be stopped
12 for execution, if the warrant that we are on now
13 expires.

14 THE COURT: Got it. So, no, I want
15 to play this back because I didn't know that. Not
16 because someone told me something contrary.

17 But this order suspending means the
18 execution cannot go forward until it is lifted. If
19 this order is in place and I am opening Christmas
20 presents, then the warrant has expired, and no new
21 warrant can be sought until this order is lifted.
22 Once the order is lifted, someone can seek a
23 warrant. And then how long does the warrant live?

24 UNIDENTIFIED PERSON: One week.

25 THE COURT: Just one week --

1 THE REPORTER: I'm sorry. I can't
2 hear who is speaking.

3 THE COURT: We are going to go off
4 the record now. Okay. I will let you know when we
5 are back on the record.

6 (Off-the-record discussion.)

7 THE COURT: Let's get back on the
8 record.

9 THE REPORTER: Back on.

10 THE COURT: Thank you. All right. I
11 will keep working on this. And I will certainly
12 reach out if I have questions. Emails will always
13 go to both sides. And we will see what we can do
14 with this.

15 If anyone ever has a question, just
16 reach out to Ms. Niles. Email is the most direct
17 way to get to her. She will let me know. And we
18 will work through it.

19 And, again, thank you to both sides.
20 Everything is always so compressed as we approach
21 that deadline, and it involves so many different
22 layers of courts. We even have the feds poking in
23 here. So I appreciate everyone's focus.

24 And with that, you all need to settle
25 up with our court reporter. She has done an

1 excellent job of keeping us near microphones so
2 that she is able to make an accurate record of the
3 proceedings.

4 So thank you for that, Ms. Nichols.
5 And I will rely on petitioner's team to get those
6 exhibits to Ms. Nichols.

7 MS. CINO: I think they have been
8 sent.

9 THE COURT: Well, just make extra
10 sure. All right. Thank you, everyone.

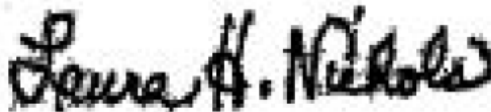
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12 PROCEEDINGS CONCLUDED AT 5:50 p.m. EST
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C E R T I F I C A T E

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the above and foregoing proceedings was taken down by me in stenotypy, and the colloquy, questions and answers thereto were reduced to typewriting under my supervision, and that the foregoing represents a true and correct transcript of the proceedings upon said hearing, to the best of my ability.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.



/s/ LAURA H. NICHOLS

Commissioner-Notary Public, State of AL
ACCR License No. 3, Exp. 9/30/2026
GA CCR No. 2714, Exp. 4/1/2026
TN LCR No. 679, Exp. 6/30/2027
Transcript Certified on 12/16/2025

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

FILED IN OFFICE
12/1/2025 03:23PM
CONNIE TAYLOR
CLERK OF SUPERIOR COURT
COBB COUNTY

THE STATE OF GEORGIA, *
v. * CRIMINAL ACTION NO.
STACEY IAN HUMPHREYS, * 04-9-0673
Defendant. *
*

ORDER

The Court having sentenced Defendant, Stacey Ian Humphreys, on the 30th day of September, 2007, to be executed by the Department of Corrections at such penal institution as may be designated by said Department, in accordance with the laws of the State of Georgia, and;

The date for the execution of said Stacey Ian Humphreys having passed by reason of supersedeas incident to appellate review; IT IS CONSIDERED, ORDERED, AND ADJUDGED by this Court, pursuant to O.C.G.A. § 17-10-40, that within a time period commencing at noon on the 17th day of December, 2025 and ending seven days later at noon on the 24th day of December, 2025, the Defendant, Stacey Ian Humphreys, shall be executed by the Department of Corrections at such penal institution and on such a date and time within the aforementioned time period as may be designated by said Department in accordance with the laws of the State of Georgia.

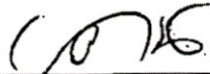
I HEREBY CERTIFY THE WITHIN AND FOREGOING TO BE A TRUE AND CORRECT AND COMPLETE COPY OF THE ORIGINAL THAT APPEARS ON RECORD.
CASE NO. 04-9-0673
THIS DAY OF Dec 25
Christina Hestley-Andrews
DEPUTY CLERK, COBB COUNTY COURT
COBB COUNTY, GEORGIA

In so ordering, this Court is aware of the current injunction in the case of *Federal Defender Program, Inc. and Virgil Presnell, Jr. v. State of Georgia and Christopher Carr*, Fulton County Superior Court, 2022CV364429 (May 17, 2022). This Court finds that Stacey Ian Humphreys is not a party to that action and it therefore does not enjoin his execution. *See* Injunction, p. 19 (identifying the plaintiffs); *see also* *State of Ga. v. Fed. Defender Program, Inc.*, 315 Ga. 319, 344, n.17 (2022) (same). The Court further finds that Mr. Humphreys' petition for rehearing or rehearing en banc was denied by the Eleventh Circuit on October 3, 2024, which was after the judicial emergency expired on June 30, 2021. *See* Fifteenth Order Extending Declaration of Statewide Judicial Emergency.

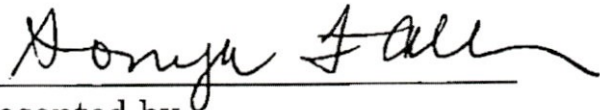
It is FURTHER ORDERED that the Clerk of the Superior Court of Cobb County, Georgia shall record this order on the minutes of the court and shall cause a certified copy of this Order for execution of the original sentence to be served immediately to the Attorney General of Georgia, the Cobb County District Attorney, the Commissioner of the Georgia Department of Corrections, the Warden of the Georgia

Diagnostic and Classification Prison, and Defendant's last known
attorney of record.

This 1st day of December, 2025.



ANN B. HARRIS
CHIEF JUDGE, SUPERIOR COURT
COBB JUDICIAL CIRCUIT



Presented by
SONYA F. ALLEN
DISTRICT ATTORNEY
COBB JUDICIAL CIRCUIT



THE STATE OF GEORGIA

EXECUTIVE ORDER

BY THE GOVERNOR:

ORDERED: That the Honorable Kimberly Beth McCoy of Bartow County, Georgia, is appointed to serve as a member of the State Board of Pardons and Paroles, for a term of office expiring December 31, 2027, to succeed the Honorable Margaret Ellen Heap, who resigned.

This 1st day of December 2025

A handwritten signature in black ink, appearing to read "B. Lh", written over a horizontal line.

GOVERNOR

BOARD MEMBER

Kimberly McCoy

Kimberly McCoy was appointed to the State Board of Pardons and Paroles by Governor Brian Kemp, effective December 1, 2025. Ms. McCoy, of Bartow County, joins the Board following her retirement from the Cobb Family Justice Center, a multidisciplinary agency where organizations collaborate to meet the needs of victims of domestic violence, child and elder abuse, sexual assault, human trafficking, and stalking. Ms. McCoy served as a leader in establishing the organization, the first of its kind in Georgia.



Prior to her 27 year career with Cobb County, Ms. McCoy worked with the Blue Ridge Judicial Circuit's District Attorney's Office where she began the Victim Witness Assistance Program. She implemented many programs for victims of crime and community awareness campaigns including a Grief Support Group for Homicide Victims and the Cherokee County Night Out Against Crime. Ms. McCoy was instrumental in obtaining a grant for an inter-agency Domestic Violence Task Force in Cherokee County. The

grant made it possible for law enforcement and Victim Advocates to work from a central location to investigate and prosecute domestic violence cases while simultaneously providing services to victims. She previously served on the Board of Directors for the Cherokee Family Violence Center, as an officer of the Cherokee County Family Violence Task Force, and on the Board of Directors for the Anna Crawford Center for Children.

Ms. McCoy was the Director of the Victim Witness Unit for the Cobb County District Attorney's Office from April 1999 to April 2024, where she also maintained a caseload providing services to victims of crime involved in capital cases and select high-profile cases. Ms. McCoy was also responsible for researching, writing, managing and administration of grants, resulting in the office being awarded over \$10M in grant funds. She is also part of the faculty for Georgia's Victim Assistance Academy, an initiative of the Criminal Justice Coordinating Council. She has been involved in Academy implementation, programming, and instruction since 2006. Ms. McCoy is a founding member of the steering committee that developed and implemented the SANE (Sexual Assault Nurse Examiner) Program in Cobb County, a program that provides specialized forensic exams and support services for victims of sexual assault.

Ms. McCoy previously served as a member of the Cobb County SANE/SART Committee, the Advisory Board for the Social Work Program of Kennesaw State University, the Cobb Collaborative, the Cobb County Law Enforcement

Association, the Cobb County Domestic Violence Task Force, and the Cobb Coalition for Child Abuse Prevention. She was a Board Member for the LiveSafe Resources, Inc. (formerly the YWCA of NWGA) from 2007 to 2013. She was appointed by Governor Sonny Perdue to Georgia's Sex Offender Registry Review Board from 2007 to 2012.

Ms. McCoy has been active with the legislation, presenting crime victim-related information to several committees, including working with the Prosecuting Attorneys' Council of Georgia on the passage of the Crime Victims Restitution Act of 2005 and with other advocacy groups for the successful revision to the Georgia Crime Victims' Bill of Rights in 2010. Ms. McCoy was the Project Director for the Cobb District Attorney's Office Domestic Violence Project from November 1997 until April 1999. In this capacity, Ms. McCoy was responsible for providing training and education to law enforcement and for educating the community at-large about domestic violence issues. Ms. McCoy was further responsible for creating and reviewing domestic violence protocols in the County and assisted in the creation of the first County Wide Law Enforcement Protocol on Domestic Violence.

Ms. McCoy obtained a master's degree in public administration from Kennesaw State University and holds a Bachelor of Arts Degree in Criminal Justice and Psychology from "The Women's College" of Brenau University. Ms. McCoy was a part-time professor for the Department of

Human Services at Kennesaw State University for over ten years.

Ms. McCoy received the “Young Alumnae Award” from Brenau in 1999 for her service to the community, the institution, and professional achievement. Further, she was awarded the 2000 Annual Victim Service Provider Award from the Crime Victims Advocacy Council and the 2001 VIP Award from the Cobb Coalition for Child Abuse Prevention. She was honored by the Criminal Justice Coordinating Council with the 2008 “Eagle Award” in the field of Advocacy. She was also honored with the 2012 VIP Award from SafePath Children’s Advocacy Center, the 2014 Pat Head Dignity Award from the YWCA of NWGA, and the 2014 Alumnae Professional Achievement Award from Brenau University. She was also honored by the YWCA of Northwest Georgia in March 2015 as one of Cobb County’s 15 Women of Achievement. She was awarded the 2022 VWAP Director of the Year from the Prosecuting Attorney’s Council of Georgia.

BRENAU

FALL 2008

Window

Annual Report of Donors
Crime victim advocate Kim McCoy
Helen Ray bids *adieu*

Brenau and the Global Economy

THIS SUMMER I VISITED TWO REMARKABLE individuals in Washington, D.C., both with strong Brenau connections: U.S. Sen. Chuck Hagel of Nebraska, whose wife, Lilibet, is a Brenau Academy alumna, and Dr. Gale Allen, a top NASA official who enhanced her science background with a Brenau M.B.A. Both individuals provided inspirational insight for our continued examination of national and global events and their impact on Brenau University.

Our 2025 strategic plan to become a widely recognized doctoral degree-granting institution took into account some evolving economic and demographic factors. First, in the future, fewer traditional-age students will be graduating from U.S. high schools and seeking undergraduate diplomas. Second, all demographic groups, particularly non-traditional students, will demand more advanced educational certification and graduate degrees because current and prospective employers will require those credentials. Finally, there is an opportunity for filling a void for a private, professionally oriented doctoral university in Georgia. Brenau's strategy, which includes strengthening and advancing the Women's College, fulfills the university's mission and assures its long-term fiscal and academic viability. Brenau committed itself to raise the bar in higher education and help fill these gaps in intellectually qualified professionals and responsible citizens.

For Brenau "the future" arrived slightly ahead of schedule and brought with it unwelcome economic baggage. In academic year 2008-09 we grew in overall student enrollments but had about 50 fewer new Women's College undergraduates than expected. Also, adverse economic impact on state revenues probably means eroding state financial support for private higher education. In response, we revised budgets and continue to exercise financial restraint. Brenau remains financially sound – in much better fiscal condition than other institutions, some of which reported enrollment declines as high as 30 percent.

I will not rehash the alarming economic problems that have dominated the news since my visit to Washington and have led to unprecedented government reactions. These solutions, I believe, address only festering symptoms of a much-deeper disease – a decline in the quality and effectiveness of scholarly, ethical education.

As I spoke with Dr. Allen, I was energized hearing her outline the possibilities of future space exploration. Given the astounding societal contributions begat by 20th century space exploration, can you imagine what might come from 21st

century missions? Before we launch the rocket, requirements of a manned Mars trip could easily lead to solar-powered terrestrial vehicles and cancer-fighting advances

in women's health as more female astronauts prepare for radiation exposure in long space journeys. Sadly, if our leaders fail to apply our limited resources of finance and collective will to the economic recovery effort, all of that could be jeopardized.

Sen. Hagel was no less thought-provoking. He clearly understands that educational opportunities and research generated huge advances in American productivity during the last half of the 20th century – the underpinning of national security and prosperity. We seem to have forgotten that history. In his book, *America: Our Next Chapter*, Hagel observes that U.S. companies represented 50 percent of the new common stocks offered around the world in 2000 – a good measure of business innovation, much of which stemmed from academic research. Today it is about five percent. In 2005 foreign companies won six of the top 10 U.S. patents. A closer-to-home example he cited was that the 15 education schools in one southeastern state from 1990-2005 graduated a total of only three new physics teachers. The last fact resonates deeply at Brenau. We constantly face the challenge of hiring qualified faculty in science, nursing, mathematics and other fields.

Sen. Hagel and Dr. Allen will agree, I believe, that Americans must invest more in education to provide a secure future. This juncture is where we as individuals come in. We must keep the pressure on our leaders so they will not short sell education and visionary programs in quick-fix solutions to economic problems. And, we need to rededicate ourselves to supporting – in any way we can – all legitimate educational institutions, especially Brenau, as we strive to make exemplary contributions to our global society.

These are tough, troubling times, but I feel buoyed by your encouragement and enthusiasm. I am thankful that I have you, the Brenau family, to help us meet the challenges.



Ed L. Schrader

Ed Schrader, Ph.D.
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Billy Howard



Ray of Sunshine

BY DAVID MORRISON

As a little girl she often climbed aboard a chair in The Orchid Club and peered through the kitchen door window at her parents as they mingled with patrons of the popular Tulsa supper club, focusing particularly on her vivacious mother, Miss Oklahoma of 1929, who always seemed to be the center of attention. She listened to the band, watched the people dancing, then trundled off to the little room they kept for her and fell asleep. After closing time, her parents gathered her up and took her to the modest, well-kept brick home where she grew up – the place where the bootlegger from across the state line in Joplin, Mo., dropped off the weekly shipment of wine and liquor for the family business.

Oklahoma was the last state in the Union to repeal Prohibition, and did so only in 1959 – 26 years after ratification of the 21st Amendment to the U.S. Constitution overturned the Volstead Act that had banned sale of all alcoholic beverages throughout the country. Although many folks in the state winked at the anachronistic, illogically applied state and local laws, for the next 23 years the one adult beverage you could buy legally in a bar was 3.2 beer. If you wanted a cocktail in a public place, you had to take your own bottle – purchased from a state-owned liquor store – to a city-licensed private club, which could serve the member

only a “set-up” for a drink. For patrons who could show an out-of-state driver’s license, establishments like The Orchid Club were merely local watering holes; for the locals who wanted to skip the brown-bagging and buy a drink, however, they were speakeasies.

For Helen Ray, it was the genesis of a serendipitous, eclectic education that continues today on the eve of her retirement in December as Brenau University provost and the institution’s top academic officer.

Ray makes no apologies for what she describes as “just something my parents did.” It helped shape who she is today. Her parents’ topsy-turvy schedules nurtured her independence and initiative. She attributes the ease with which she moved in often male-dominated environments in her education and career to that – and to the tutelage of her sometimes rowdy and mischievous brother, Edward, eight years her senior, who taught her “that I had to be tough.”

She idolized her big brother, who occasionally let her play baseball and football with him and his friends and help him with his chores. “I could throw a spiral that would totally impress you,” she says. “He taught me to mow the lawn, although I didn’t understand until later his hidden agenda.”

Her mother, Mary, technically was Rosa Maria Marco, a first-generation Italian immigrant. Mary’s parents settled in an unlikely Italian enclave in eastern



Oklahoma, where there was plenty of work in the mines. Once she won the Miss Oklahoma title, however, Mary lit out for New York, where she became a dancer, a model and a passionate consumer of the city’s opportunities for culture and self-education. There she also met and married Helen’s father, Edward Cederbaum, a Prussian-born Jew. They moved to Tulsa when Helen was 5 years old.

In her home in Gainesville, Ray proudly displays a vintage portrait of her grandparents with a toddler version of her mother posed atop a short column. “The joke in our family was they put my mother on a pedestal and there she stayed for the next 91 years,” Ray beams. “But she was my best promoter and best critic. What she did was liberate me at an early age.” And her mother gave Helen a love of learning. Her mother’s antique mahogany credenza, which now displays bottles of wine, was a repository of encyclopedias, magazines, books of Aesop’s fables and plays of Aeschylus in Tulsa. With parents who never “asked me about grades or whether I’d done my homework,” she took charge of her own education. After attending a Catholic elementary school, she wheedled her way into Tulsa’s newest public high school instead of going to the older school in her neighborhood. Very soon after she entered the University of Oklahoma as a freshman, she says, “I knew I wanted more from my college experience than ‘Boomer Sooner.’”

RAY CAME TO BRENAU in the summer of 1993, a year after trustees officially voted to transform what was then a 115-year-old women’s college into a university. It still clung stubbornly – and appropriately, in her view – to its heritage as a women’s college, but it also was wrestling with the pantheologic future of integrating into the fabric of the place the somewhat unwieldy



As Brenau Provost and Vice President of Academic Affairs Helen Ray prepares to retire at the end of 2008, she reflects on the life-long journey that shaped her personally and professionally. In the photos clockwise from the left, Ray in Florence, Italy, reflects her love of travel that she says she will have more time for now; the new University of Virginia Ph.D. with a love of learning that continues; and Ray as a single mother with sons David and Jim, her love of family.

and organically evolving coeducational evening and weekend programs on remote campuses. The university still delivered courses via the antiquated quarter system, abandoned by then on many campuses throughout the United States.

John Burd, the Brenau president from 1985-2005, says he recruited Ray from her previous post as vice president of academic affairs at Peace College, Raleigh, N.C., because she hit all the hot buttons Brenau required: experience in dealing with the accrediting body, the Southern Association of Colleges and Schools, “which we needed;” a genuine intellectual who at the same time was a true “people person;” and “a fantastic knack for hiring good faculty.”

Plus, Burd adds, Ray had considerable experience with single-gender education. Peace is a women’s college. At the end of her own freshman year, when she decided to get out of Dodge (or in this case, Norman, Okla.), she headed for Randolph-Macon Women’s College in Lynchburg, Va., where she majored in French with minors in German and art history. In an interview in these pages a year ago Ray explained with her characteristic dry wit why she chose a women’s college: “That was where all the smartest, cleverest women went, and I wanted to be one of them.”

Ray earned a Ph.D. in French language and literature in 1979 from the University of Virginia, which had just admitted its first female undergraduates nine years earlier. Her M.S. in French and linguistics was from Georgetown University in 1969 only a year after trustees formally abandoned the all-male tradition of the Jesuit institution.

Her greatest awakening, “the big exclamation mark,” as she describes it, came during an undergraduate year she spent at the University of Paris in the mid 1960s. By her own description she was “the cute little American who wandered around the streets of Paris in heels, a black shift and a cute little hat reading Moliere, Baudelaire, Sartre and Ionesco, going to see these little events, these ‘happenings’, in little out-of-the-way Parisian theaters, and dining each Friday with French dignitaries at *Chez Maxime’s*.” She learned quickly, however, that for many of her fellow students in those days at the height of the Vietnam War,

America was not the center of the universe. Her French language abilities allowed her to bob around freely in the sea of anti-U.S. sentiment. But as another American in Paris at the time recently wrote, the *lingua franca* in 1960s Paris was Marxism. There was an unabashed fascination with Latin American and Chinese communism – and with ideas that were just beginning to blossom on American campuses. In a two-or three-year period, movements in the country, largely driven by students and intellectuals who took to the streets with French revolutionary zeal, led to remarkable reforms in that democracy, particularly in matters concerning family law, the rights of women, divorce, contraception and other issues.

She had moved on to Georgetown by the spring of '68, that pivotal time in American history which saw the assassinations of Robert Kennedy and Martin Luther King Jr., riots, anti-war protests and many other signals to people of Ray's generation that the world of their parents had forever changed.

Ray did not walk onto the Brenau campus wearing a Che Guevara beret and carrying Chairman Mao's little red book. In addition to that rich personal experience, what she brought was a wealth of professional experience from 15 years of rising in the academic ranks as a French professor at Lynchburg College and another decade of growth as an academic administrator at Peace. All of her personal and professional experience outfitted her with clear – maybe even a tad radical – convictions of what higher education needed to become in the 21st century.

“Liberal education must be experienced in combination with strong professional preparation. It's not one or the other,” she says. A true college education “is not just about what you want to do, but how you learn to make changes in your life, how you get started, how you can discover different ways to feed spirit and soul – and still make a living. ... It is not just about the classes you take. It is about your life experience.”

Ray acknowledges that she has had some significant accomplishments during her 15-year tenure at Brenau and that she has been intimately involved with shaping the future of the university.

“But what does that mean?” she asks rhetorically. “It means that I've been doing my job.” Nothing would have happened, she adds hastily, without support and collaboration of faculty, staff, administration and many others in and around the university family. “A university is like a *kibbutz*,” she explains. “You just can't get anything done alone, and everything is interconnected.”

As Brenau's new provost, Ray spearheaded the drive, against some resistance, to abandon the academic quarter calendar in favor of the semester system. Once Brenau made the move, the other Georgia-based hold-outs tumbled like dominoes. She worked with faculty to reorganize academic departments into the four schools that now exist – and which more closely reflected the culture and mission of the university. Psychology, for example, moved from the School of Education to the School of Health and Science. The university was kicking tires on starting a physical therapy program when Ray arrived, but she redirected efforts toward occupational therapy, which takes a very holistic approach more in line with the liberal arts. The Master's degree program created as a result was one of the first in the nation – even before the graduate degree became a preferred credential of the top OT professional association. She led the way in expanding the institutional research department and helped revive strategic planning. Part of the latter process was creating a curriculum for the future – the kind of thing Ray says academicians can discuss and debate for years without accomplishing anything. She developed a compelling rationale to put the new curriculum planning on a two-year timetable, and then handed it over to the four deans to make it happen.

“In my years on the faculty, Dr. Ray always stood as the beacon of all that was the best that Brenau could be,” said J. Kay Keels of Murrells Inlet, S.C., the former head of M.B.A. programs at Brenau and now associate professor of strategic management at Coastal Carolina University. “She challenged all of us to always work to be better than we ever thought we could be.”

Burd also handed Ray responsibility for bringing more

technology to the classrooms at Brenau, which resulted in creation of the Redwine Center in the library and other technology-equipped environments on campus. However, she chuckles as she confesses that, when she unveiled her plan to the administration and trustees, it was the first time she'd ever done a Power Point presentation on a computer.

This year the French professor takes special pride in Brenau's selection as one of only 10 universities in the nation to participate in the Network for Effective Language Learning, a program to stimulate innovative technology-based approaches to teaching foreign language. And you can find her every Monday, Wednesday and Friday in the new Language Bistro, modeled after one of her beloved Parisian cafés, as a student in Brenau's new foreign language offering – professor Larry Bolling's “sold out” Italian class.

IT IS NO SECRET that Ray was a top candidate to replace Burd when he retired. If she harbors any disappointment over trustees' ultimate selection of Ed Schrader as Brenau's ninth president, she has kept it to herself. Truth told, Ray shrugs, she and Schrader are *simpatico* in many ways, particularly in their liberal political and educational philosophies. When the provost and the new president compared notes on the nuts-and-bolts work she already had undertaken with deans on development of a new curriculum and his ideas for creating ground-breaking “four portals” curriculum at Brenau, there were few discernible differences.

“She is the consummate professional,” Schrader says, “every bit the true leader of the faculty that she was before. She does not carry a personal burden into any intellectual discussion. You can't say that about many people. She is at her heart and core a scholar and a defender of liberal learning.”

That's a hard task, Schrader adds, particularly in some traditional liberal arts domains like foreign languages. “Brenau maintains a commitment to the learning of language, not as a byproduct but as a co-product of exposing students to broader culture and enriching their global perspectives,” he says. Many schools have “opted for the easier path” of not requiring students to study second languages at all. Also, Brenau and other institutions react to considerable pressures to train people for jobs as quickly as possible, rather than to educate them. That means more pre-professional instruction earlier in students' college careers, leaving little time for any other courses. Ray has helped the university resist those pressures, Schrader says, and find its voice for the future.

“A provost, if he or she chooses to be, becomes the artist who sculpts the faculty, assembles the mosaic of intellect and personality, so that it fits the institution, and Helen is very good at that,” Schrader says. “The faculty respect her and follow her leadership, not begrudgingly, but willingly. I don't think we could have put together this new curriculum had that not been the case. Her advocacy of 21st century approaches to teaching the liberal arts through a new core curriculum that reflects the strategic plan and a new mission has created a fluorescence of courses rich in interdisciplinary matter and liberal learning.”

“WHEN YOU GROW UP CATHOLIC, you've got a whole lot of names,” says Helen Theresa Cederbaum Staples Ray. She jokes that the only commonality on each of the diplomas that hang on her office wall is “Helen.” In 1983 the name issue set out on a path to become more complex than normal when, her first marriage having ended, she and her two sons, David and Jim, left Virginia for North Carolina. She was a single mom with a promising career, she recalls, “and I was fine with that.” Then, she went to a dinner party at the home of the CFO of North Carolina State University and noticed a “tall, handsome professional gentleman standing in a doorway.” When they struck up a conversation, she says, “I really didn't want to hear about his ex-wife or his ex-girlfriend, but here was a computer scientist from Research Triangle Institute, a Princeton graduate with a Ph.D. from Chapel Hill who spoke some French. So I remember thinking, ‘Hmmm. He's a possibility.’”



Helen and Bob Ray, who is “the genius in the family,” according to the Brenau provost.

Helen and Bob Ray have now been married for close to 20 years, with four grown children between them. Bob currently serves as senior systems analyst for the federal court system in north Georgia and, as Helen puts it, “he is the genius in the family, now a far more serious student than I.”

The Rays' Gainesville home serves as something of a museum for their blended families and eclectic interests. With strains of Debussy in the background, she sits sipping tea in a striking great room with a vaulted, sky-lighted ceiling, red brick walls brightened by her mother's paintings and a view through an expanse of glass to the covered-patio and plantings in the well-kept back yard.

“I have my cats, books, plants, music, my family, new destinations, the garden. When people ask me what I'm going to do when I retire. ...” she says, looking around her comfortable surroundings, “I'll probably think of something.”

As the conversation turns to her educational philosophies and how she might shape future learning, the obligatory interview question emerges. “If you ruled the world, ...”

“If I ruled the world?” she interrupts with mock incredulity. “I thought I did.”

Ray with President Ed Schrader, business professor and Chinese language instructor Greg Chase, and Trustees' Chairman Pete Miller in China during negotiations to establish “sister institution” relationships with three Chinese universities. In the foreground are two current Brenau students, Shuchang Liu and Meng Liu, and Zhengzhou University former dean and English Professor Li Yunlou, who helped organize the trip and select scholarship students.



In Qatar in March Ray was keynote speaker at the Arab Colleges of Education Deans Association, attended by about 50 deans from institutions throughout the Arab world. With Ray, from the left, are former Brenau professor Mickey Mathes, who remained in Qatar following a Fulbright Fellowship, Dr. Fatima Al-Maadadi, Associate Dean for Student Affairs for the College of Education, Dr. Ray and Dr. Hisa Sadiq, Dean of the College of Education on the right





Kimberly Smith

Left: Photos of homicide victims in the past decade help advocate Kim McCoy remember the real costs of skyrocketing murder rates in America's smaller communities. She found her calling as a Brenau undergraduate. Now it is difficult to differentiate between the job and the woman.

Crime's many faces.

BY DAVID MORRISON

On April 17, 2003, Lawrence Rice, nursing a 13-year-long grudge against a former supervisor, went to the man's home in the quiet Atlanta suburbs near Marietta, Ga., tied up the man's 47-year-old wife and 14-year-old son, then hacked and bludgeoned them with a hatchet. Shortly afterward, a 12-year-old girl came home from school to the gruesome scene, her mother dead and her younger brother soon to be. In July of this year, Rice received a

sentence of death by lethal injection – the first time a Cobb jury has imposed that penalty in almost a decade. A key piece in the conviction was the testimony of now 17-year-old Marlee Mincher, the only surviving member of the brutalized family. Her father, Trevor Mincher, died of cancer in 2005, two years after the deaths of his wife, Connie, and son, Ethan.

ON THE EVE OF JURY SELECTION FOR THE TRIAL, Kim McCoy, WC '92, anxiously “enjoyed” a rare moment of quiet time in her fashionably cluttered office in the modern judicial center complex just off Marietta's peaceful and picturesque town square. She knew the trial could last six weeks, but the process of picking a jury had been delayed while the trial judge and another jury considered the defendant's mental capacity to stand trial. The Brenau psychology and criminal justice major's concern, however, was not Rice's mental state, but that of Marlee Mincher and other victims of the crime.

McCoy heads the Victim Witness Unit for Cobb's district attorney. She oversees all cases covered by Georgia's 1995 Crime Victims Bill of Rights, but she personally handles cases involving the death penalty. Prosecutors in the county prepare witnesses for their trial testimony, going over facts and statements that defense lawyers will thoroughly and vigorously challenge in the courtroom. McCoy and her staff of nine advocates and two support personnel help guide victims and witnesses through the complexity and confusion of the criminal justice system – through myriad pretrial delays, appeals and legal maneuvers. They take care of creature comforts occasionally and almost always address emotional needs and frustrations through what often is a years-long ordeal.

“What most people know about the criminal justice system they've seen on TV,” McCoy explains. “On shows like *Law and Order*, the crime happens and the perpetrators are brought to justice in 52 minutes.” In McCoy's world, things are considerably different.

The Mincher case is exhibit A. Police arrested Rice one day after the murders in what appeared to be an air-tight case. That was more than five years before his trial began. According to *The Marietta Daily Journal* editorial applauding the verdict, with the inevitable appeals, “Rice will be an old man indeed before he finally receives the full measure of justice.” Another example is that previous Cobb death penalty case. A jury in 1999 condemned Virgil Delano Presnell Jr. to die for kidnapping and murdering two 8-year-old girls, drowning one of them in a creek. The crime actually happened 30 years ago. Presnell still resides on death row.

Richard Malone, executive director of the Prosecuting Attorneys Council of Georgia, argues that one tragedy of the system is that crime victims often run out of gas, emotionally and economically, before justice is served. Emotionally, victims must continually relive some of the most traumatic occurrences life can throw at them. Practically, some witnesses may have to take time off work repeatedly to give depositions or testify in trials. Key witnesses with unsympathetic employers won't risk losing livelihoods, even if their failure to testify means the perpetra-

tor goes free. There are also guilt-ridden family members who obsess over whether they could have prevented the crime or who don't want to provide testimony that could send a loved-one to prison or death row. Also, defense lawyers can be brutal in court, even to victims of the most heinous crimes. But so can prosecutors, who sometimes focus on courtroom battles and legal details so much they forget to attend to needs of witnesses and victims' families. As ex-prosecutor Malone puts it, those who commit crimes have already victimized these people once. Advocates like Kim McCoy “just want to make sure that the criminal justice system does not victimize them again.”

