JOHN MARION GRANT

A Case for Clemency

Sarah M. Jernigan
Meghan LeFrancois
Assistant Federal Public Defenders
Counsel for John Marion Grant

October 5, 2021

JOHN GRANT'S CLEMENCY PACKET

TABLE OF CONTENTS

INTRODUCTION. 1

A CASE FOR CLEMENCY. 2

CHILDHOOD. 4

OKLAHOMA'S SHAME. 9

ADULT INCARCERATION. 19

JOHN GRANT AND GAY CARTER. 23

TRIAL. 31

APPEALS. 40

JOHN GRANT TODAY. 46

CONCLUSION. 48

APPENDIX OF EXHIBITS

APPENDIX
(consecutively paginated and referenced as App. followed by page number)

John Grant was sentenced to death after an extremely flawed trial where crucial facts about his crime were never explored or presented to the jury. The jury was left in the dark as to why this crime happened. Jurors never heard that Mr. Grant killed Ms. Gay Carter while in the heat of passion and despair over the abrupt end of the deepest and most important adult relationship of his life. And, the jury did not hear about Mr. Grant's childhood of poverty and neglect or about his tragic background of institutional childhood abuse at the hands of the State of Oklahoma.

Respected experts who reviewed Mr. Grant's trial concluded he received "one of the most incompetently assembled and presented" death penalty sentencing defenses ever seen. Judges on both state and federal review offered passionate dissents because of the extraordinary ineffectiveness of Mr. Grant's trial counsel and subsequent decisions allowing his death sentence to stand. One of Mr. Grant's trial attorneys has since been disbarred[1] for conduct that was ongoing at the time of Mr. Grant's trial.

We are before this Board now to tell Mr. Grant's story, acknowledge his responsibility for the pain he has caused, and ask for mercy. Mr. Grant is far from the worst of the worst. He has taken full responsibility for his crime and has apologized to his victim's family. Had the jury learned of the horrific victimization he experienced while in the care of state-run

[1]Ms. McTeer was allowed to resign as a member of the Oklahoma Bar Association pending disciplinary proceedings. In the court's order approving her resignation, the court notes that "resignation pending disciplinary proceedings is tantamount to disbarment." https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=468608.

institutions when he was just a child, there is a reasonable probability he would not have been sentenced to death. Rather than killing him now, we ask that the State of Oklahoma extend him the mercy he was denied as a vulnerable child in its custody. We ask this Board to recommend clemency as a necessary first step, which will authorize the governor to exercise his constitutionally conferred authority to commute Mr. Grant's sentence to life imprisonment.

A CASE FOR CLEMENCY

No one denies Mr. Grant's actions were completely wrong and caused immeasurable pain. We are here to ask for mercy. Mr. Grant is a sixty-year-old man who is going blind.[2] He is not a continuing threat. Instead, he has fervently wrestled with his own actions and failings since the time of this crime, seeking to understand and better himself more so than any other client I have represented. Mr. Grant continues to question why and how he did such a thing. He grapples with the question of whether redemption and forgiveness can truly exist – especially for someone such as himself.

Just as Mr. Grant has fought to understand the "why" of his actions, we too can benefit from choosing to understand how he got here. This is a case for clemency because of our State's specific hand in creating the devastation and despair that led to this crime.

By the time he was barely a teenager, Mr. Grant was subjected to some of the worst

[2]According to DOC records, Mr. Grant has been suffering from advanced glaucoma for approximately 10 years. Ex. 1 at App. 1, DOC Medical and Dental Record Excerpts.

abuse and neglect imaginable at the hands of the State of Oklahoma. As documented herein, the State of Oklahoma was the subject of a widespread, nationally publicized scandal[3] for the treatment of its charges in its juvenile institutions during the time Mr. Grant was in these facilities. While there, the State of Oklahoma did nothing to rehabilitate him or equip him against a life of otherwise inevitable destruction. Instead, the State helped to create a broken man who had every reason to never trust again.

The State should have been a fail safe when Mr. Grant's mother was unable or unwilling to provide the stability and care to Mr. Grant that is essential to *every* child. The State should have been a fail safe in providing Mr. Grant with the mental health care and resources needed for so many of its inmate population. The State should have been a fail safe in providing competent representation to Mr. Grant once the years of abuse and dysfunction manifested in bad acts. Yet, the State neglected – more accurately, abused – its duty to protect and rehabilitate.

The State now has another opportunity to provide that fail safe in the form of clemency. "Far from regarding clemency as a matter of mercy alone, we have called it 'the fail safe' in our criminal justice system." *Harbison v. Bell*, 556 U.S. 180, 192 (2009) (quoting *Herrera v. Collins,* 506 U.S. 390, 415 (1993)). We respectfully ask this Board to take that opportunity.

---

[3]The scandal would become known as *Oklahoma Shame* by the reporters and investigators who uncovered the abuse. *See* discussion herein at pp. 9-18.

CHILDHOOD

Mr. Grant was born in Ada, Oklahoma, on April 12, 1961, the sixth of nine children in a single-parent family. From the time he was a baby and through every stage of his childhood, he was neglected and abused by broken people and broken institutions. To say he was born into progressively worsening poverty and unmet medical and emotional needs would be an understatement.

Mr. Grant's childhood home had a dirt floor and lacked running water.[4] Mr. Grant's mother, Ruth, gave birth to nine children from as many as five men. She never received support or help from any of the fathers. Instead, she tried to support herself and her nine children with government aid and part-time work as a housemaid. Ex. 2 at App. 3-8, Social History by Teresa McMahill. Mr. Grant's mother had little money, time, or energy to care for her children. Mr. Grant was left to be raised by his older siblings in his mother's frequent absence. Laronda, the oldest daughter in the family, was left to care for the kids. She was just six years old when Mr. Grant was born. Mr. Grant's sister Ruth Ann, just four years older than him, eventually took over after Laronda left home.

Children raising children very rarely works however. Mr. Grant was unable to develop a healthy attachment to his overwhelmed mother and the series of older siblings who resented being forced to care for him. A tenderhearted child, Mr. Grant was easily frustrated

---

[4]To this day, Mr. Grant is intrigued if one of us talks about a birthday or holiday celebration. His family was so poor that celebrating such things was not even a question.

and quick to get angry. His brother, O.C. III, says, "He would hold it in so much. It would just come and he'd sob and cry." Ex. 2 at App. 3. According to his sister Andrea, when Mr. Grant would cry, their mother, Ruth, would ask him, "Are you crazy? Why you cryin'? You got nothin' to worry over." Ex. 2 at App. 3. Andrea says their mother never tried to determine what was at the root of Mr. Grant's pain even though everyone knew something was wrong. An aunt even strongly advised that medical or psychological attention was needed, but nothing was done to address these needs. Ex. 2 at App. 5. *See also* Ex. 3 at App. 10, Declaration of LueJean Johnson.

Lacking money and time, Ruth exhibited little maternal connection to her children. "She didn't hardly talk to us," Andrea recalls. "I don't think she liked us." Ex. 2 at App. 3. Ruth Ann felt like she was always trying to be accepted by her mother. "She was never maternal. . . ." Mr. Grant's brother Greggory remembers getting only "occasional hugs" from his mother and that she "wasn't a loving mom." Ex. 2 at App. 3. Instead, she was a strict disciplinarian. She once beat Greggory so hard with an extension cord that it left marks for days. "I don't know if she was punishing me or taking out her emotions on me." Ex. 2 at App. 4. Mr. Grant has reluctantly but similarly spoken of being beaten with extension cords, with the tracks for hot wheel cars to race on, and with switches that he would have to go find

himself.[5] The kids said whippings could come in the middle of the night while they were sleeping and when they would least expect it.

The home was a turbulent and abusive place even outside this physical abuse. To find the love and affection she herself never received, Mr. Grant's mother went from man to man in the small town of Ada. Her countless relationships resulted in extreme abuse. When he was five years old, Mr. Grant witnessed a frightening episode where his mother was beaten by a lover's wife, resulting in her being hospitalized for a month and a half. Ex. 2 at App. 4-5; Ex. 3 at App. 9.

A further complication of all of these relationships is that Ruth had many children from many different men, which itself created tension and issues within the family. Mr. Grant was the son of a dark-skinned Black man. Though this should not have mattered, with his dark color and the timing of his birth, Mr. Grant was treated differently in the family. His sister Andrea explained, "John was known as the bastard of the family." Ex. 2 at App. 6.[6]

---

[5]Between the abuse at home and that he suffered in the juvenile institutions Mr. Grant later went to, it is no wonder a Department of Corrections report noted Mr. Grant had "scars over all [his] body."

[6]It was obvious to the rest of the family that the light-skinned children were favored over the dark-skinned children. Just one of many examples is when Mr. Grant and his brother Norman (whose biological father was white) landed in jail at the same time. Their mother held a bake sale to raise bail for Norman while leaving Mr. Grant to serve his entire sentence. Ex. 2 at App. 4-5. Another example of the hurt and neglect Mr. Grant felt from his family is that while he was incarcerated at the age of 18, his family moved to Oregon. Ex. 4 at App. 17, *Grant v. State* (*Grant I*), 58 P.3d 783, 799, 806 (Okla. Crim. App. 2002). Yet another example of hurt was documented by a juvenile case counselor. "[T]his counselor observed a soft tender feeling in John [during a] discussion of his young niece in the home.
(continued...)

Notably, Mr. Grant was the focus of his older brothers' disdain. They told him life was good until he arrived. Ex. 2 at App. 4. One of Mr. Grant's older brothers, Ronnie, was a "foul, jerk of an ass" who tortured him. "He'd shove him, throw him against the wall, and call him an ugly bastard." Ex. 2 at App. 4.

When Mr. Grant was able to find some solace for his sensitive soul, it was usually short-lived. Mr. Grant has always loved animals, which he would sometimes come across in the country, as Mr. Grant remembers Ada to be. To this day, he still remembers a dog that would follow him around. Mr. Grant originally found "Mr. Tibbs" in a bag on the side of the road when he was a puppy, his eyes not even opened yet. Mr. Grant loved him, bottle-fed him, and tried his best to take care of him despite not having his family's support. As the result of Mr. Grant's care, Mr. Tibbs survived, unlike the rest of the litter mates (who were cared for by other people). Sadly, Mr. Tibbs was eventually hit by a car and had to be put down. "He was more sensitive," his sister Ruth Ann recalls. "In our environment you couldn't be like that. . . . When our dog was put to sleep John cried. In the [B]lack culture, you don't cry over a dog dying." Ex. 2 at App. 3.

---

[6](...continued)
He was somewhat embarrassed that his true feelings came out. In this counselor's opinion, John is the only child removed from his home at [an] early age, institutionalized, and he has felt this very deeply. He however puts on a protective shield by being passive aggressive to courts, laws, and social workers. This young man has had no good male figure in his life to pattern after." Ex. 5 at App. 26, Certification Study. This same counselor noted that in the projects where Mr. Grant and his family lived "there is little hope, drugs, lack of motivation and lots of unemployed people." Ex. 5 at App. 25.

As Mr. Grant was entering school age years, the family "fled Ada to get away from other people's husbands." Ex. 2 at App. 5. However, this meant the family went from poverty in the country to worsening poverty, violence, and crime in Oklahoma City, where the family moved to be next to Ruth's brother, Clayton.[7] Though Uncle Clayton did what he could for the family – trying to provide some stability[8] and respite for the kids – Ruth eventually moved the family further away. Although they remained in Oklahoma City, Ruth moved the family into a housing project so that she could have her own bathroom, according to one of Mr. Grant's siblings. Ex. 2 at App. 6-7. This meant Clayton was no longer next door to be a consistent father figure for Mr. Grant and his siblings. And, with their mother remaining largely unavailable to them, Mr. Grant and the others were soon surrounded and influenced by an older, unsupervised criminal element in the projects. As Mr. Grant's sister Laronda put it, "we grew up on our own accord, like weeds in a desolate field, not tended to or cared about." Ex. 6 at App. 27, Letter from Laronda Hovis (Grant).[9]

---

[7]Uncle Clayton, who always cared about Mr. Grant, passed away in 2020.

[8]While Ruth and her children were living next door, Uncle Clayton had to confront his neighbor who had taken up with Ruth. The neighbor was a violent man with thirty-three children of his own. One Saturday morning, while Mr. Grant and his siblings were in the house, the neighbor held Ruth hostage in her bedroom. The children had to run to get Uncle Clayton, who came over to the house with a gun. He ended up having to fire the gun in order to get the neighbor to let Ruth go. Ex. 2 at App. 5.

[9]Though we have tried to highlight some of the neglect of Mr. Grant's childhood, we ask this Board to read more fully the details of his life in the Social History prepared by Teresa A. McMahill, a registered counselor and certified clinical social worker, to understand the extent of the neglect and abandonment he suffered as well as the psychological toll this (continued...)

The fact that Mr. Grant and his siblings eventually started getting into trouble is an unsurprising reality. Part of growing up on his own included fending for himself and his younger siblings. Mr. Grant was only nine years old when he started having to find food and clothing for them, and as a result, began stealing. Ex. 7 at App. 29, Affidavit of Andrea Grant. *See also* Ex. 8 at App. 31, Affidavit of Marvin Smith. While this was not Mr. Grant's only brush with the law, it was certainly a key factor in his downward spiral.