McCoy became head of the Cobb County Victim Witness Unit in 1999, two years after she joined the staff to manage a domestic violence program. She has a Master's degree in public

*In Kim McCoy's world,
there are no victimless crimes.*

administration from Kennesaw State University, where she occasionally teaches classes. She lobbied for passage of the Georgia Crime Victims Restitution Act of 2005. Last year Gov. Sonny Perdue added to her impressive credentials in social work, family violence and community work by appointing her to the Sex Offender Registry Review Board.

However, her career working with crime victims began at Brenau. The summer before her senior year, she took an internship near campus in the Hall County victim witness program, and she was hooked. She stayed on as a volunteer.

McCoy was convinced that working with crime victims was the career for her, but at the time victim witness advocacy was a relatively new field with few jobs available. She enrolled in graduate school at the University of Georgia, but before the first semester ended, the dyed-in-the-wool Georgia Bulldogs fan got a call from another Brenau alum. **Jessica Vaughn Moss, WC '82,** reported to McCoy that Cherokee was about to start a victim witness program. McCoy's only professional experience had been that internship, but less than a year out of Brenau she got the job and ran the program for five years.

“I was blessed enough to be in the right place at the right time,” she says. “But this work has become a passion. I educated myself. I worked hard. I learned something every day. I cannot think of anything that I would rather do. All of my education, all of my background has led me to this.”

continued



Although DAs say you can't teach qualities victim witness advocates require, McCoy's Brenau experience prepared her less than a year after graduation to start shaping the new profession. Now she's a leader in the field, quite willing to share what she's learned with others.

KIMBERLY BETH MCCOY who has three sisters and a brother, grew up in Bartow County in Kingston, a northwest Georgia town with her parents' general store at the one-caution-light town's lone intersection. She attended private Darlington School in nearby Rome and, after her first college-shopping visit, quickly dismissed Brenau as a prospect. On a second visit, "the minute I walked through that gate, I knew it was where I needed to be," she says. Her best high school friend **Stephanie Dodson Hart, WC '92**, came with her.

There is no doubt of McCoy's school loyalties. She jokes that her office "doubles as a store room" with boxes of case files labeled with names familiar from sensational news accounts (the cartons marked "State v. Turner" deal with the case of Lynn Turner, convicted for the antifreeze poisonings of her Cobb County police officer husband and Forsyth County fireman boyfriend). Numerous other appointments and bits of memorabilia, however, bear the Brenau logo. Richard Malone, who has known McCoy since he took the Prosecuting Attorneys Council job, says he can't recite many details from McCoy's resume, "but, believe me, I do know that she went to Brenau."

McCoy remains active in alumni affairs. She's a regular at May Day reunions with her classmates and Zeta Tau Alpha sisters; she's also an alumni philanthropy chair and a member of the Heritage Society, an ad hoc organization of young Brenau alumnae in the Atlanta area. She and fellow alumnae Hart and Moss remain close. Moss works in the same building where she is Cobb's deputy chief solicitor, and she is married to Cherokee District Attorney Garry Moss.

McCoy initially planned to become a child psychologist, but confesses, ironically, that she feared daily involvement with desperately troubled or traumatized kids. Former Brenau criminal justice professor George Lucas steered her toward her unique role in the criminal justice system. She states unequivocally that her entire Brenau experience nurtured her suitability for victim witness work.

"If you can live in a sorority house with 30 other women and survive, you can do just about anything," she quips. But, she adds seriously, "I am a huge proponent of single-sex institutions." One complaint against all-female colleges is they do not prepare young women to function in a dual-gender world. McCoy says she had that part covered already because most of her high school friends were male. Besides, she adds, "women are sometimes harder on other women than men are. Women have to learn to compete and interact with other women, too."

Still, gender probably plays a significant role in victim witness advocacy. Today all 49 Georgia judicial districts have victim witness programs. Women run 47 of them.

"The job fits women's nature," says Malone. "There is a lot of compassion required for someone, day in and day out, to deal with people who have been victimized by crimes, had their lives thrown into turmoil and sometimes changed forever. Men aren't wired that way. Kim McCoy is exactly what we need for that kind of job." Don't think for a moment, however, that her compassion signals weakness. "You talk about advocates – Kim is a formidable advocate," Malone adds. "She is compassionate, but if you get in her way, look out."

Cobb County District Attorney Pat Head elevated McCoy to her post shortly after he was elected as the county's top prosecutor. He says probably no formal education could specifically prepare a person for such a challenging assignment. "It's more personal attributes," he continues, "like establishing a good rapport with people and being very, very organized." Whatever the attributes are, he adds uneffusively, McCoy seems to have them. "I pretty much told her she could run the department any way she wanted to as long as we didn't have any problems. We haven't had any problems."

In addition to providing victims and their family members information about procedures and nuances of the legal system and keeping them updated as a case progresses, the victim witness advocate's major function is that of logistician: there are a lot of moving parts in a criminal prosecution, Head explains, particularly one that involves the death penalty.

IN SEPTEMBER 2007 KIM MCCOY TRANSFERRED virtually her entire operation more than 300 miles to coastal Brunswick, Ga. Stacey Ian Humphreys was on trial there for the 2003 murders in a Cobb County subdivision on two real estate agents – 33-year-old Cyndi Williams and 21-year-old Lori Brown. Each young woman have been stripped naked and shot in the back of the head.

Humphreys withdrew money from ATMs using the victims' bank cards. Police and federal marshals caught him in Wisconsin after a high-speed 35-mile automobile chase. Defense lawyers argued that Humphreys could not get a fair trial in Marietta because of sensational pre-trial publicity, so the trial judge ordered the change in venue.

McCoy's office had the task of booking travel, making hotel

The one unanswerable question is 'Why?'

accommodations, providing meals and handling many other arrangements for an array of witnesses that included federal and state law enforcement personnel, forensics experts, bank employees and others and for members of the victims' families. The trial lasted 31 days. Glynn County jurors put Humphreys on death row.

"Kim was the rock for me," says Teri Marks Brunner of Norcross, Ga., Cyndi Williams' sister. "In this most horrible situation that anyone could imagine, there is this person who is not only as solid as she can be, but compassionate and able to answer every single question. Sometimes it was just a hand on my shoulder. She helped me maintain my sanity through the trial, probably, because I was feet away from the man who murdered my sister. Just a hand on my shoulder. She's an incredible woman. She became a



friend to my family."

Cyndi Williams' father George Marks shared similar sentiments. "When you go through something like this, you are grasping for someone who can give you answers and let you know what is being done and what could be done," he says. "Although we live in Colorado, Kim was right there for us all the time. Her explanations were thorough and fair. She was extremely professional, but she also proved to be an extremely compassionate person."

Marks says he recalls at the trial McCoy carried with her a crayon drawing by her niece, and that drawing "told me this lady has some balance in her life, and we took comfort from that."

Lori Brown's father, Wayne, concedes that during the frustrating ordeal he "definitely stayed in the hair" of prosecutors and police, especially when nothing seemed to be happening. He credits McCoy with getting his family what answers she could and calming him down "in a very delicate way with an unassuming manner."

"Sometimes you see people who are tailor-made for a specific job where the person and the job are one, and that is Kim. [District Attorney] Pat Head could have searched the world over and not found anybody more suited to that job than Kim McCoy. She is a credit to that office in every respect."

Unfortunately, McCoy probably will have even more interaction with victims' families in the future. Statistics indicate that violent crime, like everything else, is migrating to smaller communities and the suburbs. In 1980 about 223,000 people lived in Cobb County, and there were only five cases of murder and manslaughter. By 2005 the explosive growth of the county had more than doubled the population to about 450,000. The number of homicides and manslaughters more than quadrupled.

PROSECUTORS AND CRIMINOLOGISTS will not state that victim witness programs themselves are a crime deterrent, but they agree that helping victims and witnesses persevere through long ordeals ensures more convictions. McCoy's great success, however unquantifiable, has been putting human faces on victims and their families.

Homicide is but one crime that generates loss and suffering. Members of McCoy's advocacy staff are assigned to a specific court and one day may handle a shoplifting case and the next a rape.

"You see so much trauma and so many people whose lives have been irrevocably changed because of some horrendous acts. The difficulty is that you cannot tell anybody why. You can say bad things happen to good people, but when it is your family member who has been murdered in some random act of violence, that's just not acceptable."

"Every case is different. All victims are different. But in every victimization there is a loss – a loss of property, a loss of life, a loss of trust in people and a loss of faith in your community and the legal system."

"Some of them," McCoy says, "are just gut-wrenching."

Charming Donny

The mountains are silhouetted darkly against the evening sky as the sun drops below the horizon. Maggie Valley is growing serenely quiet as the tourist traffic ebbs away. A rumbling sound approaches from around the corner, and three, four, five heavy motorcycles pass through the little North Carolina town, heading for Nantahala Gorge. No, these are not Appalachia's answer to *Sons of Anarchy*, television's outlaw biker gang that runs the fictional California mountain town of Charming like mobile Mafiosi. This group includes a pastor, an industry executive and one Donny Moore, who just retired as Brenau University's Augusta campus director.



MOORE THUMBS THE STARTER BUTTON on his Harley-Davidson and the big engine springs to life. Little silver skulls stand out like twinkling stars. But his leather jacket creaks as he lets out a hearty laugh when you ask him about the biker culture of beer, babes and bar brawls. "No, I've never tried that, and with two fellow academics and two police officers for riding buddies, it's not likely I'll get into that, either," he says. "We're just regular guys, whether it's in the classroom or on the highway." All the biker stuff is just a way to have a little fun and putter around the mountains.

Although he will have more time for motorcycles now that he's given up his day job, when Moore was on campus, he left the leather at home. Moore was always impeccably dressed in suit and tie and with an ever-present smile. Charming though he was, the director looked more like a Lexus salesman than an outlaw biker.

The already well-running Augusta campus flourished after Moore took the handlebars in 2002. There are close to 300 students enrolled at the two Augusta locations for the 103 classes on the fall schedule. Although Brenau moved off the U.S. Army's Ft. Gordon post, military personnel remain a strong market. Students bring a large variety of backgrounds to the classroom. The campus specializes in courses that improve highly valued professional skills, such as accounting, managerial leadership and finance, but it also provides a breadth of topics

ranging from art appreciation to science concepts "that rivals many larger university campuses," Moore says.

"Running a campus is no big deal," he explains. "All it takes is good communications, and a bit of organization. Plus, you do your best to be a nice guy."

Moore's retirement set off a mini-chain reaction in the Brenau Evening and Weekend College. His replacement is Angela Elkowitz, who previously ran the EWC programs in Gainesville. Her replacement as Gainesville campus director is Rosanne Short.

According to Elkowitz, Moore may have been sandbagging us a bit with his "no-big-deal" notion. "I'm finding out every day what a great and dedicated job Donny has been doing here," she says. "It takes a while to realize all the different things the Brenau Augusta staff have to do on a day-to-day basis – from signing up students for classes to managing the facilities, making sure the classrooms are clean, the power bills paid and the water fountains working."

Meanwhile, these days you're likely to find Moore on his hog rolling up the Cherohala Skyway, back down the Tail of the Dragon through Deal's Gap to Fontana Lake – a North Carolina-Tennessee route regarded as one of the great motorcycle treks in the western hemisphere. The biggest challenge he and his biker gang face is finding some little local restaurant with a nice prime rib.

– Rudi Kiefer



Contact sports:

Brenau intercollegiate teams build camaraderie, competitiveness



Soccer

The facts: You play outside whether its 100 degrees or freezing, slippery rain. You play on turf, which can be cement or quagmire. At the beginning of the 18-game season, you try to remember to bring the sunscreen. At the end, it's hand-warmers and earmuffs. Your basic equipment for the sport is arms, legs, feet and sometimes head. Goals are huge, but if it is so easy to get the ball inside one, why is it that most games end in single-digit scores?

Golden Tigers soccer players know what's in store, but still you can't get them to say their sport is tougher than the rest – at least not out loud. They concede that players on other team sports work very hard to perfect their skills, but they know from experience that soccer has challenges all its own, which is precisely why they love it. Kelly Young, a senior history major from Lawrenceville, Ga., likes the game's complexity. But she really likes the contact. "You get to run into people," she says. "You have to see the whole field at once and know where your opponent and your teammates are."

Brenau athletes like Young learned soccer fundamentals years ago, but they say they're still working on the many skills required by the game. "You can never be perfect," says Leanne Rowley, a junior business major from Ontario, Canada. "There's always someone challenging you for your spot." But it's that striving to be perfect that motivates these players even through three-a-day summer practices. This year head coach Mike Lochstampf shipped the team out to Jekyll Island, Ga., but wind sprints in the sand do not exactly make for a nice day at the beach.

Kim Meirowitz, a senior international studies major from Augusta, Ga., is known to take ice baths after games – almost as if the normal pain and suffering of competitive intercollegiate sports was not enough. "Everyone ends up pushing through injuries," she says. "It's constant pain and constant overcoming. Soccer is our life."

The upside is those who invest body and soul into discipline, teamwork and conditioning win games, or at least revel in seeing their teammates, or themselves, excel. And that, Meirowitz says, makes the pain worth it.

(continued)

Above left, junior forward Lily Futrel of Savannah, Ga., kicks out against Reinhardt College in a nearly season 1-0 loss. Left, Candian Leanne Rowley, junior, on the road.



Basketball

"Whenever you see a basketball player on campus, you see several basketball players," co-captain Natasha Anderson says.

And it's true. In a typical day, the teammates spend about three hours a day together, first running in the morning, then at practice. They eat meals together, go to some of the same classes and many of the players even live together. Anderson and teammate Sarah Ledford share a room in Yonah Hall, and if they need to borrow a cup of sugar-free sports drink, teammate Paige Cooper lives right next door.

It's a family atmosphere, but players and coaches say that was not always the case. Like many families, the team started off a little dysfunctional. When head coach Gary Bays came to Brenau three years ago to launch the program, he and assistant Rae Anne Boothe, 23, had to be crack salespeople just to get high school and transfer prospects to take a chance on a new team. Although Bays concedes that those who took the risk showed some character, the year-one recruits joined a team with no existing leadership from experienced upperclass players. Personality clashes and power struggles ensued. Even team captains jumped ship. "The people who are still here are the ones who stuck," says Anderson, who is from Blue Ridge, Ga. She is one of the few year-one players remaining. Once the players found their roles, superstar attitudes turned to selfless teamwork.

Anderson and co-captain Vicky Wilson of Buford, Ga., both junior education majors, play the part of big sisters on the team. "They are good listeners," says Cooper, a junior in nursing from Sarasota, Fla., who describes the captains as mediators between the coaches and other players. Anderson explains: "They come to us, team captains, and we make the call about situations."

If any player fills the parental role, teammates say it is veteran Lori Pope, a graduate student in business from Atlanta, an honor accorded for both her experience and her love for the team. "She keeps us in check and watches out for us," Cooper says. When Pope comes into the game, Anderson says, she motivates everyone and makes things run smoothly.

Ledford, a junior in education from Ellijay, Ga., is the family overachiever. She's the leading scorer, averaging 13.9 points per game. Teammates take pride in



Above left, two-time member of the SSAC All Academic team, Lori Pope leads on and off the court. Left, Coach Bays is retoring quiet order to a once 'dysfunctional family.'



Time Management, Matthews Style

Kelsey Aley, a freshman in biology from Tallahassee, Fla., wakes at 7 a.m., grabs breakfast in her room and heads to class. After that, she has required study hall in the library three times a week. On Tuesdays and Thursdays, she meets with Volleyball Coach Matthews for individual practice. Real practice with the rest of the team begins at 6 p.m. and can last until 9 p.m. or later. It's up to Aley to schedule required thrice-a-week weightlifting, "wherever it fits in."

If any Golden Tigers volleyball player thinks about making excuses for being late or cheating on workouts, Matthews is one step ahead. Each player signs a player-coach contract, which includes an honesty clause, says Aley. New players are not the only ones adjusting to the Matthews regimen. Audra VanArsdale, a junior accounting major from Pelham, Ala., had to retool the way she plans her day as well. Once, VanArsdale got so caught up in getting where she needed to be on time (the contract has a clause on punctuality as well), that she forgot to eat. "In one class, I looked down, and my hands were shaking," she says. Now she packs a lunch.

her recognition as the first Golden Tiger to win SSAC All Conference recognition.

Cooper's personality is similar to an easy-going little sister. The team's leading rebounder, she says she likes to make people happy and comfortable, an attitude that has great value in recruiting new players.

In fact, the whole team now participates in recruiting. After a potential player interviews with coaches, the recruit practices with the team. Although recruits may fool some of the coaches some of the time, hardly anything of their true selves gets by the players on the court, Bays says. They'll quickly ferret out and expose slouchers and prima donnas. As a result of the new team attitude, the Tigers are reaping rewards. The team went from a 10-20 record in year one to 16-15 last year and qualified for the conference tournament with its sixth-place finish. That's a good start, Bays concedes, but the challenge is to stay hungry.

"Now teams know Brenau is good," says team leader Pope. "We've got to keep playing like we are. We can't go back to those bad habits and selfishness."

Volleyball

It's not every night that volleyball gets a spot on primetime TV. Every four years the summer Olympics turns the camera to both the indoor and outdoor varieties. This year especially viewers across America tuned in to watch gold-medal beach duo Misty May-Treanor and Kerri Walsh and the silver-medal U.S. indoor volleyball team – everybody, it seemed, except the Golden Tigers volleyball team. They were too busy with their own mini-Olympics.

Starting in mid-August, the players spent two weeks in the gym. At the end of gruelling eight-hour days, staying up late to watch other women thump volleyballs was not nearly as appealing as flopping into bed to recover for the next day. It was all part of head coach Meredith Matthews' plan to get Brenau volleyball players

focused on Brenau volleyball. Matthews took over in mid-season last year, and she immediately established a tougher regimen to counteract what she called the team's losing mentality.

"They had the mind-set that it's OK to lose," she says. In past seasons, fan attendance has been low, Matthews adds, because clearly players weren't even proud of their own team.

Matthews kicked some veteran players off the team and brought in new ones for a fresh start. Since players themselves were not doing their own time management, Matthews took charge of that as well – mapping out daily schedules for individuals that laid out time for practices and schoolwork. Players sign a contract that puts them on probation if they fall below a 2.8 GPA. Misbehave on or off the court and you're history.

Matthews admits there was resistance at first. "They were, like, 'are you serious?'" But she adds unapologetically that "what you learn from me, you can use in life." If a woman plays volleyball scared, Matthews wonders, then how is she going to handle academic challenges? How will she respond after college when she faces a demanding boss? Happily, Matthews says, the players are beginning to get it – not only as life lessons but as part of the more immediate task of playing well against tough competitors. Last season, she says she screamed directions to the players on the court during games. Now she has them "brainwashed" enough from disciplined practice that they react instinctively during games.

Audra VanArsdale, a junior in accounting from Pelham, Ala., says before Matthews took over the team, the players were frustrated by their lack of productivity.

"This year is better," she says, "because it feels like it's worth my time."

– Julie W. Boley

Striking Symbol: *Shaw Ring celebrates accomplishment and potential*

SHAW RING RECIPIENTS

- 1997 Brandi Fort, Milledgeville, Ga.
- 1998 Tina Coleman, Mt. Airy, Ga.
- 1999 Jennifer Caldwell Mielke, Braselton, Ga.
- 2000 Lori Cross, Akron, Ohio
- 2001 Porcha Carew, Hinesville, Ga.
- 2002 Ashlee Tising Falco, Midway, Fla.
- 2003 Pauline Clayton, Roswell, Ga.
- 2004 Marie Barnwell, Jefferson, Ga.
- 2005 Sheena Borders, Athens, Ga.
- 2006 Sabrina Masters, Dacula, Ga.
- 2007 Ashley Grubbs, Gainesville, Ga.
- 2008 Kristina Shepard Rhoades, Gainesville, Ga.



Kristina Shepard Rhoades, 2008 Shaw ring recipient.



Tom Askew

SYMBOLS WITHIN A SYMBOL

GOLD BAND – BRENAU AS GOLD REFINED

PEARL – PURITY AND HONESTY

INTERTWINING GOLD ROPES – MYRIAD QUALITIES OF A WELL-ROUNDED PERSON

KNOTS AT THE ENDS OF THE ROPE – FORM THE WHOLE PERSON

TASSELS – IDEAL WOMAN REACHES OUT TO A DIVERSE WORLD

DIAMONDS – VALUE DEVELOPED AT BRENAU

by Brittany Long, WC '10

Brenau is big on symbols – starting with its made-up “gold refined by fire” name, sash colors on May Day, Greek letters, passages through the gate, the Crow’s Nest, spades and the “four portals” logo. Few, however, are as visually striking as the Shaw Ring, awarded to a graduating senior at Women’s College Commencement each year since 1997.

Scott Briell, senior vice president of student services and enrollment, who carries the diamond, pearl and gold ring to commencement like a nervous best man at a wedding, says the Shaw Ring is “the highest non-academic honor” awarded to the graduating Women’s College senior whose service to community and the university best exemplifies the Brenau Ideal.

David and Patsy Mercer of Gainesville, Ga., established the endowment for the pearl-centered ring in 1996 to honor their daughter Heather Mercer Shaw, WC '91. David Mercer, a Citadel man, envisioned something similar to the prestigious John O. Wilson Ring cadets aspire to win at his alma mater. Freelance illustrator Rachel Cotton-Smith, WC '00, designed the ring when she was a freshman studio arts major, her idea selected by the Mercers from student submissions. As Heather Shaw explains, the Mercers had many friends and children of friends who attended Brenau, and her father wanted to give back to the community and the university, which she described as “near and dear to his heart.” Shaw lives in Ft. Lauderdale, Fla., with husband, Clay, and four children. She wanted the

winners to be chosen by their peers and to have exhibited the following qualities: honest, respectful, admirable, a true lady, well-rounded, pure, dependable, trustworthy, self confident, dedicated, appreciative and courteous.

For Shaw, the classmate who most embodied those qualities, she says, was Leila Cullen Kramer, WC '92, an educational therapist in Washington, D.C. “Her personality and spirit were contagious,” Shaw recalls. “Although she was not the most active or popular person on campus, she was the truest and most dedicated student at Brenau.”

Ironically, as aspiring as Citadel cadets may be for the Wilson ring, according to an informal survey, many Brenau women hear about the Shaw Ring for the first time when one of their cap-and-gown-clad classmates rises up to receive it. Nominees’ reputations among other students definitely are considered in the selection of the recipient along with recommendations by deans of the four schools and academic department heads.

In 2008 the deans unanimously selected Kristina Shepard Rhoades, whom William Lightfoot, dean of business and mass communication, says exhibited all the proscribed qualities. However, in addition to looking for students who are “proactive and enthusiastic in helping others,” Lightfoot also says he projects how he envisions the person’s applying the Shaw Ring-winning qualities in the future.

Rhoades, paralyzed from the waist down since she was

a toddler, with her “Hot Wheels” moniker and companion dog, Chevy, remains a familiar site on campus as a new staff member, splitting time helping run the WBCX-FM radio station and teaching at Brenau Academy. She interprets the ring’s symbolism as both a reflection and a foreshadowing. As a student, she says philosophically, “you demonstrate what you have the potential for. I won’t give up, and I will give anything a try.”

Likewise, the first Shaw Ring recipient, Brandi Fort, WC '97, says she views it as the icing on her Brenau experience which helped her evolve from “shy and fearful of everything” into “a confident individual and leader.” The Milledgeville, Ga., resident now serves as a Baldwin County Schools psychologist. Tina Coleman, of Mt. Airy, Ga., the '98 recipient and the vice president for marketing with Financial Supermarkets, says the ring helped her to understand that good behavior does not go unnoticed. And Jefferson, Ga., kindergarten teacher,

Marie Barnwell, the '04 recipient, views the ring as an encouragement that “service is a life-long mission,” an ideal that she attempts to instill in her pupils.

“I touch lives every day, and that’s a blessing [to which] few people get to lay claim,” says Barrow County public health nurse Sheena Borders of Athens, Ga. The 2005 recipient says placing the Shaw Ring on her finger helped her “gain insight, build character and become a mentor of young girls.”

“The Heather Mercer Shaw Ring is intended to highlight not only those accomplishments achieved during the recipient’s college career, but also the likelihood that she will contribute her time, efforts and the best of herself to her community in the future, wherever she may be, thereby fully representing the Brenau Ideal.” – Ashlee Falco, Midway, Fla., the 2002 Shaw Ring recipient.

 Virginia
STATE OF ~~IDAHO~~)
) ss.
 Henrico
COUNTY OF ~~ADA~~)

AFFIDAVIT OF DEBORAH ANNE CZUBA

Comes now the affiant, Deborah Anne Czuba, who after being duly sworn or affirmed by an officer authorized by law to administer oaths, swears and states the following:

1. My name is Deborah Anne Czuba. I am over the age of eighteen. This affidavit is made upon my personal knowledge, and I am competent to testify to the matters set forth herein.
2. I was trial counsel for Stacey Humphreys in his 2007 death penalty trial.
3. I remember the Cobb County District Attorney's Victim Advocate in this case, Ms. McCoy. She was present in pre-trial hearings and throughout the trial, sitting front and center with the victims' family members. If they were in court, she was most often in court with them. She was in charge of them, and she made that very clear to everyone. She was like a hawk with the families. I knew she worked for the District Attorney's office and it was clear in court that she saw herself as part of the prosecution team. She was the liaison between the district attorneys and the family members.
4. My practice has always been to introduce myself to the victims' family members in capital cases. It was how I had been trained but it was also what I believed I should do. I cannot imagine the pain that the victims' families feel in capital

cases. I think it is important to introduce myself so that they know they can approach me and speak with me if they have questions and also so that they understand that my role is not against them but is simply to represent my client to the best of his interests. I have practiced law for thirty years and met with many victims' family members and believe that this approach is the best way I can show respect to the victims. I still follow this practice in my capital habeas cases.

5. That did not happen in this case. I tried several times to approach them but Ms. McCoy would not allow me to do so. I remember she once actually stepped in front of me as I tried to approach them. The victim advocates I have encountered in the past as a whole have treated me with professional courtesy. That was not the case at Mr. Humphreys' trial.
6. There was a hearing, I believe pre-trial, where victims' family members came in with Ms. McCoy wearing pins that honored the victims. I think the pins may have had the victims' pictures on them. We thought that was prejudicial to Mr. Humphreys so raised it with the judge. I don't remember if this was on the record or if we just raised it informally, nor do I remember how the judge ruled.
7. During the penalty phase deliberations, it became apparent that there was strife among the members of the jury. Throughout the trial, I had regularly communicated with the courtroom deputies. The deputies relayed information to me regarding their observations during jury deliberations, which grew increasingly contentious. The deputies reported hearing crying coming from the

jury room, which I could also hear from my place in the courtroom. Additionally, the deputies also reported overhearing yelling within the jury room and, at one point, a “thud” that turned out to be the result of one juror punching one of the walls within the room.

FURTHER AFFIANT SAITH NOT.

This the ¹¹____ day of December, 2025

Deborah Anne Czuba

Deborah Anne Czuba

Sworn to or affirmed and subscribed before me this 11 day of December, 2025.

LaRonda Shanik Toler

Notary Public, State of ~~Idaho~~ ²⁰Virginia

My commission expires:



LaRonda Shanik Toler

REGISTRATION NUMBER

7882770

COMMISSION EXPIRES

April 30, 2028

STATE OF GEORGIA)
) ss.
COUNTY OF DEKALB)

AFFIDAVIT OF LAURA BANDROWSKY

Comes now the affiant, Larra Bandrowsky, who after being duly sworn or affirmed by an officer authorized by law to administer oaths, swears and states the following:

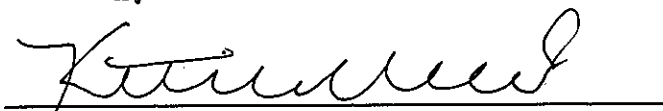
1. My name is Laura Bandrowsky. I am over the age of eighteen. This affidavit is made upon my personal knowledge, and I am competent to testify to the matters set forth herein.
2. I was the mitigation specialist in Stacey Humphreys capital case. I was employed by the Georgia Capital Defender (GCD) and was working with attorney Deb Czuba on the case. I obtained my Masters in Social Work in 2004. I am now a Licensed Clinical Social Worker.
3. I have been asked if I remembered the Cobb County District Attorney's victim advocate who was present at Mr. Humphrey's trial and I remember her well. I did not remember her name until I saw her picture in the Brenau article. Ms. McCoy is definitely the woman I remember because she was present throughout the trial.
4. Mr. Humphreys' case was the first case I worked on that went to trial after I was hired at GCD, so I was learning as I went along. Deb explained to me before trial that she believed we should introduce ourselves to the victims' family members if they came to any hearings or the trial. This approach was consistent with my training as a social worker, and I wanted to reach out to extend sympathy and condolences.

5. I tried to introduce myself the first time I saw them in court but Ms. McCoy would not allow it. She was a pitbull. She would circle around them and keep us away. She stayed with the families so there were no opportunities to reach out. She appeared to be close with both families. I think I finally was able to introduce myself to a single family member while in the restroom, but it was several weeks into the trial. My recollection is that Ms. McCoy stayed with the family pretty constantly.
6. I recall an incident with them wearing pins as well. I think it was a pre-trial hearing and they showed up wearing these pins of the victims. My recollection is that Stacey's attorneys mentioned it to the judge and that he told them not to wear them.

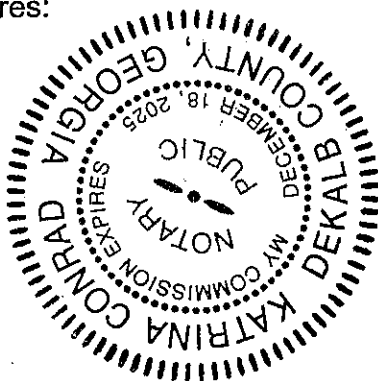
FURTHER AFFIANT SAITH NOT.


Laura Bandrowsky

Sworn to or affirmed and subscribed before
me this 10th day of December, 2025.



Notary Public, State of Georgia
My commission expires:



Superior Court of the State of Georgia Cobb Judicial Circuit

JUDGE DOROTHY A. ROBINSON

JUDGE GEORGE H. KREGER

JUDGE MARY E. STALEY

JUDGE JAMES G. BODIFORD

JUDGE S. LARK INGRAM
CHIEF JUDGE

JUDGE KENNETH O. NIX

JUDGE ROBERT E. FLOURNOY, III

JUDGE ADELE P. GRUBBS

JUDGE J. STEPHEN SCHUSTER



JUDGE WATSON L. WHITE

JUDGE G. CONLEY INGRAM

JUDGE MICHAEL STODDARD
SENIOR JUDGESCOURT ADMINISTRATOR
HOWARD "SKIP" CHESHIRE80 WADDELL STREET
MARIETTA, GA 30090-9642
(770) 528-1800

August 10, 2007

VIA FACSIMILE (912) 554-7684

Sheriff Wayne V. Bennett
Glynn County Sheriff's Office
1812 Newcastle Street
Brunswick, GA 31520

Re: State of Georgia v. Stacey Ian Humphreys
Criminal Action File No. 04-9-0673-05

Dear Sheriff Bennett:

Following my conversation with Judge Tuten on August 9, 2007, this letter is being written to clarify the functions of the Glynn County and Cobb County Sheriff's Deputies during the trial of the above-referenced matter scheduled to begin on September 4, 2007.

Cobb County Sheriff's Deputies:

- (1) Will transport the defendant from Cobb County to Glynn County and return the defendant following completion of the trial.
- (2) One deputy will transport bailiffs to Glynn County in an unmarked Cobb County Sheriff's Office van. This van will also be used to transport jurors between the Courthouse and the hotel, dinner, or other necessary destinations. [MAJOR SCOTT: This is a departure from our earlier conversation regarding rental of vans to transport jurors; therefore, any rental arrangements you've made can be cancelled. Also, there will be eight (8) bailiffs coming to Glynn

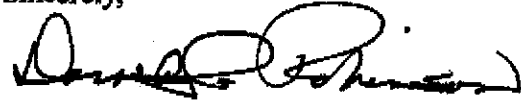
County rather than six (6) as discussed, so housing at the Holiday Inn will need to accommodate eight (8) bailiffs plus one (1) Cobb County Sheriff's Deputy.]

Glynn County Sheriff's Deputies:

- (1) Will receive the defendant when delivered by Cobb County Sheriff's Deputies.
- (2) Will house the defendant in the Glynn County Detention Center and transport the defendant each day to and from the Courtroom.
- (3) Will provide security in the Courtroom during the trial.
- (4) One plainclothes Sheriff's Deputy will provide security for the jurors while sequestered at the Holiday Inn.

Please make sure to keep records of all expenses incurred during the trial for reimbursement by the Cobb County Judicial Circuit. Thank you again for all of your help and cooperation in handling this matter.

Sincerely,



Dorothy A. Robinson

cc: Major John Scott
Hon. James R. Tuten, Jr.
Cobb County Sheriff Neil Warren

Post Office Box 793
Brunswick, Georgia 31521
Telephone (912) 554-7600
Facsimile (912) 554-7681



Wayne V. Bennett
Sheriff

Ron Corbett, Undersheriff

Louise Clifton Newsome, Colonel
Jail Administrator

October 4, 2007

Dear Ms. Barber,

As you are aware, jury service is an integral part of the Judicial System. Without the cooperation and hard work of people like you, a person could not receive what the law entitles them, which is a fair trial by an impartial jury.

We at the Sheriff's Office are charged by the Court with the safety, welfare and integrity of jurors while they are in our care. Of course, the Humphreys case involved a change of venue from Cobb County to Glynn County. Judge Robinson who presided over the case ordered that Cobb County bailiffs be involved in the movement and management of the jury. Consequently, the Glynn County Sheriff's Office did not dictate all of the activities of the jurors as we would normally do.

In general we arranged your housing, meals and we provided you with security to protect you and the case at hand from any improprieties that might taint the case. This is the reason we must take so many precautions with television, newspapers, visitors, and telephone calls.

Attached you will find a brief questionnaire, which we would greatly appreciate your filling out. It will help us see from your point of view what we've done right, what we've done wrong and any suggestions you may have.

I would personally like to express to you my sincere appreciation for your cooperation and hard work during this trial. For you, as a Juror, it has been difficult being separated from your daily routine with family and friends. However, you and your fellow jurors have been an exemplary group to work with.

If I, or any of my staff, can ever be of assistance to you, please do not hesitate to call.

Sincerely,

Wayne V. Bennett
Sheriff
Glynn County, Georgia

WVB:cb

EXHIBIT

Petr.'s 8

Nathan Potek

From: Nathan Potek
Sent: Thursday, December 4, 2025 4:15 PM
To: 'La'Quandra Smith'
Subject: RE: Stacey Ian Humphreys

Hi La'Quandra,

It has come to our attention that two of the current Board members, Mr. Bennett and Ms. McCoy, have conflicts in Mr. Humphreys' case arising from their respective roles at his trial. Mr. Bennett was the Sheriff of Glynn County, where the case was tried, and in that role oversaw trial and juror security as well as the housing and transportation of Mr. Humphreys. Ms. McCoy was the Director of the Cobb County District Attorney's Victim Witness Unit, and in that role worked closely with the victims' family members and the State's witnesses throughout Mr. Humphreys' trial.

Could you please let me know how the Board plans to address this issue and ensure that Mr. Humphreys has five conflict-free Board members to consider his clemency application?

I really appreciate your attention to this important matter.

Best,

~Nate

Nathan A. Potek
Chief, Capital Habeas Unit
Federal Defender Program, Inc.
(e) nathan_potek@fd.org

From: La'Quandra Smith <laquandra.smith@pap.ga.gov>
Sent: Tuesday, December 2, 2025 1:29 PM
To: Nathan Potek <Nathan_Potek@fd.org>
Subject: Stacey Ian Humphreys

You don't often get email from laquandra.smith@pap.ga.gov. [Learn why this is important](#)

EXTERNAL SENDER

Good afternoon, Mr. Potek. The Board has received the Execution Order for Stacey Ian Humphreys and has set aside time on Tuesday, December 16, 2025, to hear from those advocating for executive clemency in his case. The attached letter contains details for the meeting and important deadlines for submissions. **Should you have any questions, please do not hesitate to contact me at [REDACTED].**

Thank you!

La'Quandra L. Smith

Director of Legal Services
State Board of Pardons and Paroles



Please note my new email address: laquandra.smith@pap.ga.gov

Nathan Potek

From: La'Quandra Smith <laquandra.smith@pap.ga.gov>
Sent: Tuesday, December 9, 2025 5:54 PM
To: Nathan Potek
Subject: Re: Stacey Ian Humphreys

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL SENDER

Good evening, Nate.

A full Board of five members is required to consider the clemency request of an offender sentenced to death. A majority vote of that Board is required to render a decision. Mr. Bennett and Ms. McCoy were duly appointed to the Board by Governor Kemp. As it is currently constituted, this Board plans to give due consideration to any clemency request made by Mr. Humphreys.

Regards,

La'Quandra L. Smith
Director of Legal Services
State Board of Pardons and Paroles
[REDACTED]

Please note my new email address: laquandra.smith@pap.ga.gov

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WALLACE M. FUGATE, III,	}	
	}	
Petitioner,	}	
	}	
v.	}	Civil Action No. 2002CV54604
	}	
THE BOARD OF PARDONS & PAROLES,	}	
MILTON E. NIX, JR., Chair, Board of Pardons &	}	
Paroles, DR. BETTY COOK, Vice Chair, Board	}	
Of Pardons & Paroles, DR. EUGENE WALKER,	}	
Member, Board of Pardons & Paroles, GARFIELD	}	
HAMMONDS, JR., Member, Board of Pardons &	}	
Paroles, THE DEPARTMENT OF CORRECTIONS	}	
And JIM WETHERINGTON, Commissioner,	}	
Department of Corrections,	}	
	}	
Respondents.	}	

ORDER

The above-referenced matter comes before this Court for consideration on the Petitioner's Emergency Motion for Injunctive Relief and Temporary Restraining Order, Emergency Petition for a Writ of Mandamus, and an Emergency Complaint and Petition for Declaratory Judgment. The Petitioner seeks this Court to enjoin, prohibit and/or stay his execution, until his application for a commutation of his death sentence has been fully and fairly considered by the Board of Pardons and Paroles made up of its full five (5) members. This Court heard oral argument on this matter on June 17 and June 18, 2002.

FINDINGS OF FACT

On April 29, 1992, the Petitioner was convicted of the murder of his former wife and of burglary, kidnapping with bodily injury, two (2) counts of aggravated assault, and theft, and was sentenced to death by electrocution. The Petitioner has filed numerous appeals and petitions for writs of habeas corpus since his date of sentencing, all of which have been denied. On May 31, 2002, Judge William A. Prior, Jr. of the Putnam County Superior Court issued an Order directing the Department of Corrections to execute the Petitioner during a seven (7) day time period beginning at noon on Tuesday, June 18, 2002. The Department of Corrections subsequently scheduled the Petitioner's execution for 7:00 p.m. on June 18, 2002.

On June 11, 2002, the Petitioner's attorneys contacted the Board of Pardons and Paroles ("the Board") to request a hearing in support of his claim for executive clemency. The Board is an independent constitutional entity of the State of Georgia government that is vested with the power of executive clemency, including the power to commute a death sentence. *See Ga. Const. Art. IV, §II, ¶II; O.C.G.A. §42-9-42*. The Board scheduled the hearing for Friday, June 14, 2002.

On June 13, 2002, two (2) of the Board's five (5) members resigned due to impending investigations into allegations of corruption at the Board. Governor Roy Barnes, exercising authority vested in him by *O.C.G.A. §§42-9-2(a) and 42-9-4*, appointed one (1) new Board member to fill one (1) of the vacancies. The Governor did not appoint anyone to fill the second (2nd) vacancy. Despite having only four (4) members on the Board, the Board went forward with the Petitioner's June 14, 2002 clemency hearing. At the June 14, 2002 hearing, faced with a four (4) member Board, the Petitioner made a motion, pursuant to *O.C.G.A. §42-9-20*, asking the Board to stay his execution and to postpone its deliberations for ninety (90) days until a fifth (5th)

member was appointed to the Board. *O.C.G.A. § 42-9-20* provides in pertinent part:

In all cases in which the chairman of the board or any other member designated by the board has suspended the execution of a death sentence to enable the full board to consider and pass on same, it shall be mandatory that the board act within a period not exceeding 90 days from the date of the suspension order.

On June 17, 2002, the Board informed the Petitioner that it had denied his Petition for Commutation of Death Sentence and was simultaneously denying his motion to stay proceedings until a fifth (5th) member is appointed. On June 16, 2002, the Petitioner filed the subject Motion requesting injunctive relief, a temporary restraining order, declaratory judgment, and a writ of mandamus, contending that he was denied his constitutional and statutory rights when: (1) his clemency petition was denied by a Board consisting of less than five (5) members; and (2) his clemency petition was denied by a Board that was the subject of an ongoing investigations into corruption, obstruction of justice, and collusion by Board members and staff.¹

CONCLUSIONS OF LAW

Both the Georgia Constitution and the Georgia statutory code provide that “[t]here shall be a State Board of Pardons and Paroles which **shall** consist of **five members . . .**”. *See Ga. Const. Art. IV, §II, ¶I; O.C.G.A. §42-9-2(a)* (emphasis added). *See also*, Rules & Regulations of Georgia 475-1.01 (“The State Board of Pardons and Paroles shall be composed of five members, appointed by the Governor . . .”). Moreover, the Georgia Constitution unequivocally provides that “the **full board shall** have an opportunity to hear the [clemency] application of the convicted

¹ Having carefully reviewed the Petitioner’s second (2nd) enumerated complaint about the corruption of the Board, and having found no relevancy in those allegations for any possible relief that could be obtained in this case, this Court’s Order will only address the Petitioner’s constitutional complaints about the four (4) member Board.

person” sentenced to death. *See Ga. Const. Art. IV, §II, ¶II(d)* (emphasis added).

Only a majority vote of the sitting Board is needed to commute a death sentence to life imprisonment. *See O.C.G.A. §42-9-42(a)* (“No person shall be granted clemency, pardon . . . except by a majority vote of the board.”). The Attorney General Opinion 73-137 on the meaning of “majority vote” for the Board provides as follows:

[W]here the Constitution provides that “a majority shall decide the action of the board,” the intended number is a majority of the board, not a majority of those members present and voting. . . .
[T]he constitutional requirement of a majority to decide the action of the board requires the affirmative vote of *three* members to commute a sentence of death to one of life imprisonment.

(emphasis in original). As to the necessary number (quorum) of Board members that must be present to take action at a clemency/commutation hearing, *O.C.G.A. §42-9-7* provides that: “[a] majority of the board shall constitute a quorum for the transaction of all business . . .”.

Therefore, three (3) out of the five (5) Board members must preside over a clemency/commutation hearing in order to provide for a constitutional proceeding.

Citing the quorum rules in *O.C.G.A. §42-9-7*, the Respondents attempt to argue that none of the Petitioner’s constitutional or statutory rights were violated since four (4) Board members presided over the Petitioner’s clemency hearing, which constitutes a quorum. However, in construing the constitutional and statutory provisions together, this Court finds that the quorum rules are applied to determine the necessary number of presiding Board members, *given* the constitutional requirement of a fully constituted Board, to wit: five (5) members. That is, although only three (3) of the Board members need preside over the hearing to constitute a proper quorum, this does not negate the requirement of five (5) appointed members of the Board

at all times who are to have an opportunity as required by the Constitution to consider applications for themselves. In addition, unlike the quorum rules, which were passed by the Legislature, the people of the State of Georgia voted on the constitutional guarantee of five (5) members on the Board of Pardons and Paroles; hence, in order to respect the citizens' expectations, this Court must strictly construe the constitutional guarantee of five (5) Board members, especially in light of the possible irreparable harm to the Defendant. Finally, significant to this Court, the Respondents were unable to refute the Petitioner's contentions that there has never been a death penalty clemency hearing without a full five (5) member Board not only appointed, but indeed present at the hearing (or at least voting after a review of the record and the papers filed by the parties).

Further, the opportunity to present a case for clemency is unique and firmly rooted in our criminal justice system. A fifth (5th) Board member might be persuaded by the Petitioner's case and may well be able to move others on the Board to favorably consider a reprieve. The Respondent's suggestion that the quorum rule anticipates a Board vacancy does not square with the Constitution's mandate that the full Board consider clemency applications. Given the unequivocal nature of the Constitution's language, the quorum rule only makes sense in the context of a fully constituted Board.

Finally, given the irreparable harm to the Defendant should a stay not be granted, and given the peculiar nature and role of a clemency hearing (i.e., the last opportunity for the decision of life and death to be made), a balancing of the equities clearly demonstrates that this Court must enjoin the scheduled execution of the Petitioner until such time as his clemency application has been duly and properly considered by the full Board. This Court is unaware of any death

penalty jurisdiction in which that state's highest court has not at one time or another stressed that the unique, irrevocable nature of the death penalty necessitates safeguards not required for other punishments and "the need for special care and deliberation in decisions that may lead to the imposition of that sanction." *Thompson v. Oklahoma*, 487 U.S. 815, 856 (1988) (Justice O'Connor, *concurring*). *See also, Thompson, supra*, 487 U.S. at 856 ("[t]he Court has accordingly imposed a series of unique substantive and procedural restrictions designed to ensure that capital punishment is not imposed without the serious and calm reflection that ought to precede any decision of such gravity and finality"); *Proffitt v. Wainwright*, 685 F.2d 1227 (1982) (because the death penalty, unlike other punishments, is permanent and irrevocable, the procedures by which the decision to impose a capital sentence is made bring into play constitutional limitations not present in other sentencing decisions). Thus, given the magnitude of the death penalty and the life and death decision companion thereto, and given the fact that the Respondents in this case will not be prejudiced (but rather inconvenienced temporarily), this Court finds it necessary to stay the Petitioner's execution until a fifth (5th) member has been appointed to the Board and the Petitioner is given a clemency hearing before the full Board.

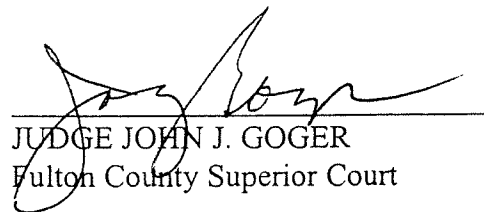
WHEREFORE having found that the Petitioner has pled sufficient facts to demonstrate that there is a genuine, important legal issue of whether actions taken by a four (4) member Board violates the constitutional and statutory mandates that the Board "shall" consist of five (5) members and that the "full" Board "shall" have an opportunity to pass judgment on a death sentenced person's plea for executive clemency, this Court **HEREBY ORDERS** as follows:

- (1) The June 17, 2002 denial of clemency by the four-member Board of Pardons and Paroles is deemed to violate the

Georgia Constitution and, thus, is void;

- (2) The Respondents (the Department of Corrections and Jim Wetherington, Commissioner) are **HEREBY ENJOINED** from carrying out the Petitioner's death sentence until such time as Governor Roy Barnes duly appoints a fifth (5th) member to the Board and the Petitioner is granted a second (2nd) clemency/commutation hearing before the Board.

SO ORDERED this 17th day of June, 2002.



JUDGE JOHN J. GOGER
Fulton County Superior Court

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PUBLIC

AI Index: AMR 51/099/2002

24 June 2002

Further information on EXTRA 44/02 (AMR 51/094/2002, 10 June 2002) - Death penalty / Legal concern

USA (Georgia)Wallace Marvin Fugate, (m) white, aged 52

Wallace Fugate received a stay of execution from a judge three hours before he was due to be put to death in Georgia's lethal injection chamber on 18 June 2002. On the afternoon of 21 June, the Georgia Supreme Court upheld the stay.

On 13 June 2002, two members of the five-member Board of Pardons and Paroles resigned amidst long-running allegations of corruption. The Governor only replaced one of them, saying that he would appoint the second replacement at a later date.

On 17 June, the four-member Board denied clemency for Wallace Fugate. His lawyers filed an appeal arguing that the Board violated the state constitution in deciding the case with only four members sitting. They appealed for the execution to be stayed until the Board's vacancy had been filled by the Governor. The defence lawyers also argued that Fugate had been denied a minimum standard of fairness. This was based on the fact that his petition for clemency had been considered and decided in the midst of the ongoing controversy concerning the allegations of corruption at the Board. (Four more staff working at the Board resigned on 21 June after they were told they would otherwise be fired).

The judge hearing Wallace Fugate's appeal requested the Board to voluntarily issue a stay of execution. The Board refused, however, so the judge granted a stay of execution himself. Wallace Fugate had already had his final meeting with his elderly parents and other relatives, and had been given his final meal.

The state appealed to the Georgia Supreme Court to lift the stay of execution. The Court gave the defence until the morning of 20 June to file its arguments. On the afternoon of 21 June, after Wallace Fugate's parents had again said what they believed would be their final goodbyes to their son, the Court upheld the lower court's stay of execution.

Further arguments in the case will be filed with the Georgia Supreme Court over the next month.

No further appeals by the UA Network are requested at present. Many thanks to all who sent appeals.

STATE BOARD OF PARDONS AND PAROLES



ORDER STAYING THE EXECUTION OF A SENTENCE OF DEATH

WHEREAS, a sentence of death has been imposed in the case of The State of Georgia vs. Melbert Ray Ford, Indictment Number 86-CR-192-4 before the Superior Court of Newton County; and,

WHEREAS, an order of the Superior Court of Newton County, dated February 3, 2010, directs that Melbert Ray Ford shall be executed by the Department of Corrections during a certain period of time commencing at noon on the 23rd day of February, 2010, and ending at noon on the 2nd day of March, 2010; and,

WHEREAS, the State Board of Pardons and Paroles, constitutionally mandated to have five members, has received, on behalf of Melbert Ray Ford, a clemency application requesting that the Board exercise its authority to commute his sentence of death to life without parole; and,

WHEREAS, the Board currently has a vacant position and the only previous clemency consideration by a Board of four members of a death case was held by the judiciary to violate the Georgia Constitution and thus void; the court further ordered the execution stayed until a fifth member was appointed in accordance with the Constitution of the State of Georgia and a second clemency "hearing" held; and,

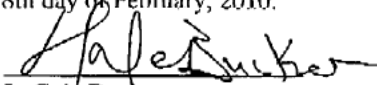
WHEREAS, a death case clemency consideration by the Board places oppressive and excruciating pressure on both those advocating for, and those opposed to, clemency; and,

WHEREAS, the Board desires to avoid forcing all interested parties from unnecessarily participating in two clemency proceedings; and,

NOW, THEREFORE, pursuant to provisions of Article IV, Section II, Paragraph II (d) of the Constitution of the State of Georgia, **IT IS HEREBY ORDERED** that the execution of the sentence of death in the case of Melbert Ray Ford be, and hereby is, **STAYED** for ninety days or until a fifth member to the Board is appointed in accordance with the Constitution of the State of Georgia, whichever first occurs.

For the State Board of Pardons and Paroles on this 18th day of February, 2010.




L. Gale Buckner
Chair

State Board of Pardons and Paroles
BOARD POLICY STATEMENT



POLICY: Ethical Guidelines

NUMBER: 1.120

EFFECTIVE DATE: February 9, 1999

PAGE 1 OF 7

LAST REVISION: January 2024

BY: Director of Legal
Services

REFERENCE/SOURCE MATERIALS:

O.C.G.A. Title 42, Chapter 9, Section 2;
O.C.G.A. Title 42, Chapter 9, Section 9;
O.C.G.A. Title 42, Chapter 9, Section 15;
O.C.G.A. Title 45, Chapter 10, Section 1;
Executive Order signed April 1, 2021.
(09/21)

-
- 1.101. **AUTHORITY:** The provisions of O.C.G.A. §§42-9-2 and 42-9-9, authorize the Board to establish standards of conduct for its employees. O.C.G.A. §45-10-1 established the Code of Ethics for Government Services and an Executive Order, signed by the Governor on April 1, 2021, established a Code of Ethics for Executive Branch Officers and Employees. (09/21)
- 1.102. **PURPOSE:** To establish ethical guidelines for all employees of the Board.
- 1.103. **APPLICABILITY:** This policy applies to members of the Board and all employees of the Board.
- 1.104. **DEFINITIONS:** As used in this policy, the following definitions shall apply:
- 1.104.1. **Ethics Officer:** the Director of Legal Services or, in his or her absence, the Executive Director of Parole. (09/21)

1.104.2. Employee: all persons employed by the Board and members of the Board.

1.104.3. Charitable Organization shall have the meaning defined in O.C.G.A. Section 45-20-51. (01/03)

1.104.4. Relative: a spouse, parent, grandparent, child, brother, sister, uncle, aunt, nephew, niece, first cousin, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister. (01/24)

1.104.5. Gift: any object or sum that retains value of more than \$75.00 including intangible property, currency, gift cards, travel expenses, gratuities, subscriptions, memberships, loans, extensions of credit, forgiveness of debts, investment, or advances or deposits of money, but shall not include contributions to campaign committees, leadership committees, or anything given that accrues to the benefit of the State. (09/21)

1.104.6. Lobbyist shall have the meaning defined in O.C.G.A. § 21-5-70 (6).

1.104.7. Person: an individual, partnership, committee, association, business entity, labor organization, or any other organization or group of individuals. (09/21)

1.104.8. Value: the cost attributable to a gift, less applicable taxes and gratuities, or a reasonable estimate based upon customary charges for like goods or services in the locality. (01/24)

1.104.9. Vendor: a person or business entity that has a business relationship with an employee or an employee's agency or is actively engaged in the procurement of a contract with an employee's agency, including third parties and subcontractors of other vendors. (09/21)

1.105. POLICY:

1.105.1. Employees of the Board shall perform their official duties in such a manner as to promote the best interest of the public.

1.105.2. Employees shall make every effort to avoid even

the appearance of a conflict of interest. An appearance of a conflict exists when a reasonable person would conclude from the circumstances that the employee's ability to protect the public interest or perform public duties is compromised by personal interests. An appearance of a conflict could exist even in the absence of a true conflict of interest. (01/24)

1.105.3. Except as provided in paragraph 1.106.3.1. below, no employee, nor any person on his or her behalf, shall accept, directly or indirectly, any gift from any person with whom the employee interacts on official state business, including, without limitation, lobbyists and state vendors. If a gift has been accepted, it must be either returned to the donor or transferred to a charitable organization. (01/03)

1.105.4. No employee shall accept an honoraria whatsoever. (01/03)

1.105.5. An employee shall not advocate for or cause the advancement, appointment, employment, promotion, or transfer of a relative to an office or position with an agency or with the Office of the Governor. (01/24)

1.105.6. Lobbying shall be in accordance with the following guidelines: (01/03)

1.105.6.1. The use of lobbyists will not be required or preferred as a way to obtain access to employees. Employees will strongly encourage any lobbyist wishing to meet with the Board or its staff regarding his or her client and/or principal to bring a principal of his or her client to such meeting. (01/03)

1.105.6.2. Former employees should not use their former positions for financial or other personal gain or to influence legislation or procurement decisions. Employees shall decline to communicate on official government matters with any lobbyist or vendor who was an officer within the preceding one-year period. (09/21)

1.105.6.3. The Board shall not contract with any business entity or person to provide lobbying, as the term is defined in O.C.G.A. §21-5-70(5), services on behalf of the Board. (09/21)

1.105.7. Employees are required to afford all constituents fair and equal opportunity to express their concerns and ideas regarding State programs and policies without regard to their political affiliation, sophistication or personal attributes. Recommendations and decisions made by employees in the performance of their duties shall be made without bias. (01/24)

1.105.8. Dual employment/board service shall be in accordance with the following guidelines: (01/03)

1.105.8.1. No employee shall be employed outside his or her state employment or serve as a corporate officer or director of any organization if such employment or service conflicts with his or her duties as an employee of the state unless otherwise approved by the agency or Governor's Executive Counsel in accordance with the Governor's Executive Order. (01/23)

1.105.8.2. Voluntary, pro bono services on behalf of non-profit organizations shall be permitted, so long as services to such organizations would not have the potential to create a conflict and do not impair the employee's ability to discharge his or her public duties fully and faithfully. (01/24)

1.105.8.3. No Board Member may have any ongoing dual employment. (01/03)

1.105.9. Employee political activity shall be in accordance with Board Policy 3.106 and the following guidelines: (01/03)

1.105.9.1. Employees wishing to take part in political activities are responsible for complying with applicable federal and state law. (01/03)

1.105.9.2. Employees are prohibited from soliciting or knowingly accepting any campaign contribution in a governmental building or office. "Accept" means to receive a contribution by personal hand-delivery from a contributor or his or her agent. This does not apply when a government-owned building or any portion thereof is rented for the specific purpose of holding a campaign fund-raiser. (09/21)

1.105.9.3. Employees are permitted to express their opinions on political subjects and candidates

outside of working hours, including the wearing of badges or buttons and displaying of bumper stickers and posters. Employees are encouraged to vote.
(01/03)

1.105.9.4. Employees who wish to seek office must comply with applicable federal and state laws including the limitations set forth in O.C.G.A. section 42-9-15. Employees must notify the Board's Ethics Officer prior to announcing or qualifying for any elected position or office. (01/03)

1.105.9.5. While most state employees may take an active part in political campaigns outside working hours, O.C.G.A. §42-9-15 prohibits employees of the Board from being engaged on behalf of a candidate for public office in solicitation of votes. (01/03)

1.105.10. State-provided telephone and internet access is intended for public business. Any personal use of telephones and internet access shall be in accordance with the following guidelines: (09/21)

1.105.10.1. Personal long-distance calls charged to State telephones are prohibited. It is also inappropriate to use a State cellular telephone for personal calls. (09/21)

1.105.10.2. Employee use of the internet may be recorded and monitored. No employee is permitted to use or access the internet for pornographic, obscene, or other improper purposes. (09/21)

1.106. PROCEDURE:

1.106.1. The Board's Ethics Officer shall take appropriate measures to ensure that the Board's employees become familiar with applicable ethics laws and policies, including the policies set forth in the Executive Order signed on April 1, 2021, which establishes a code of ethics for executive branch officers and employees.
(01/24)

1.106.2. An employee shall recuse himself or herself from any proceeding in which the employee has a conflict of interest or the employee's impartiality might reasonably be questioned due to the employee's personal or financial relationship with a participant in the proceeding. (01/24)

1.106.2.1. A "participant" includes, but is not limited to, a person, an owner, shareholder, partner, employee, or agent of a business entity involved in the proceeding. (09/21)

1.106.2.2. If the employee is uncertain whether the relationship justifies recusal, then the employee shall disclose the relationship and the facts of the underlying situation to the Ethics Officer. The Ethics Officer shall determine the extent to which, if any, the employee will be permitted to participate. If the affected employee is the Ethics Officer, then the Executive Director of Parole shall make the determination. (01/24)

1.106.2.3. Employees who have a personal or financial relationship that otherwise gives rise, or may give rise, to a conflict of interest, must disclose that relationship to the Board's Ethics Officer using a Conflict of Interest Disclosure Form and Affidavit. Employees shall be responsible for updating and supplementing, if necessary, the information contained within the disclosures and informing the Board's Ethics Officer of any changes or new circumstances or potential conflicts at the time they arise. (01/24)

1.106.3. Where appropriate for purposes of tradition, ceremony, or intergovernmental relations, or when acting as a representative of the Board, an employee may accept a gift on behalf of the Board. No employee may accept a gift that retains value after its acceptance. (01/24)

1.106.4. An employee on whose behalf actual and reasonable expenses for food, beverages, travel, lodging, and registration are paid to permit the employee's participation in a meeting related to official or professional duties of the employee shall file a "Payment of Expenses Report" (Bd-120f-2/June1, 2003.wpd) no later than the 30 days after such expenses are paid. (06/03)

1.106.4.1. The report shall be filed with the Board's Ethics Officer and must contain a description of each expense, and the purpose, date, and location of the meeting. (01/24)

1.106.4.2. Notwithstanding this provision, the preferred practice is for the Board and not

third parties to pay such expenses. (01/03)

1.106.5. Employees who promote or oppose the passage of any legislation by the General Assembly or any committee thereof shall coordinate all such activities with the Office of the Governor. (01/24)

1.106.6. There may be unique or compelling circumstances warranting exceptions to or waivers from this policy in certain individual cases. In those instances, prior written approval of the Board's Ethics Officer is required, subject to review by the Governor's Executive Counsel. (09/21)

1.106.7. Employees who violate this policy are subject to disciplinary action, including termination of employment, subject to review by the Governor's Executive Counsel. The agency head shall report all alleged violations of this policy to the State Inspector General. (01/03)

Last Revision: January 2024

Terry E. Barnard, Chair

David Herring, Vice-Chair

Meg Heap, Member

Timothy C. Ward, Member

Joyette M. Holmes, Member

CPK

Conflict of Interest Disclosure Form

In accordance with the Code of Ethics, an employee of a state agency is required to disclose personal and financial relationships that give rise, or may appear to give rise, to a conflict of interest and recuse himself or herself from situations where such a conflict exists or where the employee's impartiality might reasonably be questioned due to his or her relationship with a person or entity participating in a matter before the employee's agency.

Further, Georgia law prohibits any full-time state employee, for himself or herself or on behalf of any business, or for any business in which such employee or his or her spouse or dependent has a substantial interest, to transact any business with the employee's agency. O.C.G.A. § 45-10-23(a).

Situations which require an employee to disclose their relationship with a person or entity, and subsequently recuse themselves from interactions between their agency and such person or entity, include, but are not limited to, when the employee's relative is a lobbyist, when the employee's relative is a vendor or potential vendor for the State, or when the employee's relative has a current or potential business relationship with an agency or otherwise participates in matters pending before the employee's respective agency. Any employee who is uncertain as to the existence of an actual or potential conflict should discuss the conflict with their agency's ethics officer and disclose such conflict if instructed to do so.

Employees with multiple relatives creating potential conflicts must complete a separate Disclosure Form and Affidavit for each relative. Employees with relatives who have multiple clients, current or potential contracts with an agency or the State, or other current or potential business relationships with an agency or the State must complete a separate Disclosure Form and Affidavit for each client, contract, or other business relationship.

The term "relative," as used herein and as defined by the Code of Ethics, includes the following: spouse, parent, grandparent, child, brother, sister, uncle, aunt, nephew, niece, first cousin, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister.