OKLAHOMA'S SHAME

By the age of twelve, Mr. Grant was sent away. He was first sent to the Missionary Cosmopolitan Home in Wewoka, followed by Oklahoma's Boley State School for Boys and the Helena State School for Boys. Ex. 9 at App. 33, 35, Boys Homes Index Cards. There, "state employees were subjecting abandoned, orphaned, emotionally disturbed and delinquent children to a Dickensian kind of terror." *Oklahoma Shame,* Gannett News, 1982. Ex. 10 at App. 37, Gannett News Service.

The pattern of abuse and neglect at these facilities came to light when Washington, D.C.-based Gannett News Service launched an extensive investigation into the abuse. The investigations revealed the very system that had been instituted to rehabilitate and care for Oklahoma's troubled youth was scarring them indelibly. News articles, aptly known as

[9](...continued)
caused. Ex. 2 at App. 3-8. While attached affidavits directly support McMahill's Social History, other family affidavits are available but not attached due to space limitations. Should the Board members desire to review any of these additional documents, counsel will make them available.

Oklahoma Shame,[10] detailed the "whippings, rapes and assaults." They told "the story of a political system so huge and powerful that it could condone such abuse, hide it from the public eye, and still cling to life. . . ." Ex. 10 at App. 37. Sadly, the years Mr. Grant spent at these State-run juvenile homes were at the very height of this abuse. Ex. 11 at App. 44, Affidavit of Steven A. Novick.

The main focus of the news reports was the State's warehousing of children. In return for the housing of these children, the State of Oklahoma received per diem federal funds for each child. Ex. 12 at App. 45, *Throwaway Kids* Summary. The State was not providing appropriate services in return. Most of the children were housed in outdated, state-run institutions located in rural towns far from their families. Ex. 12 at App. 45. Denied proper services and care, the children were exposed to mass mistreatment. Countless stories were uncovered of beatings by staff and days and weeks of solitary confinement as a means of punishment. ABC News documented some of the rampant abuse in its Peabody Award winning feature *Throwaway Kids*. Ex. 13, Video Excerpt from ABC News 20/20 *Throwaway Kids*.

Lloyd E. Rader Sr., the director of the Oklahoma Department of Human Services, resigned during the investigation. Ex. 12 at App. 45. Amongst other things, Rader was accused of using state funds to hire private detectives to follow and harass the reporters who

---

[10]*Oklahoma Shame* consists of numerous news articles published by Gannett News Service in 1982. Because of space limitations, we are unable to reproduce the whole of *Oklahoma Shame*. However, should this Board desire a copy of the work in its entirety, we will gladly provide one.

were investigating the Department of Human Services. Ex. 12 at App. 45. The investigations culminated in a civil rights class action suit, challenging the widespread abuse and mistreatment of the children within Oklahoma's juvenile institutions. Ex. 11 at App. 38-44. Ex. 14 at App. 46-47, Affidavit of Laura Choate. The lawsuit came to be known as the *Terry D*. litigation.

Steven Novick, plaintiffs' counsel in the litigation, recounted how Boley and Helena – the very institutions to which Mr. Grant was sent – utilized solitary confinement to punish kids. Ex. 11 at App. 39. If a child talked back to staff or tried to run away, he was put in solitary for at least seven days. Additional infractions would double the child's time. There were recorded instances of these institutions using solitary confinement on children for twenty to thirty day periods. Ex. 11 at App. 41-42. One documented case showed a child in solitary for 108 consecutive days. Ex. 11 at App. 41.

While in solitary, the children were confined for at least twenty-three and a half hours a day in cells containing only a sink, a toilet, and a mattress on a concrete pad. Helena was specifically known for its "Dodge House" – the place where the boys were brought for solitary confinement. Ex. 11 at App. 39-40. The Dodge House cells were notorious, measuring 5' x 8'. Some of the cells did not have toilets, leaving the kids to urinate and defecate on the floor. Ex. 11 at App. 41. Additionally, there was no ventilation system in the cells – no heat or air. Ex. 15 at App. 48, *Oklahoma Shame* Article *Hogtied, Shackled, and Left*. Basic things such as showers and exercise were denied for the kids who "acted out."

Ex. 11 at App. 40. The children had no contact with people during confinement. No schoolwork or other activities were provided. The children merely sat in cells – many times on the cold concrete floor because their mattresses had been taken during the day. Oklahoma's own expert during the *Terry D*. litigation testified this "border[ed] on Hitlerism." Ex. 11 at App. 41-42.

Experts during the litigation showed how destructive isolation was for the children, testifying that solitary confinement causes and/or exacerbates serious mental health problems. In fact, it was shown that solitary confinement in children promotes every behavior the institutions should have sought to rehabilitate. Ex. 11 at App. 40-41. Dr. David Foley, an expert on juvenile institutions, noted the children were being fully shackled in their cells for conduct no more serious than yelling or banging on their cell doors. Ex. 15 at App. 48. While sentences from five to twenty days were routine, this type of punitive confinement for any duration would have been harmful to even a mature adult. Dr. Foley stated the incarceration of children in such conditions was likely to result in *"irreversible emotional injury*." Ex. 15 at App. 48 (emphasis added).

Dr. Ernst Papanek was quoted as "decry[ing] the isolation method totally as a method to be used in reconstructing young people's personalities. It only destroys what good part of the personality one could work and build on."[11] Expert after expert denounced Oklahoma's

---

[11]Dr. Papanek was cited during hearings on the allegations of serious abuse and misconduct in the Oklahoma juvenile institutions, which were conducted by the United States Senate Subcommittee on Juvenile Justice during the aftermath of the *Oklahoma Shame* investigations. *See* discussion at p. 14.

use of isolation. "Each time a kid got locked up in isolation, the irreversible psychological damage would increase." Ex. 15 at App. 48 (quoting State's expert, Dr. Stuart B. Simon). Children would learn to become highly suspicious. "Can I trust any interaction with anyone?" Ex. 15 at App. 48.

Unfortunately, the abuse was not limited to isolation. Boys at both Boley and Helena were subjected to a form of restraint referred to as hog-tying. Staff shackled the child's ankles and tied his feet to his wrists, which were handcuffed behind his back. "For many children, hog-tied restraint was imposed for several hours or more." Ex. 11 at App. 42. The State's experts readily acknowledged this practice as exceedingly harmful to youth – both physically and psychologically. "[H]og-tying induced panic and terror in youth and resulted in increasing the youth's anger and future assaultive behaviors." Ex. 11 at App. 42.

The investigations also revealed that staff would sit back and watch the homes' youth physically and sexually assault each other. The younger children, like Mr. Grant, were particular targets. Ex. 16 at App. 49-50, Declaration of Ricky D. Mitchell.

> [A] common practice at both Boley and Helena was the staff use of the "bully system" to control youth within the institution. In the bully system, staff would grant favors to designated larger and stronger youngsters in exchange for their use of force against smaller and weaker children as a way of "keeping the children in line." The inevitable consequence of the bully system was the systematic abuse of smaller and weaker children by larger and stronger youth while staff "looked the other way." This abuse ran the gamut from simple beatings to forcible rapes.

Ex. 11 at App. 42-43. All of these practices led to the unanimous conclusion that "Oklahoma's juvenile-care system [was] one of the worst in the country, one of the most

archaic, and one with widespread abusive practices." *See Oklahoma Shame* articles & footnote 9.

Unsurprisingly, the investigations revealed many of the facilities' staff members were unqualified, dangerous, and indeed, in some cases, predators. Ex. 17 at App. 53-54, Affidavit of Joseph Crawford; Ex. 18 at App. 56, Affidavit of Donnie Bacon. The U.S. Attorney for the Northern District of Oklahoma, Frank Keating,[12] reported "One special area of [my] focus . . . will be the actions of those DHS officials responsible for hiring employees with previous criminal records – some involving child molestation and rape – and placing them in sensitive jobs requiring daily contact with children." *See Oklahoma Shame* articles & footnote 9.

The abuse that formed the basis of the *Terry D.* litigation was also corroborated by United States Department of Justice investigators during the United States Senate Subcommittee hearing on Oklahoma's juvenile justice system in February and May 1982.[13] These investigations determined that many of the most serious reports came from the two schools – Boley and Helena – where Mr. Grant was housed.

Despite all of the extensive investigations, however, countless instances of abuse went unaddressed because they were never documented. This was a deliberate choice by

---

[12]Frank Keating went on to serve as Governor of Oklahoma from 1995-2003.

[13]The report and appendix of the hearing on Abuse of Juveniles in Public Care and Detention spans 645 pages. Should any member of the Board desire a copy, counsel will promptly provide the same.

Oklahoma officials. Secrecy was an essential component of the corrupt system because it allowed the abuse to persist. During the United States Senate Subcommittee hearing, subcommittee investigator, William Treanor, confirmed that DHS did not conduct thorough investigations of serious allegations. Most incidents were not recorded and when they were "a number of impediments [were] put in the way of a full and thorough investigation."

The Attorney General may argue there is no specific evidence corroborating Mr. Grant's abuse within the system. Failure of documentation is a direct byproduct of the abusive system. The experts and investigators testified to this. It is extraordinary to contend Mr. Grant survived Boley and Helena unscathed. Those intimately involved in the investigations have expressed no hesitation in labeling Mr. Grant a victim:

> As a resident of Boley and Helena during the two years immediately preceding the filing of the *Terry D* case, the abuses uncovered by the litigation were rampant and unchecked. Therefore, it is likewise certain that Mr. Grant would have been subjected to various forms of abuse from either staff or other youngsters, or at least would have witnessed such abuse. It is notable that the defendants in the litigation went to extraordinary lengths in seeking to prevent the discovery of the litany of abuses that pervaded these institutions.

Ex. 11 at App. 44, Affidavit of Steven Novick. Boys who were with Mr. Grant in the institutions during this time have likewise confirmed the rampant abuse. Ex. 16 at App. 50 ("It happened to me, and I know it happened to John Grant."); Ex. 17 at App. 55 ("Lakeside[14] was loud and would not let people push him around. . . . I know [Helena is] where he learned

---

[14]Mr. Grant still goes by "Lakeside" to this day. He was given that nickname when he was younger because people would many times catch him singing songs by the American funk band "Lakeside."

that behavior. . . . You had to do that to survive."); Ex. 18 at App. 56 ("I slept with a steel pipe beside me because a lot of things happened at night. . . . The House Parents knew it was going on. You couldn't miss it. . . . they let it happen. Sometimes they encouraged it and would even arrange for someone to get beat by other students."). Both family members and experts who evaluated Mr. Grant have identified the tangible results of this abuse. One of Mr. Grant's brothers, O.C. Frazier, remembered:

> I first noticed a change in my brother John when he came home from Boley Training School. John was younger than the other boys at the School. John told me the older boys taught the younger ones criminal things. When I visited the school, I thought it was a prison like atmosphere. My brother John said there was pressure to join gangs and always the threat of being beaten and the staff locked the children in small rooms at Boley. When John came home from Boley, he was not easy to talk to any more.

Ex. 19 at App. 58, Affidavit of O.C. Frazier. Mr. Grant's cousin, Marvin Smith, similarly explained:

> Before he went to the boys homes John was a good kid. He was always smiling and a good person. He didn't bother anybody. After John returned from boys homes he was so different. He put up this tough guy front and was not going to be bullied by anybody. . . . I didn't know what was going on with John, but whatever happened to him made him have mental problems.

Ex. 8 at App. 31, Affidavit of Marvin Smith. Finally, Dr. Craig Haney[15] confirmed what the family noticed:

> John was confined in harsh and threatening facilities, ones to which he had a difficult time adjusting and in which he became more alienated, depressed, and

[15]Dr. Craig Haney, who has both a J.D. in law and a Ph.D. in psychology, is a Distinguished Professor of Psychology at the University of California who has reviewed hundreds of capital trials.

> emotionally troubled. Far from ameliorating the psychological effects of his abusive upbringing, John's institutional experiences likely worsened his behavioral and emotional problems.

Ex. 20 at App. 70, Excerpts from Declaration of Craig Haney, Ph.D., J.D.

The one person we cannot expect to hear from on this topic is Mr. Grant. He almost never speaks of his time in the system. Mr. Grant minimizes its impact when he is willing to reference his time there. Ex. 21 at App. 85-86, Affidavit of Donna Schwartz-Watts. As is true of so many survivors of abuse, Mr. Grant is simply unwilling to divulge the details of the abuse as it is too painful to do so.[16] The periods of confined isolation, as well as Mr. Grant's exposure to abuse, have rendered him unwilling or unable to be an accurate historian of his life. Ex. 21 at App. 86. Minimizing the trauma enables him to avoid the pain.