I. Reason for Disclosure (choose one):

- ☐ My relative is a lobbyist. (Complete Section II)
- ☐ My relative is a vendor or potential vendor for the State. (Complete Section III)
- ☐ My relative has a current or potential business relationship with a state agency or otherwise participates in matters pending before my agency. (Complete Section IV)
- ☐ I have a personal or financial relationship which otherwise gives rise, or may give rise, to a conflict of interest. (Complete Section V)

Sections II and III on following page

II. Employees with a relative who is a lobbyist shall disclose:

Name of Relative: _____

Relationship to Employee: _____

Name of Relative's Employer or Business: _____

Description of All Relevant Underlying Facts of the Relationship and Potential Conflict:

III. Employees with a relative who is a current or potential vendor for the State shall disclose:

Name of Relative: _____

Relationship to Employee: _____

Name of Relative's Employer or Business Entity: _____

State Contract Relative Holds or is Seeking to Obtain and State Entity Issuing Such Contract:

Description of All Relevant Underlying Facts of the Relationship and Potential Conflict:

Sections IV and V on following page

- IV. Employees with a relative who has a current or potential business relationship with a state agency or otherwise participates in matters pending for the employee's respective agency shall disclose:

Name of Relative: _____

Relationship to Employee: _____

Name of Relative's Employer or Business Entity: _____

Name of Relative's Client (if applicable): _____

Issue(s) for Which such Relative or Such Relative's Employer Has Been Retained:

Description of All Relevant Underlying Facts of the Relationship and Potential Conflict:

- V. Employees with a personal or financial relationship that otherwise gives rise, or may give rise, to a conflict of interest shall disclose:

Name of Person or Entity with Which Such Employee Has Such Personal or Financial Relationship:

Relationship to Employee: _____

Description of All Relevant Underlying Facts of the Relationship and Potential Conflict:

Signature on following page

Please complete the attached Affidavit affirming the validity of the information provided herein and that you have not disclosed any information learned through your employment to the financial benefit of yourself, your relative, or any business relationship of your relative prior to this execution of this disclosure form.

I hereby certify that the information set forth above is true and complete to the best of my knowledge.

Employee Name (Printed):

Employee Signature:

Date:

Conflict of Interest Affidavit

State of Georgia, County of _____

The undersigned, _____ (Affiant's Name), being duly sworn, hereby deposes and says:

1. I am over the age of 18.
2. I suffer no legal disabilities and have personal knowledge of the facts below.
3. I have not disclosed any non-public information learned through my employment with the State of Georgia for my own financial benefit or for the financial benefit of the person or entity identified in the Conflict of Interest Disclosure Form, or such person's or entity's clients, prior to the disclosure of my relationship with such person or entity as required by Executive Order 04.01.21.57.
4. I have fully disclosed all current and potential conflicts of interest I have or may have to my agency's ethics officer, including situations where my impartiality might reasonably be questioned due to my personal or financial relationships.
5. I will immediately notify my agency's ethics officer if the information provided herein materially changes, requires supplementation, or when I enter a new personal or financial relationship which gives rise, or may give rise, to a conflict of interest.
6. I have read and will comply with Executive Order 04.01.21.57.
7. I declare that to the best of my knowledge and belief, the information contained herein and the information contained in the Conflict of Interest Disclosure Form is true, correct, and complete.

FURTHER AFFIANT SAYETH NOT.

Executed this _____ day of _____, 20____.

Signature of Affiant

NOTARY PUBLIC

STATE OF _____, COUNTY OF _____

Signature of Notary

Commission Expiration

From: Dodson, Lori
Sent: Wed 9/12/2007 3:44 PM
To: Dixon, Eleanor; Head, Patrick H.
Cc: Kirby, Kim; McCoy, Kimberly
Subject: FW: inmate needed for testimony in Humphries trial (Fredrick O'Neal)

Please advise me that you are aware of this.

-----Original Message-----

From: Major T. Palmer [mailto:thomas.palmer@cobbcounty.org]
Sent: Wednesday, September 12, 2007 3:46 PM
To: Beck, Milton H.; Clayton, Chris LTC
Cc: Dodson, Lori; Palmer, Thomas Major
Subject: inmate needed for testimony in Humphries trial (Fredrick O'Neal)

Shirley Sims , SCT for court calendars, informed me that the state prison system advised that O'Neal will be having surgery and he may not be available for travel and testimony. This information was passed on to Peggy in Judge Dorothy Robinson's office. Peggy has informed the Judge and the Judge has informed DA Pat Head. Word has returned that if the inmate is definitely needed that the District Attorney will notify us and the State DOC. It appears that the transport is on standby right now. Lori Dodson will confirm that DA Pat Head has been informed of this information.TJP

9/13/2007

Cella, Marc

From: Ben Lindsey [blindsey@yrwrf.com]
Sent: Monday, August 06, 2007 10:02 AM
To: Cella, Marc
Subject: Stacey Humphries interview details

Mr. Cella,

I am contacting you all with some details that "came back" to me after our interview.

1. A question was asked about how employees were supposed to contact us if they were going to be tardy or absent. I think I gave you an incorrect answer to that question. I think I stated that employees were supposed to call my company cell phone. We actually utilized an automated answering option with our phone service provider. Employees were responsible to call the jobsite phone number and leave us a message that included their name, foreman, time or date of their return, and brief reason for their non attendance. Each morning our receptionist would retrieve the messages and contact the General Foreman (Phillip Strouth) who would then pass the message to the foreman of the employee who called in.
2. Either Mrs. Dixon or Mrs. McCoy asked me if I remembered "how I felt" when I heard the WSB radio description of the suspect relative to the murders of the lady real estate agents. My wife reminded me of what I told her about that morning. She said that I commented that "The hair on the back of my neck stood up!" I don't remember specifically if that was the comment when I called in or not. But I do specifically remember feeling that sensation.

Please let me know if I can be of any further assistance

Ben Lindsey
Superintendent
Cleveland Electric
404-597-9677

8/6/2007

1752

17870

E - 234

EXHIBIT
Petr.'s 16

Dodson, Lori

From: McCoy, Kimberly
Sent: Friday, August 03, 2007 5:01 PM
To: Head, Patrick H.; Dixon, Eleanor; Cella, Marc; Greathouse, Eddie
Cc: Dodson, Lori; Kirby, Kim
Subject: law enf and other witness meetings - itinerary for week of Aug 6th



law enf
meetings.pdf (388 KE



evidence list from
clerk.pdf (...)

Is attached.

I've sent at least two emails for the four officers I have not yet heard from and I've left messages for Gaynor, Flynn and Haas. As of right now, no response.

Also attached is the evidence list from the clerk's file.

Kim

*Kimberly B. McCoy, Director
Victim Witness Unit
Office of the District Attorney
Patrick H. Head, District Attorney
Cobb Judicial Circuit
10 East Park Square
Marietta, GA 30090
ph 770/528-3042 / fx 770-528-3031*

This email may contain confidential information and is intended only for the named recipient. If you received this email in error, please respond to the original sender.

Robin Nolte

From: McCoy, Kimberly [KMcCoy@cobbcounty.org]
Sent: Friday, July 06, 2007 4:06 PM
To: Robin Nolte
Subject: directions

Attachments: DIRECT.DOC



DIRECT.DOC (36 KB)

Here are directions to the office. If you need anything else, please let me know. Otherwise, we will see you on Thursday, July 19th at 9:15am. When you get to our building, come to the fifth floor and ask for me.
Thanks. Kim

Kimberly B. McCoy, Director
Victim Witness Unit
Office of the District Attorney
Patrick H. Head, District Attorney
Cobb Judicial Circuit
10 East Park Square
Marietta, GA 30090
ph 770/528-3042 / fx 770-528-3031

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1

EXHIBIT 96
OF 23 OF 60 PAGES
326

SUBPOENA EVIDENCE

SUBPOENA FOR THE PRODUCTION OF EVIDENCE

STATE OF GEORGIA

GLYNN COUNTYTO: ROBIN NOLTE, CLEVELAND ELECTRIC

You are hereby required to be and appear at the GLYNN County Superior Court before
THE HONORABLE DOROTHY ROBINSON, Judge of
 Superior Court, in Room 3 of the GLYNN County Courthouse at 9:00 o'clock A.M. P.M. on the
4th day of SEPT. 19 2007, and to bring with you into said Court certain DOCUMENTS to be used
 as evidence by THE STATE in a certain case pending in said Court between

THE STATE and STACEY TAN HUMPHREYS,
 Case No. 04-0673 (LBB)

The following are hereby subpoenaed: EMPLOYMENT RECORDS ON DEFENDANT STACEY
TAN HUMPHREYS FROM CLEVELAND ELECTRIC

Herein fail not, under penalty of the law.

Witness,

DOROTHY ROBINSON

, Judge of said Court

this 19th day of JULY, 19 2007

If you have questions contact Attorney For Plaintiff/
 Defendant

ELEANOR DIXONMARC COLE

Sela B. Jamsky, Clerk
 Superior Court

Phone: 770-528-3042 (Kim McCoy)



CLEVELAND ELECTRIC COMPANY

Main Telephone: (404) 696-4550

ISO 9002



DNV

DNV Certification, Inc.

REGISTERED FIRM

Facsimile Cover Sheet

To: Kim McCoy

Company: Cobb Judicial Circuit, Victim Witness Unit

Fax: 770-528-3031

Phone: 770-528-3042

From: Cindy Carr

Company: Cleveland Electric Company – Payroll Department

Fax: 404-696-0208

Phone: 404-505-4466

Date: July 23, 2007

Number of Pages: 36
(including this cover)

RE: Stacey Ian Humphreys

Comments:

Kim,

Please find attached a break down by week of Mr. Humphreys' work hours. There were a couple of weeks where the time was all entered on one day that week instead of being broken out by day.

If you have any questions please feel free to call me. I will be out of the office the remainder of week, but will be returning on Monday, July 30th.

Thank you,

Cindy Carr

EXHIBIT 96
PAGE 25 OF 66 PAGES
328

If you have any difficulty with this transmission, please notify the sender at (404) 696-4550

E - 238

1281 Fulton Industrial Blvd., NW • Atlanta, GA 30336

1 THE COURT: 2004 or 2005?

2 THE JUROR: Yes.

3 THE COURT: What was the sentence that you
4 received?

5 THE JUROR: Probation.

6 THE COURT: Probation for how long?

7 THE JUROR: About ten years.

8 THE COURT: Ten years?

9 MS. DIXON: Your Honor, is there any way if we can
10 ask -- maybe inquire what county and maybe get some
11 further information on that? There is probably a
12 motion we need to make.

13 THE COURT: Was that here in Glynn County?

14 THE JUROR: No.

15 THE COURT: Where was it?

16 THE JUROR: Tiffany.

17 THE COURT: Tiffany?

18 THE JUROR: Georgia.

19 THE COURT: The town was Tiffany, Georgia. Do you
20 know what county that was?

21 THE JUROR: No.

22 THE COURT: Are you still on probation?

23 THE JUROR: Yes.

24 THE COURT: I think we need to take an afternoon
25 break so that perhaps there can be some inquiry.

1 MR. HEAD: I just sent Ms. McCoy up to the DA's
2 office to see if they can verify what the status is.

3 THE COURT: We will take about a 15-minute
4 afternoon recess, Ms. Pinkney. I'm going to ask that
5 you return to the jury room for that short break.

6 (Juror exits courtroom.)

7 THE COURT: We will take 15 minutes.

8 (Break taken.)

9 (Defendant present.)

10 THE COURT: I think we might have time this
11 evening -- or this afternoon to have the charges read
12 to panel six, and panel six would include not only
13 those on the list of panels, but Mr. Fountain, Larry
14 Fountain. So they're moving the panel from the jury
15 assembly room into this jury room here. There is a
16 member of the panel, Bertha Proctor, who had some kind
17 of fall and has an injury to some ribs. I believe she
18 is here, and I think it might be appropriate to bring
19 her in first and just inquire about that.

20 MR. BERRY: I know we have Ms. Shimkus here also,
21 Judge. Are you going to try to deal with her this
22 afternoon?

23 THE COURT: She missed everything about her panel.

24 MR. CELLA: Did we ever hear back, your Honor,
25 from the woman with the open wounds on Saturday? I

IN THE SUPERIOR COURT OF COBB COUNTY

COBB COUNTY GA.
FILED IN OFFICE

2006 DEC 29 PM 4: 37

STATE OF GEORGIA

STATE OF GEORGIA

v.

STACEY IAN HUMPHREYS,

Defendant.

)
)
)
)
)
)
)

CRIMINAL ACTION FILE
NO. 04-9-0673-05
JAY C. STEPHANSON
CLERK

RE: DEFENDANT'S MOTION NO. 19, 20, and 119
MOTION FOR CHANGE OF VENUE

ORDER

The above-styled case having come before this Court on Defendant's Motion for a Change of Venue, and the Court having heard arguments of counsel, and having reviewed the Motion submitted by Defendant, as well as other matters of record, finds as follows:

FINDINGS OF FACT

An evidentiary hearing on the Defendant's Motion for Change of Venue was held on June 7, 2005, at which the Defendant offered evidence regarding pretrial publicity involving his case. The Defendant presented a report on a large number of newspaper articles that appeared about the case in 2004 and 2005 in the Marietta Daily Journal, (Defendant's Exhibit 14), and an audit report for numerous articles about the case that appeared in the Atlanta Journal Constitution over a twelve (12) month period, (Defendant's Exhibit 15). The Defendant also presented a report by Track TV which includes the wording, not the actual video, from numerous news reports about this case, (Defendant's Exhibit 16).

The Defendant pointed to some of the coverage in the Marietta Daily Journal, the newspaper of record for Cobb County, which focused upon real estate agents' safety, which led to increased publicity within the realty community and within the community as a whole. During that time, in March, 2005 (see attached) one of the victims' family members also placed two large advertisements in the Marietta Daily Journal, wherein certain inflammatory information from an undisclosed source was published, criticizing this Court, and adding to the notoriety of this case.

The publicity had subsided somewhat until late August and early September, 2006, when publicity increased as the story briefly reappeared on local news stations, apparently due to victims' family members' dissatisfaction with the proceedings in this Court. On October 15, 2006 the Marietta Daily Journal published a front page article entitled: "Victims' families push for trial of alleged killer." The article featured photographs of one of the victim's parents, and focused upon their filing a complaint with the Judicial Qualifications Commission,¹ alleging judicial misconduct by this Court. The Court personally observed that the story was picked up by the Associated Press, published in the Atlanta Journal Constitution, and broadcast on the local news, including all the major network affiliates and Fox 5 Atlanta, which included video interviews with members of one of the victims' family, and a video of one of the victims, and film clips of the Defendant, appearing in prison garb and restraints in court.

The Court personally observed that the nationally syndicated Nancy Grace show further increased the publicity, including the story of the complaint in a feature called "Judges in Contempt" which included an appearance by the local Marietta Daily Journal reporter. Ms. Grace

¹ Although the Complaint form states upon its face that all such complaints to the Judicial Qualifications Commission are to be kept confidential until they are resolved, with any violation subject to a citation of contempt of the Supreme Court of Georgia, the complaint was discussed at length in the article, and the complaint form itself was featured in the

vehemently criticized this Court, stating that the victim's family had been "begging" this Court to do "something – anything" about this case, and that the victims' family stated that the Court had done "absolutely nothing" on the case in three (3) years, all of which the record in this case shows was untrue.

CONCLUSIONS OF LAW

According to O.C.G.A. § 17-7-150, "[i]f from the evidence submitted, the judge is satisfied that an impartial jury cannot be obtained to try the case, the judge shall grant a change of venue." The Supreme Court of Georgia announced a new standard for judges to utilize when deciding change of venue motions in death penalty cases. See Jones v. State, 261 Ga. 665, 409 S.E.2d 642 (1991). "Trial courts will order a change of venue for death penalty trials in those cases in which a defendant can make a substantive showing of the likelihood of prejudice by reason of extensive publicity." Id. at 666.

Furthering its ruling, the Supreme Court added several standards to help trial judges determine whether a change of venue is justified in a particular case. See Barnes v. State, 269 Ga. 345, 496 S.E.2d 674 (1998). "[A] defendant must show that the trial setting was inherently prejudicial as a result of pretrial publicity or show actual bias on the part of individual jurors." Id. at 347. Regarding pretrial publicity, "to determine if the trial setting was inherently prejudicial, [] courts will consider the size of the community, the extent of media coverage, and the nature of the media coverage, especially if the coverage was inaccurate or inflammatory." Id. The Court finds that the extent of the media coverage was widespread in Cobb County, the metro Atlanta area, and the nation. The numerous newspaper articles included some information that would be

inadmissible at trial. This coverage included inflammatory and inaccurate statements about this Court, which shall remain unanswered, and which are totally irrelevant to any issue that might arise during the Defendant's trial and serve only to prejudice the local community. The Court finds that the pretrial publicity was extensive and creates an inherently prejudicial environment in which to conduct the trial.

IT IS HEREBY ORDERED AND ADJUDGED that Defendant's Motion for Change of Venue IS AND THE SAME SHALL BE GRANTED.

SO ORDERED, this 29th day of December, 2006.


DOROTHY A. ROBINSON
Judge, Superior Court
Cobb Judicial Circuit

Justice or Agenda ???

More than a year has past since that fateful day on November 3, 2003 when Lori Brown and Cyndi Williams were murdered in their Cobb County real estate office and no trial date has been established for the accused.

Why is this Judge delaying this case?

Perhaps thirty years on the bench produces arrogance and benevolence toward criminals which are apparent from the obstacles placed in the path of justice such as delaying trials and prolonging the agony of victims.

The citizens of Cobb deserve a Judge that will perform their sworn duties in an impartial and professional manner. We do NOT deserve an advocate for criminals serving in the role of Judge. We do NOT deserve a Judge that openly displays animosity towards the D. A. and attempts to blame him for their dereliction of duty. We do NOT deserve a Judge who displays cartoon-like caricatures from the bench which demeans this most important position and our judicial system. Cobb County deserves a professional and impartial Judge.

Let the reader be reminded that CRIME affects each of us and ask the following questions:

1. Why is there no legislation from the State Capitol requiring accountability of our JUDGES?
2. Why are our Judges permitted to serve thirty years or more when our Governor and President can only serve a maximum of eight consecutive years?

Each of us should be reminded that crime will destroy a society and we must not ignore it regardless of the perceived safety of our individual enclaves.



Lori Kathleen Brown
(Murdered November 3, 2003)

This article is paid for by Wayne Brown;
P.O. Box 1133; Powder Springs, Ga. 30127



5 of 100 DOCUMENTS

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January 20, 2005 Thursday Metro Edition

SECTION: Metro News; Pg. 3C

LENGTH: 394 words

HEADLINE: Cobb suspect's lawyers don't want tape heard

BYLINE: DON PLUMMER

SOURCE: AJC

BODY:

Lawyers for double-murder suspect Stacey Ian Humphreys want a judge to prevent jurors from hearing a confession Humphreys made after his arrest in the slaying of two Cobb County real estate agents.

Cobb Superior Court Judge Dorothy Robinson listened to a tape of Humphreys' statement to detectives in her office Wednesday after saying in a pretrial hearing that making the information public could taint potential jurors in the death-penalty case.

Robinson later ruled that Cobb police Detective Eddie Herman, who interviewed Humphreys, will be questioned in secret Friday by prosecutors and defense lawyers. Robinson said she will review the transcript of the Friday session before ruling on what parts of the statement can be heard by jurors once the trial begins.

"We've turned into a society that has a media frenzy over criminal cases," Robinson said. "I think the Lynn Turner case is a good example of massive waste of money" because of publicity. Turner was convicted of murder last year for poisoning her Cobb police officer husband with antifreeze.

The trial was moved to Middle Georgia when lawyers were unable to seat an unbiased jury in Cobb County.

In the Humphreys case, real estate agents Lori Brown and Cyndi Williams were killed Nov. 3, 2003, at their office in the model home at the Oakwind subdivision in west Cobb.

Brown, 21, was shot once. Williams, 33, was shot twice and also strangled, police said. The women's car keys and

Cobb suspect's lawyers don't want tape heard The Atlanta Journal-Constitution January 20, 2005 Thursday

wallets were stolen, according to detectives.

Parts of the interview heard Wednesday by Robinson was mentioned by Herman in earlier pretrial testimony.

"He started out by telling us that he just wanted to come back to Georgia . . . and plead guilty and get it over with," Herman testified at a Nov. 26, 2003, hearing.

Robinson had planned to exclude the public, including the victims families, from Wednesday's hearing, but allowed limited public testimony by Herman after a legal challenge by The Atlanta Journal-Constitution and TV station WSB.

Robinson cited a newspaper advertisement placed by Lori Brown's father, Wayne Brown, in which the Powder Springs man complained that Humphreys' case was moving too slowly.

"I'm very concerned about the publicity," Robinson said. "And now advertisements have been taken out in newspapers. They are not true, but they are being taken out."

GRAPHIC: Photo: Stacey Ian Humphreys was arrested in the 2003 slayings of two real estate agents.
ME: Metro version longer

LOAD-DATE: January 20, 2005



1 of 100 DOCUMENTS

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The Associated Press State & Local Wire

October 15, 2006 Sunday 5:27 PM GMT

SECTION: STATE AND REGIONAL

LENGTH: 293 words

HEADLINE: Family claims judge's not making progress on murder trial

DATELINE: MARIETTA Ga.

BODY:

Two parents have filed a complaint against the judge presiding over the trial of their daughter's alleged murderer, claiming that she hasn't made enough progress in the case.

Wayne and Linda Brown's daughter, Lori, was found murdered along with a co-worker in a real estate sales office in Powder Springs on Nov. 3, 2003. Five days later, authorities arrested Stacey Ian Humphreys in the slayings.

Humphreys still hasn't gone to trial, and Cobb Superior Court Judge Dorothy Robinson hasn't heard proceedings in the case since a motion hearing more than a year ago.

The Browns filed a complaint against Robinson with the state's Judicial Qualifications Commission, which investigates alleged misconduct by judges, though its findings aren't binding.

"My understanding is the commission has reviewed the complaint and they've found that the complaint does have some merit," Wayne Brown said. "At the present, they're waiting on a response from Judge Robinson. I'll be real interested in her response."

The Marietta Daily Journal couldn't reach the judge for comment.

While the Browns say they have nothing personal against the judge, Wayne Brown says he believes the judge hasn't acted faster because she might have a problem with the death penalty, which prosecutors are seeking for Humphreys.

Linda Brown calls the judicial process "a nightmare."

"My expectations of our judicial system was that once they arrested this person who's accused of killing Lori and Cyndi, that we would just go in and have this speedy trial," she said. "That's not the way the system works."

Family claims judge's not making progress on murder trial The Associated Press State & Local Wire October 15, 2006
Sunday 5:27 PM GMT

Ted Williams, whose wife, Cyndi, was killed along with Lori Brown, said he's also perplexed the trial would take so long to get started.

Information from: Marietta Daily Journal, <http://mdjonline.com/>

LOAD-DATE: October 16, 2006



4 of 100 DOCUMENTS

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October 16, 2006 Monday

SECTION: A

LENGTH: 123 words

HEADLINE: Family claims judge mishandling trial

BODY:

Two parents have filed a complaint against the judge presiding over the trial of their daughter's accused murderer, claiming that she hasn't made enough progress in the case.

Wayne and Linda Brown's daughter, Lori, was found slain along with a co-worker in a real estate sales office in Powder Springs on Nov. 3, 2003. Five days later, authorities arrested Stacey Ian Humphreys in the slayings.

Humphreys still hasn't gone to trial, and Cobb Superior Court Judge Dorothy Robinson hasn't heard proceedings in the case since a motion hearing more than a year ago.

The Browns filed a complaint against Robinson with the state's Judicial Qualifications Commission, which investigates alleged misconduct by judges, though its findings aren't binding.

LOAD-DATE: October 16, 2006

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Your purchase of **10** articles expires on **03/24/2013**.
You have viewed **4** articles and have **6** articles remaining.

Marietta Daily Journal (GA)

Delay in justice devastating for victims' families

Published: May 17, 2007
DEAR EDITOR:

Re: Story, "Judge sets trial date **in** agent deaths" Saturday's MDJ

The **delay in** the Stacy Ian Humphreys case is more than just an emotional perception by the families of the murdered real estate agents, Lori Brown and Cynthia Williams. The vicious and brutal murders of these two women took place on Nov. 3, 2003 and thanks to the excellent work of the Cobb police, the accused murderer was arrested and returned to Cobb **in** short order. Also, with the outstanding work by our district attorney and his staff, Humphreys was indicted for the murders **in** February 2004.

However, Humphreys wasn't arraigned by Cobb Superior Court Judge Dorothy Robinson until June 2004 and for six months after the arraignment there were no court sessions scheduled for the case. The first hearing on motions was scheduled **in** January 2005 and the last hearing on motions was **in** September 2005. **In** addition, no court sessions were scheduled during 2006. It is worth noting that there were no appeals filed to a higher court during 2005 or '06. There were no hearings scheduled until early 2007.

Finally, a tentative trial date of Sept. 4, 2007 was set Friday. Because of hostility toward the court caused by one of the victim's families, a change of venue was granted. Therefore, the trial will take place **in** Brunswick. That is the retribution for an average citizen questioning the unwarranted **delay** (almost four years) of **justice**.

Again, it is worth noting that there were no appeals prior to January 2007. According to Georgia law, it is the duty of the presiding judge **in** all counties with inhabitants of 100,000 or more, such as Cobb, to render a decision within 90 days on all motions that have been submitted unless providentially hindered or unless prosecution and defense agrees **in** writing to extend the time limitation. Surely, we all can agree that 15 months is much longer than 90 days. Also, it is worth noting that between the indictment **in** February 2004 and the remainder of 2004, the only court session scheduled was for the arraignment, which is simply the entering of a plea.

Why are such **delays in** the judicial process permitted? Perhaps, we have become complacent and think that crime always happens to someone else.

Regardless of how safe we might perceive our enclaves of life to be, none of us are so protected that we are beyond a criminal's reach. What if, God forbid, one of these young women had been your daughter? The loss of your child would be **devastating in** itself, let alone the **delay of justice** for almost four years.

Wayne Brown

Powder Springs

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Marietta Journal Archive Search Results

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About your archives purchase:

Your purchase of **10** articles expires on **03/24/2013**.
You have viewed **3** articles and have **7** articles remaining.

Marietta Daily Journal (GA)

Families seek closure in murder case Trial for accused real estate agent killer set to begin Tuesday

Marcus E. Howard

Published: September 2, 2007

POWDER SPRINGS -- Nearly four years after two west Cobb real estate agents were found dead inside a Powder Springs model home, the murder trial of a Dunwoody man accused of fatally shooting them in 2003 is set to begin with jury selection Tuesday in southeast Georgia. Attorneys and family members associated with the case are preparing to travel 327 miles south of Cobb to Glynn County's Neoclassical Revival-style courthouse built amongst the hanging Spanish moss of Brunswick in 1991, after Cobb Superior Court Judge Dorothy Robinson moved the trial there in May to find impartial jurors in light of pre-trial publicity in metro Atlanta. For the victims' families, the trial is the beginning of the end to a long and emotional road to closure. "Right now, I'm just to a point like everyone else who (is) looking for closure," said Wayne Brown, father of victim Lori Brown. "The realization won't hit until we get in that courtroom and hear testimony. I'm sure it will revive some of the pain from four years ago." **Stacey Ian Humphreys** is accused of murdering Lori Brown, 21, of Powder Springs and Cynthia "Cyndi" Williams, 33, of Acworth on Nov. 3, 2003, in the Morrison Homes sales office of the Oakwind subdivision where they worked off Antioch Road near Vaughan Elementary School. A builder discovered the bodies of the two women at around 1:43 p.m. the day they were slain. Ms. Brown was shot once; Ms. Williams was strangled and shot twice. Cobb District Attorney Pat Head has filed for the death penalty in the case. Brown, a 60-year-old engineer, and his wife, Linda, a 54-year-old Powder Springs real estate agent, plan to take time off of their jobs to attend the entirety of the trial, which is expected to last four to five weeks. "We have to do it, we are her parents and have to stand up for her," said Mrs. Brown, who has been subpoenaed to testify during the trial. "She would have done the same thing for us." During the trial, the Brown family plans to remember, as they do every year, what would have been Ms. Brown's 25th birthday on Sept. 13. In an interview with the Marietta Daily Journal a year after the death of his wife, Cyndi, Ted Williams of Acworth said he too is seeking a certain type of closure he hopes the trial will provide. But he said he is looking forward to the trial with mixed emotions. "Things get better, then things are going to come back up again (with the trial)," said Williams. Ms. Brown was known to be very outgoing and loved her job as a real estate agent, her family says. Nov. 3, 2003, was a bright fall Monday and by that afternoon things were coming together in the life of the McEachern High School 2001 graduate. After working a couple of jobs after graduation, she became engaged to her high school sweetheart, Johnnie Tuggle, a Cobb Police recruit. Ms. Brown could constantly be seen carrying around a notebook stuffed with wedding ideas that her close friend and co-worker, Cyndi, a former wedding planner, helped advised her about in preparation for her big day scheduled for Sept. 25, 2004. Ms. Brown was also planning to move into her parents' former Powder Springs home, which she owned. In addition, she'd learned that day from her supervisor after a weekly sales meeting in Marietta that she was going to be promoted from a junior to a senior sales associate, said Mrs. Brown, who also worked for Morrison Homes at the time. She said she had stayed after the meeting to catch a ride with her daughter back to their Powder Springs home in order to get her car before both went to their respective subdivisions 12 minutes from each other. That conversation after the meeting regarding her future and career plans was one of the last Mrs. Brown remembered her daughter having. "They talked about what she needed to do to accomplish the things she wanted to," remembered Mrs. Brown. "Neither one of us knew in an hour or two that she wouldn't have a future in this world." After Mrs. Brown watched Lori jump into her Honda Accord at their house, she drove behind her on Lost Mountain Road in her Sport Utility Vehicle before Ms. Brown pulled into the Chevron gas station at the corner of Dallas Highway. It was the last time she saw her daughter. Ted Williams has generally stayed out of the media spotlight since the homicides and declined to be interviewed for this article. "I decided a while back that I didn't want to do anything like this before the trial," he wrote in an e-mail to the MDJ. Williams first met Cyndi back in their native Louisiana in 1997 and they enjoyed living in metro Atlanta after marrying in 1999. In his previous interview with the MDJ, Williams described his wife as someone who was adventurous about life. "She was everything," he said. "She was a person that was always happy, that was always wanting to do something fun." By Nov. 3, 2003, the young couple continued to enjoy life together and things were good. "We were just doing well. It was a good time for us, and everything was going great," Williams remembered. Earlier that morning, Mrs. Williams and Ms. Brown had learned at the company

meeting that they'd won a trip to New York for their high volume of home sales in the Oakwind subdivision, where homes at the time started at \$190,000. Later on that day, both women headed to work in west Cobb at the Morrison Homes sales office. News of the double-homicide shocked neighbors in the normally quiet Powder Springs neighborhood. From eyewitness accounts, Cobb Police learned that a black Durango had been spotted cruising the neighborhood with a man behind the wheel. A few days later, police released a sketch of the suspect. **Humphreys**, now 33, was reportedly working as an electrical contractor at a MARTA station in November 2003 since being paroled on burglary charges and shared a north DeKalb County home with his grandmother. The murders happened on a Monday; by Friday, Cobb Police investigators zeroed in on **Humphreys** at his Dunwoody home, but he was able to slip away from officers. About 24 hours later, **Humphreys** - who some believe was headed to Canada - made it to Brookfield, Wis., about 45 miles west of Milwaukee and 800 miles north of Atlanta, before being apprehended after a 30-minute chase, and returned to Georgia. Police accused **Humphreys** of taking credit cards from the women and then fleeing the scene. They said the murder weapon was found in the glove compartment of the rental Jeep that **Humphreys** used to flee. But his fingerprints were not found at the scene, according to police testimony during his probable cause hearing. **Humphreys** was indicted for the murders in February 2004 and entered a not guilty plea at his arraignment on June 1, 2004. One of the last times Glynn County saw a death penalty case was back in 2003 when a man was tried for the murder of a sheriff's deputy from nearby Camden County. He was convicted; however, a jury decided to give him life without parole after one of 12 jurors voted against the death penalty. Stephen Kelley, district attorney for the Brunswick Judicial Circuit that includes Glynn, said attorneys in the case can expect to find an impartial jury in the county of approximately 73,630 residents, considering he himself had never heard about the **Humphreys** case until inquiries were made about moving it to Glynn. "I don't think Glynn County has had any publicity (about the case)," said Kelley. He said that while the Glynn Superior Court does have a full docket, finding room to try the **Humphreys** case wasn't a huge problem. "The courthouse is pretty stretched," Kelley said. "But they would have done the same for us if we went up to Cobb." Humphrey's high-profile Marietta defense attorney Jimmy Berry and the Cobb DA's Office informally agreed to move the trial to Glynn in February after Judge Robinson granted a defense motion in December for a change of venue in the case. Around that time, Berry told the MDJ that trying the case well outside Cobb offers his client the best opportunity at having an impartial jury. "We didn't feel that it would be good to try it here because of the amount of publicity, so I think Glynn County will be a good jurisdiction for us," Berry said. The demographics between Glynn and Cobb are both different and similar, depending on what categories you look at. Cobb's population is much larger with approximately 605,795 more residents than Glynn, according to a 2006 U.S. Census Bureau estimate, though the geographic area of Glynn is bigger. At 51.7 percent, Glynn has just 1.5 percent more women than Cobb's 50.2 percent; but the 2004 median household income of \$52,936 in Cobb was significantly higher than Glynn's \$40,233. When it comes to race, Glynn is 72 percent white, 26 percent black, 4.1 percent Hispanic and 0.7 percent Asian, according to data from the U.S. Census in 2005 compared to Cobb which is 71.9 percent white, 22.5 percent white, 10.4 percent Hispanic and 3.9 percent Asian. Except for the defendant, attorneys, witnesses and judge, Glynn County will provide everything need for the trial such as court space, sheriff deputies, bailiffs and, of course, the jury pool. Judge Robinson will preside over the trial as she has done for the over 150 motions filed by attorneys leading up to the trial. She has sat on the Cobb Superior Court since 1980, when she became the first woman Superior Court judge in the county. She was last re-elected in 2004 to a four-year term when she held off opponent William J. McKenney, a Marietta attorney. A major issue in that election was streamlining the calendar process and expediting court proceedings. Members of the two victims' families have expressed anger and frustration over what they perceive to have been a slow pace to the start of the trial since **Humphreys** was indicted about three-and-a-half years ago. "I think we have a lot of good Cobb judges," said Brown. "But in this case, we were given a judge who - I wish no ill will - but after sitting on the bench for over 30 years, I think arrogance and laziness rules the day and pettiness." The Brown family said it believes the reason why Judge Robinson moved the trial hundreds of miles away from the convenience of Cobb for victims' family members and witnesses was due to them filing a complaint against her with the state's Judicial Qualifications Commission, which conducts investigations and hearings into alleged misconduct by Georgia's judges. "I think a lack of a swift trial is a lack of justice," said Brown, who added that he isn't certain if the complaint formally impacted the case. Since he took office in 1998, Head has had only two cases tried outside of Cobb during his tenure. The death penalty case - presided over by Judge Robinson - of Michael Buttram in 2003 in north Georgia's Lumpkin County that last nearly 4 weeks and the murder trial of Lynn Turner in Middle Georgia's Houston County that went on for about three weeks in 2004. About four weeks ago Cobb DA Pat Head took a break from his family reunion on nearby St. Simon's Island and drove across the F.J. Torras Causeway to Brunswick to pay a visit to the Glynn courtroom where the trial will take place. He was also shown the office space made available to him and his team of prosecutors. Head and his Assistant DAs Eleanor Dixon and Marc Cella will prosecute the case. Head said he has "no reason to feel any other way" about getting a fair jury in Glynn. Death penalty trials are divided into two phases: a trial to determine innocence or guilt and a punishment phase for the jury to unanimously decide if the death-penalty or whether life or life without parole should be given if they find the defendant guilty. As to why he made the decision to file for the death penalty in this particular homicide case, Head wouldn't say. "You can't get into why a DA files for the death penalty unless you talk about evidence," he said. "I'm not commenting on evidence until the trial." Head, who said it his custom to personally present closing arguments during the punishment phase of a death penalty case, said he wouldn't rule out negotiating a sentence for **Humphreys** if he and Berry were to come up with a plea deal. "I don't know if I'd ever say there are no circumstances," Head said. "We will take one day at a time." Defense attorney Jimmy Berry did not return several phone calls made by the MDJ requesting an interview with him and his client.

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Marietta Daily Journal (GA)

Family tears flow as jury ponders **Humphreys'** fate

From staff and wire reports

Published: September 27, 2007

BRUNSWICK -- Tears were shed in the witness stand and the jury box Wednesday as **family** and friends of two slain Cobb real estate agents bared their grief, still raw after nearly four years, to jurors weighing the death penalty for the women's killer.

Several jurors wiped their eyes and noses with tissues as a dozen of the victims' loved ones -- parents, siblings, friends, a husband and a fiancé -- remembered Cyndi Williams, 33, of Acworth, and Lori Brown, 21, of Powder Springs, and described lives shattered by their murders.

Mrs. Williams' husband cried as he told the jury he remains "functionally depressed" since his wife's death. Ted Williams said he's become withdrawn and thinks about quitting his job and moving but can't decide.

"I catch myself during the day thinking, 'Wait until Cyndi hears about this,' or I hear something and imagine her laughing," he said, sobbing. "All I want is to have her back, but that's never going to

happen."

The jury convicted **Stacey Ian Humphreys**, 34, of malice murder

Tuesday.

The 10 women and two men now must decide if **Humphreys** will be sentenced to life in prison or death by lethal injection.

The bodies of Mrs. Williams and Ms. Brown were found Nov. 3, 2003, at the Morrison Homes sales office of west Cobb's Oakwind subdivision off Antioch Road near Vaughan Elementary School where they sold homes.

Prosecutors say **Humphreys** stalked out the women at the sales office. **Humphreys** used a handgun to force them to strip naked and give him the access codes to their bankcards before he shot them both in the back of the head.

Humphreys was arrested five days after the killings. On Nov. 7, 2003, he fled the metro-Atlanta area and was found in Brookfield, Wis., about 30 miles west Milwaukee the next day.

Prosecutors said **Humphreys** needed money to make a \$565 payment on his Dodge Durango truck.

"It's going to be an easy decision for you to make that this case is eligible for the death penalty," Cobb Assistant District Attorney Marc Cella told jurors as the sentencing phase of **Humphreys'** trial began Wednesday.

Marietta defense attorney Jimmy Berry told jurors that experts who have studied **Humphreys' family**, school and medical histories will testify they believe **Humphreys** suffers from Asperger's syndrome, a form of autism.

"This is not an excuse for what he did," Berry said. "We ask you to hear both sides before you render a decision."

Cobb Superior Court **Judge** Dorothy Robinson moved the trial from Cobb County to coastal Brunswick, more than 300 miles away, because of pretrial publicity.

Ms. Brown's **family** described her as an ambitious but giving young woman who got her real-estate license when she was 18 years old. Before she was killed, Ms. Brown had set a September 2004 wedding date to marry boyfriend Johnnie Tuggle.

Tuggle, whose father died and mother left him as a child, wept as he told jurors how Ms. Brown made him feel a part of her own **family**.

Her older brother, Wayne Brown Jr., remembered how his sister had cleaned his house, done the laundry and had a cake waiting when he and his wife returned home with their newborn son two months before she was killed.

Ms. Brown's mother, Linda Brown, said her daughter seemed much older than her 21 years.

"I miss this child so much, some days I feel like this is a dream and she's still here," Linda Brown said. "I feel like I'm in a maze and can't get out. But I keep running and looking for Lori, hoping she'll be there."

Mrs. Williams' **family** recalled her bright smile and infectious laugh, a personality that made selling homes come naturally.

George Marks, Williams' father, said he couldn't erase the image of seeing his daughter's body at the funeral home in 2003, and the toll that death had taken on her "beautiful face."

Mrs. Williams' older sister, Teri Marks-Brunner, trembled and could barely speak as she recalled the irony of how she would always seek her younger sister's advice. She wept as she recalled having to tell her 3-year-old daughter, whom Williams doted on, that her aunt was dead.

"Our **family** has a hole in it, a large hole that no one can ever fill," Marks-Brunner said. "My mom ... cannot bear to walk into Cyn and Ted's home, because emotionally it's too much to bear."

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Marietta Daily Journal (GA)

Humphreys' death case at impasse

Katie Fallon

Marietta Daily Journal Staff Writer

Published: October 8, 2006

COBB COUNTY -- As frustration pours from the **families** of murder **victims** Lori Brown and Cynthia Williams, Cobb Superior Court **Judge** Dorothy Robinson has reached a stalemate in the death penalty trial of **Stacey** Ian **Humphreys**.

Judge Robinson hasn't ruled on motions in the case since Sept. 14, 2005.

On Wednesday, Cobb district attorney Pat Head refused to comment on the progress of the case and why it's taking so long to reach trial.

Calls placed to **Judge** Robinson's chambers last week reached only her clerk, who said motions in the case are "a matter of public record," and refused to connect the Marietta Daily Journal with the **judge**.

Humphreys, who high-profile Marietta criminal defense attorney Jimmy Berry represents, is accused of killing the two women in the Morrison Homes sales office of west Cobb's Oakwind subdivision off Antioch Road near Vaughan Elementary School.

A builder discovered their bodies Nov. 3, 2003. Ms. Brown was shot once while Ms. Williams was strangled and shot twice. The two were real estate agents who worked together.

Humphreys faces charges of murder, aggravated assault and armed robbery. Robbery was the suspected motive of the crime because both women's wallets were missing from the crime scene.

The lack of progress in the case has frustrated many, including Ms. Brown's mother, Linda, who maintains a Web site in her daughter's memory.

The site, lori-brown.memory-of.com/, lists a timeline of Ms. Brown's life and details of the case. Linda Brown's latest entry dated in August voices anger over **Judge** Robinson's inaction.

"We talked to the district attorney on Thursday. He has nothing new to report," Linda Brown writes. "The **judge** is not doing anything on Lori and Cyndi's case. The bad thing is there is nothing we can do. We are still praying that **Judge** Robinson will be moved on to bring this case to trial quickly. All we want for Lori and Cyndi is Justice."

How quickly the case reaches trial is out of Head's hands once a jury issues an indictment. Head said he would not comment on why **Judge** Robinson hasn't ruled on motions in the case in more than a year.

In June 2005, Berry said he expected the trial to begin early in 2006. Last year, he filed a motion for a change of venue in the case to move the trial out of Cobb County.

"A defendant has a right to a fair trial," Berry said. "That's the issue we're looking at. What it really boils down to is saturation by the amount of information given to the community."

One aspect of the case that has kept **Humphreys** in a negative light is the fact that after the murders, he fled the state Nov. 7 and was found in Brookfield, Wis., about 30 miles west Milwaukee the next day.

In the past, **Judge** Robinson has defended her progress in moving the case along.

"The case is moving faster than any other case," she has said. "This case is moving quickly."

If Humphrey's trial starts next year, it will be one of up to six death penalty trials Cobb might hear in 2007.

Trials for accused murderers Craig Michael Moore and Philip Bailey already have received trial dates. Trials for Lawrence Rice, Anjail Muhammad and Joshua Kevin Drucker also are unscheduled.

If **Humphreys** doesn't see trial next year, **Judge** Robinson would have to hear the case during a judicial election year. The **judge** is up for re-election in 2008.

Judge Robinson has sat on the Cobb Superior Court since 1980. She was last re-elected in 2004 when she held off opponent William J. McKenney, a 57-year-old Marietta attorney. A major issue was streamlining the calendar process and expediting court proceedings.

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Marietta Daily Journal (GA)

Murder trial move would add to costs

MDJ Columnist

Published: February 23, 2007

It's hard to believe that 12 impartial jurors could not be found in Cobb County to try the death penalty case of **Stacey Ian Humphreys**.

Humphreys is charged with the murder of two real estate agents, Lori Brown and Cyndi Williams, shot to death in a Powder Springs model home four years ago.

But apparently the prospects of finding an impartial jury in Cobb are so poor that the trial will be moved to another county, adding to costs and perhaps increasing the chances the defendant will escape the death penalty if convicted.

Judge Dorothy Robinson of Cobb Superior Court has granted a change of venue and is now considering where to move the trial.

The venue of choice for the defense and prosecution is coastal Glynn County, home of the resort islands of St. Simon's, Sea Island and Jekyll -- Georgia's Golden Isles.

It's about as far away from Cobb as possible short of moving the trial out of state.

It's the place of "emerald twilights" and "of the heavenly woods and glades that run to the radiant marginal sand-beach within the wide sea-marshes of Glynn," wrote poet Sidney Lanier.

It's an idyllic setting for lots of things, but a double murder trial?

Humphreys' attorney, the well-known death penalty opponent Jimmy Berry of Marietta, said the key is the demographics -- the people statistics. And he said, "the demographics are similar."

Here are some of the

demographics:

Glynn County has roughly 72,000 people, little more than 10 percent of Cobb's population.

In 2005, Glynn County's population was 71 percent white, 26 percent black and about 3 percent Hispanic.

That compares with Cobb's 2005 racial makeup of 64 percent white, 21 percent black and about 10 percent Hispanic.

Median income for a Glynn County household in 2000 (latest available) was \$38,765 and for a family \$46,984, while the county had a per capita income of \$21,707. About 12 percent of families and 15 percent of the total population were below the poverty line.

In Cobb, the median household income (2003) was \$60,565, and median family income was \$72,398. Per capita income was \$30,620. About 6 percent of families and 8.5 percent of the population fell below the poverty line.

The critical issues are pretrial publicity and juror prejudice. In Judge Robinson's change of venue order, she condemned "inflammatory and inaccurate statements" by members of the families of the victims. They complained about how long this case has taken to come to trial, which is hardly surprising.

Now the families will have to travel to some other county and pay for lodging, meals and other expenses in order to attend the trial.

Attorney Berry may find a jury outside of Cobb that, if it convicts **Humphreys** on what appears to be extremely strong evidence, will spare his life.

For, as Berry said of the costly defense for Brian Nichols in the Fulton courthouse massacre: "It's more about the death penalty than anything else."

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Marietta Daily Journal (GA)

Victims' families push for trial of alleged killer Browns file complaint against judge on case

Katie Fallon

Published: October 15, 2006

POWDER SPRINGS -- In a quiet, well-kept neighborhood in west Cobb, two parents grieve for a lost daughter and what they believe is a lost justice system.

On Nov. 3, 2003, Wayne and Linda Brown's daughter, Lori, and her co-worker, Cyndi Williams, were found murdered in the Morrison Homes sales office in the Oakwind subdivision in Powder Springs. Just five days later, Dunwoody resident **Stacey Ian Humphreys** was arrested for the slayings in Brookfield, Wis., roughly 30 miles west of Milwaukee.

Now, nearly three years later, the Browns are frustrated that so much time has passed since the murders and **Humphreys** still has not gone to trial. Because their daughter's alleged killer was arrested so soon after the murders, the Browns expected a "speedy trial" would have been heard by now.

The case, which is before Cobb Superior Court **Judge** Dorothy Robinson, has not heard a court proceeding since a motion hearing in Sept. 14, 2005.

Wayne Brown said because of the lack of progress, the **family** has filed a complaint against **Judge** Robinson with the state's Judicial Qualifications Commission, which conducts investigations and hearings into alleged misconduct by Georgia's **judges**.

The Commission issues opinions about potential violations of judicial conduct as well as the removal or suspension of **judges**, but the state Supreme Court makes the final decision and is not bound by the commission's ruling.

Brown said the **family's** complaint has been validated.

"My understanding is the commission has reviewed the complaint and they've found that the complaint does have some merit," Brown said. "At the present, they're waiting on a response from **Judge** Robinson. I'll be real interested in her response."

Brown did not know when the commission is expected to rule on the complaint.

Calls placed to **Judge** Robinson's chambers seeking comment on the case reached only her clerk, who said motions in the case are "a matter of public record," and refused to connect the Marietta Daily Journal with the **judge**.

Despite their anger over **Judge** Robinson's inaction, the Browns said they have nothing personal against the **judge**.

"Regardless of how I feel in terms of her professionalism as a **judge**, I wish her no ill will," Mrs. Brown said. "I really don't. It's not personal."

Brown said he believes one of two reasons why **Judge** Robinson is taking so long to bring the case to trial. He said she is either grown complacent because she has been on the bench for so long, or she has a problem with the death penalty, which Cobb District Attorney Pat Head is seeking for **Humphreys**.

Mrs. Brown said her experience with the judicial system has opened her eyes to things the average person never realizes.

"The whole thing is a nightmare," Mrs. Brown said. "We knew the whole thing was going to be a process. We just didn't know it was going to be like this. My expectations of our judicial system was that once they arrested this person who's accused of killing Lori and Cyndi, that we would just go in and have this speedy trial and if he was found guilty, then he would receive his punishment. That's not the way the system works."

Brown said a rude awakening for him came after he learned that once **Humphreys** was indicted for the murders and his case assigned to a **judge**, then the **judge** had total autonomy over its timeline.

"Not only did we lose our daughter, but now, we have to go through this process of trying to make sure the person who killed her is convicted and never does this to somebody else again," Mrs. Brown said.

Ms. Williams' husband, Ted, has stayed out of the media spotlight since the murders, but said he shares the Brown **family's** frustration over the lack of progress in the trial.

He said he is perplexed at how the trial could take so long to start. Nonetheless, Williams said he has been pleased with the cooperation he has received from District Attorney Pat Head and his office.

"I don't have any issues with the DA or his team," Williams said. "I feel they have kept us up to date as much as possible, but as of late, with no further progress, there is nothing more for them to communicate other than the **judge** still has yet to rule on motions introduced nearly a year ago."

Williams said he has been reluctant to speak to the media because he believes **Humphreys'** defense team will use any public mention of the case to fuel its motion to have the case tried in another county.

Head last week refused to comment on the progress of the case and why it's taking so long to reach trial.

Likewise, the Browns said while they also are displeased with how **Judge** Robinson has handled the case, they have found Head's office to be as helpful as possible.

"We never have any trouble getting a hold of Pat," Mrs. Brown said. "He seems very willing to talk about the case regardless of how frustrated we are."

The **families** also credit the Cobb County Police Department for arresting **Humphreys** so quickly.

Brown said it would be more painful to have the alleged murderer still unidentified and on the run than knowing somebody was behind bars awaiting trial for the deaths.

"We were extremely impressed with Cobb County Police," Brown said. "I think they did an absolute super job. They had this thing under control."

While the Browns sit and wait for any news in the case, several pictures of Lori and their two other children that adorn the walls of their Powder Springs home they bought just a year before Lori was killed comfort them. Brown said time has helped the pain, but special occasions are tough to deal with.

"As time passes, things get better," Brown said. "The pain dulls, but then you have those moments that you recall when she was here and it makes it very difficult."

In the three years since Cyndi and Lori were killed, the two **families** have kept in contact, but as the frequency of new news slows, so does contact. Williams has remained in Cobb, but Brown said the past few years have been tough.

"It almost destroyed Ted," he said.

One thing that has changed since the murders is how real estate agents handle their personal safety while on the job.

Both Lori and her mother worked for Morrison Homes at the time of the murders, and since, Mrs. Brown said she believes real estate agents are more aware of their surroundings and keep themselves safe. She said some women agents she knows have even started to carry guns.

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BOARD MEMBER

Wayne V. Bennett

Vice Chairman

Wayne V. Bennett serves as Vice Chair of the Parole Board. Mr. Bennett was appointed to the State Board of Pardons and Paroles by Governor Brian Kemp in March of 2024. As Parole Board Vice Chair, he serves on the Board of the Department of Community Supervision. He is the former sheriff of Glynn County.



Mr. Bennett served as sheriff of Glynn County from 1992 to 2012 and retired from the office. Mr. Bennett is the first former sheriff appointed to the Board. As sheriff, he was responsible for the operations of a 600 capacity correctional facility to include providing for the custody, control and welfare of the offender population. During his 20-year tenure as sheriff, Mr. Bennett served on the Executive Committee for the G8 Summit in 2004, and served on Presidential Security Teams for Presidents Jimmy Carter, George H. W. Bush and George W. Bush. He served as an advisory board member of the Georgia Peace Officer

Standards and Training (POST) Council. From 1978 to 1992, Mr. Bennett served with the Glynn County Police Department. He served as Patrol Division Supervisor, Commander of the Criminal Investigative Division, supervised Internal Affairs/Professional Standards, and supervised Task Force Operations. Mr. Bennett graduated from the 152nd session of the FBI National Academy. He served in the U.S. Army from 1974 to 1978. Since retiring from Glynn County, he has worked as a consultant in the areas of law enforcement, policy and procedures and jail operations. Mr. Bennett has a Bachelor of Science in Criminal Justice and Public Administration from Liberty University.

Mr. Bennett is active in his community and has served on several boards and groups to include the Glynn County Parks and Recreation Advisory Board, the Glynn County Police Advisory Panel, Chamber of Commerce, and Leadership Glynn 12 Month Fellowship. He's a member of his local church.

Appendix F

SOTOMAYOR, J., dissenting

SUPREME COURT OF THE UNITED STATES

STACEY IAN HUMPHREYS, PETITIONER *v.*
SHAWN EMMONS, WARDEN

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

No. 24–826. Decided October 14, 2025

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN and JUSTICE JACKSON join, dissenting from the denial of certiorari.

In 2007, a Georgia jury convicted Stacey Humphreys of murder and robbery, and sentenced him to death. It did so only after one of the jurors, during *voir dire*, misleadingly omitted critical details of her own experience as a victim of a similar crime and then bullied the other jurors into voting for death based on that prior experience. The extreme juror misconduct in this case illustrates the harms of an ironclad no-impeachment rule that prevents consideration of juror testimony to undermine a death verdict. Because our review of that question is buried in a procedural thicket that could be clarified by the Court of Appeals, I would at the very least vacate and remand for the Eleventh Circuit to supply the needed clarity on the important issues raised by this case. I therefore respectfully dissent from the denial of certiorari.

Humphreys was charged with murdering two women inside a construction company’s model home, during which he forced both to undress and robbed them at gun point. The State of Georgia sought the death penalty. During *voir dire*, juror Chancey stated that she had previously been the victim of an attempted rape and robbery in her home, by a convicted murderer who had escaped from a mental institution. She swore under oath, however, that nothing

SOTOMAYOR, J., dissenting

about that prior experience would prevent her from being a fair juror. She explained that her attacker never physically harmed her because she had escaped the building before he entered. She also swore that she would be able to “honestly consider” all three sentencing options: life with parole, life without parole, and death. App. to Pet. for Cert. 72a. As later revealed, these statements directly contradicted what she told other jurors during deliberations.

During the penalty phase deliberations, she disclosed to the other jurors that her attacker had in fact assaulted her while she was naked in her bed. In light of that experience, the jury foreperson later reported, Chancey “‘had her mind made up’” from “‘day one’” of trial that Humphreys “‘deserve[d] to die.’” *Id.*, at 71a.

On the second day of deliberations, “even when the other eleven jurors . . . voted for life without parole” in an internal poll, “Chancey would not even consider it.” *Id.*, at 71a–72a. At that point, the foreperson wrote a note to the trial court explaining that the jurors were “‘unable to come to a *unanimous* decision on either death or life imprisonment without parole as a sentence.’” *Id.*, at 9a. Chancey, believing the note as written would result in a mistrial, revised the note to say that the jurors were “‘*currently* unable to come to a unanimous decision.’” *Id.*, at 9a–10a. The court instructed the jury to continue deliberating.

Chancey then “snapped.” *Humphreys v. Sellers*, No. 1:18-cv-02534 (ND Ga., Sept. 19, 2018), ECF Doc. 42–7, p. 443. She yelled, cursed, and screamed that she would “stay [t]here till forever if” that is what it took “for [Humphreys] to get death.” App. to Pet. for Cert. 9a. She threw the victims’ photos across the table and demanded, “[D]o you want this to happen to someone you know?” *Ibid.* She reminded the jurors of the similar details of her own attack, and told them that “‘they had to reach a unanimous decision or [Humphreys] would be paroled,’” which was not true under Georgia law. *Ibid.* She then levied personal

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attacks against the jurors and refused to engage in any debate.

Perhaps unsurprisingly, jury deliberations almost completely broke down. Screaming could be overheard from the courtroom. One juror “took a swing” at Chancey and punched a hole in the wall. *Ibid.* Jurors were seen crying on several occasions. A juror later recalled that “it was as if an evil force took over . . . Chancey.” ECF Doc. 33–12, p. 13. The foreperson even wrote a note asking to be removed from the jury because of the “hostile nature of one of the jurors.” App. to Pet. for Cert. 12a. The court instead gave an *Allen* charge and instructed the jury to deliberate further. See *Allen v. United States*, 164 U. S. 492 (1896). It also rejected defense counsel’s renewed motion for a mistrial. On the third morning of deliberations, the jury returned a unanimous verdict of death.

The above facts constitute a likely violation of Humphreys’s Sixth Amendment right to an impartial jury. The problem for Humphreys is that these facts came to light largely through juror affidavits and juror testimony obtained after the trial. The Georgia courts held this evidence inadmissible under Georgia’s no-impeachment rule, which generally prohibits the use of juror testimony to impeach a verdict, even in death penalty cases. See App. to Pet. for Cert. 325a (citing *Spencer v. State*, 260 Ga. 640, 643, 398 S. E. 2d 179, 184 (1990)). The no-impeachment rule, however, is not an absolute shield, and in extreme cases it must give way to constitutional guarantees.

A form of the no-impeachment rule is followed in every State and in the federal system, and it serves important purposes. The rule “gives stability and finality to verdicts” and “promotes full and vigorous discussion by providing jurors with considerable assurance that after being discharged they will not be summoned to recount their

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deliberations.” *Pena-Rodriguez v. Colorado*, 580 U. S. 206, 218 (2017).*

The rule, however, is not without limits. This Court has long recognized that the rule has exceptions in the “gravest and most important” cases. *McDonald v. Pless*, 238 U. S. 264, 268–269 (1915). Indeed, there “may be cases of juror bias so extreme that, almost by definition, the jury trial right has been abridged.” *Warger v. Shauers*, 574 U. S. 40, 51, n. 3 (2014). “If and when such a case arises,” courts should “consider whether the usual safeguards are or are not sufficient to protect the integrity of the process.” *Ibid.* For example, one such exception to the no-impeachment rule is in an “egregious cas[e]” in which a “juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant.” *Pena-Rodriguez*, 580 U. S., at 225, 229. In those situations, “blatant racial prejudice . . . must be confronted . . . despite the general bar of the no-impeachment rule” because such prejudice is “antithetical to the functioning of the jury system.” *Id.*, at 229.

This case illustrates another “extreme” situation in which the no-impeachment rule likely should have yielded because the juror’s extreme misconduct threatened Humphreys’s Sixth Amendment right to an impartial jury. *Warger*, 574 U. S., at 51, n. 3.

The “usual safeguards” were plainly insufficient “to protect the integrity of the process.” *Ibid.* For instance, the “suitability of an individual for the responsibility of jury service” is typically “examined during *voir dire*.” *Tanner v. United States*, 483 U. S. 107, 127 (1987). *Voir dire*,

**Pena-Rodriguez* involved Colorado’s no-impeachment rule, which largely tracked the version of the rule set forth in Federal Rule of Evidence 606(b). See 580 U. S., at 218. Rule 606(b) is analogous in all relevant respects to Georgia’s no-impeachment rule. See App. to Pet. for Cert. 36a. In any event, Georgia’s interpretation of its own evidentiary rules cannot abridge an individual’s federal constitutional rights.

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however, cannot meaningfully screen out an individual like Chancey, who both misleadingly omitted crucial details about her prior assault when questioned and then undertook bad-faith tactics in the jury room by leveraging that experience to coerce her peers. Similarly, jurors' behavior is normally "observable by the court, by counsel, and by court personnel" during the trial, and jurors "may report inappropriate juror behavior to the court *before* they render a verdict." *Ibid.* Here, the trial court declined to investigate the possibility of inappropriate behavior despite hearing screaming and crying from the jurors and receiving the foreperson's note reporting the "hostile nature of one of the jurors" and requesting to be removed from the jury. App. to Pet. for Cert. 12a.

Importantly, Chancey's misconduct appears to have singlehandedly changed the verdict from life without parole to death. That places this case squarely among the "gravest and most important" cases in which the no-impeachment rule should yield to avoid "violating the plainest principles of justice." *McDonald*, 238 U. S., at 269. Acknowledging an exception here is essential because there is a heightened "need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U. S. 280, 305 (1976) (plurality opinion); see *California v. Ramos*, 463 U. S. 992, 998–999 (1983) ("The Court . . . has recognized that the qualitative difference of death from all other punishments requires a correspondingly greater degree of scrutiny of the capital sentencing determination"). "It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion." *Gardner v. Florida*, 430 U. S. 349, 358 (1977) (plurality opinion).

The proper application of the no-impeachment rule to Humphreys's underlying juror-misconduct claim, however, is not directly presented in Humphreys's petition to this

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Court. That is because, despite learning about Chancey’s misconduct after the trial, Humphreys’s lawyers failed to raise a juror-misconduct claim on direct appeal. New post-conviction counsel eventually raised the claim on state habeas review. The Supreme Court of Georgia held that the claim was thus procedurally defaulted and that the default was not excused by the ineffectiveness of Humphreys’s appellate counsel on direct appeal. The court addressed the no-impeachment rule in the context of its ineffective-assistance-of-counsel analysis by holding that Humphreys was not prejudiced by his lawyers’ failure to raise the claim because the underlying evidence was barred by the rule.

When Humphreys sought review of his juror-misconduct claim in federal court, his case took a further unexpected turn. Like the Supreme Court of Georgia, the Eleventh Circuit rejected the claim as procedurally defaulted. In so doing, the court seemingly deferred under the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) to the state court’s holding that Humphreys’s default could not be excused by ineffective assistance of counsel. See App. to Pet. for Cert. 34a (suggesting that the standard of review for the juror-misconduct claim requires “apply[ing] AEDPA deference on top of *Strickland* [v. *Washington*, 466 U. S. 668 (1984)] deference”); *id.*, at 74a (Rosenbaum, J., concurring) (explaining that the panel’s decision was required by a “faithfu[l] appl[ication of] AEDPA’s standard of review”).

By its terms, however, AEDPA deference applies only to a “claim that was adjudicated on the merits in State court proceedings.” 28 U. S. C. §2254(d). AEDPA says nothing about the cause-and-prejudice inquiry that federal habeas courts undertake in deciding whether the state prisoner can “overcome the prohibition on reviewing procedurally defaulted claims.” *Davila v. Davis*, 582 U. S. 521, 528 (2017); see *Coleman v. Thompson*, 501 U. S. 722, 750 (1991);

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Wainwright v. Sykes, 433 U. S. 72, 90–91 (1977). Nor has this Court held that AEDPA deference applies when a federal court considers whether the ineffectiveness of counsel establishes “cause” to excuse the procedural default. In fact, most courts of appeals to consider the issue have found that such deference has no place in the federal cause-and-prejudice inquiry. See *Fischetti v. Johnson*, 384 F. 3d 140, 154–155 (CA3 2004); *Hall v. Vasbinder*, 563 F. 3d 222, 236–237 (CA6 2009); *Visciotti v. Martel*, 862 F. 3d 749, 769 (CA9 2016); but see *Richardson v. Lemke*, 745 F. 3d 258, 273 (CA7 2014).