Given the wealth of investigation, evidence, testimony, and reports, there is no doubt Mr. Grant was exposed to the very same abuses. Mr. Grant's time in these group homes served no rehabilitating purpose. His confinement ensured lasting trauma – all of which is evident in Mr. Grant's life to this day. It did not need to be this way and should never have been this way. The majority of the children sent to these institutions in the 1970s and early 1980s would never end up there in today's system. Terry Smith is the former President and CEO of the Oklahoma Institute for Child Advocacy, an organization developed as a direct result of the horrific system. Mr. Smith is blunt in his assessment of the initial failure: "We

---

[16]It is noteworthy that Mr. Grant does not deny abuse when questioned about it. Rather, he simply will not speak. A refusal or inability to talk about abuse is a telltale sign of the abuse itself. *See*, *e.g.*, http://www.indigodaya.com/talking-about-trauma-can-feel-really-really-hard-but-it-can-get-easier/.

now know that removing a child from their family is the worst thing you can do to a child." Ex. 22 at App. 88-89, Affidavit of Terry Smith. When children commit crimes, "it is usually more of a parent problem than a kid problem." Ex. 22 at App. 88.

> Today there are first time offender programs that hold the child accountable for his actions, and also provide treatment in areas of need. The system also helps parents be more accountable and provides education and treatment for them as well. . . . None of these opportunities existed when John Grant needed them.

Ex. 22 at App. 88. Indeed, "[r]esearch shows the earlier and deeper a child becomes involved in the juvenile system, the more likely it is they will be in the adult corrections system." Ex. 22 at App. 88. Of the 357 boys listed on Helena's 1978 monthly population report alongside John Grant, 268 of them (75%) have gone on to commit felonies as adults. And, nearly one-fifth of these 357 boys are already dead.

We respectfully ask this Board to honor the findings of those who investigated the system in which Mr. Grant was abused. We ask this Board to honor the fact that the complete and utter failure of the Oklahoma juvenile system is a stain on our State's history for which we should take responsibility. This system took troubled youth and cemented their fate. If we expect Mr. Grant to take responsibility for his actions – which he has immediately and freely done from the beginning – we too must be willing to take ownership of what our State has done. We ask this Board not to turn a blind eye. Because of this abuse and its lasting effects, we ask for mercy for Mr. Grant.

ADULT INCARCERATION

When Mr. Grant eventually left Oklahoma's juvenile institutions, he reentered free society without having had the benefit of counseling or treatment for the problems that resulted in his being sent to these facilities in the first place. He had no marketable skills with which to enter the workforce, and he bore the psychological scars of having been confined under Oklahoma's brutal juvenile institutional regime. Predictably, his adjustment to the free world was short in duration and fraught with problems.

After committing a robbery, seventeen year-old Mr. Grant was classified as an adult and reincarcerated. However, Mr. Grant was completely unequipped to cope with the rigors of confinement with adults.[17] The State of Oklahoma readily acknowledged his vulnerability. When Mr. Grant was eighteen years old, an Oklahoma Department of Corrections psychological assessment indicated that although Mr. Grant was "not a severe risk for violence or escape . . . in stressful situations, he could become more difficult to manage." Ex. 20 at App. 65. When Mr. Grant was given another Department of Corrections intake assessment a year after this, it stated he was at risk for "crazy" and "irrational" behavior, and "[p]rompt referral to medical and counseling programs" was recommended. Ex. 20 at App.

---

[17]Marvin Smith, Mr. Grant's cousin, has affirmed the continued abuse. "John and I were both adjudicated as adults and were placed in Oklahoma County Jail. John was 17 and I was 15 years old. It was horrible. Other inmates tried to take advantage of us because we were younger. We were babies compared to everybody else. John and I would get jumped and had to fight all the time. The guards would either encourage it or just sit there and watch." Ex. 8 at App. 31.

65. Yet, over the course of the next seventeen years, Mr. Grant received no treatment or access to the "medical and counseling programs."

Mirroring the juvenile system, Mr. Grant's experiences were defined by institutional failings Oklahoma was finally compelled to address in litigation. The dispute in *Battle v. Saffle* centered on Oklahoma's mistreatment of prisoners and their conditions of confinement including the fact prisoners were not receiving treatment for serious mental health problems. An expert in *Battle v. Saffle* detailed the overwhelming shortage of experienced psychiatric and psychological staff within the prison system despite the fact that "[c]onservatively, 10-15% of the incarcerated population has a major psychiatric disorder [and] [o]nce arrested and detained, preexisting mental illnesses may be exacerbated." Ex. 20 at App. 66. Mr. Grant was one of the individuals who needed help. But again, the record reveals that despite its own assessments and recommendations, the State of Oklahoma provided nothing to help Mr. Grant.

Dr. Haney described what happened within the Oklahoma prison system – and specifically, what happened to John Grant – as an institutional failure. Ex. 20 at App. 67. "Institutional failure" is a pattern of treatment in which persons are confined by the State – in order to have a range of psychological, familial, social, or legal problems addressed – only to find that those problems are ignored or exacerbated by conditions of confinement and mistreatment. Ex. 20 at App. 61. Institutional failure results in the exacerbation of the inmates' pre-existing problems or the creation of new ones linked to their institutionalization. Ex. 20 at App. 61. Nothing defines Mr. Grant's experiences better than this.

> This problematic pattern – interpreting John's disruptive behavior as a willful disregard of prison rules and punishing it, rather than recognizing its connection to his underlying mental health problems and providing treatment – continued when John was transferred to a private prison in Texas. . . to ease the high levels of overcrowding that plagued the Oklahoma prison system. . . However, when a videotape from another CCR Texas facility showed inmates being abused by staff, officials from states that had inmates housed in these facilities began to investigate and return prisoners to their states of origin.
>
> Thus, the record of institutional failure in John Grant's case came full circle, just before he committed the crime for which he was sentenced to death. It began with his childhood confinement in substandard and abusive juvenile facilities and continued throughout his lengthy stay in the adult Oklahoma prison system. At no point is there any indication that he received any of the counseling and treatment that he clearly needed, and he appears to have been subjected to severe institutional conditions that would have worsened rather than alleviated his pre-existing psychological problems.

Ex. 20 at App. 66-67. "The kind of problems that John manifested, ones deeply rooted in a traumatic, neglectful, and criminogenic childhood and exacerbated by painful experiences in an abusive and similarly criminogenic juvenile justice system, simply do not spontaneously remit." Ex. 20 at App. 65.

Without having received the proper mental health services and never having been taught healthy ways to cope with the dysfunction, stress, and abandonment in his life, Mr. Grant has done the best he could while incarcerated. When not under threat of violence or extreme stress, he tried to better himself at the facilities. To this day, Mr. Grant has pride in having had a job, keeping his cell spick-and-span, and continuing to learn.

However, when threatened or stressed, Mr. Grant tried to put on a tough-guy front to keep bullies at bay – a survival skill he learned as a child in Boley and Helena. Mr. Grant learned if he was loud enough to scare people away, he could be safe. This behavior should

be no surprise. The *Oklahoma Shame* and *Terry D*. experts predicted this. And, DOC itself recognized it in Mr. Grant and recommended treatment it would not later provide.[18]

When Mr. Grant was eventually placed at Dick Conner Correctional Center (DCCC), a medium security prison in Hominy, Oklahoma, he encountered yet another institution plagued by stressors. The facility was a society unto itself where weapons, drugs, and fraternization among staff and inmates were all an accepted way of life. Needless to say, this was not the stabilizing environment that would allow Mr. Grant to function well. Part of the dysfunction at the facility was that over a course of years, kitchen supervisor Gay Carter, as well as other staff members, held close relationships with inmates. Mr. Grant worked in the kitchen with Gay Carter. For someone so isolated and used to abandonment as Mr. Grant, her kindness was an unexpected and welcomed connection. Eventually, his relationship with Ms. Carter developed into a long-term, personal relationship, which carried with it probably the most love and concern Mr. Grant had ever experienced in his life. It was something he cherished dearly.

Years later and with little warning as to her reasoning, Ms. Carter abruptly cut off their relationship. Mr. Grant was unequipped to process this reality. In a heat of passion over what he believed was an ultimate betrayal, Mr. Grant killed Ms. Carter. Immediately upon stabbing her, he began to also stab himself by ramming himself into a knife against a wall. It took guards administering three bursts of electrical stuns to stop Mr. Grant from

[18]As noted, the *Battle* litigation confirmed that the lack of treatment and care was a systemic problem within the Department of Corrections.

continuing to hurt himself. Tr. IV at 1081-82. To this day, Mr. Grant cannot believe what he did.

JOHN GRANT AND GAY CARTER

Ms. Gay Carter was a kind woman, deeply loved by family and friends. We acknowledge the great pain and suffering John Grant caused. This suffering continues and may continue even if Mr. Grant is executed. Our purpose is not to cause any additional pain or embarrassment, but to highlight the crucial details the jurors were unaware of when they sentenced Mr. Grant to death.

The State argued this entire situation was a "bad choice" John Grant made because he didn't get "as much food as he thought he ought to get."[19] Tr. VI at 1456, 1613. The crime was painted as a random act of violence on an unsuspecting prison worker. The jurors were completely unaware of any relationship between Ms. Carter and Mr. Grant.

Dr. Haney's 2002 report presents a wealth of information from investigative interviews with DCCC Unit Manager Steve Moles and inmates Steve Irvin and Ricky Mitchell; a series of interviews conducted by the Oklahoma State Bureau of Investigation (OSBI); and other assorted affidavits. All of this information would have been available at

---

[19]That John Grant killed Gay Carter simply over a tray of food was implied by the State during the first stage of trial. Tr. V at 1145, 1204-1206. Mr. Grant's own defense counsel made the same implication in its closing argument at sentencing. Tr. VI at 1456.

the time of trial to provide the appropriate context for the crime. Mr. Grant's defense counsel failed to investigate it.[20]

A sampling of evidence concerning the relationship, which counsel failed to preserve includes:

> 98. . . . John's older sister Ruth Ann Grant believes that John was counting heavily on the victim, Gay Carter, to make a future together with him. She believes that Ms. Carter promised John that she would help him find an attorney to get him out of prison. Once John found out that Ms. Carter had been lying to him, . . . "he just gave up." O.C. Frazier, one of John's younger brothers, recalled essentially the same thing . . . and that John "went off the deep end" when she started seeing someone else.
>
> 99. Inmates at the Dick Conner Correctional Center corroborated essential elements of John Grant's story as well. Steve Irvin reported that Ms. Carter's "face lit up" when she saw the defendant and, conversely, that she made Mr. Grant "happy for the first time" in his life. Another inmate, Ricky Mitchell recalled that John Grant "lost everything" when the victim rejected him-including his job at the prison-and that he was "lonely and miserable" when Ms. Carter broke off the relationship with him. Both inmates reported that the relationship was common knowledge among the staff. Claude Stith, John Grant's cell mate at the time of the crime, told (OSBI) agents that he had heard rumors that Gay Carter was John's "girlfriend" and observed John visiting the kitchen and dining hall where the victim worked often and that he often brought food back to the cell.
>
> 100. Indeed, Steve Moles, a Dick Conner Correctional Center Unit Manager reported to OSBI agents that there had been an internal investigation of Ms. Carter regarding inappropriate conduct with inmates. In addition, he acknowledged that, although he had never been able to prove the allegations, he, too, had heard rumors that the victim, Gay Carter, had some sexual contact with inmates and had occasionally smuggled contraband items to them.

---

[20]Lead counsel, James Bowen has acknowledged not investigating Mr. Grant and Ms. Carter's relationship despite knowing about it prior to trial. He admits this was error. Ex. 23 at App. 91, Affidavit of James Bowen.

Ex. 20 at App. 75-76.

An abundance of information confirms that while prison authorities had advance notice and warnings about the situation, they did nothing about it. An OSBI report reads:

> [Inmate] Gould sat down at a small table across the room from the mop closet and began drinking a cup of coffee. As he sat there he noticed that Food Service Supervisor Gay Carter entered the mop closet with Grant. Gould paid little mind as he had heard rumors that Grant and Carter had been involved in a sexual affair.

Ex. 24 at App. 93, OSBI Report of Interview with Inmate Michael Dean Gould, 11/20/98.

> Although Grant had never personally said anything about it, Stith had heard rumors that Food Service Supervisor Gay Carter was Grant's girlfriend.

Ex. 25 at App. 95, OSBI Report of Interview with Inmate Claude Edward Stith, 11/20/98.

> Moles was familiar with Carter and her work. A few years ago there had been an internal investigation on Carter regarding inappropriate conduct with inmates. There had been rumors that Carter had had a sexual relationship with an inmate and was bringing things into the prison for the population. Nothing was ever proven.

Ex. 26 at App. 96, OSBI Report of Interview with Unit Manager Stephen Moles, 11/16/98.

These interviews, affidavits, and investigative reports show there was credible evidence of an inappropriately close, overly attached, obviously improper relationship. These reports came from more than just inmates. Some of the most detailed reports were from prison employees themselves. Our own investigation uncovered further corroborating evidence. Officer Scott Bighorse reported:

> 2. I was employed at [DCCC] in Hominy, Oklahoma from 1988-2001. . . . I worked closely with Chief of Security, Charlie Arnold.
>
> . . . .