Humphreys seeks review in this Court only on the issue whether the Eleventh Circuit correctly applied AEDPA deference to the cause-and-prejudice inquiry, not on the merits of the underlying juror-misconduct claim. In response, respondent does not contend that AEDPA deference should apply. Instead, he points to ambiguities in the Eleventh Circuit’s opinion and argues that the Eleventh Circuit never applied AEDPA deference to the procedural-default question. See Brief in Opposition 13–16. Under these circumstances, the Court’s reluctance to grant plenary review is understandable because the decision below may not be implicated by the question presented. Nevertheless, the court should vacate and remand and seek clarification from the Eleventh Circuit about the basis for its decision.

In a capital case with a potentially meritorious juror-misconduct claim, mere confusion about a lower court’s reasoning does not justify closing the door to relief altogether. Nor is so harsh an outcome necessary here. Faced with a similarly “unclear” lower court opinion just last year, this Court remanded a capital case for further consideration, recognizing that the “ultimate assessment” of the petition would “depend on the basis for the Eleventh Circuit’s decision.” *Hamm v. Smith*, 604 U. S. 1, 2–3 (2024)

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(*per curiam*). The Court should have done the same thing in this case.

Tragically, the Court denies review instead, allowing a death sentence tainted by a single juror’s extraordinary misconduct to stand. Because it is at best “unclear” whether the Eleventh Circuit applied the correct standard of review in declining to adjudicate Humphreys’s claim on the merits, I would vacate and remand the case for further clarification rather than leave Humphreys’s juror-misconduct claim caught in a web of procedural barriers.

To avoid a similar result in future cases of extreme juror misconduct, courts considering such claims *ab initio* should carefully weigh the aims of the no-impeachment rule against the constitutional requirement to ensure the impartiality of a death-empaneled jury. Applying the no-impeachment rule too reflexively and restrictively risks a “systemic loss of confidence in jury verdicts, a confidence that is a central premise of the Sixth Amendment trial right,” *Pena-Rodriguez*, 580 U. S., at 225, and that is all the more imperative when the difference between life and death is at stake. I respectfully dissent from the denial of certiorari.

Appendix G

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-10387

STACEY IAN HUMPHREYS,

Petitioner-Appellant,

versus

WARDEN, GEORGIA DIAGNOSTIC PRISON,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:18-cv-02534-LMM

Before WILLIAM PRYOR, Chief Judge, and ROSENBAUM and NEWSOM, Circuit Judges.

PER CURIAM:

Petitioner Stacey Humphreys, a death-row inmate in Georgia, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Between the district court and this Court, Humphreys received a certificate of appealability (“COA”) on four issues. First, Humphreys asserts that juror misconduct and bias plagued the proceedings and deprived him of his due-process rights. Second, Humphreys contends the trial court gave an improper *Allen* charge, which compounded the juror misconduct. And third and fourth, Humphreys asks us to find that his trial counsel was ineffective during the investigation and presentation of mitigating evidence and that his appellate counsel was ineffective for failing to raise the juror-misconduct claim sooner.

After careful consideration of the claims and with the benefit of oral argument, we affirm the district court’s denial of the habeas petition.

I. BACKGROUND

A. *Facts*

Humphreys was arrested for the murders of Cynthia Williams and Lori Brown in November 2003. Jimmy Berry was appointed as trial counsel. After the state issued its notice of intent to seek the death penalty in February 2004, the Georgia Capital Defender’s Office (“GCD”) signed onto the case with its director,

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Chris Adams, joining Berry. The responsibility for Humphreys's case shifted over the course of four years, but Berry remained on the case the entire time. Teri Thompson from GCD replaced Adams and worked on the case from January 2006 until June 2007. At that time, Deborah Czuba (who had also been working on the case during the same period as Thompson) became the second-chair attorney. Berry was first chair, presenting both the guilt and sentencing phases.

At trial, the evidence showed the following tragic facts relating to the murders of Williams and Brown:

At approximately 12:40 p.m. on November 3, 2003, Humphreys, a convicted felon who was still on parole, entered a home construction company's sales office located in a model home for a new subdivision in Cobb County [Georgia]. Cindy Williams and Lori Brown were employed there as real estate agents. Finding Ms. Williams alone in the office, Humphreys used a stolen handgun to force her to undress and to reveal the personal identification number (PIN) for her automated teller machine (ATM) card. After calling Ms. Williams's bank to learn the amount of her current balance, Humphreys tied her underwear so tightly around her neck that, when her body was discovered, her neck bore a prominent ligature mark and her tongue was protruding from her mouth, which had turned purple. While choking Ms. Williams, Humphreys forced her to get down on her hands and knees and to move into Ms. Brown's office and behind Ms. Brown's desk. Humphreys placed his handgun at

Ms. Williams[']s] back and positioned a bag of balloons between the gun and her body to muffle the sound of gunshots. He then fired a shot into her back that went through her lung and heart, fired a second shot through her head, and left her face-down on her hands and knees under the desk.

Ms. Brown entered the office during or shortly after Humphreys's attack on Ms. Williams, and he attacked her too. Ms. Brown suffered a hemorrhage in her throat that was consistent with her having been choked in a headlock-type grip or having been struck in the throat. Humphreys also forced Ms. Brown to undress and to reveal her PIN, called her bank to obtain her balance, and made her kneel with her head facing the floor. Then, while standing over Ms. Brown, Humphreys fired one gunshot through her head, this time using both a bag of balloons and Ms. Brown's folded blouse to muffle the sound. He dragged her body to her desk, took both victims' driver's licenses and ATM and credit cards, and left the scene at approximately 1:30 p.m. Neither victim sustained any defensive wounds.

When the builder, whose office was located in the model home's basement, heard the door chime of the security system indicating that someone had exited the sales office, he went to the sales office to meet with the [real-estate] agents. There he discovered Ms. Brown's body and called 911. The responding police officer discovered Ms. Williams's body.

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After interviewing the builder and canvassing the neighborhood, the police released to the media descriptions of the suspect and a Dodge Durango truck seen at the sales office near the time of the crimes. In response, someone at the job site where Humphreys worked called to advise that Humphreys and his vehicle matched those descriptions and that Humphreys did not report to work on the day of the crimes. The police began to investigate Humphreys and made arrangements through his parole officer to meet with him on the morning of November 7, 2003. Humphreys skipped the meeting, however, and eluded police officers who had him under surveillance.

Humphreys was apprehended in Wisconsin the following day. Police there recovered from the console of his rental vehicle a Ruger 9-millimeter pistol, which was determined to be the murder weapon. Swabbings from that gun revealed blood containing Ms. Williams's DNA. A stain on the driver-side floor-mat of Humphreys's Durango was determined to be blood containing Ms. Brown's DNA.

After the murders, the victims' ATM cards were used to withdraw over \$3,000 from their accounts. Two days after the murders, Humphreys deposited \$1,000 into his account, and he had approximately \$800 in cash in his possession when he was arrested. Humphreys claimed in a statement to the police that he did not remember his actions at the time of the crimes. However, when asked why he fled, he

said: “I know I did it. I know it just as well as I know my own name.” He also told the police that he had recently taken out some high-interest “payday” loans and that he “got [in] over [his] head with that stinking truck.”

Humphreys v. State, 694 S.E.2d 316, 322–23 (Ga. 2010).

Humphreys was convicted on September 25, 2007, in the Superior Court of Cobb County, Georgia, of two counts each of malice murder, felony murder, aggravated assault, kidnapping, and armed robbery in connection with the murders of the two women at their workplace. Defense counsel then presented evidence of mitigation during the sentencing phase. Trial counsel’s mitigation strategy was to show that Humphreys suffered severe and frequent physical abuse as a child and suffered from Asperger’s Syndrome. On September 30, 2007, after a sentencing hearing, the same jury found the existence of several statutory aggravating circumstances and recommended a sentence of death. The trial court imposed death sentences for each murder.

B. Jury Selection and Deliberations

Much of Humphreys’s petition centers on the selection of a particular individual as a juror, Linda Chancey, and her interaction with other jurors during the sentencing phase. To explain Humphreys’s claim, we must first discuss the jury-selection process and the jury’s deliberations. We note from the outset, though, that most of this information comes from post-sentencing interviews

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of jurors that the trial court later found to be inadmissible and the Supreme Court of Georgia agreed.

During jury selection, prospective juror Linda Chancey stated on a questionnaire that she had been the victim of an armed robbery and attempted rape. Both the questionnaire and her voir dire testimony revealed that her assailant was a convicted murderer who had escaped from a mental hospital. When the prosecution asked her about the incident during voir dire, Chancey said that her assailant “actually didn’t do [her] any physical bodily harm. [She] was able to escape before he ever actually physically entered the dwelling, so it was preempted.” Chancey further attested that her prior experience would not prevent her from sitting as a fair juror and that she felt she could listen to the evidence and follow the law. Defense counsel did not ask any follow-up questions. Nor did he challenge Chancey for cause or bias, even though the defense had a preemptory strike remaining. Chancey was seated on the jury.

In contrast to her answers during the voir dire process, Chancey apparently told the other jurors during deliberations that her assailant actually breached her home and attacked her. In an unsworn statement, another juror stated that Chancey told the jurors she “had been attacked in her bed in her apartment. [She] was naked in her bed and a man broke in and attacked her. [She] ran into the halls of her apartment and finally someone opened the door.” When jurors asked Chancey if she told the attorneys this, she said she hadn’t thought about it. After trial, investigators for Humphreys went to Chancey’s home to conduct an interview.

Chancey told them that “a strange man came in through the window of her apartment, robbed her, and tried to rape her.” Based on these circumstances, Humphreys contends Chancey lied during voir dire.

Humphreys also asserts that Chancey bullied other jurors into voting for a death sentence. Deliberations were contentious and lengthy. According to Susan Barber, the jury foreperson, from “day one, [Chancey] had her mind made up: early in the trial – before the end of the first phase – she said something along the lines of he’s guilty and he deserves to die.” Chancey later stated that she “would only vote for death.” Following the presentation of evidence during sentencing, initially, three jurors—Susan Barber, Alma Pogue, and Tara Newsome—believed that Humphreys should receive life without parole and indicated they wouldn’t vote for death (resulting in a vote of 9-3 in favor of death). It became apparent that two of the jurors (Barber and Pogue) were set on a life sentence (resulting in a vote of 10-2), so two male jurors began trying to convince the other eight jurors to change their votes from death to life without parole. Later, the jurors agreed that they would unanimously vote for life without parole, but when the jurors tallied their votes, Chancey voted for death. At that point, the vote was 11-1 in favor of life without parole. The deliberations continued and became quite heated, eventually resulting in a verdict for death.

A post-trial investigation revealed some jurors claimed that Chancey yelled and cursed at others during deliberations. Chancey

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herself agreed that the deliberations in the penalty phase were “volatile” with screaming and raised voices, and at one point, another juror “took a swing” at Chancey and punched a hole in the wall. Chancey went through the crime-scene photos, threw them on the table and showed them to the other jurors and asked them, “[D]o you want this to happen to someone you know? And Chancey yelled at the other jurors that she intended to “stay here till forever if it takes it for [Humphreys] to get death.” Chancey also “put her feet up on the table and said that she was digging in and she would not change her vote.” She told the others that “they had to reach a unanimous decision or [Humphreys] would be paroled.”

After deliberating for approximately eight hours over a period of two days, Jury Foreperson Barber, wrote a note to the court which stated as follows:

We, the jury, have agreed on statutory aggravating circumstances on both counts, but not on the penalty. While we agreed that life imprisonment with parole is not an option, we are unable to come to a *unanimous* decision on either death or life imprisonment without parole as a sentence. Please advise.

(emphasis added). Before Barber provided the note to the court, however, Chancey, added the word “currently.” Barber re-wrote the note and the version sent to the court stated as follows:

We, the jury, have agreed on statutory aggravating circumstances on both counts, but not on the penalty. Currently we agreed life imprisonment with parole is not an acceptable option. We are currently unable to

form a *unanimous* decision on death or on life imprisonment without parole. Please advise.

(emphasis added).

Chancey said she revised the note because she did not want to give the court the impression that the jury was at an impasse. She believed the manner in which Barber originally wrote the note could have resulted in a mistrial, which she said she “wasn’t going to let □ happen.”¹ The court placed the note in the record but did not read it aloud, instead summarizing its contents for the parties and letting them know that the court intended to instruct the jury to keep deliberating.² At that time, the trial court told the jury, “[Y]ou need to continue with your deliberations, and address the remaining issues.”

Humphreys points out that under controlling law at the time, if the jury failed to reach a unanimous decision on the death penalty, the court would have imposed a sentence of life without

¹ Chancey said that if a mistrial were declared, the jury would either have to “do it over again” or Humphreys “would get parole and hunt the jurors down.”

² The court summarized the contents of the note as follows:

[The jurors have] indicated that they have reached a verdict in regard to some of the issues that have been submitted to them, but have not yet reached a decision on other issues that were submitted to them.

Humphreys, 694 S.E.2d at 331.

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the possibility of parole. See O.C.G.A. § 17-10-31.1(c) (repealed by Ga. L. 2009 p.223, § 6, effective April 29, 2009).³

Rather than informing the jury about this statute, the trial court told the jury to continue deliberating after receiving its note. When the jury did so, the deliberations became quite heated with Chancey “yell[ing]” at and making personal attacks on the other jurors. Chancey also apparently used her prior experience as a victim of a crime to pressure the other jurors to impose the death penalty. As we’ve described, Chancey shared a version of her

³ The then-relevant statutory section provided as follows:

Where a jury has been impaneled to determine sentence and the jury has unanimously found the existence of at least one statutory aggravating circumstance *but is unable to reach a unanimous verdict as to sentence*, the judge shall dismiss the jury and *shall impose a sentence of either life imprisonment or imprisonment for life without parole*. In imposing sentence, the judge may sentence the defendant to imprisonment for life without parole only if the court finds beyond a reasonable doubt that the defendant committed at least one statutory aggravating circumstance and the trial court has been informed by the jury foreman that upon their last vote, a majority of the jurors cast their vote for a sentence of death or for a sentence of life imprisonment without parole; provided, however, that the trial judge may impose a sentence of life imprisonment as provided by law.

§ 17-10-31.1(c) (emphases added).

assault that included a much closer encounter with her attacker than she had shared during voir dire.

Following three more hours of deliberations, Foreperson Barber sent a second note to the court asking that the jurors be allowed to rehear a taped statement that Humphreys had given to law enforcement. *See Humphreys*, 694 S.E.2d at 32. After listening to the recording, the jury resumed deliberations for approximately two more hours, at which point, defense counsel moved for a mistrial. *Id.* The trial court denied the motion, finding that the jury had not indicated it was deadlocked. *Id.*

Another two hours of deliberations passed, and Barber sent yet another note to the court. This one read, “Due to the hostile nature of one of the jurors, I am asking to be removed from the jury.” The trial court read the note to the parties and informed them that it intended to give the jury a modified *Allen*⁴ charge. Defense counsel renewed its motion for a mistrial, but the trial court again denied the motion. The judge brought the jury into the courtroom and issued the following charge:

The Court deems it advisable at this time to give you some instruction in regard to the manner in which you should be conducting your deliberations in the case. You’ve been deliberating upon this case for a period of time. The Court deems it proper to advise

⁴ *See Allen v. United States*, 164 U.S. 492 (1896).

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you further in regard to the desirability of agreement, if possible.

The case has been exhaustively and carefully tried by both sides and has been submitted to you for decision and verdict, if possible, and not for disagreement. *It is the law that a unanimous verdict is required.*

While this verdict must be the conclusion of each juror independently, and not a mere acquiescence of the jurors in order to reach an agreement, it is nevertheless necessary for all the jurors to examine the issues and the questions submitted to them with candor and with fairness and with a proper regard for in [sic] deference to the opinion of each other.

A proper regard for the judgment of others will greatly aid us in forming our own judgment. Each juror should listen with courtesy to the arguments of the other jurors with the disposition to be convinced by them.

If the members of the jury differ in their view of the evidence, the difference of opinion should cause them all to scrutinize the evidence more carefully and closely and to reexamine the grounds of their own opinion.

Your duty is to decide the issues that have been submitted to you if you can consci[enti]ously do so. In conferring, you should lay aside all mere pride of opinion and should bear in mind that the jury room is no place for hostility or taking up and maintaining in a spirit of controversy either side of the cause.

You should bear in mind at all times that, as jurors, you should not be advocates for either side of the case. You should keep in mind the truth as it appears from the evidence, examined in the light of the instructions that the Court has given to you.

You may, again, retire to the jury room for a reasonable time, examine your differences in a spirit of fairness and candor and courtesy, and try to arrive at a verdict if you can conscientiously do so. At this time, you may return to the jury room.

(emphases added).

Later interviews with the jurors revealed that Foreperson Barber and other jurors took from this instruction that the jury's decision on sentencing must be unanimous. And they believed if they were deadlocked, Humphreys would get life imprisonment with the possibility of parole or that he could "walk." After receiving the third note, the court did not ask why Barber wished to be removed from the jury. And Barber later explained that she did not believe it was an option to send another note to the court stating that the jury was deadlocked since "[t]he judge had made it clear that it didn't matter: [the jury] didn't have a choice other than to be unanimous." That day, the jury deliberated for an additional two hours before retiring for the evening at 10:20 p.m.

The next day, when the jury resumed deliberations, Foreperson Barber decided to "fight for [a sentence of] life without parole." At that point in the deliberations, Foreperson Barber and Juror Pogue were the only two not voting for death. Despite

Barber's intent to fight, Chancey would "not engage in debate at all." The parties could hear "screaming" coming from the jury room. Barber became "extremely distressed and locked [herself] in the bathroom and cried." She later expressed that she felt they had run out of options because she "thought that unanimity was our only choice." Pogue deferred to Barber as to whether to "stick it out" but the two finally relented, and after two hours of deliberations, the jury returned two death sentences because they "didn't want Mr. Humphreys to go free."

Barber expressed that she believed she "had absolutely no other option . . . [She] cried the entire time. [She said] [i]t was one of the hardest things [she had] ever done because [she] was not true to [her] own belief about what the proper sentence should be." Barber also said if she had known that "not being unanimous meant a sentence of life without parole in this case, it would have been easy to stand [her] ground as long as [she] needed to."

On September 30, 2007, the jury found the existence of several statutory aggravating factors and recommended that Humphreys be executed.⁵ The trial court ultimately imposed two death sentences for the murders of Williams and Brown.

⁵ One of the five aggravating factors found by the jury is set forth in O.C.G.A. § 17-10-30(b)(10), which provides that a jury may impose a death sentence when the "murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another." The Supreme Court of Georgia later found that the

*C. Post-trial Proceedings*1. Motion for New Trial

After interviewing some jurors, who revealed the circumstances we've noted, Humphreys's trial counsel filed a motion for new trial. Although defense counsel raised various grounds in the motion, they did not raise a claim of juror misconduct. Instead, counsel challenged the trial court's *Allen* charge, claiming it led jurors to erroneously believe that they were required to reach a unanimous decision. In support of the claim, Humphreys submitted the affidavits of Juror Darrell Parker and two investigators. *See Humphreys*, 694 S.E.2d at 333.

The trial court denied the motion for new trial. Among other conclusions, the trial court determined that both the juror and investigator affidavits were inadmissible under O.C.G.A. § 17-9-41 and did not fall under any exception. That statutory section provided that the "[a]ffidavits of jurors may be taken to sustain but not to impeach their verdict." The trial court explained that exceptions to the rule are allowed "where extrajudicial and prejudicial information has been brought to the jury's attention improperly, or where non-jurors have interfered with the jury's deliberations." The trial court determined that the affidavits did not offer any evidence of extrajudicial prejudicial information improperly brought

jury's reliance on O.C.G.A. § 17-10-30(b)(10) as an aggravating factor was improper but still affirmed the death sentence.

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to the jury's attention or allege any non-juror interference had occurred. Accordingly, the court concluded that the affidavits did not fall into any exception to § 17-9-41 and could not be considered.

Regarding the *Allen* charge, the trial court looked to the decision in *Walker v. State*, 635 S.E.2d 740, 748 (Ga. 2006). There, the defendant made a similar claim of error because, during the sentencing phase, the jury was told, "[Y]our verdict as to penalty must be unanimous" and it was directed to continue deliberating after the jury told the trial court that it could not reach a unanimous verdict. *Id.* The trial court pointed out that in *Walker*, the Supreme Court of Georgia rejected the claim of error since Georgia law expects a jury to consider all the evidence and attempt to reach unanimity on the issue of sentence, and, if possible, unanimously recommend a sentence. Based on *Walker*, the trial court rejected Humphreys's *Allen*-charge claim and ultimately denied the motion for new trial.

2. Direct Appeal

In Humphreys's direct appeal, he again raised the issue of the *Allen* charge and again omitted any claim of juror misconduct. He argued that the portion of the instruction that stated that "[i]t is the law that a unanimous verdict is required" was an incorrect statement of the law in the sentencing phase of a death-penalty case and misled the jurors. *Humphreys*, 694 S.E.2d at 332–33. The Supreme Court of Georgia disagreed, affirming Humphreys's convictions and sentences. *Id.* at 334–36.

The Supreme Court of Georgia also agreed with the trial court’s ruling that the juror and investigator affidavits were inadmissible under O.C.G.A. § 17-9-41. *Id.* at 333. Thus, it upheld the trial court’s decision to exclude the juror and investigator affidavits when analyzing the alleged coerciveness of the *Allen* charge. *Id.* (citing *Gardiner v. State*, 444 S.E.2d 300 (Ga. 1994) and noting that exceptions to § 17-9-41 exist but do not include juror’s misapprehension regarding the law).

The Supreme Court of Georgia then turned to the issue of whether the *Allen* charge was “so coercive as to cause a juror to ‘abandon an honest conviction for reasons other than those based upon the trial or the arguments of other jurors.’” *Id.* at 333–34 (quoting *Mayfield v. State*, 578 S.E.2d 438, 443 (2003)). The Court concluded it was not. *Id.* at 334.

Still, the Court recognized that the charge could lead to claims of jury confusion that require an analysis of the circumstances of the jury instructions given. *Id.* It then analyzed the charge in Humphreys’s case and found that the challenged “unanimity” language was just a “small portion of the extensive *Allen* charge given.” *Id.* The court determined that the overall charge passed muster. It explained,

[The overall *Allen* charge] [c]autioned the jurors that the verdict was not to be the . . . mere acquiescence [of the jurors] in order to reach an agreement, that any difference of opinion should cause the jurors to scrutinize the evidence more [carefully and] closely and that the aim was to keep the truth in view as it

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appeared from the evidence, considered in light of the court's instructions.

Id. (cleaned up).

The Court also noted that after the publication of the verdicts, the jury was polled. *Id.* At that time, each juror affirmed that the verdicts announced were the verdicts that they had reached and that each juror had reached the verdicts without pressure from anyone during deliberations. *Id.* Ultimately, the Court concluded the *Allen* charge did not unduly coerce the jury into rendering a death sentence because the "unanimous verdict" language was required and was "one small portion of an otherwise balanced and fair *Allen* charge." *Id.* But because potential problems existed with the *Allen* charge that could result in claims of jury confusion, the Court instructed future trial courts "to omit this language from *Allen* charges given during the sentencing phase of death penalty trials." *Id.*

The Supreme Court of the United States denied Humphreys's petition for writ of certiorari on November 15, 2010. *See Humphreys v. Georgia*, 562 U.S. 1046 (2010).

D. Habeas Proceedings

1. State Habeas Petition

Humphreys filed a petition for writ of habeas corpus in the Superior Court of Butts County on February 14, 2011. He later amended that petition to include twenty-one claims for relief. As relevant here, Humphreys contended that (1) trial counsel were

ineffective in their mitigation investigation and presentation; (2) his constitutional rights were violated as a result of juror misconduct; (3) the manner in which the trial court handled the jury deadlock and *Allen* charge was erroneous; and (4) appellate counsel's failure to adequately litigate these claims during the motion for new trial and direct appeal also deprived him of due process.

The state habeas court held an evidentiary hearing in February 2013. At that hearing, Humphreys's new counsel presented both affidavits and live testimony of jurors, the substance of which we have already set forth. Humphreys also submitted evidence during the habeas proceedings that painted a somewhat different picture of his childhood than the one presented to the sentencing jury—including the fact that he had been sexually abused by his great grandmother.

When addressing the juror-misconduct claim, the state habeas court recognized the claim included assertions that Chancey (1) was not forthcoming during voir dire about her experience as a victim of violent crime and her willingness to consider a sentence other than death; (2) pressured and bullied other jurors into voting for a death sentence, refused to deliberate, and used the *Allen* charge to convince other jurors that they had to reach a verdict; and (3) altered a note to the trial court to mislead it about the status of deliberations. In support of these claims, Humphreys offered the affidavits of three jurors—one of which was filed in support of the motion for new trial. Humphreys also offered the live testimony of Foreperson Barber.

In denying relief, the state habeas court first found the juror-misconduct claims to be procedurally defaulted under O.C.G.A. § 9-14-48(d) because Humphreys failed to raise them in the motion for new trial or on direct appeal. It also determined that Humphreys had not overcome the procedural default because he showed neither cause for failing to raise the issue nor actual prejudice as a result of appellate counsel's failure to raise these claims. In conducting this analysis, the state habeas court acknowledged that Humphreys sought to rely on juror affidavits and Foreperson Barber's testimony but found them to be inadmissible under O.C.G.A. § 17-9-41, O.C.G.A. § 9-10-9, and Georgia law.⁶ Humphreys presented no other evidence of Chancey's alleged bias or misconduct, so in the absence of the jurors' affidavits and Barber's live testimony, nothing was left to support a valid challenge for cause by defense counsel. The state habeas court further determined that even if it considered the juror testimony, Humphreys still failed to show any resulting prejudice.

As for the ineffective-assistance-of-trial-counsel claim, the court began by thoroughly detailing trial counsel's qualifications, the mitigation investigation counsel conducted, and counsel's presentation of evidence and experts during the sentencing phase. The court concluded that trial counsel were not ineffective in their presentation of mitigation evidence, and it determined that, in

⁶ The state habeas court acknowledged both the juror affidavits and Barber's live testimony and grouped them together, referring to them as "testimony."

particular, counsel were not ineffective for not presenting allegations that Humphreys's great grandmother had sexually abused him. In support of this conclusion, the court noted that the defense team had questioned Humphreys about sexual abuse, and Humphreys had failed to disclose any such abuse.

The state habeas court also determined that trial counsel's investigation and presentation of mental-health and other mitigating evidence were reasonable. The only "new" evidence Humphreys presented at the habeas hearing was of sexual abuse, but Humphreys did not disclose it to trial counsel or anyone else when asked, so, the court concluded, trial counsel could not be faulted for failing to discover it.

Not only that, but the court determined that Humphreys failed to show the requisite *Strickland* prejudice. As the court reasoned, the additional evidence presented to it during the habeas evidentiary hearing would not have created a reasonable probability of a different outcome had it been presented originally. That was so, the court reasoned, because the majority of the evidence presented in habeas proceedings (mostly having to do with physical abuse, poor living conditions, and mental-health assessments) reiterated the testimony presented during sentencing. Indeed, the court concluded that much of the testimony from both lay witnesses and expert witnesses during the habeas proceedings was cumulative. In the end, the court weighed the totality of the aggravating evidence against the totality of the mitigating evidence and

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announced that “any additional mitigating testimony would not have created a reasonable probability of a different outcome.”

Rounding out its decision, the state habeas court addressed Humphreys’s claim that the trial court improperly instructed the jury on the principle of unanimity in capital sentencing—the *Allen* charge claim. Humphreys candidly acknowledged that the Supreme Court of Georgia had already reviewed and rejected the claim, but he asserted that the Court had erred in its legal conclusions. The state habeas court noted that it did not review in a habeas proceeding issues raised and litigated on direct appeal. And because Humphreys had failed to advise the state habeas court about any changes in the law, the court determined the claim was precluded from review under the doctrine of *res judicata*.

In sum, the state habeas court denied Humphreys’s petition in its entirety.

2. Supreme Court of Georgia’s Denial of Certificate of Probable Cause to Appeal

Humphreys filed an application for certificate of probable cause to appeal with the Supreme Court of Georgia. That court denied the entirety of the application, finding that it lacked any arguable merit.

Humphreys filed a petition for writ of certiorari, which the Supreme Court of the United States denied on April 16, 2018.

3. Federal Habeas Petition (§ 2254 Petition)

Humphreys filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Northern District of Georgia. He later amended the petition.

On September 16, 2020, the district court issued a final order denying relief on all claims and dismissed the petition with prejudice, except as to a challenge not applicable here. The district court granted Humphreys a COA on the issue of whether his trial counsel was ineffective in investigating and presenting his case in mitigation during the penalty phase of his trial.

4. Notice of Appeal and Motion to Expand COA

Humphreys timely filed his notice of appeal with this Court and later sought an expansion of the COA to include six additional claims of constitutional error. We granted the motion in part and permitted Humphreys to appeal four claims as follows: (1) whether Humphreys is entitled to relief from the denial of his habeas petition on his claim that juror bias and misconduct deprived him of his constitutional rights; (2) whether Humphreys is entitled to relief from the denial of his habeas petition on his claim that the trial judge gave inaccurate, misleading, or coercive instructions and inadequately responded to juror misconduct; (3) whether Humphreys is entitled to relief from the denial of his habeas petition on his claim that he was denied his Sixth Amendment right to effective assistance of counsel by appellate counsel; and (4)

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whether his trial counsel was ineffective in investigating and presenting his case in mitigation during the penalty phase of his trial.

The parties fully briefed these issues, and we heard oral argument.

II. STANDARD OF REVIEW

This Court reviews “de novo the denial of a petition for a writ of habeas corpus.” *Morrow v. Warden*, 886 F.3d 1138, 1146 (11th Cir. 2018) (quotation omitted). But the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) governs our review of federal habeas petitions and prescribes a highly deferential framework for evaluating issues previously decided in state court. *Pye v. Warden, Ga. Diagnostic Prison*, 50 F.4th 1025, 1034 (11th Cir. 2022) (en banc); *Sealey v. Warden, Ga. Diagnostic Prison*, 954 F.3d 1338, 1354 (11th Cir. 2020). Under AEDPA, we may not grant habeas relief on claims that were “adjudicated on the merits in [s]tate court” unless the state court’s decision (1) “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” or (2) “was based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding.” *Sealey*, 954 F.3d at 1354 (quoting 28 U.S.C. § 2254(d)). These standards mean that we must give state-court decisions “the benefit of the doubt.” *Evans v. Sec’y, Dep’t of Corr.*, 703 F.3d 1316, 1325 (11th Cir. 2013) (citation and internal quotation marks omitted).

A state-court decision is not “contrary to” federal law under 2254(d)(1) “unless it contradicts the United States Supreme Court on a settled question of law or holds differently than did that Court on a set of materially indistinguishable facts.” *Id.* (citation and internal quotation marks omitted); *see also Williams v. Taylor*, 529 U.S. 362, 405 (2000).

And a state-court decision is not an “unreasonable application” of federal law under 2254(d)(1) “unless the state court identifies the correct governing legal principle as articulated by the United States Supreme Court, but unreasonably applies that principle to the facts of the petitioner’s case, unreasonably extends the principle to a new context where it should not apply, or unreasonably refuses to extend it to a new context where it should apply.” *Evans*, 703 F.3d at 1325 (citation and internal quotation marks omitted); *see also Williams*, 529 U.S. at 407 (a state court decision is an “unreasonable application” of clearly established law if the state court identifies the correct governing legal rule from the Supreme Court’s holdings but unreasonably applies it to the facts of the particular defendant’s case).