> 6. It seemed like problems with staff members having inappropriate relationships with inmates occurred in the kitchen and the laundry at DCCC more than in other units. . . . The kitchen and laundry prison staff were hired off the street and were not uniformed officers. Both departments utilized inmate workers daily. There was only one uniformed officer assigned to oversee the kitchen and the laundry.
>
> 7. Before Gay Carter was killed, Ms. Pinkerton, who was the head of the laundry department held a birthday party. Ms. Pinkerton, other prison staff, and several inmates participated in this party in the laundry room. The way the prison grapevine is, it was not long after inmates were talking about the party and the word got out. Bill McKenzie was the DCCC officer who investigated it. He obtained a video-tape made of this party by one of the participants. I remember going to Charlie Arnold's office where several staff members were watching the video. I just looked at it long enough to see staff dancing closely with inmates and left the room. I remember a discussion about John Grant and Gay Carter being together at that party.
>
> 8. About a week before Gay Carter's death, John Grant was fired from his kitchen job over a fight he got into with another kitchen worker. He was sent to the disciplinary unit, or the "hole" as we called it. I was involved in investigating that incident and believed the fight was caused because Gay Carter essentially dumped John Grant for this Caucasian inmate.
>
> 9. No one from the district attorney's office or Mr. Grant's defense team ever interviewed me about what I knew about Gay Carter or John Grant.

Ex. 27 at App. 97-98, Affidavit of Scott Bighorse (DCCC Officer). Officer John Ware similarly explained:

> 1 . . . I worked at [DCCC] from 1992 to 1999. I was a Sergeant for Chief of Security Charles Arnold. . . .
>
> 2. Several inmates told me John Grant and Department of Corrections kitchen supervisor Gay Carter had an intimate relationship going on. I heard Grant got in a fight not too long before Gay was killed because he was jealous of Gay paying attention to another inmate. John had to go to the hole because of the fight and he lost his kitchen job. While John was in the hole, I heard Gay honeyed up with this other white convict who worked in the kitchen. When John got out of the hole, Gay wouldn't have anything to do with him. It was

> because of the rumors I heard that I told an OSBI agent Gay was "overly friendly" with Mr. Grant.
>
> 3. Relationships between staff and inmates compromise the safety of everyone in the prison. These relationships also account for how most of the contraband makes its way into the facility.
>
> . . . .
>
> 5. I have known many female staff members at DCCC that have been fired or forced out because they had inappropriate relationships with an inmate.
>
> 6. I knew inmate John Grant. He was always friendly to me and never caused any problems until this incident.

Ex. 28 at App. 99, Affidavit of John Ware (DCCC Officer). Another Officer, Linda Sorrells, reported:

> 1. My name is Linda Sorrells. I worked at Dick Conner Correctional Center (DCCC) for twenty three years.
>
> . . . .
>
> 6. A lot of contraband was brought in to DCCC because of inappropriate relationships between staff and inmates. I have observed several relationships occur between staff and inmates. Those women lost their jobs or were forced to resign because it is against DCCC's code of operations. One female who started at DCCC hating the inmates, ended up falling in love with one and marrying him. Another female fell in love, resigned her position, and after the inmate got out of prison, they moved in together. Another female denied having a relationship with an inmate despite the fact there were pictures and letters of her found in his cell. Even one of the females I was training fell in love with a guy doing [life without parole] and resigned. She had not been at DCCC more than a month.
>
> 7. I was at work the day Carter lost her life. I was shocked when I heard what had happened to her and that it was John Grant who did it. He did not strike me as a violent offender.
>
> 8. I knew John Grant pretty well. He was on my caseload at one point at DCCC. He always had a smile on his face. He was very quiet and a hard

> worker. I thought he and I got along really well and that he got along well with other staff members.

Ex. 29 at App. 101-102, Affidavit of Linda Sorrells (DCCC Officer). Finally, Inmate Ricky Alexander said:

> Ms. Carter played Lakeside [John Grant] like a yo-yo. . . . For years, [they] carried on their relationship. . . . Ms. Carter had complete and total control over her relationship with Lakeside. . . . If she had been scared, she could have had him easily transferred to a different facility or kept him from being around the kitchen. There were several inmates involved in relationships with correctional staff. . . . While I was at Lexington Assessment and Reception Center in 1999, I worked in the kitchen as a cook. My supervisor was Ms. Rebekah Newkirk. We became friends. Once I was shipped to James Crabtree and she quit the DOC, we started communicating through mail. We got married in March 2001. This is just one example of the closeness that can occur between inmates and DOC staff members.

Ex. 30 at App. 103-104, Affidavit of Ricky Alexander; *see also*, *e.g.*, Ex. 17 at App. 53. As noted, many other employees and inmates struggled with this dynamic throughout the facility, with little to no enforcement of staff-to-inmate boundaries. Ex. 31 at App. 105-106, Affidavit of Chief of Security, Charles Arnold.

The United States Department of Justice warns:

> Even when staff sexual abuse of inmates occurs without force or threat of force, it is a serious offense that harms inmates and can have a destructive effect on the safety and security of institutions. Sexual abuse of inmates can corrupt staff members, lead to the introduction of contraband, and expose the BOP and staff to civil and criminal liability.

https://oig.justice.gov/sites/default/files/archive/special/0504/index.htm. The State's negligence with respect to this culture was unacceptable. The State knew or should have known about the safety implications that accompany staff-to-inmate relationships. The State

also knew or should have known there is an inherent imbalance of power between staff and inmates.[21]

All of this type of information could have been used in mitigation.[22] Had the jury heard Mr. Grant's actions precipitated not from a short lunch tray, but rather from sudden abandonment, it could have made a difference in the jury's ultimate sentencing. It may very well have mattered to at least one juror that despite knowing of the widespread problem, the prison did not set up the structure necessary to protect its staff and inmates from feeling the need to form intimate relationships with one another. It may very well have mattered to at least one juror that Ms. Carter's kindness captured the heart of a man who had never been shown much, if any, affection.[23] It may very well have mattered to at least one juror that the

---

[21]Congress enacted the Prison Rape Elimination Act (PREA) approximately four years after this crime. PREA identifies the inmate as the victim of any staff-to-inmate relationship regardless of whether the relationship is seemingly consensual. Under PREA, an incarcerated individual is not able to give consent to any type of sexual contact with staff, due to the imbalance of power between the two.

[22]As detailed in Ex. 32 at App. 107, Oklahoma Capital Trial and Appellate Process, "mitigation," also referred to as mitigating factors or circumstances, is evidence presented during the sentencing phase of a trial to provide reasons why a defendant should receive a sentence less than death. *Lockett v. Ohio*, 438 U.S. 586, 604 (1978).

[23]Despite the existence of evidence substantiating these types of relationships occur within correctional facilities and that Mr. Grant and Ms. Carter's relationship happened specifically, counsel did not present any of this evidence at trial. The State may try to explain this away as trial strategy or that the "relationship" was just a bunch of wishful thinking on John Grant's part. Even if, hypothetically, John Grant was just delusional about what he had with Gay Carter, the jury still should have heard about it. Expert Craig Haney makes this point:

(continued...)

sudden loss of that affection and kindness was too much for someone already compromised by years of trauma. And, we know it would have mattered to one juror that Mr. Grant reacted out of hurt and loss, losing the one person he truly cared about and who truly cared about him.[24] Given how crucial this evidence was to a proper sentencing decision, we respectfully tell the whole of the truth now so that this Board might not be misguided, like Mr. Grant's jury was, when deciding whether to bestow mercy.

---

[23](...continued)

> Even (and perhaps especially) if defense counsel concluded Mr. Grant's version of events was incorrect, mental health experts would need to have been consulted about why he apparently believed this to be true . . . . The point is simply that this version of events was either accurate or not and, either way, defense counsel should have pursued it with the assistance of a mental health expert who was involved early in the case.

Ex. 20 at App. 76.

[24]"If the defense lawyers would have confirmed my suspicions regarding Mr. Grant's relationship with Gay Carter and explained the role his family history and childhood played in his ability to form and maintain relationships, I would have voted for a sentence less than death." Ex. 33 at App. 109, Affidavit of Cheryl L. Johnson.

TRIAL[25]

It is against the law for any jurisdiction to automatically put a person to death because he killed someone. Instead, an offender is entitled to a sentencing proceeding where his personal life circumstances and history – as a unique human being on this planet – are heard. This keeps the death penalty from being unconstitutionally cruel and unusual. This gives a poor kid who never had any real opportunity in life a chance. This gives a man who acted under the impulse of passion against the person he most cared about in this world a chance to avoid a death sentence. Individualized second-stage presentation ensures the death penalty is reserved for the "worst of the worst" cases.

John Grant did not receive any of these protections. His dysfunctional, court-appointed counsel ensured he received a death sentence by failing to meet basic constitutional thresholds. Dr. Craig Haney classified Mr. Grant's case as "one of the most incompetently assembled and presented" death penalty sentencing defenses. The facts bear this out. The two most obvious failings from Mr. Grant's dysfunctional legal team are that they failed to develop Mr. Grant's life story – including his deprived childhood and the abusive systems in which he suffered both as a child and young adult – and they failed to explain the crime, which necessarily entailed exploring and discussing the lax environment at DCCC and the relationship between Mr. Grant and Ms. Carter.

---

[25]Because each state has unique rules and procedures for its capital trials and appellate process, we are attaching a brief summary of the trial and appellate process that precedes clemencies in Oklahoma. Ex. 32 at App. 107-108.

Instead of detailing Mr. Grant's life of abuse and neglect, counsel barely (and incompetently) elicited that Mr. Grant was "somewhere in between" in the birth order among his eight other siblings and that he had been incarcerated most of his life. Tr. VI at 1565.[26] That is the extent of it. No details. No explanation of the poverty and neglect he was raised in. No description of the systemic failure and abuse to which he was subjected while a charge of the State.[27] No explanation for how the abuse and neglect severely damaged his adolescent brain. No accountability for the lack of mental health treatment from the Department of Corrections despite Mr. Grant's demonstrable vulnerability. Nothing. There were volumes of documents and information available to Mr. Grant's counsel through which

---

[26]Due to space limitations, it is difficult to provide every example of what Mr. Grant's trial attorneys did and did not do. We have attempted to append as many exhibits as possible to document the facts noted here. But, if any Board members desire a full transcript of the sentencing proceeding, or any other proceeding, counsel will readily make that available.

[27]As noted, defense counsel provided no details about the abuse and neglect Mr. Grant suffered. In fact, the only time the word "abuse" is mentioned in the six volumes of trial transcripts is one sentence offered by Dr. Dean Montgomery during guilt-stage proceedings. "He spent most of his adolescence in the custody of the State of Oklahoma and doing time in juvenile facilities such as Helena and Boley which has since been closed down for abuse." Tr. V at 1332. No discussion followed as to the abuse that closed down the facilities; no discussion of Mr. Grant's time there; and no discussion of the effects of the abuse on Mr. Grant or the other children. The only other time these facilities are even mentioned in the transcripts is to affirm Mr. Grant was sent there because of "getting in trouble." Tr. VI at 1566, 1570-71. Mr. Grant's childhood is not discussed either. The words "poverty," "poor," "neglect," "abandoned," "childhood," amongst other relevant terms, are not cited a single time during the trial. When referencing the juvenile facilities, Dr. Montgomery mentions Mr. Grant's siblings and that he did not know his father. Combined, Dr. Montgomery's references span two paragraphs – not even a full 18 lines of transcript. Tr. V at 1331-1332.

to establish the brokenness of his life and the abuse that exacerbated his struggles. Mr. Grant's attorneys utilized none of this.

To say that Mr. Grant was appointed dysfunctional attorneys is a gross understatement. In the midst of trying to save his life, Mr. Grant's two attorneys found themselves overloaded, underfunded, uncommunicative, and wholly unprepared. Much of this was due to the fact that in the course of preparing for Mr. Grant's trial, his counsel married and divorced one another. In dealing with their breakup, they made a shambles out of John Grant's death penalty trial.

The chronology of events illustrates the complete failure of counsel. On Tuesday, May 25, 1999, Amy McTeer, having barely started the practice of law, filed an entry of appearance to represent John Grant as co-counsel in his death penalty trial, arguably the most difficult type of proceeding a lawyer can undertake. Four days later, on Saturday May 28, 1999, she married her co-counsel in the case, James Bowen. Less than seven months later, divorce proceedings were initiated. The divorce was finalized on January 19, 2000. John Grant's trial started the very next month. Both attorneys remained on the case, but barely spoke to one another. As Bowen and McTeer's affidavits indicate, there was a huge breakdown in communication between the two, both before and after their divorce, that affected counsel's competence to represent Mr. Grant.

On top of the communication issues, counsel found themselves swamped. Even apart from Mr. Grant's case, lead counsel James Bowen was unable to devote the attention

necessary for a capital criminal trial because of his competing docket. As he states in his affidavit:

> At the time of Mr. Grant's trial, I was involved in three other capital cases (Murphy, McElmurry, Banks).[28] These were four of the worst cases of my life. I ended up trying the cases back to back in a matter of a couple of months. On top of all of that, I was handling a number of other non-capital murder cases as well. I do not think it was possible to adequately prepare.

Ex. 23 at App. 90. *See also* Ex. 34 at App. 111-112, Affidavit of Amy McTeer.

But, there was something else that neither counsel, the trial court, or Mr. Grant knew at the time, and something no appellate court has ever heard. At the time of Mr. Grant's trial, co-counsel Amy McTeer suffered from undiagnosed and untreated bipolar disorder, a major mental illness. In 2012, the Oklahoma Bar Association launched an investigation into her mental competency, eventually revoking her law license for many of the behaviors she was already exhibiting at the time of Grant's trial. As her affidavit attests to, Ms. McTeer was self-medicating with prescription drugs (without a prescription) and alcohol before, during, and after Mr. Grant's trial.[29] Ex. 34 at App. 111-112. Jim Bowen entrusted an unstable, brand-new lawyer to the most important part of any capital case: the second-stage closing argument. The second-stage presentation is the one chance to convince a jury that a client should receive less than death. Mr. Grant's second stage was a disorganized, incoherent

---

[28]Each of these defendants received a death sentence under Mr. Bowen's lead.

[29]After Mr. Grant's trial, she was arrested multiple times, including for meth use and assisting a prisoner escape. *See* https://tulsaworld.com/archive/court-approves-suspended-nichols-hills-attorneys-resignation/article_9b3cb2f6-3c6f-59a3-ac5d-818136adf7d1.html

mess. Not a single family witness was called. No evidence of mental illness was presented. There was no mention of the broken relationship that spurred on this crime. As one juror told us, Ms. McTeer just cried and begged for Mr. Grant's life – the defense did not present any witnesses to "help us not give him death."

Ms. McTeer's ineffective argument simply continued the incoherent first-stage effort of lead counsel. Mr. Bowen suggested:

> Was [the murder] over food? Was it because he didn't get a big enough -- as much food as he thought he ought to get? Well, that's the only evidence we have heard . . . .

Tr. VI at 1456. The theme of anger over a short food portion was avidly embraced by the prosecution. In addition to demonizing Mr. Grant, it insulated the State's failure to address its employee's inappropriate relationship with an inmate from consideration by the jury. Had the role of the State's negligence in this crime been acknowledged, the prosecutor may very well have not pursued death in the first place.

The jury was *not at all* irrevocably committed to a sentence of death. Indeed, Juror Marvin Yost has stated:

> 2. During the second phase of Mr. Grant's trial when we were deciding Mr. Grant's punishment, I noticed that none of Mr. Grant's family were at the trial. During the deliberations, some of the other jurors questioned why none of Mr. Grant's family was there for him.
>
> 3. We, as a jury considered all of the information presented by both sides. I would have been comfortable with a life without parole sentence, but I did not feel like the defense presented enough of a reason to justify a sentence less than death.

> 4. I would have considered additional evidence from Mr. Grant's family in my decision if the defense had presented it.

Ex. 35 at App. 114, Affidavit Marvin Yost. Juror Cheryl Johnson has agreed:

> 2. Although it was mentioned that Mr. Grant had a large family, none of his family testified. It appeared to me that Mr. Grant had no one other than his lawyers to plead for his life.
>
> 3. At the conclusion of the second stage, I did not want to give the death penalty. However, I did not feel like the defense lawyers provided me with enough evidence to justify a sentence less than death. I really wanted and needed an explanation for what happened (the crime) and more information about who John Grant was and why his life was worth saving. The defense lawyers did not provide me that. I believe that information would have been important in the deliberations, and I would have considered it if it had been presented.
>
> 4. I speculated that Mr. Grant and his victim had a romantic relationship and something went wrong between them, but neither side presented any evidence to support my theory. I was instructed only to consider the evidence presented so I did not factor my theory into my decision.
>
> 5. If the defense lawyers would have confirmed my suspicions regarding Mr. Grant's relationship with Gay Carter and explained the role his family history and childhood played in his ability to form and maintain relationships, I would have voted for a sentence less than death and maintained that position regardless of other jurors attempting to change my mind.

Ex. 33 at App. 109.

It takes only one juror to decide against death in order for that sentencing option to be removed from consideration. Ex. 32 at App. 107. There was no reason Mr. Grant's jurors were not presented with the truth. Having even a simple discussion with their client would have shown counsel that Mr. Grant could not open up about his childhood or life

circumstances.[30] An independent investigation into his history of trauma was essential – indeed, required by Supreme Court law.[31] It would have yielded compelling results.

Mr. Grant wanted to express his remorse. There is real poignancy in his words at trial. Although he did not speak of the details of his relationship with Gay Carter (nor did the prosecutor, defense counsel, or judge ever ask), he expressed confusion about and great remorse for his actions:

> Q Did you know Mrs. Gay Carter?
> A Yes, sir, I did.
> Q And how did you know her?
> A I knew her pretty well.
>
> . . . .
>
> Q So you knew her before you started -- before you did your last eighteen months at Dick Connor?
> A Yes.
> Q Did you -- what did you think of Miss Carter?
> A I thought she was a nice person.
> Q She treat you well?
> A Yes.
> Q Were the two of you what you would call friends?
> A Yes.
> Q Did she ever do things for you like give you special treatment or give you more food or something like that while you were in there?
> A Yes.

---

[30]As discussed earlier, in large part due to the trauma he has suffered, Mr. Grant does not like to talk about parts of his past or his feelings.

[31]*See, e.g.*, *Wiggins v. Smith*, 539 U.S. 510 (2003) (finding trial counsel ineffective after having abandoned their investigation into client's background after having acquired only rudimentary knowledge of his history from narrow set of sources). *See also* ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 11.4.1 (1989) ("The investigation for preparation of the sentencing phase should be conducted regardless of any initial assertion by the client that mitigation is not to be offered.").

Tr. V at 1371;

Q So she was real nice to everybody?
A Yes.
Q Did you consider her to be a friend of yours?
A Yes.
Q Did you consider her to be your only friend?
A No.
Q Was she -- was she your closest friend?
A I thought so.

Tr. V at 1372;

Q And did Mrs. Carter show you a lot of attention while you were working in the kitchen?
A Yes.
Q Were you upset when you lost the kitchen job?
A I was kind of disappointed with myself.

Tr. V at 1373;

Q Did you ever talk about it to anybody about this?
A No. I don't hardly talk to anybody.

Tr. V at 1375;

A. I am having a hard time believing it [the murder].
Q A hard time believing it? Why? Why are you having a hard time believing it?
A Because it's against everything that I was trying to accomplish.

Tr. V at 1376;

A I have a hard time explaining it to myself. I can't explain it to somebody else.

. . . .

Q Okay. Nobody else can explain it. Can you explain it?
A No, I try to myself. I thought about it a lot.
Q Can you even explain it to yourself?
A I tried. Just don't make no sense.

Tr. V at 1378-79;

> Q What would you like to say to [Gay Carter's family]?
> A I'd like to apologize to them even though I know they got their own opinion and I respect that. But that's -- I didn't want that to happen just like you all didn't. I like to apologize. I used to speak to some of you all at work. I know it's hard for you all to accept that but I understand that. But it's my -- I got to apologize. Something I have to do even if you accept it or not.

Tr. VI at 1568;

> Q Have you ever figured out why you did this?
> A No. I got my own idea but it's not nothing like, you know, speak up on because I really don't know, understand myself.

Tr. VI at 1569.

John Grant's testimony reveals his remorse and his readiness to accept responsibility. Because the defense lawyers gave the jurors nothing to work with, the jurors had no choice but to go with the simplistic, yet inaccurate account with which the prosecutor would leave them at the conclusion of the second-stage final argument: "[Grant chose] a way of life that most of us don't follow. . . . He's made bad choices. Some people just do that." Tr. VI at 1613. The jury was never given an opportunity to genuinely understand John Grant or the crime. Mr. Grant's sentencing was disgraceful and should never have withstood scrutiny on appeal.

APPEALS

All of the deficiencies and failures in John Grant's case should have readily come to light on appeal. Some of the judges called foul on what transpired in Mr. Grant's representation. These dissenting voices were ignored, adding to the travesty of John Grant's story.

Mr. Grant's conviction and sentence were affirmed twice by a judge who was himself active in wrongdoing, soon disgraced and disbarred from the legal profession.[32] Ex. 36 at App. 115, *Sex Scandal Costs Former Appeals Judge Steve Lile*. Just as Oklahoma Court of Criminal Appeals (OCCA) Judge Steve Lile turned a blind eye to his own wrongdoings, he ignored the wrongs that transpired at John Grant's trial. After being presented a wealth of information on appeal that could have and should have been discovered at trial – including powerful testimony from nine family members who were never even contacted – Judge Lile opined defense counsel's failure to call any of Mr. Grant's family members in mitigation was not ineffective assistance. Ex. 4 at App. 15-16, (citing *Grant v. State* (*Grant I*), 58 P.3d 783, 799-800 (Okla. Crim. App. 2002)).

A fellow OCCA judge, Judge Charles Chapel, lodged a strong dissent to this finding. In so many of the published death penalty opinions issued while he was on the court, Judge

---

[32]At the time of his review of Mr. Grant's case, Judge Lile was grafting funds from the State and wrongly involving himself in both his son's drug case and his assistant/former lover's drug offenses.

Chapel voted to affirm the death sentence. Yet, Judge Chapel plainly saw that John Grant's sentencing proceeding did not comport with constitutional requirements:

> [T]he essential task . . . should have been patently clear: give the jury a reason to spare his life . . . . [M]itigating evidence can only be presented if it is first discovered. . . . [T]his obligation includes investigating and pursuing mitigating evidence relating to the defendant's background and family history. . . . Capital counsel have no discretion, however, to simply neglect to seek out such evidence. . . . [A]ll nine family members "were findable and would have testified at trial if they had been asked." . . . The family members painted a rather depressing picture of the circumstances into which Grant was born and in which he grew up.

Ex. 4 at App. 13-20 (Chapel, J., dissenting). Judge Chapel detailed the strong childhood mitigating evidence that was missed due to trial counsel's failings and concluded that to deny this information could have affected John Grant's jurors was to "deny the possibility for human compassion and mercy." Ex. 4 at App. 19.

A petition for certiorari was subsequently filed with the United States Supreme Court. Thousands of petitions for certiorari are filed with the Supreme Court every year, and only a minuscule fraction are granted. https://supremecourtpress.com/chance_of_success.html (noting certiorari acceptance rates usually vary between 1-3% annually). While sifting through thousands of petitions, Mr. Grant's case stood out: the Supreme Court could see there was something extremely wrong. The Supreme Court granted certiorari, vacated the judgment against John Grant, and remanded the case to the OCCA for further review in light of a then-recent case, *Wiggins v. Smith,* 539 U.S. 510 (2003) (finding ineffective assistance of counsel after attorneys failed to investigate potential mitigating evidence).

At the United States Supreme Court's direction, the case went back to the Oklahoma Court of Criminal Appeals, once again before Judge Lile, as he was the one who wrote the original opinion. Even though the Supreme Court telegraphed a message to the court that it should reconsider its decision in light of *Wiggins,* Judge Lile wrote that "[t]he *Wiggins* case does not change our decision." Ex. 37 at App. 122, *Grant v. Trammell*, 727 F.3d 1006, 1027 (10th Cir. 2013) (Briscoe, C.J., dissenting in part) (citing *Grant v. State* (*Grant II*)*,* 95 P.3d 178, 181 (Okla. Crim. App. 2004)). More shocking was the reasoning Judge Lile employed: "Grant's childhood . . . was a matter of choice." Ex. 37 at App. 123 (citing *Grant II*, 95 P.3d at 180). "Grant 'chose to steal at an early age.'" Ex. 38 at App. 138, *Grant v. State* (*Grant II*), 95 P.3d 178, 184 (Okla. Crim. App. 2004) (Chapel, J., dissenting) (citing 95 P.3d at 180). He was not "'abused sexually or physically by those in authority over him.'" Ex. 38 at App. 138 (citing 95 P.3d at 180).

We submit no one chooses his childhood, and Mr. Grant certainly *did not choose*:

- to be abandoned by his father;
- to be born into a family of nine children where he was the least wanted child;
- to suffer racial discrimination within his own family;
- to be neglected to the point of pathological abuse;
- to grow up in abject poverty;
- to need, yet fail to receive, psychiatric care before he was five years old;
- to need to steal at age nine to put clothes and shoes on his younger brothers and sisters; and

- to be housed at juvenile facilities where he would be beaten and abused.

Judge Lile's pronouncement that John Grant's childhood was the childhood he chose is shocking to the conscience.

Judge Chapel's scathing dissent, in response to Judge Lile's affront to the Supreme Court and standards of basic decency, should be read by the members of this Board in its entirety. We offer an excerpt:

> Some people just can't take a hint. On October 6, 2003, the Supreme Court of the United States responded to John Marion Grant's petition for a writ of certiorari, arising from this Court's rejection of his direct appeal from his capital conviction, by granting the petition, summarily vacating the judgment of this Court, and remanding the case to this Court, "for further consideration in light of *Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003)." In a capital case like Grant's . . . intervention by the Supreme Court at this stage of the appellate process is rare and remarkable. One would think that this Court would issue a careful, thoughtful response. That has not happened.
>
> . . . .
>
> [T]oday's majority makes a factual claim that is radio-talk-showesque, especially from the perspective of anyone familiar with the horrifying realities of childhood abuse, neglect, and exploitation of any kind. The claim: it is the child's fault. The majority writes, "Grant's childhood, unlike Wiggins' life[,] was a matter of choice." Wow.
>
> Grant *chose* to be abandoned by his father just after he was born; to be the sixth of nine children born to a mother who did not have the means or the wherewithal to care for her huge family; to never have a father figure living in his home; to be raised largely by his older sisters; to be "dirt poor," without indoor plumbing or a family car; to live in run-down, dangerous, and crime-ridden neighborhoods; to be bused to schools far from his home; etc. The majority apparently concludes that because the record does not suggest that Grant was "abused sexually or physically by those in authority over him" (as Wiggins was), and because Grant "chose to steal at an early age," his entire depressing childhood was his own "choice," and really not particularly mitigating at all.