Regarding AEDPA’s unreasonable-application-of-federal-law provision under 2254(d)(1), “[t]he key word is ‘unreasonable,’ which is more than simply incorrect.” *Sealey*, 954 F.3d at 1354. To meet this standard, “a prisoner must show far more than that the state court’s decision was merely wrong or even clear error.” *Pye*, 50 F.4th at 1034 (quoting *Shinn v. Kayer*, 141 S. Ct. 517, 523 (2020) (per curiam) (quotation marks omitted)). “[A] state court’s

application of federal law is unreasonable only if no fairminded jurist could agree with the state court's determination or conclusion." *Raulerson v. Warden*, 928 F.3d 987, 995–96 (11th Cir. 2019) (citations and internal quotation marks omitted). This is "a difficult to meet and highly deferential standard . . . , which demands that state-court decisions be given the benefit of the doubt." *Id.* at 996 (citation and internal quotation marks omitted). Still, AEDPA does not "prohibit a federal court from finding an application of a principle unreasonable when it involves a set of facts different from those of the case in which the principle was announced. The statute recognizes, to the contrary, that even a general standard may be applied in an unreasonable manner." *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007) (citations and internal quotation marks omitted).

For each claim presented, we review "the last state-court adjudication on the merits." *Greene v. Fisher*, 565 U.S. 34, 40 (2011). If the state court did not reach the merits of the claim, though, "federal habeas review is not subject to the deferential standard that applies under AEDPA[.]" *Cone v. Bell*, 556 U.S. 449, 472 (2009). Rather, in that case, we review the claim de novo. *Id.* The Supreme Court has instructed us to presume "the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary." *Harrington v. Richter*, 562 U.S. 86, 99 (2011) (citation omitted). An indication to the contrary exists when, for example, the state court has denied the petitioner's claim on only one prong of the *Strickland* test. In that case, we review de novo the prong that the state court never reached. *See*,

e.g., *Rompilla v. Beard*, 545 U.S. 374, 380, 390, (2005); *Wiggins v. Smith*, 539 U.S. 510, 534 (2003).

We also defer to a state court’s determination of the facts under 2264(d)(2) unless the state-court decision “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d). Section 2254(d)(2) is similar to § 2254(d)(1) in that it requires us to give state courts “substantial deference.” *Brumfield v. Cain*, 576 U.S. 305, 314 (2015). “We may not characterize . . . state-court factual determinations as unreasonable ‘merely because we would have reached a different conclusion in the first instance.’” *Id.* at 313–14 (quoting *Wood v. Allen*, 558 U.S. 290, 301 (2010)) (alteration adopted). We also presume that the state court’s factual determinations are correct, absent clear and convincing evidence to the contrary. *Pye*, 50 F.4th at 1035; 28 U.S.C. § 2254(e)(1).

If the petition satisfies § 2254(d)’s requirements, we then consider whether the state court’s error was harmless. *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993). In collateral-review cases, a federal constitutional error is harmless unless it caused “actual prejudice.” *Id.* at 637 (citation omitted). Put another way, we examine “whether the error ‘had substantial and injurious effect or influence in determining the jury’s verdict.’” *Id.* at 623, 637 (quoting *Kotteakos v. United States*, 328 U.S. 750, 776 (1946)); *See also Brown v. Davenport*, 596 U.S. 118, 122 (2022) (“When a state court has ruled on the merits of a state prisoner’s claim, a federal court cannot grant relief without first applying both the test this

Court outlined in *Brecht* and the one Congress prescribed in AEDPA.”).

III. DISCUSSION

A. *Juror Misconduct*

Humphreys contends that juror misconduct infected the trial from voir dire all the way through jury deliberations, resulting in a violation of his due-process rights. He points to the following as evidence of Chancey’s misconduct: (1) lying during voir dire about her experience as a victim of a crime and her unwillingness to consider a sentence other than death; (2) intimidating other jurors and refusing to deliberate; and (3) altering a note to the trial court to mislead it about the status of deliberations.

According to Humphreys, Chancey vacillated between refusing to deliberate and berating other jurors, and she admitted that she would vote for only a death sentence. Humphreys also emphasizes that during deliberations, Chancey revealed that she had been dishonest during voir dire about the home invasion and attempted rape. Had Chancey revealed that information during jury selection, Humphreys asserts, the defense would have stricken her. Humphreys further takes issue with what he deems to be Chancey’s “bullying” and coercion of the other jurors. He contends that, paired with the trial court’s *Allen* charge, Chancey’s conduct caused at least one juror—Barber—to surrender her honestly held beliefs about the appropriate sentence. Finally, Humphreys characterizes Chancey’s alteration of the jury note by inserting the

word “currently” as an attempt to mislead the trial court that the jury was not deadlocked.

The state habeas court concluded Humphreys procedurally defaulted these claims because he failed to raise them in his motion for new trial or on direct appeal. The Supreme Court of Georgia and the district court agreed.

The issue of whether a claim is subject to the doctrine of procedural default “is a mixed question of fact and law, which we review *de novo*.” *Ward v. Hall*, 592 F.3d 1144, 1175 (11th Cir. 2010) (citation and internal quotation marks omitted).

The doctrine of procedural default bars a court from reviewing a petitioner’s claim when that claim has been or would be rejected in state court on a state procedural ground. *See Judd v. Haley*, 250 F.3d 1308, 1313 (11th Cir. 2001). We have explained,

Federal habeas review reduces the finality of litigation and frustrates states’ sovereign power to punish offenders and states’ good-faith attempts to honor constitutional rights. So, when a state prisoner fails to follow state procedural rules, thereby procedurally defaulting on the claim, our authority to review the prisoner’s state court criminal conviction is severely restricted. Federal review of a petitioner’s claim is barred by the procedural-default doctrine if the last state court to review the claim states clearly and expressly that its judgment rests on a procedural bar, and that bar provides an adequate and independent state ground for denying relief.

Atkins v. Singletary, 965 F.2d 952, 956 (11th Cir. 1992) (citations and internal quotation marks omitted). Because the state habeas court concluded that Humphreys procedurally defaulted his claims about Chancey, those claims are also likely barred from review in this proceeding.

Still, we have recognized that a petitioner may obtain federal review of a procedurally defaulted claim if he can show both “cause” for the default and actual “prejudice” resulting from the default. *Henderson v. Campbell*, 353 F.3d 880, 892 (11th Cir. 2003) (citing *Murray v. Carrier*, 477 U.S. 478, 485 (1986), and *Wainwright v. Sykes*, 433 U.S. 72, 87 (1977)). To establish “cause,” a petitioner “must demonstrate that some objective factor external to the defense impeded the effort to raise the claim properly in the state court.” *Id.* (quoting *Wright v. Hopper*, 169 F.3d 695, 703 (11th Cir.1999)); *Mize v. Hall*, 532 F.3d 1184, 1190 (11th Cir. 2008) (“Cause exists if there was ‘some objective factor external to the defense [that] impeded counsel’s efforts to comply with the State’s procedural rule.’” (quoting *Murray*, 477 U.S. at 488)). To establish prejudice, a petitioner must show that “there is at least a reasonable probability that the result of the proceeding would have been different.” *Henderson*, 353 F.3d at 892 (citing *Wright*, 169 F.3d at 703, and *Crawford v. Head*, 311 F.3d 1288, 1327–28 (11th Cir. 2002)).

We have further explained that a federal court may also grant a habeas petition on a procedurally defaulted claim, without a showing of cause or prejudice, to “correct a fundamental miscarriage of justice.” *Id.* (citing *Murray*, 477 U.S. at 495–96). A

fundamental miscarriage of justice occurs only in an extraordinary case, where a constitutional violation has resulted in the conviction of someone who is actually innocent. *Id.* (citing *Murray*, 477 U.S. at 495–96).

Here, Humphreys does not claim actual innocence, so he must establish cause and prejudice to overcome the procedural bar to his juror-misconduct claim. He says he can demonstrate cause for the default because his appellate counsel was ineffective for failing to raise the claims about Chancey’s conduct earlier. So embedded in Humphreys’s juror-misconduct claim is his separate claim that his appellate counsel was ineffective.

For the reasons we explain below, we disagree with Humphreys that his appellate counsel was ineffective. We therefore deny that separate claim. And because Humphreys cannot show that his counsel was ineffective, he also cannot show cause for the procedural default of the juror-misconduct claim, so we deny that claim, too.

1. Strickland Standard

When a federal habeas petitioner alleges ineffective assistance of counsel, as here, the relevant law “as determined by the Supreme Court” is *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on an ineffective-assistance claim under *Strickland*, a petitioner must show that (1) his “counsel’s representation fell below an objective standard of reasonableness” and (2) a reasonable probability “that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 687–88, 694. We

can resolve an ineffectiveness claim on either ground if a petitioner cannot prove both. *Atkins*, 965 F.2d at 959; *see also Strickland*, 466 U.S. at 697. A reasonable probability of a different outcome is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. It is not enough for the defendant to show that the errors had “some conceivable effect on the outcome of the proceeding.” *Id.* at 693. Rather, defense counsel’s errors must be “so serious” that they deprived the defendant of a “fair trial, a trial whose result is reliable.” *Id.* at 687.

When we assess counsel’s performance, we must avoid viewing their decisions through the “distorting effects of hindsight.” *Id.* at 689. We must also “indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Id.* The defendant bears the burden to show that counsel made errors “so serious that counsel was not functioning as the ‘counsel’ guaranteed . . . by the Sixth Amendment.” *Id.* at 687. He must show that the attorney’s representation amounted to incompetence under prevailing professional norms. *Id.* at 690. As we have explained, “The test has nothing to do with what the best lawyers would have done. Nor is the test even what most good lawyers would have done.” *Waters v. Thomas*, 46 F.3d 1506, 1512 (11th Cir. 1995) (en banc) (citation and internal quotation marks omitted). Instead, the inquiry is whether counsel’s actions were “so patently unreasonable that no competent attorney would have chosen [them].” *Kelly v. United States*, 820 F.2d 1173, 1176 (11th Cir. 1987) (per curiam) (citation and internal quotation marks omitted).

And when we apply AEDPA deference on top of *Strickland* deference, we may reject a state-court finding that trial counsel was adequate only upon the dual-determination that counsel acted in a professionally unreasonable manner (under *Strickland*) and that the state court’s contrary determination was “objectively unreasonable” (under § 2254). It is a “rare” circumstance when a federal court finds in favor of a habeas petitioner on both accounts. *Johnson v. Sec’y, Dep’t of Corr.*, 643 F.3d 907, 910–11 (11th Cir. 2011).

2. Admissibility of Juror Testimony

Because Humphreys’s ineffective-assistance claim is premised on the evidence contained in the affidavits and testimony counsel obtained about juror deliberations, Humphreys can establish the necessary “cause” to avoid procedural default of his juror-misconduct claims only if that evidence is admissible. The state habeas court refused to consider that evidence, finding it to be inadmissible. Previously, both the trial court and Supreme Court of Georgia had reached the same conclusion with respect to Humphreys’s claim that the *Allen* charge was coercive.

Humphreys acknowledges that the lower courts, relying on Georgia law, refused to consider the juror statements. In Georgia, in general, jurors may not impeach their own verdict. *O’Donnell v. Smith*, 751 S.E.2d 324, 327 (Ga. 2013); *see also Henley v. State*, 678 S.E.2d 884, 887 (Ga. 2009) (“[A] jury verdict may not be challenged based on an affidavit from one or more jurors.”). Indeed, former O.C.G.A. § 17-9-41 (repealed by Ga. L. 2011, Act 52, § 33, effective January 1, 2013), referred to as the “no-impeachment rule,”

provided that “[t]he affidavits of jurors may be taken to sustain but not impeach their verdict.”⁷ This rule applies equally to juror affidavits and live testimony by jurors, even in death-penalty cases. See *Roebuck v. State*, 586 S.E.2d 651, 658 (Ga. 2003); *Oliver v. State*, 461 S.E.2d 222 (Ga. 1995); *Spencer v. State*, 398 S.E.2d 179 (Ga. 1990). That said, this general rule cannot override a defendant’s right to a fair trial. *O’Donnell*, 751 S.E.2d at 327 (citing *Henley*, 678 S.E.2d at 888, and *Turpin v. Todd*, 493 S.E.2d 900 (Ga. 1997)).

Multiple exceptions to the general rule also exist: “when (1) prejudicial, extrajudicial information has been brought to the jury’s attention; (2) nonjurors have interfered with deliberations; or (3) there has been irregular jury conduct so prejudicial that the verdict lacks due process.” *Tate v. State*, 628 S.E.2d 730, 732–33 (Ga. Ct. App. 2006); see also *Crowe v. Hall*, 490 F.3d 840, 846 (11th Cir. 2007).

Analogously, Federal Rule of Evidence 606(b) also generally precludes courts from relying on post-trial juror testimony during an inquiry into the validity of a verdict. That rule provides, “During an inquiry into the validity of a verdict . . . , a *juror may not testify* about any statement made or incident that occurred during the jury’s deliberations; the effect of anything on that juror’s or another juror’s vote; or any juror’s mental processes concerning the verdict or indictment.” Fed. R. Evid. 606(b)(1) (emphasis added). Because of this rule, a court may not consider a juror’s affidavit or

⁷ This statute was in place at the time of Humphreys’s motion for new trial and direct appeal in 2008 and 2010, respectively.

testimony on these matters. *Id.* As with the Georgia rule, the federal rule contains exceptions. Under Federal Rule of Evidence 606(b)(2), a jury may testify about its verdict when “(A) extraneous prejudicial information was improperly brought to the jury’s attention; (B) an outside influence was improperly brought to bear on any juror; or (C) a mistake was made in entering the verdict on the verdict form.” Rule 606(b) reveals Congress’s endorsement of a “broad no-impeachment rule, with only limited exceptions.” *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 217 (2017).

Rule 606(b) arose from the common-law rule against admitting jury testimony to impeach a verdict. In *Tanner v. United States*, the Supreme Court explained that “full and frank discussion in the jury room, jurors’ willingness to return an unpopular verdict, and the community’s trust in a system that relies on the decisions of laypeople would all be undermined by a barrage of postverdict scrutiny of juror conduct.” 483 U.S. 107, 120–21 (1987). The Supreme Court has reasoned that Rule 606(b) “promotes full and vigorous discussion by providing jurors with considerable assurance that after being discharged they will not be summoned to recount their deliberations, and they will not otherwise be harassed or annoyed by litigants seeking to challenge the verdict. The rule gives stability and finality to verdicts.” *Pena-Rodriguez*, 580 U.S. at 218.

Here, Humphreys does not claim that the verdict came as a result of external influences or a mistake in the verdict form. And “juror misconduct” is not an exception to the no-impeachment rule, so post-trial testimony from jurors regarding alleged

misconduct is not admissible under Federal Rule 606(b). *See Warger v. Shauers*, 574 U.S. 40 (2014); *Tanner*, 483 U.S. 107 (1987).

But Humphreys argues the state habeas court unreasonably refused to consider the juror testimony establishing Chancey’s misconduct based on constitutional standards of fairness that require criminally accused defendants to enjoy a panel of fair and impartial jurors.

In Humphreys’s view, the no-impeachment rule presupposes the existence of specific trial safeguards the Supreme Court recognized in *Tanner* that bring misconduct to light during the trial proceedings, eliminating the need for post-trial inquiries into deliberations. Those safeguards include (1) “[t]he suitability of an individual for the responsibility of jury service . . . is examined during voir dire[,]” (2) “[t]he jury is observable by the court, by counsel, and by court personnel[,]” (3) “jurors are observable by each other, and may report inappropriate juror behavior to the court *before* they render a verdict[,]” and] (4) “nonjuror evidence of misconduct.” *Tanner*, 483 U.S. at 127; *See also Warger*, 574 U.S. at 51. But Humphreys contends the *Tanner* safeguards are not infallible and they sometimes fail to capture serious juror misconduct.

As Humphreys sees things, this is a “rare” case in which all four of the *Tanner* safeguards failed. And because the *Tanner* safeguards failed, the no-impeachment rule should yield and the state habeas court should have considered the juror testimony. He emphasizes the Supreme Court’s acknowledgment that “[t]here may be cases of juror bias so extreme that, almost by definition, the jury

trial right has been abridged. If and when such a case arises, the Court can consider whether the usual safeguards are or are not sufficient to protect the integrity of the process.” *Warger*, 574 U.S. at 51 n.3. Humphreys argues this is such a case.

In short, Humphreys asserts Chancey’s bias and misconduct implicate his Eighth Amendment right to a fair and reasonable sentencing determination and his due-process right to an impartial, unbiased jury. He says the no-impeachment rule should be “stripped away” to preserve his rights and we should find the state habeas court unreasonably refused to take that action. Still, Humphreys acknowledges that the Supreme Court has considered the application of the no-impeachment rule in only a small number of cases. See Blue Brief at 69, n. 27 (citing *United States v. Reid*, 53 U.S. 361 (1851), *Mattox v. United States*, 146 U.S. 140 (1892), *McDonald v. Pless*, 238 U.S. 264 (1915), *Tanner v. United States*, 483 U.S. 107 (1987), *Warger v. Shauers*, 574 U.S. 40 (2014), and *Pena-Rodriguez v. Colorado*, 580 U.S. 206 (2017)). But he asserts that *Pless*, *Tanner*, *Warger*, and *Pena-Rodriguez* establish the lower courts’ authority to review and consider the juror testimony.

Humphreys’s argument is somewhat novel. Indeed, the Supreme Court issued three of the cases he relies on—*Reid* (1851), *Mattox* (1892), and *Pless* (1915)—before Congress adopted Rule 606(b) in 1975, which endorsed a broad no-impeachment rule, with “limited exceptions.” See *Pena-Rodriguez*, 580 U.S. at 215–218. And although both *Reid* and *Pless* noted the possibility of an exception to the no-impeachment rule in the “gravest and most important

cases[.]” *Pless*, 238 U.S. at 269, the Supreme Court has addressed this circumstance in only three cases—*Tanner*, *Warger*, and *Pena-Rodriguez*. See *Reid*, 53 U.S. at 366. Yet in only one of those cases—*Pena-Rodriguez*—did the Court actually allow an exception to the no-impeachment rule.

In *Tanner*, the Court rejected a Sixth Amendment exception for evidence that some jurors were under the influence of drugs and alcohol during the trial. *Tanner*, 483 U.S. at 125. In reaching this conclusion, the Court noted the “long-recognized and very substantial concerns” supporting “the protection of jury deliberations from intrusive inquiry.” *Id.* at 127. In particular, the Court did not want attorneys to use juror testimony to attack verdicts because, the Court ruled, that would result in jurors being “harassed and beset by the defeated party,” thus destroying “all frankness and freedom of discussion and conference.” *Id.* at 120 (quoting *Pless*, 238 U.S. at 267–68). The Court also expressed concerns about attempts to impeach a verdict that would “disrupt the finality of the process” and undermine both “jurors’ willingness to return an unpopular verdict” and “the community’s trust in a system that relies on the decisions of laypeople.” *Id.* at 120–21.

Besides identifying the problems with cracking open jury deliberations post-verdict, the Court emphasized the existing safeguards that protect the defendant’s right to an impartial and competent jury beyond post-trial juror testimony, which we noted earlier. *Id.* at 127. Balancing the concerns and safeguards against the

defendant's Sixth Amendment interest, the Court affirmed the exclusion of affidavits about the jury's inebriated state.

Warger was a civil case. There, the Supreme Court again declined to recognize an exception to the no-impeachment rule. After the trial court entered the verdict, the losing party sought to proffer evidence that the jury forewoman failed to disclose pro-defendant bias during voir dire. *Warger*, 574 U.S. at 43. Like in *Tanner*, the Court relied substantially on existing safeguards for a fair trial. The Court stated, "Even if jurors lie in *voir dire* in a way that conceals bias, juror impartiality is adequately assured by the parties' ability to bring to the court's attention any evidence of bias before the verdict is rendered, and to employ nonjuror evidence even after the verdict is rendered." *Id.* at 51.

Still, the *Warger* Court reiterated that the no-impeachment rule may have exceptions. As in *Reid* and *Pless*, the Court warned of "juror bias so extreme that, almost by definition, the jury trial right has been abridged." *Id.* at 51 n.3. The Court announced, "If and when such a case arises," it would "consider whether the usual safeguards are or are not sufficient to protect the integrity of the process." *Id.*

As it turned out, in *Pena-Rodriguez*, the Supreme Court encountered such a grave case. There, the Court held,

where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in

order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.

Pena-Rodriguez, 580 U.S. at 225. Despite finding an exception, the Supreme Court once again emphasized that its recognition in *Warger*—that there may be extreme cases where the jury trial right requires an exception to the no-impeachment rule—“must be interpreted in context as a guarded, cautious statement.” *Id.* at 221. As the Court explained, such a begrudging exception was necessary “to avoid formulating an exception that might undermine the jury dynamics and finality interests the no-impeachment rule seeks to protect.” *Id.* But given that “racial animus was a significant motivating factor in [the juror’s] finding of guilt,” the Court held that the Constitution required an exception to the no-impeachment rule. *Id.* at 221, 225. That was so, the Court explained, because such statements cast “serious doubt” on the fairness of the trial and resulting verdict. *Id.* at 225.

Against this legal landscape, we cannot say that Humphreys’s appellate counsel acted unreasonably in refraining from raising the juror-misconduct claims in the motion for new trial or in the direct appeal. For starters, only *Pena-Rodriguez* has ever applied an exception to the no-impeachment rule. But that case involved prejudice based on a protected status. And that type of bias is in a category of its own. Plus, *Pena-Rodriguez* was not decided until well after the motion for new trial and direct appeal were filed. When counsel filed those documents, the Court had never recognized an exception to the no-impeachment rule. In fact, counsel

didn't have the benefit of *Warger*, either, when moving for a new trial and filing the direct appeal.

That leaves *Reid*, *Pless*, and *Tanner*. To be sure, in *Reid* and *Pless*, the Supreme Court left the door open for a case in which juror bias was so severe that the right to a fair trial was abridged. But those cases did not give any concrete examples to guide counsel.

Here, Chancey allegedly revealed that she had lied during voir dire about the particulars of being a victim of a crime, bullied other jurors, was loud and unwilling to deliberate, and altered a note. The other jurors knew all these things during deliberations and could have brought them to the trial court's attention. They did not—even though Chancey was the only juror involved in the troubling conduct and even though Chancey's conduct did not involve racial bias. As the Supreme Court explained in *Pena-Rodriguez*, “[t]he stigma that attends racial bias may make it difficult for a juror to report inappropriate statements during the course of juror deliberations.” 580 U.S. at 225. The same is not true here. So while we certainly understand and are concerned by Chancey's conduct, we cannot say that counsel unreasonably decided that it did not fall into a then-theoretical exception to the no-impeachment rule.

In short, appellate counsel's representation did not fall below an objective standard of reasonableness when counsel did not pursue the juror-misconduct claims in the motion for new trial or on direct appeal. Perhaps, some other lawyer may have pursued the claim. But the test is not what the best lawyer or even a good

lawyer would have done. Not raising these claims was not “so patently unreasonable that no competent attorney would have chosen” counsel’s actions.⁸ *Kelly*, 820 F.2d at 1176.

Ultimately, because Humphreys has not shown that appellate counsel was ineffective for failing to pursue the juror-misconduct claims sooner, he cannot demonstrate the cause required to defeat the procedural default of those claims. For this reason, we are barred from examining the merits of the juror-misconduct claims. The claims are therefore denied.

⁸ We recognize that appellate counsel submitted other affidavits in support of the *Allen* charge claim. But that claim is markedly different because the affidavits made up only a small portion of the evidence supporting the claim. The *Allen* charge claim was based on an amalgamation of the trial judge’s own words, the jury notes to the court, the amount of time it took the jurors to deliberate, the yelling coming from the jury room, and other evidence. In contrast, the juror-misconduct claims are based exclusively on the post-trial juror interviews, juror affidavits, and juror testimony. In short, the entirety of the juror-misconduct claim is premised upon juror testimony—evidence that is inadmissible under the no-impeachment rule. See Fed. R. Evid. 606(b) (“a juror may not testify about any statement made or incident that occurred during the jury’s deliberations”); see also *Gavin v. Comm’r, Ala. Dep’t of Corr.*, 40 F.4th 1247 (11th Cir. 2022); *Roebuck*, 586 S.E.2d at 658; *Oliver*, 461 S.E.2d at 223–24. It was not unreasonable for counsel to refrain from pursuing those claims under Humphreys’s novel theory where it was nearly a foregone conclusion that the only piece of evidence—the juror testimony—would not be considered and the court would be left with nothing to support the juror-misconduct claims.

B. *Ineffective Assistance of Appellate Counsel*

Humphreys’s ineffective-assistance-of-appellate-counsel claim necessarily fails for the same reason that Humphreys cannot show cause for his procedural default: as we’ve explained, counsel did not act unreasonably when they did not pursue the juror-misconduct claims sooner. Consequently, we reject Humphreys’s claim that his appellate counsel was ineffective under *Strickland*.

C. *Allen Charge*

Humphreys also argues that the trial court coerced a sentencing verdict by instructing the jurors that “[i]t is the law that a unanimous verdict is required,” by repeatedly returning them to the jury deliberation room despite their declaration of a deadlock, and by ignoring Foreperson Barber’s plea to be excused “due to the hostile nature” of one of her fellow jurors. On direct appeal, the Supreme Court of Georgia found the trial court’s instructions did not constitute coercion and the trial court’s unanimity instruction was correct. *Humphreys*, 694 S.E.2d at 332–34.

Because the Supreme Court of Georgia adjudicated the coercion claim on the merits, it is entitled to AEDPA deference.⁹ We

⁹ Although the state habeas court briefly addressed the *Allen*-charge claim, it determined that it was barred from adjudicating it because the claim had already been litigated on direct appeal and could not be reviewed absent a change in the law. We therefore look to the decision of the Supreme Court of Georgia on direct appeal since it is the “last state-court adjudication on the merits” with respect to the *Allen*-charge claim. *Greene*, 565 U.S. at 40.

may grant relief on this claim only if the Supreme Court of Georgia's determination was (1) "contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States," or (2) "based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding." 28 U.S.C. § 2254(d).

Trial courts may not coerce juries into rendering verdicts. *See United States v. Davis*, 779 F.3d 1305, 1312 (11th Cir. 2015). And a defendant "being tried by a jury is entitled to the uncoerced verdict of that body." *Lowenfield v. Phelps*, 484 U.S. 231, 241 (1988). That said, the Supreme Court has held that a trial court may instruct a deadlocked jury to keep deliberating. *Id.* at 237 (citing *Allen v. United States*, 164 U.S. 492 (1896)). Therefore, "[i]n an *Allen* charge, the judge instructs a deadlocked jury to undertake further efforts to reach a verdict." *United States v. Chigbo*, 38 F.3d 543, 544 n.1 (11th Cir. 1994) (per curiam). Although we've acknowledged the potential for coercion in an *Allen* charge, we've also approved the use of the charge. *Rubinstein v. Yehuda*, 38 F.4th 982, 996–97 (11th Cir. 2022). Accordingly, district courts have broad discretion in issuing *Allen* charges but must take care to not "coerce any juror to give up an honest belief." *United States v. Anderson*, 1 F.4th 1244, 1269 (11th Cir. 2021) (quoting *Davis*, 779 F.3d at 1312).

We recently reiterated that "[c]oercion does not mean 'simple pressure to agree.'" *Sears v. Warden*, 73 F.4th 1269, 1301 (11th Cir. 2023) (per curiam) (quoting *Brewster v. Hetzel*, 913 F.3d 1042, 1053 (11th Cir. 2019)). "Pressure becomes coercive when the

actions of the court result in ‘a minority of the jurors sacrificing their conscientious scruples for the sake of reaching agreement.’” *Id.* (quoting *Brewster*, 913 F.3d at 1053)).

In our Circuit, whether a verdict was coerced presents a mixed question of law and fact. *Id.* We look at the language the trial court employed and “examine the totality of the circumstances to see if the court’s actions created a substantial risk that one or more jurors would be coerced into abandoning their honest convictions.” *Brewster*, 913 F.3d at 1053 (citing *United States v. Woodard*, 531 F.3d 1352, 1364 (11th Cir. 2008)). The relevant, but not exhaustive, circumstances we consider include the following:

(1) the total length of deliberations; (2) the number of times the jury reported being deadlocked and was instructed to resume deliberations; (3) whether the judge knew of the jury's numerical split when he instructed the jury to continue deliberating; (4) whether any of the instructions implied that the jurors were violating their oaths or acting improperly by failing to reach a verdict; and (5) the time between the final supplemental instruction and the jury's verdict.

Id. (citations omitted).

Here, the Supreme Court of Georgia concluded that the *Allen* charge, considered as a whole, was not coercive. *Humphreys*, 694 S.E.2d at 334. The court noted that it had previously considered the same “a unanimous verdict is required” instruction given as part of an *Allen* charge in the sentencing phase of a death-penalty

trial and found that it was technically a correct statement of the law. *Id.* (citing *Legare v. State*, 302 S.E.2d 351 (Ga. 1983)). Relying on *Legare*, the Supreme Court of Georgia explained that “it is true that any ‘verdict’ rendered [in the sentencing phase] must be unanimous and thus also true, stated in isolation, that it is ‘the law that a unanimous verdict is required.’” *Id.* (quoting *Legare*, 302 S.E.2d at 353).

The Supreme Court of Georgia further expounded, noting that Georgia requires a unanimous verdict even in the sentencing phase of a capital case because under its death-penalty law, “[w]here a jury is unable to agree on a verdict, that disagreement is not itself a verdict.” *Id.* (quoting *Romine v. State*, 350 S.E.2d 446, 451 (Ga. 1986)). As the court explained Georgia law, “[t]he jury’s deadlock may lead to a sentence of life with or without parole imposed by the trial court, but it does not result either in a mistrial subject to retrial (as in other contexts where a jury deadlocks) or an automatic verdict (as occurs under the death penalty law of other states).” *Id.* (citing *Romine*, 350 S.E.2d at 451). Thus, the court emphasized, it had “repeatedly held that a trial court is not required to instruct the jury in the sentencing phase of a death penalty trial about the consequences of a deadlock.” *Id.* (citing *Jenkins v. State*, 498 S.E.2d 502 (Ga. 1998)).

Still, the Supreme Court of Georgia recognized that the charge could lead to claims of jury confusion, requiring an analysis of the “circumstances of the jury instructions given[.]” *Id.* The court then considered the circumstances here and determined that

the unanimity language amounted to merely a small portion of the extensive *Allen* charge the trial court gave. In the court's view, several other aspects of the *Allen* charge minimized the unanimity language in these ways:

[It] cautioned the jurors that the verdict was not to be the . . . mere acquiescence [of the jurors] in order to reach an agreement, that any difference of opinion should cause the jurors to scrutinize the evidence more [carefully and] closely and that the aim was to keep the truth in view as it appeared from the evidence, considered in light of the court's instructions.