> The majority also apparently sees nothing mitigating in the testimony of Grant's sister that his early thefts involved getting clothing and shoes for his younger siblings. It strikes me that Grant has run across a remarkably unsympathetic Court, but I am not so sure that a jury would be so unwilling to see Grant's sad childhood for what it was and to see the mitigating impact of this personal history. The question is not whether Grant's background, family history, and some of his positive traits could excuse his cruel murder of Gay Carter. They certainly could not. The question is whether there is a "reasonable probability" that at least one juror—and it would only take one—could be sufficiently moved by the circumstances of Grant's life to choose to spare that life from execution. I continue to believe that there is enough of a chance that this could happen that we should leave it to an *actual jury*, provided with the array of mitigating evidence that Grant's original jury never heard, to make this call. This Court should not be making this life and death determination.

Ex. 38 at App. 132-138.

When John Grant's case made its way through habeas review in federal court, another powerful dissent issued. This time the dissent was by Chief Judge Mary Briscoe, then Chief Judge of the United States Court of Appeals for the Tenth Circuit at the time. Judge Briscoe, a former longtime federal prosecutor, found the OCCA made at least seven errors that were not minor or highly debatable, but rather, even under the steep deference owed to state court decisions, "clearly contrary to, and rebutted by, the record." Ex. 37 at App. 123. Judge Briscoe discussed these errors at length. Ex. 37 at App. 116-131. Judge Briscoe agreed with Judge Chapel regarding Judge Lile's characterization of Grant's childhood as a "matter of choice," calling it "indeed offensive."[33] Ex. 37 at App. 123. "[I]t is my view that Grant has

---

[33]Judge Briscoe cited the United States Supreme Court case of *Roper v. Simmons*, 543 U.S. 551 (2005) to counter Judge Lile's offensive "choice" conclusion. "The statement is clearly inconsistent with the more sympathetic views expressed by the Supreme Court regarding juvenile offenders." Judge Briscoe detailed how the Supreme Court has (continued...)

established that he was deprived of the effective assistance of counsel and is thus entitled to federal habeas relief in the form of a new sentencing proceeding." Ex. 37 at App. 117.

With three powerful dissents at different stages and a grant of certiorari – each of which is nearly unheard of, let alone in combination like this – it is clear there was something patently wrong with Mr. Grant's capital trial representation. The appellate judges knew only a fraction of the abuse Mr. Grant had been subjected to. They didn't know what had really been going on for a long time at Dick Conner Correctional Center. They did not know attorney Amy McTeer's struggles, or what was going on in her and James Bowen's personal lives while they were entrusted to fight for John Grant's life. If these issues had been brought to light for consideration at the same time as the mitigation deficiencies, John Grant may have received relief through the appellate process. This Board is the last line of procedural defense to cure the patent injustice this case represents.

---

[33](...continued)
recognized that juvenile offenders – like Mr. Grant was when he entered the horrific juvenile system – lack maturity, which results in "impetuous and ill-considered actions" and decisions "as any parent knows and as the scientific and sociological studies . . . tend to confirm." "[J]uveniles' 'own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.'" Ex. 37 at App. 124.

JOHN GRANT TODAY

John Grant lives peacefully today in a single cell at Oklahoma State Penitentiary (OSP). He is sixty years old, has no teeth, and is going blind from glaucoma.[34] He will stay single-celled (and almost certainly stay at maximum-security OSP)[35] whether he is put to death by the State this month, or if his sentence is commuted to life without parole.

In 2019, he was recommended for a unit orderly position on H-Unit. Ex. 40 at App. 141, Assignment Form. This is a highly coveted position because there is only one unit orderly[36] for each side of H-Unit. To be recommended, multiple staff members must sign off on a recommendation for hire. While Mr. Grant chose not to proceed with serving in this position because of his failing eyesight and his concerns with how that might impact his performance, it is still a high honor to be recommended. The recommendation carries with it a sign of confidence from staff – a rare accolade on death row – showing he is not considered a threat. *See also* Ex. 21 at App. 87; Ex. 41 at App. 142, Affidavit of Oscar Patterson III.

---

[34]Prison records reveal Mr. Grant's teeth were removed approximately 25 years ago, although bone fragments were left in his gums. Records also show Mr. Grant suffers from advanced glaucoma. The prison, however, has effectively stopped medical treatment for this deteriorating condition. Ex. 1 at App. 1-2.

[35]Although he has had misconducts in the past, he has not had one since November 4, 2009, almost twelve years ago. *See* Ex. 39 at App. 139-140, DOC Records excerpts.

[36]Orderlies are allowed to walk freely in their respective units when performing janitorial duties. They also work closely with prison staff for staff-assigned duties, as well as assist inmates with obtaining actual services, i.e. filling out requests to staff, medical request forms, canteen slips, etc.

Mr. Grant earned his GED in 1991. Ex. 42 at App. 143, Certificate of High School Equivalency. His days now are spent continuing to seek out education and knowledge. Although his vision is bad, he still has a TV and loves to talk about the science and history programs he watches on the local PBS television station. He has an inquisitive mind, always searching and grasping for truth and knowledge. As noted, Mr. Grant desires to be in "learning mode." Each time he meets a new member of our office, he has questions for them about life, things they have learned, and things he is currently wrestling with. He has his own sense of integrity and principle. Though some of the other inmates on the row can be disruptive at times, Mr. Grant is one of the first to speak up if one of the men – especially those who are mentally or physically challenged – is being abused or taken advantage of in any way. No matter how much Mr. Grant may like or dislike someone, Mr. Grant does not tolerate mistreatment of others. His sense of right and wrong is very strong, and no doubt influenced by the life he has lived. Although he is one of the clients with a sometimes "crusty" exterior, he is also one of the few to make sure to always call and wish us happy birthday; to talk about the Roosevelts after watching a Ken Burns documentary on PBS; to ask what our kids are learning in school; to ask how my mother is after my father tragically died three years ago; to share his battles of personal growth; and to question the existence of God and how or if His love makes sense in all of this sadness. He never misses the opportunity to quiz us on who sings a certain song; to ask us if we have ever eaten a specific type of candy from his childhood; to call to tell us not to come visit him when he contracted

COVID because he was worried about our safety; and to laugh when one of us talks about a pet cat, whom he has dubbed "Dustbuster" because of its fluffy tail.

Mr. Grant is who he says he is. He holds himself to a high standard when he thinks he has messed something up. He wants people to be genuine and he works to be genuine in his own life too. Mr. Grant does not trust most people. Truthfully, why should he? After the life he has been dealt, it is hard to imagine any person would emerge ready to trust. But, through openness and consistency, Mr. Grant has softened to the point of being vulnerable with some people. As he learns he can trust someone, he is the most loyal of loyal. When there are setbacks, he gradually reminds himself to be open once again. When it comes down to it, Mr. Grant has suffered from some of the worst frailties of humankind, but has come out of it with real human dignity.

CONCLUSION

We as actors in a system that purports to dispense mercy cannot now label Mr. Grant a monster. It was our system that helped shape his life and the many other youth who were left for naught. We must take responsibility for that and offer John Grant the rehabilitation he needed from the beginning. We are not asking that there be no punishment. We in no way want to ignore the devastation caused to Ms. Carter's loved ones. We agree punishment is right and deserved. We ask that John Grant not be executed. He is a changed man – an ever-changing man – who has been so neglected and abused by our society and is now deserving of grace and mercy. He can repay his debt to society, and more specifically to Ms. Carter's family and loved ones, through a sentence of life without parole.

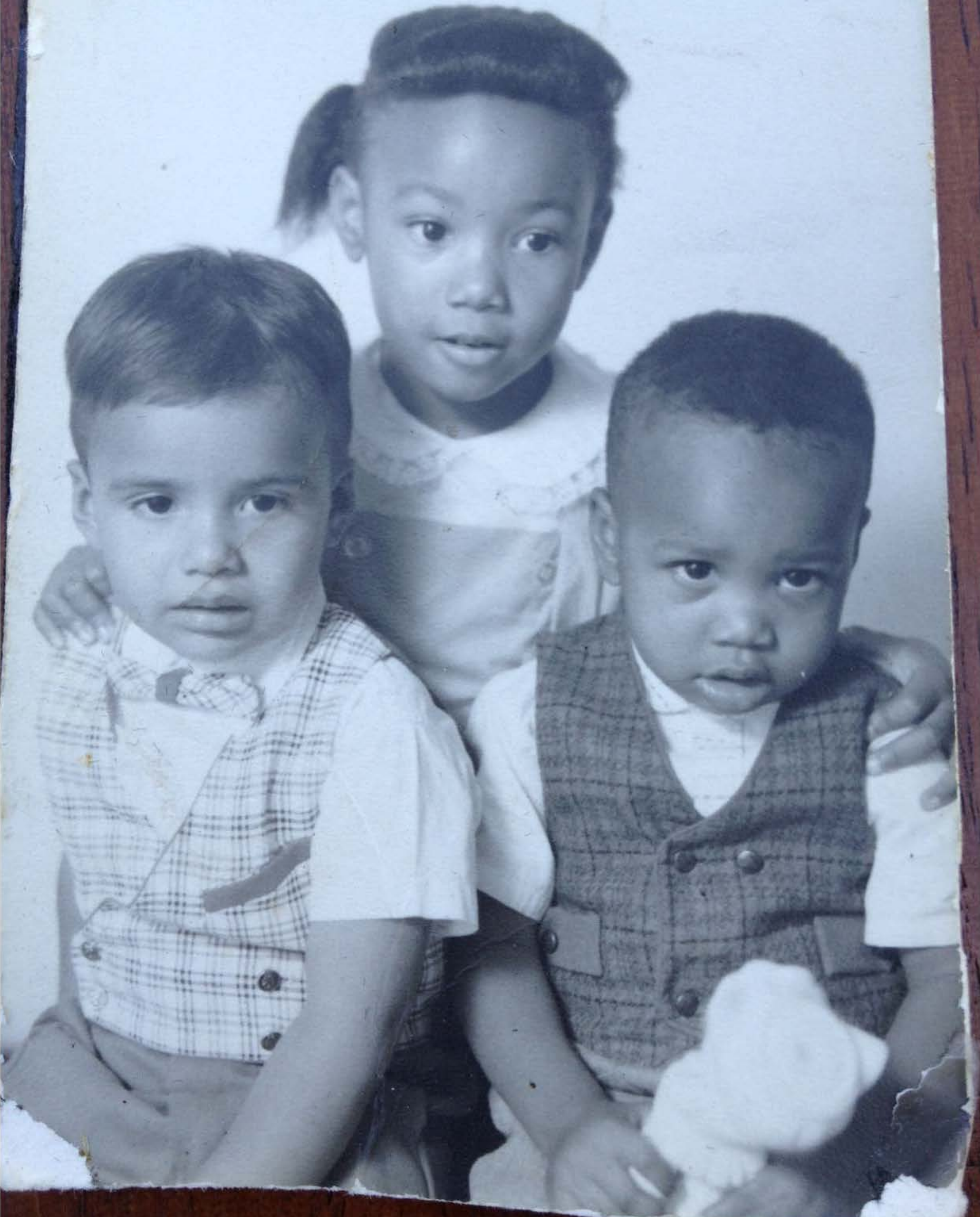
At the end of the day, regardless of someone's actions, mercy can be extended if we as a society choose to act in a way that approaches darkness with light. We see newness in this Board. We see people equipped with the hearts and minds to weigh these heavy questions. We see people who understand the necessity of punishment while also understanding the role of rehabilitation and mercy. We see people who understand that those qualities only bear fruit if someone in need of grace is given an actual chance.

We are here now asking for mercy for a man who has been devastated by the senselessness of his own actions. Mr. Grant has spent every day since that fateful moment racking his brain to understand why he did what he did. He has truly sought to understand the "why" for himself and change accordingly.

We submit that few are more deserving than Mr. Grant of this precious gift of mercy and grace. We humbly request a clemency recommendation.

Exhibit No.	John Grant Clemency Packet Appendix of Exhibits	Page Nos.
1	DOC Medical and Dental Record Excerpts	1-2
2	Social History of John Grant by Teresa A. McMahill, A.C.S.W.	3-8
3	Declaration of LueJean Johnson	9-11
4	*Grant v. State*, 58 P.3d 783, 801 (Okla. Crim. App. 2002), J. Chapel dissent	12-24
5	Certification Study	25-26
6	Letter from Laronda Hovis	27-28
7	Affidavit of Andrea Grant	29-30
8	Affidavit of Marvin Smith	31-32
9	Boley State School for Boys and Helena State School for Boys DHS Index Cards	33-36
10	Gannett News Service Letter	37
11	Affidavit of Steven A. Novick	38-44
12	*Throwaway Kids* summary	45
13	Video Excerpt from ABC News 20/20 *Throwaway Kids* (eight-minute video CD attached)	Attached CD
14	Affidavit of Laura Choate	46-47
15	*Oklahoma Shame* Article *Hogtied, Shackled and Left*	48
16	Declaration of Ricky D. Mitchell	49-52
17	Affidavit of Joseph Crawford	53-55
18	Affidavit of Donnie Bacon	56-57
19	Affidavit of O.C. Frazier	58-59
20	Excerpts from Declaration of Craig Haney, Ph.D., J.D. of April 23, 2002	60-84
21	Affidavit of Donna Schwartz-Watts	85-87
22	Affidavit of Terry Smith	88-89
23	Affidavit of James Bowen	90-92
24	OSBI Interview of Michael Gould	93-94
25	OSBI Interview of Claude Stith	95

Exhibit No.	**John Grant Clemency Packet** **Appendix of Exhibits**	**Page Nos.**
26	OSBI Interview of Stephen Moles	96
27	Affidavit of Scott Bighorse	97-98
28	Affidavit of John Ware	99-100
29	Affidavit of Linda Sorrells	101-102
30	Affidavit of Ricky Alexander	103-104
31	Affidavit of Charles Arnold	105-106
32	Oklahoma Capital Trial and Appellate Process	107-108
33	Affidavit of Cheryl L. Johnson	109-110
34	Affidavit of Amy McTeer	111-113
35	Affidavit of Marvin Yost	114
36	Sex Scandal Costs Former Appeals Judge Steve Lile	115
37	*Grant v. Trammell*, 727 F.3d 1006, 1027 (10th Cir. 2013), C.J. Briscoe dissent	116-131
38	*Grant v. State*, 95 P.3d 178, 184 (Okla. Crim. App. 2004), J. Chapel dissent	132-138
39	DOC Records Excerpts	139-140
40	DOC Assignment Form	141
41	Affidavit of Oscar Patterson III	142
42	Certificate of High School Equivalency	143



OPTOMETRIC SERVICE RECORD - 03/23/20 04:04 PM
OBJECTIVE DATA:
Offender seen by an outside optometrist:
No
Chief Complaint:
IM seen on 01/24/2020 for routine eye exam. LEE/LRx was 2013. POAG Severe. Stents put in superior posn OU. Also DES.
Visual Acuity Unaided: OD:; 20/40 aided thru LRx. OS:; 20/50 aided thru LRx
Pupils: PERRL; No afferent pupillary defect;
Extraocular Movements: Smooth, accurate, full, extensive;
Confrontation Visual Field: Full throughout;
Distance Cover Test: Orthophoria;
Near Cover Test: Orthophoria;
OD REFRACTION:
SPHEROCYLINDER: +1.50-1.00x027
ADD: +2.00
SEGMENT HEIGHT: 18
SEGMENT TYPE: ft28
VISUAL ACUITY: 20/20
PUPIL DISTANCE: 64/61
OS REFRACTION:
SPHEROCYLINDER: -0.50-1.00x157 (note unequal signs)
ADD: +2.00
VISUAL ACUITY: 20/20-
Frame: L1050 Blk
Size: 54-22
Temple: 150
Tinted: No;
Lid / Lashes
Clear
Conjunctivia:
Quiet
Cornea:
Clear
Anterior Chamber:
Deep
Quiet
Lens:
Sclerosis
Eye(s): 2+ OU
Iris:
Flat
Intact
IOP OD: 12
IOP OS: 17
IOP Time: 1500
Cup / Disc ratio OD: 0.9x0.9 deep
CUP/DISC ratio OS: 0.8x0.8 deep
DISC:
Pale
Eye(s): 1+ OU
Macula:
Normal
Vessels:
Normal
Vitreous:
Clear
Periphery:

Oklahoma Department of Corrections
Oklahoma Department of Corrections Private and DOC: ODOC Formulary Group Number:
GRANT, JOHN
OK DoC Offender ID **102816**
04/12/1961 (59) M African American
Oklahoma State Penitentiary

Flat
Diagnosis: H52.4
H52.223
H52.01
H52.12
H40.1133
H04.123
Plan: New BF Rx - no charge for time. RTC PRN.
CO-PAYMENT ASSIGNMENT ONLY (Select procedure 99211-office visit and/or medication(s) for co-payment)

Encounter:	OPTOMETRIC SERVICE RECORD
Date/Time of Service:	03/23/20 04:04 PM
Location of Service:	Oklahoma State Penitentiary
Provider:	Larry Silkey, OD, OD Authorizing Provider:Larry Silkey, OD, OD

Signed Electronically by Larry Silkey, OD, OD on 03/23/20 04:30 PM

The contents of this document are confidential and restricted to authorized personnel of the Oklahoma Department of Corrections.

John Grant Clemency
Page 1 of 143

DENTAL-SC exam, extract #4,13 root tip - 05/17/17 10:26 AM
SUBJECTIVE DATA:
Chief Complaint:
my tooth hurts
Subjective Data:
20 years ago i had all my teeth removed, after a while
i had a couple pieces of tooth come to the surface.
Recently ,they both started hurting a little, right now,
the right side is hurting a little.
OBJECTIVE DATA:
Physical Findings:
#4,13 root tip at the gum line, xray reveals slight apical
radiolucency around both. 2 pa's
No remaining teeth,
ASSESSMENT:
Assessment/Diagnosis:
#4,13 root tip, chronic draining abscess
PLAN:
Plan of Action:
#4,13 root tip extracted,simple, POIG,consent signed,
review medical hx.
2 carpules septocaine hcl 4% w/epi 1/100,000.
N.V. by request
Priority: II;
EDUCATION:
Oral care / hygiene education given to Inmate?
Yes
Inmate verbalized understanding of instructions:
Yes
CO-PAYMENT ASSIGNMENT ONLY (Select procedure 99211-office visit and/or medication(s) for co-payment)

Encounter:	DENTAL-SC exam, extract #4,13 root tip
Date/Time of Service:	05/17/17 10:26 AM
Location of Service:	Oklahoma State Penitentiary
Provider:	Robert Brisolara, DDS, Lic.#: 5066 Authorizing Provider:Robert Brisolara, DDS, Lic.#: 5066

Signed Electronically by Robert Brisolara, DDS, Lic.#: 5066 on 05/17/17 01:44 PM

Oklahoma Department of Corrections
Oklahoma Department of Corrections Private and DOC: ODOC Formulary Group Number:
GRANT, JOHN
OK DoC Offender ID **102816**
04/12/1961 (59) M African American
Oklahoma State Penitentiary

Consent For Medical / Dental / Mental Health Services - 05/17/17 01:36 PM [Addendum to note: DENTAL-SC exam, extract #4,13 root tip - 05/17/17 10:26 AM by Robert Brisolara, DDS, Lic.#: 5066]
Document Upload:
Image of patient authorization for release of PHI.
See file 151241_1_42885.5668634259.pdf under attachment folder

Signed Electronically by Amanda Workman, Dental Assistant II on 05/30/17 01:36 PM

The contents of this document are confidential and restricted to authorized personnel of the Oklahoma Department of Corrections.

SOCIAL HISTORY

John Marion Grant

Prepared by Teresa A. McMahill, A.C.S.W.
September 6, 2005

Birth and early years

John Marion Grant was born in Oklahoma on April 12, 1962, the sixth of nine children born to Ruth Lee Alexander Grant. John and his older siblings—Kenneth, Ronnie, Laronda and Ruth Ann—were fathered by Walter Grant (though there is some question about Kenneth's paternity). A year before John was born, Ruth gave birth to Norman, who was obviously fathered by a white man. She and Walter were already separated at that point, and he had moved to California. Nonetheless, Walter returned to Oklahoma for Norman's birth, and it was during that visit that Ruth became pregnant with John. Three children were born to Ruth after John, Andrea and O.C.III, whose father was O.C. Frazier Jr., and Greggory. Ruth's mentally ill cousin was allegedly Greggory's father.

Ruth rarely received any financial assistance from her children's fathers. In order to support her family she worked under the table as a domestic and collected public assistance. When she got home from work, Ruth was exhausted and would retreat to her bedroom. At those times, the children knew not to disturb her. Ruth's long absences and her isolation when she was at home left the responsibility of raising the younger children to Laronda and Ruth Ann, who bitterly resented this. When their mother and older sisters were all gone, John, Andrea, Greggory and O.C. III were left to fend for themselves. Greggory remembers being home alone frequently from the time he was in kindergarten. Other siblings report that when they got home from school they would often find John sitting on the porch—locked out and crying.

John was very fragile emotionally. "He was more sensitive," Ruth Ann recalls. "In our environment you couldn't be like that…. When our dog was put to sleep John cried. In the black culture, you don't cry over a dog dying." John was easily frustrated and quick to get angry, O.C. III says. "He would hold it in so much. It would just come and he'd sob and cry." According to Andrea, when John would cry Ruth would ask him, "Are you crazy? Why you cryin'? You got nothin' to worry over." Andrea says that their mother never tried to determine what was at the root of John's pain.

It appears that Ruth had little connection to her children. "She didn't hardly talk to us," Andrea recalls. "I don't think she liked us." Ruth Ann felt like she was always trying to be accepted by her mother. "She was never maternal…. She tried as she got older. It was difficult for her because that's how she was raised." Greggory remembers getting only "occasional hugs" from his mother, and that she "wasn't a loving mom." A

strict disciplinarian, Ruth once beat Greggory so hard with an extension cord that it left marks for days. "I think it was on the verge of child abuse," Greggory says. "I don't know if she was punishing me or taking out her emotions on me." Because of their mistreatment, Andrea believes that she and her siblings are incapable of loving. "We don't know what love is. We don't even love our own kids."

The value of an education was never stressed in the Grant household. Ruth did not ever ask about her children's grades or help them with their homework, and rarely attended school functions. O.C. III claims that Ruth, who only had a sixth grade education, was very involved with his teachers, but other family members say that their mother never set foot in their schools. The one exception occurred when Ruth attended a PTA meeting at Ruth Ann's urging. She reports that her mother showed up in her "after 5 clothes." Ruth Ann was embarrassed and never invited her mother to her school again. She recalls, "Mama was always trying to meet a man. When she died, she had a lover who was 50 years younger than her."

Ronnie and Kenneth

John's two older brothers, Ronnie and Kenneth, moved to California when John was two years old. They rarely visited and when they were in Oklahoma "they'd do their own thing," Greggory recalls. He did not even know that Ronnie was his brother until he was ten years old. By that time, Kenneth had moved back to Oklahoma and the younger children were getting to know him. Ronnie's infrequent visits were not welcomed, according to Ruth Ann. "Ronnie used to torment my younger siblings. Ken cussed us out, too. They felt superior. I remember Kenneth saying, 'Life was good until you guys came along.' " Andrea describes Ronnie as a "…foul, jerk of an ass" who tortured John. "He'd shove him, throw him against the wall, and call him an ugly bastard." O.C. III remembers that "every time Ronnie came here it was wild." Mercifully, Ronnie did not ever stay long. "He was more like a stranger than an older brother," O.C.III recalls. Andrea believes that at least some of John's crying was due to Ronnie's emotional and physical abuse.

Domestic violence

Their household was a violent one, family members report. When Ronnie and Kenneth would visit, they would have terrible fights—breaking furniture and pummeling one another. It was Ruth's choice of men, however, that created the greater turmoil. Two particularly frightening episodes stand out for John's siblings, and as John was present for both of them, it is likely that he was traumatized by them as well. The first incident occurred in 1966, when John was five years old. It was at night, and Ruth's lover broke into the house by crawling through the window in the girls' room. He then went into Ruth's bedroom and sometime later his wife and sister-in-law showed up and began beating Ruth. She kept screaming to her children, "Call Aunt Rosetta! Call Aunt Rosetta!", but they were not allowed to use the telephone and did not know how to place

a call. After Ruth's paramour and assailants left, she was taken to the hospital, where she remained for six weeks. "There was blood everywhere," Ruth Ann recalls.

John and his siblings were sent to live with relatives while their mother recuperated. They were parceled out according to color, with the lighter children going to stay with their aunt LueJean, and the darker ones with their maternal grandfather. As he was one of the darker children, John was sent to live on his grandfather's farm, a not altogether pleasant experience for him. According to Ruth Ann, there was a mean turkey on the farm who would only chase John. "He'd be scared, crying. Nobody would stop the turkey, they just laughed."

Move to Oklahoma City

Shortly after Ruth was released from the hospital, her brother Clayton arranged for her to move to Oklahoma City. "We fled Ada to get away from other people's husbands," Andrea claims. "[Ruth's sister] LueJean…and Clayton…[were] trying to get her away from partying and being the town whore." Clayton purchased a home next door to the house he was living in, and Ruth and her family moved into his former house. Ruth's trouble with men was not confined to Ada, however. Shortly after moving to Oklahoma City, Ruth took up with a neighbor named Eric Booth. Eric, a widower with 33 children, was violent, and Clayton begged Ruth to end her relationship with him. One Saturday morning, with Eric in Ruth's room and the children gathered around the television, things were clearly getting out of hand. O.C. III ran to get Clayton, who rushed over brandishing a rifle. John and his siblings were all screaming, "Uncle Clayton's got a gun! Uncle Clayton's got a gun!" Clayton then ran into Ruth's bedroom, where Eric was holding Ruth hostage, and began firing. The children streamed into the bedroom and began pummeling Eric with anything they could get their hands on. One of them smashed a catsup bottle on Eric's head. "I thought it was blood," Greggory recalls. Eric, who apparently dodged Clayton's bullets, dashed off, and Ruth Ann remembers thinking "good riddance!"