Id. (citation and internal quotation marks omitted). Plus, the court observed, the trial court polled the jury, and each juror affirmed that the verdicts announced were the verdicts that they had reached. *Id.* Each juror also confirmed that they had rendered their verdicts without any pressure from anyone during their deliberations. *Id.*

In the end, the Supreme Court of Georgia concluded that the *Allen* charge did not unduly coerce the jury into rendering a death sentence because the unanimous-verdict language was required at the time and was "but one small portion of an otherwise balanced and fair *Allen* charge." *Id.* Still, the court recognized that the unanimity language may result in claims of "jury confusion." For this reason, the court instructed future trial courts to exclude this language from *Allen* charges given during the sentencing phase of death-penalty trials. *Id.*

Humphreys argues it was unreasonable for the Supreme Court of Georgia to find that the jury charge, which results in jury confusion, was constitutional. And he claims that when a trial court insists that the jury must reach a decision, even in the face of a deadlock, that instruction is unconstitutionally coercive. We reject both claims. First, the Supreme Court of Georgia did not find that the “unanimous verdict language” in the jury charge *results in* jury confusion; rather, it found that it *could* result in jury confusion. Second, the court made an individualized determination of the circumstances in Humphreys’s case to ascertain whether juror confusion occurred in Humphreys’s trial and determined it did not.¹⁰

We must defer to the Supreme Court of Georgia’s decision so long as it did not unreasonably determine the facts in light of the evidence presented and its decision was not contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court. Humphreys cannot meet the AEDPA standard on either ground.

With respect to its factual determinations, the Supreme Court of Georgia accurately recounted the circumstances leading to the jury’s verdict. It correctly noted that, during the sentencing phase, the jury deliberated for approximately eight hours over a

¹⁰ Importantly, the Supreme Court of Georgia found that the inclusion of the unanimity language in an *Allen* charge would require a detailed analysis of the full circumstances of the jury instructions given. Here, the court engaged in that analysis.

period of two days before Foreperson Barber sent the trial court a note that stated,

We, the jury, have agreed on statutory aggravating circumstances on both counts, but not on the penalty. *Currently* we agreed life imprisonment with parole is not an acceptable option. We are *currently* unable to form a *unanimous* decision on death or on life imprisonment without parole. Please advise.

Humphreys, 694 S.E.2d at 331 (emphasis added).

The Supreme Court of Georgia recounted that the trial judge informed counsel of the note and summed up its details, advising counsel that the jury “indicated that they have reached a verdict in regard to some of the issues that have been submitted to them, but have not yet reached a decision on other issues that were submitted to them.” *Id.* So the trial court declared its intention to call the jury in and instruct it to continue deliberating. *Id.* When the jurors were brought into the courtroom, the judge instructed them as follows:

I guess you’ve been deliberating now about eight hours in the case. And the case was a lengthy trial, and there are a lot of issues. And you need to continue with your deliberations, and address the remaining issues.

The Supreme Court of Georgia next correctly noted that the jury returned to the jury room and continued deliberations for about three more hours before sending a second note to the court. *Id.* at 332. In that note, the jury asked to listen to Humphreys’s taped statement to detectives. *Id.* The court allowed the

jury to listen to the statement, and the jury returned to the jury room to continue deliberations. *Id.* After about two hours or so, defense moved for a mistrial. *Id.* The trial court denied the motion, emphasizing that the jury had not indicated that it was deadlocked. *Id.*

Following that motion, the jury deliberated for another roughly two hours, when Foreperson Barber sent a note to the court. She asked to be removed from the jury “[d]ue to the hostile nature of one of the jurors.” *Id.* In response to this note, the trial court announced that it intended to give the jury a modified *Allen* charge. *Id.* The Supreme Court of Georgia correctly set forth the verbatim *Allen* charge in its decision, acknowledging that Foreperson Barber’s note and the trial court’s intent to give an *Allen* charge prompted an objection from the defense and a renewal of the defense’s motion for mistrial, which the trial court again denied. *Id.* at 332 & n.7

After reading the juror’s note and without identifying from whom it came, the trial court gave the modified *Allen* charge. *Id.* at 332. The jury retired to the jury room at 8:40 p.m., where it deliberated until 10:20 p.m., and then went home for the evening. *Id.* at 333. The following morning, the jurors reconvened and deliberated for two more hours, and the jury returned a death sentence for the two murders. *Id.*

After reviewing the complete record, we cannot say that clear and convincing evidence exists that the Supreme Court of Georgia clearly erred in its factual determinations based on the evidence presented. The sequence of events and other facts set

forth by the court were correct. Humphreys does not appear to dispute this. Rather, he argues that the court's legal conclusion of no coercion was unreasonable.

But on this record, we cannot say that the Supreme Court of Georgia's decision was contrary to or an unreasonable application of clearly established federal law as determined by the Supreme Court of the United States. With respect to the trial court's first decision to send the jurors back for further deliberations, the court correctly observed that whether a jury is "hopelessly deadlocked" is a determination to be made by the trial court and will be reversed on appeal only for an abuse of discretion. *Humphreys*, 694 S.E.2d at 332. And here, the court emphasized, the trial was lengthy, the jury "had been deliberating for less than nine hours, and the language twice used in the note that the jurors 'currently' were not able to agree indicated that deliberations were ongoing." *Id.*

As for the two later notes, the Supreme Court of Georgia again pointed to the length of the trial in relation to the time the jury had been deliberating, and the court also noted that the jurors had recently requested to rehear evidence. *Id.* at 333. These facts, the court said, showed that the jurors were continuing to actively deliberate. *Id.* We can't say that the Supreme Court of Georgia's determinations in these regards were unreasonable.

With respect to the *Allen* charge, the Supreme Court of Georgia recognized the correct law in its analysis, considering whether, as a whole, the charge was "so coercive as to cause a juror

to abandon an honest conviction for reasons other than those based upon the trial or the arguments of other jurors.” *Id.* (citation and internal quotation marks omitted). It concluded that it was not. Then, the court emphasized that the trial court polled the jurors, and each juror disavowed any coercion. *Id.* at 334. Again, these determinations are neither unreasonable nor contrary to law.

The Supreme Court’s case law on what constitutes a coerced verdict is quite limited. When the Supreme Court of Georgia issued its decision here, the leading case on this topic was *Lowenfield*. There, the Supreme Court determined that a jury’s penalty-phase verdict was not coerced after the trial court polled the jurors on whether further deliberations would be helpful and then instructed the jury to continue deliberating. 484 U.S. at 240–41.

In *Lowenfield*, the Supreme Court acknowledged that juror coercion can support a constitutional claim and that the relevant inquiry is the totality of the circumstances. *Id.* at 237–38. That said, the Supreme Court hasn’t shed further light on what constitutes juror coercion that violates a defendant’s constitutional rights. Given this fact and the Supreme Court of Georgia’s analysis here, we cannot conclude that the Supreme Court of Georgia unreasonably applied existing federal law.

To the extent that Humphreys relies on *Jenkins* to support his argument that his conviction should be reversed, we disagree. In *Jenkins*, the Supreme Court reversed a conviction based on jury instructions given in a federal prosecution. But the Court has since explained that it based its decision there on the Court’s

“supervisory power over the federal courts, and not on constitutional grounds.” *Lowenfield*, 484 U.S. at 239 n.2 (citation omitted); *Early v. Packer*, 537 U.S. 3, 10 (2002) (per curiam). The same is true of the Court’s decision in *United States v. Gypsum Co.*, 438 U.S. 422 (1978), another case upon which Humphreys relies. Consequently, both *Jenkins* and *Gypsum Co.* “are off the table as far as § 2254(d) is concerned.” *Sears*, 73 F.4th at 1304 (quoting *Packer*, 537 U.S. at 10).

In sum, the Supreme Court of Georgia accurately portrayed the facts and examined the *Allen* charge in its entirety, determining that the trial court did not coerce the jury to return a death sentence. Under AEDPA, we must defer to the Supreme Court of Georgia’s decision because it did not unreasonably determine the facts in light of the evidence presented, and its finding of no coercion was not contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court.

D. Ineffective Assistance of Trial Counsel

In his final claim, Humphreys challenges the state habeas court’s finding that his trial counsel was not ineffective in investigating and presenting mitigation evidence. In Humphreys’s view, trial counsel’s failure to conduct a thorough and accurate mitigation case caused them not to learn about years of childhood sexual abuse that Humphreys endured from his great-grandmother, the full extent of his mother’s neglect and abuse, or his lengthy family history of mental illness, abuse, and drug dependency. Humphreys also complains that the defense did not accept the diagnoses of their own mental-health clinician because someone on the defense

team had already “chosen” another diagnosis for Humphreys—Asperger’s Syndrome. Based on these claims, Humphreys contends trial counsel’s representation of him fell below the prevailing professional norms. Had a jury had heard the undiscovered, un-presented evidence, Humphreys contends, “there is clearly a reasonable probability that the . . . jury . . . ‘would have struck a different balance.’”

As we’ve noted, the state habeas court denied Humphreys’s claims after holding an evidentiary hearing during which new counsel presented evidence in support of Humphreys’s claims. The Supreme Court of Georgia denied a certificate of probable cause to appeal, and the district court denied relief on the claim. We apply AEDPA deference to the state habeas court’s opinion. That requires us to deny Humphreys’s petition on this ground.

First, the state habeas court discussed at length the qualifications of the defense team and, based on these details, it determined that Humphreys’s trial counsel were death-penalty qualified and their experience supported a finding of effective assistance of counsel.

Next, the state habeas court described the investigation the defense team conducted and found it to be reasonable. The court noted that counsel interviewed Humphreys’s family members, friends, co-workers, and teacher, where available. The defense team also spoke with Humphreys, his father, stepmother, brother-in-law, paternal grandmother, aunt, uncle, and stepfather about Humphreys’s mental-health history and questioned them about

any physical, mental, or sexual abuse Humphreys suffered. During this investigation, neither Humphreys nor any of his family members indicated that he had been sexually abused.

Besides these steps, defense counsel reviewed Humphreys's prison records, criminal records, employment records, family records, financial records, legal records, medical records, social-services records, psychological records, and school records. And to prepare for the sentencing phase, defense counsel hired a licensed clinical social worker (Marti Loring, who met with Humphreys and diagnosed him with post-traumatic stress disorder ("PTSD") and Asperger's Syndrome), a prison adaptability expert (James Aiken), a neuropsychologist (Robert Schaffer, who diagnosed Humphreys with PTSD, Dissociative Disorder, and Asperger's Syndrome), a psychiatrist (Bhushan Agharkar, to render an opinion as to trauma and abuse),¹¹ a victim outreach specialist, and a trauma expert.

As for the investigation of childhood sexual abuse, at the evidentiary hearing, mitigation specialist Laura Switzer testified that she suspected Humphreys had been sexually abused. But during the defense team's interviews of witnesses (including Humphreys), no one reported that he had been sexually abused. In fact, the defense team asked Humphreys directly about sexual abuse, but Humphreys denied any recollection of such abuse.

¹¹ Dr. Agharkar disagreed with the diagnosis of Asperger's Syndrome, and defense counsel decided he would not testify since his evaluation did not support their sentencing-phase theory.

The state habeas court summarized defense counsel's presentation during the guilt-innocence phase as follows: (1) Humphreys's childhood was characterized by violence, trauma, and instability and that he was raised by a dysfunctional, abusive family; (2) Humphreys's parents divorced when he was two years old, and he lived with his mother for a while, during which he received a head injury that resulted in a concussion; (3) when Humphreys's father gained custody of him, violence and disruption occurred in the home; and (4) Humphreys was placed in special education because of behavioral problems. The state habeas court also noted that trial counsel advised the jury about Humphreys's mental-health issues, including about dissociative episodes that started when he was a teenager, and about his obsessive-compulsive behavior ("OCD"). Finally, the state habeas court acknowledged that trial counsel presented evidence that Humphreys was non-violent and non-confrontational.

As for the state habeas court's findings about counsel's performance during the penalty phase of the trial, it determined that trial counsel "made a reasonable presentation during the sentencing phase based on their strategy and the information discovered during their investigation." It recognized the strategy was to present evidence of Asperger's Syndrome as well as Humphreys's traumatic childhood to allow the jurors to have some empathy for him. The state habeas court pointed out that defense counsel used the testimony of six lay witnesses and three experts to present the information to the jury.

The state habeas court summarized the testimony of each witness. As relevant here, the court pointed out that trial counsel presented the testimony of Humphreys's stepmother, Janie Swick, who conveyed the dynamics in the home, including that Humphreys's father was verbally and physically abusive to him. Swick explained that Humphreys's father "bullied" him and caused him to run away in fear. She recalled an incident in which Humphreys's father struck him in the arm with a broom, requiring Humphreys to go to the hospital. Swick also informed the jury that Humphreys did not have many friends growing up and had mental problems, and she said she regretted not getting psychological help for Humphreys.

Next, Humphreys's half-sister Julia testified to the abuse their father inflicted on them. Although the father disciplined all the children, Julia characterized the abuse he inflicted upon Humphreys as "very bad." Julia explained that her father used switches and belts to discipline the children. And she recalled an incident where their father challenged Humphreys to a fight. During that fight, their father repeatedly punched Humphreys in the head before he finally escaped.

Later, the state habeas court turned to the testimony of Humphreys's sister Dayna, who gave examples of their "rather difficult" early childhood. According to Dayna, their father was an unhappy man who was hard on them and showed very little affection. He did not handle stress well and often became angry and violent. Dayna testified that their father physically abused her and

Humphreys throughout their childhood, imposing whippings with a large belt or stick. Their father beat Humphreys with his fist.

The state habeas court further recounted the testimony of the two expert witnesses trial counsel presented to the jury during the mitigation phase. Dr. Loring, who was qualified as an expert in social work and trauma, testified that she met with Humphreys on four occasions for approximately three hours each time. Dr. Loring also interviewed sixteen individuals to get their perceptions, experiences, and observations of Humphreys. To complete her analysis of Humphreys, Dr. Loring reviewed extensive records including police records, school records, jail records, divorce records, work records, and hospital records.

Dr. Loring testified to the jury that Humphreys's childhood was marked by abuse; he spent his early childhood living in a home where drugs were bought and sold. As evidence of the "extensive physical abuse," Dr. Loring testified that the Department of Family and Children Services discovered cigarette burns on Humphreys when he was a child. At age two, Humphreys's entire body was bruised following a beating by his father, who admitted that he had "lost it" and beaten him. At age three, he was taken to the hospital for a fractured skull. At age four, his shoulder was dislocated as the result of a violent shaking by his father. Dr. Loring also spoke of the incident where Humphreys's father hit Humphreys with a broom handle. After the incident, his father threatened to kill his stepmother if she tried to take Humphreys to the hospital for treatment. Besides these incidents, Dr. Loring recounted that

Humphreys's father had severely beaten by him because he got into a car accident and, on another occasion, his father sat on his private parts, holding Humphreys's hands above his head and continually beating him in the head and the chest.

And the state habeas court noted that Dr. Loring explained to the jury that Humphreys's father flew "into a rage as a matter of pattern, not just one time or two, and he would whip or beat [Humphreys]." Dr. Loring described the abuse as "not only explosive physically, where [Humphreys] would get slapped and punched, thrown across the room, indeed, but there was a very remarkable emotional component to the abuse that [his father] committed upon [Humphreys and his sister]." In Dr. Loring's view, this was "ritualistic emotional abuse," meaning a series of steps led up to the physical abuse.

The state habeas court also considered Dr. Loring's testimony that, growing up, Humphreys was in special education and exhibited "odd classroom behavior, inappropriate behavior, that was marked by a lack of focus, being hyper, [and] a lack of concentration." She said these symptoms were often seen in children who are traumatized and abused. Dr. Loring also told the jury that as a result of his abusive upbringing, Humphreys tended to wander off, even to different states, evidencing Humphreys's dissociation.

Dr. Loring advised the jury that she had diagnosed Humphreys with PTSD and Asperger's Syndrome. In Dr. Loring's view, Humphreys suffered from PTSD because of the trauma he

experienced during his childhood and teenage years. Regarding her diagnosis of Asperger's Syndrome, Dr. Loring educated the jury that individuals with Asperger's Syndrome were "very impaired in their ability to be close or intimate with another person" and severely suffered from a "sustained impairment in social interaction." Dr. Loring provided several indicia to support her diagnosis of Humphreys. She opined that he had "a real impaired ability to relate to people and to empathize with them," and his life experiences caused him to be "much more involved with objects or cleaning or a kind of ritual of what you do at what moment in time."

When the state habeas court finished reviewing Dr. Loring's testimony to the jury, it then went through Dr. Robert Shaffer's testimony. Dr. Schaffer, a clinical psychologist, interviewed six individuals about their observations of Humphreys. Dr. Shaffer also spoke with Dr. Loring about the social history she prepared on Humphreys and reviewed police reports, hospital records, school records, and prison records. Based upon his evaluation, Dr. Shaffer opined that Humphreys suffered from PTSD, Dissociative Disorder, and Asperger's Syndrome.

In support of his diagnosis of Asperger's Syndrome, Dr. Shaffer testified that Humphreys had very unusual cleaning routines, and he explained that Humphreys became uncomfortable and agitated if his routine was disturbed. Dr. Shaffer also testified that Humphreys met the criteria for Asperger's in that he had an "extreme interest" in reading science fiction and constantly talked

about these books for hours with different people as if they really could be true. Additionally, Dr. Shaffer recounted Humphrey's lack of the normal emotional give and take.

As for Dissociative Disorder, Dr. Shaffer said that involved an individual who "split[s] off from their normal state of awareness" and experiences "periods of productive and active behaviors, and then later, ha[s] no recollection of that." Dr. Shaffer opined to the jury that Humphreys suffered from Dissociative Disorder as a result of the violence in his home, so Humphreys was unaware of the "normal judgment and thoughts and memories that he has to bring to bear on a situation."

Besides this testimony, Dr. Shaffer told the jury that Humphreys met all the diagnostic criteria for PTSD. In Dr. Shaffer's view, there was "pretty strong evidence that there was significant abuse before [Humphreys's] age of earliest memory." And he also said that the second category of diagnostics for PTSD—avoidance of the memories—also applied to Humphreys, as there was "clear evidence of a great deal of denial" by Humphreys. Finally, Dr. Shaffer testified that Humphreys's denial was his attempt to "avoid re-experiencing the problems and horrors" that occurred in his life.

The state habeas court then recounted the evidence presented during the habeas proceedings: (1) the testimony of Humphreys's step-siblings, who testified that Humphreys's mother verbally and physically abused them, (2) Humphreys's ROTC teacher, who testified that he was in special education classes for a

behavioral disorder, (3) Humphreys's childhood neighbor, who testified that Humphreys's father yelled at him often and spanked him in the yard after he soiled his underwear, and (4) two expert witnesses.

The most relevant testimony here was that of the two expert witnesses, Dr. Julie Rand Dorney and Dr. Victoria Reynolds. The state habeas court recounted that testimony.

It noted that Dr. Dorney, an expert in forensic psychiatry, testified she performed an examination of Humphreys over the course of two days, and diagnosed him with obsessive-compulsive disorder and depressive disorder, NOS. She also found that he had many symptoms of both PTSD and bipolar disorder, but she concluded he did not meet all the criteria for either diagnosis. Dr. Dorney testified that, in her second meeting with Humphreys, he told her that he had been sexually abused by his great-grandmother.

As for Dr. Reynolds, an expert in trauma and its impact on victims, she testified about much of the evidence presented in the sentencing proceedings. She acknowledged that when she spoke to Humphreys about his great-grandmother, he did not reveal the sexual abuse. Still, Dr. Reynolds suspected Humphreys had been sexually abused based on his level of dissociativeness, his level of compartmentalization, and his sexual activity. Dr. Reynolds also spoke about the trauma Humphreys endured growing up, including a skull fracture, the instability in the home, and physical abuse.

After these detailed inventories of defense counsel’s presentation of evidence at the mitigation stage and habeas counsel’s presentation of evidence at the habeas hearing, the state habeas court concluded that trial counsel performed adequately. And “particularly in light of trial counsel’s thorough investigation and strategic decisions[,]” the state habeas court determined that Humphreys was not prejudiced by counsel’s failure to discover and present the additional mitigation evidence Humphreys said should have been presented. As the state habeas court emphasized, trial counsel was not required to present all mitigation evidence and “[c]onsidering the realities of the courtroom, more is not always better. . . . [G]ood advocacy requires ‘winnowing out’ some arguments, witnesses, evidence, and so on, to stress others.”

Plus, the state habeas court observed that the evidence submitted during the habeas proceedings was largely cumulative of the evidence presented at trial. Indeed, the court concluded, the only truly “new evidence” concerned Humphreys’s past sexual abuse, although neither Humphreys nor anyone else had disclosed the abuse prior to the habeas proceedings. Still, the state habeas court noted, Humphreys’s defense team remained suspicious and investigated further. The court explained that it “weigh[ed] heavily the information provided by the defendant” in evaluating the reasonableness of counsel’s investigation.

Here, Humphreys did not provide the court with any evidence of sexual abuse that would have been available to trial counsel. The only evidence was his self-report to Dr. Dorney, *after* the

sentencing proceedings. Given these circumstances, the state habeas court explained that trial counsel “does not render ineffective assistance by failing to discover and develop evidence of childhood abuse that his client does not mention to him.” Accordingly, the state habeas court concluded trial counsel’s performance was not deficient “for not presenting evidence that [Humphreys] withheld from them.”

And in any case, the state habeas court determined that Humphreys failed to show any prejudice since the additional evidence presented in the habeas proceedings would not have created a reasonable probability of a different outcome. As the court explained, a comparison of the trial record with the habeas record “shows the majority of the evidence presented in habeas reiterated the testimony presented at trial.”

As for the expert testimony, the state habeas court recognized that the habeas experts diagnosed Humphreys with OCD, but the trial experts diagnosed him with PTSD, dissociative disorder, and Asperger’s Syndrome. But the court reasoned that the diagnoses were based on the same behaviors and symptoms. And while OCD could be one possible diagnosis, it was not the only reasonable diagnosis that could be made from the information.

With respect to the new evidence of past sexual abuse, even assuming the investigation was deficient (as we’ve noted, the court found it wasn’t because the defense team expressly asked about sexual abuse and Humphreys and his relatives and friends did not disclose it), Humphreys still did not demonstrate a reasonable

probability that the outcome would have been different if the evidence had been presented at trial, given the weight of the mitigation evidence that counsel did present.

In sum, the state habeas court found that Humphreys failed to show deficient performance *or* the required resulting prejudice. Consequently, the state habeas court denied the ineffective-assistance-of-trial-counsel claims.

As we have already noted, to succeed on an ineffective-assistance-of-counsel claim, the petitioner must show both that (1) his attorney's performance was deficient, and (2) the deficiency prejudiced his defense. *Strickland*, 466 U.S. at 687. And because *Strickland*'s standard itself requires deference to counsel's performance, and AEDPA, by its terms, requires deference to state-court decisions, our review of state courts' resolution of the deficient-performance prong of *Strickland*'s ineffective-assistance standard requires double deference. *See Cullen v. Pinholster*, 563 U.S. 170, 202 (2011).

After careful consideration, and applying AEDPA deference, we conclude that the state habeas court reasonably determined that Humphreys failed to show unconstitutionally deficient performance on the part of his trial counsel. In answering this question, we reweigh the aggravating evidence against the totality of the available mitigating evidence. *See Ferrell v. Hall*, 640 F.3d 1199, 1234 (11th Cir. 2011). In doing so, we find nothing unreasonable about the state court's determination that counsel were not deficient in not uncovering Humphreys's sexual abuse. Here, members of the defense team interviewed Humphreys and others, asking

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specifically whether Humphreys had been sexually abused. No one responded that he had. Counsel also reviewed medical, school, and other records, but they, too, failed to reveal Humphreys's sexual abuse. A defense attorney preparing for sentencing in a capital trial is not required "to scour the globe on the off chance something will turn up." *Everett v. Sec'y, Fla. Dep't of Corr.*, 779 F.3d 1212, 1250 (11th Cir. 2015) (quoting *Rompilla*, 545 U.S. at 382–383).

As for the additional evidence of Humphreys's non-sexual abuse and his mental conditions, counsel presented substantial mitigation evidence, and the new habeas evidence was mostly cumulative of what was presented during the trial and sentencing proceedings. The jury learned of the severe and frequent physical and mental abuse, as well as neglect, that Humphreys suffered as a child. It also learned of Humphreys's mental-health issues—his dissociative episodes, his OCD behaviors, and his other odd behavior.

The state habeas court reasonably concluded that any additional evidence about these issues would be cumulative. The "mere fact that other witnesses might have been available or that other testimony might have been elicited from those who testified is not a sufficient ground to prove ineffectiveness of counsel." *Chandler v. United States*, 218 F.3d 1305, 1316 n.20 (11th Cir. 2000) (citation omitted).

Finally, as for Humphreys's suggestion that his trial counsel conducted a last-minute mental-health investigation and reached an unreasonable conclusion that he suffered from Asperger's Syndrome, we cannot conclude that the state habeas court

unreasonably rejected that claim, either. Dr. Shaffer conducted his first evaluation of Humphreys in May 2005, but at that time, he was instructed not to prepare a written report. Dr. Shaffer later conducted a second evaluation of Humphreys in August of 2007 after reviewing additional records, reviewing case information, and interviewing witnesses. After the second evaluation, Dr. Shaffer diagnosed Humphreys with PTSD, Dissociative Disorder, and Asperger's Syndrome. This timeline refutes the idea that defense counsel waited until just prior to trial to develop a mitigation strategy and hire defense experts.

Humphreys focuses on the opinion of another doctor who agreed with Dr. Shaffer's findings that Humphreys exhibited symptoms of PTSD but disagreed with the Asperger's Syndrome diagnosis. The defense was not required to present the testimony of the second doctor; it made a strategic decision not to present it. And the state habeas court was not unreasonable in concluding that decision was within competent counsel's discretion. *See Nance v. Warden, Ga. Diagnostic Prison*, 922 F.3d 1298, 1302 (11th Cir. 2019) ("It is especially difficult to succeed with an ineffective assistance claim questioning the strategic decisions of trial counsel who were informed of the available evidence."). After all, other evidence supports defense counsel's strategy. Along with Dr. Shaffer, Dr. Loring opined that Humphreys suffered from PTSD and Asperger's Syndrome. Consequently, two doctors' findings supported the defense team's decision. And both Dr. Loring and Dr. Shaffer testified as to how they came up with their diagnoses.

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For these reasons, the state habeas court's determination that defense counsel was not ineffective is entitled to deference. We will not disturb that finding on the grounds advanced by Humphreys.

Though this conclusion requires us to deny Humphreys's petition even without considering the state habeas court's prejudice determination, we nonetheless find that the court's prejudice determination was likewise not unreasonable. As the state habeas court explained, with the exception of the sexual-assault evidence, the remainder of the evidence was largely cumulative of the hefty mitigation evidence trial counsel presented to the jury. And we cannot say the habeas court unreasonably concluded that the addition of the sexual-assault evidence would have made an overall difference in the impact of the mitigation case, given the strong evidence of abuse and mental-health issues counsel presented. So for this reason, too, we reject Humphreys's claim of ineffective assistance.

IV. CONCLUSION

Our review of the record compels the conclusion that Humphreys is not entitled to relief on any of the claims he presented in his petition for writ of habeas corpus. We therefore affirm the district court's denial of Humphreys's habeas petition.

AFFIRMED.

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ROSENBAUM, J., Concurring

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ROSENBAUM, Circuit Judge, Concurring:

I concur in the panel opinion because I think that a combination of the no-impeachment rule and the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) require it. But I am deeply concerned about what transpired during jury deliberations here.

Linda Chancey swore under oath during voir dire that her attacker “actually didn’t do [her] any physical bodily harm” because she “escape[d] before he actually physically entered the dwelling.” That was false. Chancey told jurors that she “was naked in her bed and a man broke in and attacked her” in her bed. And after trial, Chancey told Humphreys’s investigators that “a strange man came through the window of her apartment, robbed her, and tried to rape her.” These were important facts, and had Humphreys’s lawyers known of them, they could have exercised the remaining peremptory strike to remove Chancey from the jury. But they didn’t know about them. And they didn’t know because Chancey lied during voir dire.

Even worse, Susan Barber testified that on “day one, [Chancey] had her mind made up: early in the trial—before the end of the first phase—she said something along the lines of he’s guilty and he deserves to die.” Indeed, according to Barber, Chancey told the other jurors that she “would only vote for death.”

So even when the other eleven jurors, after deliberating many hours, voted for life without parole, Chancey would not even consider it. Of course, it was Chancey’s right to vote for death if

she thought the facts warranted it. But Humphreys had the right to expect that (a) Chancey had told the truth during voir dire, and (b) she would at least honestly consider imposing a sentence of life without parole.

Worse still, Chancey incorrectly told the other jurors that “they had to reach a unanimous decision or [Humphreys] would be paroled.” That, of course, was wrong. In fact, had the jurors failed to reach a unanimous decision, Humphreys would have been sentenced to life without parole under Georgia law. But Chancey’s incorrect statement, combined with the court’s repeated instructions to the jury to continue deliberating, caused Barber to believe incorrectly that if the jury didn’t return a death verdict, Humphreys would be sentenced to life imprisonment with the possibility of parole or that he could “walk.”

Based on Barber’s testimony about what occurred during jury deliberations, two things seem clear: (1) Chancey was dishonest during voir dire, and her undisclosed bias likely made her unable to consider any verdict other than death, and (2) had the jury not incorrectly believed, as a result of the trial court’s instructions and Chancey’s statements, that Humphreys would have been released or been sentenced to life with the possibility of parole if the jury couldn’t return a verdict, the jury wouldn’t have returned a verdict, and Humphreys would have been sentenced to life imprisonment without the possibility of parole. Put simply, I do not doubt that the errors here “actually prejudice[d]” Humphreys. See *Brecht v Abrahamson*, 507 U.S. 619, 637 (1993). When an error “actually

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ROSENBAUM, J., Concurring

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prejudices” a defendant and that error is the difference between life and death, in my view, we should be able to correct that error.

But we can’t here. The problem is that proving prejudice requires us to consider the jurors’ testimony about what occurred during deliberations. Yet Georgia law and the no-impeachment rule prohibit us from doing just that.

True, the Supreme Court has identified an exception to the no-impeachment rule. But the Court has never recognized an exception under the specific circumstances here (and when the state courts considered Humphreys’s case, the Supreme Court had yet to apply the limited exception in any case).

And while the Court has limited any exception to the “gravest and most important of cases”—a category into which death-penalty cases would seem to fall—AEDPA’s standard of review cuts off that avenue for granting the petition. As I’ve noted, the Supreme Court has applied the exception in only a single case ever—and the reason there was the juror’s racial bias, which was not the case here. And though a Supreme Court case need not be directly on point to make it applicable, here, the Supreme Court has otherwise consistently refused to apply the exception and has cautioned time and again against construing the exception in any way but extremely narrowly.

Given this precedent, if we faithfully apply AEDPA’s standard of review, we cannot find that the state court’s decision was “contrary to” federal law. 28 U.S.C. § 2254(d)(1). That’s so because the state court’s decision does not “contradict[] the United States

Supreme Court on a settled question of law or hold[] differently than did that Court on a set of materially indistinguishable facts.” *Evans v. Sec’y, Dep’t of Corr.*, 703 F.3d 1316, 1325 (11th Cir. 2013) (citation omitted).

So I must reluctantly concur in today’s opinion. But I don’t think that makes it right.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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June 11, 2024

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 21-10387-P
Case Style: Stacey Humphreys v. Warden GDP
District Court Docket No: 1:18-cv-02534-LMM

Opinion Issued

Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing

The time for filing a petition for panel rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing is timely only if received in the clerk's office within the time specified in the rules. **A petition for rehearing must include a Certificate of Interested Persons and a copy of the opinion sought to be reheard.** See 11th Cir. R. 35-5(k) and 40-1.

Costs

No costs are taxed.

Bill of Costs

If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees

The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or

cja_evoucher@call.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

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OPIN-1 Ntc of Issuance of Opinion