Favoritism

As did their relatives, Walter and Ruth both favored their light skinned children. Consequently, Ruth Ann, Norman and O.C. III, the "high yellow" offspring, were given preferential treatment over their darker siblings. Consequently, Walter acted as if John was not his son. The two or three times Walter visited his children he showered affection on Norman, whose biologic father was white, and ignored John. When the children got older, Norman had his own bedroom and was allowed to entertain his girlfriends there. John and his siblings were not even allowed to have friends in the house, let alone visit their shared bedroom. "He even smoked marijuana in his bedroom!", Greggory recalls—with obvious bitterness. Later, when John and Norman landed in jail at the same time, Ruth held a bake sale to raise bail for Norman, while John ended up serving his entire sentence. "We talked about it [and observed], 'She sure hustled to get Norman out and

left John still sitting there',” Greggory remembers. In addition, Ruth belittled John and physically disciplined him more than the other children. Several siblings remember John getting beaten with an extension cord with some regularity. “It was awful when John got it with the extension cord,” Ruth Ann says. “He was crying, and I could hear the licks.”

Though all of the children wore hand-me-down clothes, Norman got the best of these. John, next in line after Norman, was forced to wear Norman's old clothes, even though Norman was much shorter than John. Norman also received more medical attention that his siblings. “If Norman scratched his knee, he'd be at the doctor's so damn quick,” Andrea recalls. “When we were sick, we'd just be sick…. I remember John got hit in the eye…with a wire hanger…once. I thought his eyeball was going to pop out…. I think it was two days later when my mom took him to the doctor.”

In addition to the discrimination based on color within the family, John and his siblings' birth orders and who their fathers' were influenced how they were treated. John became the invisible child, wedged between Norman, one year his senior, and Andrea, a year younger. And because Ruth was still in love with O.C. Frazier Jr., her two children with him, Andrea and O.C. III, were favored. With his dark color, the timing of his birth and his paternity, John was born with three strikes against him. “…John was known as the bastard of the family,” Andrea comments sadly. “He was a throw away kid.”

Love of animals

One of the few things that brought John pleasure were animals. Clayton had a few horses and some dogs, and when his family moved next door to Clayton, John was in seventh heaven. Greggory's first memory of John is of him interacting with animals. “John loved horses and he was good at riding them.” O.C. remembers that John especially liked Clayton's horse named Big Red. “Other than John, no one could touch that horse but my uncle.” Andrea believes that John bonded with animals much better than he did with people. “He'd play with rabbits, dogs, snakes and honey toes [frogs],” but Clayton's dog Katie was John's favorite. “He used to take this push-mower and mow people's lawns. Katie would be on one side of him,” Andrea recalls. “They'd be going down the street like they was best friends!”

Move to projects

After living next door to her brother for eight years, Ruth decided to move her family into Forrest Oaks, a subsidized housing project a few blocks away. According to O.C.III, “Mama moved to the projects because she could get her own bathroom….” John, who was then 13 years old, lived for a short period of time with his uncle Clayton before he joined his family. “He didn't want to live [in the projects],” Greggory claims, [and] Uncle Clayton was the only father figure he had.” John also did not want to move even five blocks away from Big Red and Katie. He eventually joined his family in Forrest Oaks and shortly thereafter Clayton sold his animals. Greggory believes the loss

of the pets, who were literally John's best friends, affected him "pretty negatively…. We didn't have any animals in Forrest Oaks." John also interacted much less with Clayton after the move. "It was only a few bocks away…[but] we didn't see Clayton a lot…. It was hard on John," Greggory adds.

Living in the projects exposed John to a lifestyle that would soon trigger his downfall. "Everything went haywire when we moved to Forrest Oaks,' O.C. III claims. "We started mixing with kids who had single parents and were unsupervised…. I had to fight my way to the bus stop in the morning…. I'd see kids breaking into cars, breaking into apartments." John started hanging out with older boys, Greggory recalls. "He could have been with these guys because he had no father figure." John soon started getting into fights and stealing. "These guys were experienced criminals who knew the ropes. Guys his age hadn't gotten to that level," Greggory adds. John's siblings began to suspect that John was using PCP or harder drugs, but they only had direct knowledge of his use of marijuana and alcohol. "All of us have drug and alcohol problems," Andrea claims, but [the others] won't admit it…. Ronnie has been a drug addict since he was 18 or 19."

In spite of his increasing problems, John remained devoted to his family. Greggory and O.C.III both have fond memories of time spent with their older brother. "He would always talk to me. We'd go into the forest and do boy things…. I love my brother." John would tell Greggory, "Don't do what I've done…live a right life." John would often get in fights to protect his younger siblings. "I remember I was about to get into a fight with some kids and he beat them up," Greggory recalls. "I don't know if it was a nice thing to do, but growing up in the ghetto, it's a good thing. He loved his brothers and sisters." O.C. III concurs. "If anybody tried to mess with me he would have my back." When his siblings or mother needed anything, John often provided it. "I guess he stole the money he gave Mom," Greggory speculates. "She would question it but still took it." When they needed food, John would produce it, and clothes as well. "John stole a pair of shoes for me that I needed for school," O.C.III recalls. Andrea adds, "If we had to go on a field trip he'd get us food to take along so we wouldn't be embarrassed…. We got a free lunch at school but not on field trips…. We had nothing to take for a sack lunch."

Mental disorders in family

Even after the move to the projects, John continued to cry. "He cried because he wanted to [leave Oklahoma City] and pursue his art. He was a good artist," Andrea recalls. "Sometimes he'd cry about nothin', no reason I could tell." Ruth blamed John's apparent depression on the fact that her own mother died when she was pregnant with John, making her depressed. No treatment was ever sought for John, or for his siblings who were obviously struggling with depression and other mental disorders. According to Andrea, "Most of us are depressed…. I don't want to be alive…. I've attempted suicide

[and my] sisters said they would like to." Laronda recently attempted to kill her daughter, and tore up her bedroom because she was convinced someone was in it.

Incarceration/family moves to Portland

O.C.III has very few memories of John after the move to the projects. "I didn't see him too often. He was in and out of jail." Andrea remembers that John was frequently sent off to juvenile homes and would be home for only a few months at a time. "He was mostly locked up for stealing clothes and shoes for us little ones." In 1979, when John was 18 years old, Ruth decided it was time to leave the projects—and Oklahoma City. "I think she wanted a fresh start," Greggory speculates. She was at her wits end with John." O.C.III believes that his mother also wanted to "save the youngest three." Ruth picked far away Portland, Oregon, to be their new home, presumably because O.C. Frazier Jr. was living near by. According to Andrea, "My baby brother had come up to visit our dad in Vancouver [Washington], and he was talking about maybe getting back together with my mom, so we came to Portland, but they didn't get back together. Probably his wife broke them up." Other than O.C. Jr., Ruth did not know a soul in the Portland area. "We ended up here with nothin'," Greggory recalls. "We had no relatives in Portland. Mom just picked a church from the yellow pages and we stayed with a member of that church." Six months later, Ruth and her children moved into a rooming house.

Loss of contact

After moving to Portland, John's siblings have had less and less contact with John. Though expressing great love for their brother, they each have their own justifications for not staying in touch. The more likely explanation is that they themselves are too damaged to provide support to another human being. Nonetheless, those interviewed unequivocally stated their willingness to testify on John's behalf at any future hearing or trial.

DECLARATION UNDER PENALTY OF PERJURY

STATE OF OKLAHOMA)
)
OKLAHOMA COUNTY)

I declare under penalty of perjury that the following statements are true and correct:

1. My name is LueJean Johnson. I reside at 3220 N.W. 33rd Street, in Oklahoma City, Oklahoma, 73112.

2. I am John Grant's maternal aunt, sister to John's mother, Ruth. I have known John since he was born. I lived in Oklahoma City and Spencer while Ruth was in Ada, but I saw the family on and off for visits. Sometimes when I was young I stayed with Ruth.

3. John's mother Ruth and I grew up in Allen, Oklahoma. There were seven children in our family. Ruth was ten years older than I, she was like my second mother. Ruth left home at around 15, because her stepfather (my father) was critical of her and picked at her. My Mother didn't approve of how he treated Ruth; she was sad when Ruth left, but thought it was better for Ruth. Ruth went to live with a cousin in Ada. For a while Ruth worked in the fields, but then later she worked in a house and got room and board. Ruth lived there until she married Walter Grant.

4. John's family lived in terrible conditions in Ada. There was no running water in the house. They had a very hard life in Ada. Ruth never got any help from the men in her life or from her children's fathers. Ruth was on her own.

5. I remember one time in Ada when Ruth was beaten up by one of her boyfriends. I got there the day after she had been beaten. I got there because I knew the kids would need help. Ruth had to go to the hospital. I stayed with the kids while she was sick.

6. Not too long after she was beaten, Clayton brought Ruth to Oklahoma City. He was worried about Ruth. They moved next door to Clayton at first, but then moved to government assisted housing in the projects. Things were rough for the kids in the projects.

7. Clayton tried to look after Ruth while she was in Oklahoma City. The boyfriend that

Grant v. Mullin
05-CV-0167 TCK-SAJ
Petition for Writ of Habeas Corpus

Attachment F

had beaten Ruth in Ada came looking for her, and Clayton ran him off to keep him away from Ruth.

8. Ruth had a lot of men in her life. A lot of times they were younger men. She didn't really have a father in her life, I think she may have been looking for that. But the men did not stay with Ruth and John never had a father figure in his life.

9. I remember that John cried a great deal as a child. He would be off by himself, separate from the other kids and cry. He had needs that were not being met and that he needed a lot of help. The crying was bad enough that when John was about five or six years old I suggested his mother, Ruth, have a doctor look at John, but I do not know if anything was ever done about it, but I never heard that anything was done

10. John was a strange child. I would always have to call him out to make him come over to get a hug. He would always be by himself and not interacting much with the other kids.

11. The kids in Ruth's family had very little. When I saw one of them in need, I tried to get clothes for one of them, and then they would pass the clothes on to their brothers and sisters.

12. When John was a young child he was sent away to various juvenile institutions. I never talked with him about what it was like for him at those places. We felt like it was terrible for him to go away at that young age.

13. Ruth had five children under the age of five at one point. She lived on aid to families with dependant children and worked outside the home cleaning houses. There was too much to be done to give any one child much attention and John got less attention than the other children because he was always off on his own.

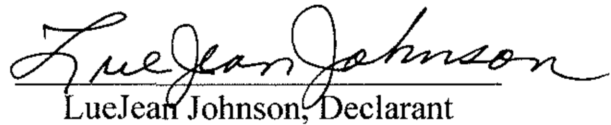
14. Ruth's oldest girl, Laronda, who was fourteen when John was born, had responsibility for the younger children. But she was just a kid herself and it was too much for her. Laronda left home and she had a baby of her own by the time she was 18. After Laronda left, the care of the kids fell to Ruth Ann. Ruth Ann was just a child herself, far too young to have care of the other kids.

15. Ruth Ann is bitter now about having had to look after her brothers and sisters. But Ruth (John's Mother) did the best she could with what she had.

16. Laronda has mental health problems now. It was probably bad that she had the care of the kids in the family. Recently I heard that Laronda barricaded herself in her house and wouldn't let anyone, even her kids, inside. I visited Laronda shortly after her Mother's death. Everything was fine for a while during the visit. All of the sudden Laronda snapped. She started with her daughter who was with me. She started talking about restraining orders and other things we didn't understand. She just flipped. I don't think Laronda is well.

17. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of September, 2005.



LueJean Johnson, Declarant

Mike Evett, Witness

Therefore, counsel's failure to object did not amount to deficient performance.

[45] ¶ 90 Grant also claims that the failure of his counsel to make proper objections to the victim impact evidence constituted ineffective assistance. We dealt with counsel's performance with regard to the victim impact evidence in our discussion of proposition nine. Our conclusion was that trial counsel made reasonably strategic decisions; therefore, his performance was not deficient. Grant has not shown that trial counsel's conduct fell below reasonable standards of professionally competent assistance in any area.

IX. CUMULATIVE ERROR

¶ 91 Grant urges us to consider his proposed errors in a cumulative fashion in proposition fifteen, if we find that none of them individually necessitate reversal of his conviction and sentence. We have reviewed the case to determine the effect, if any, of Grant's alleged accumulation of error. We find, even viewed in a cumulative fashion, the errors we identified do not require relief. *Woods v. State,* 1984 OK CR 24, ¶ 10, 674 P.2d 1150, 1154.

X. MANDATORY SENTENCE REVIEW.

¶ 92 Title 21 O.S.1991, § 701.13, requires this Court to determine "[w]hether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor; and whether the evidence supports the jury's or judge's finding of a statutory aggravating circumstance." Sufficient evidence existed to support the finding of the three statutory aggravating circumstances. Grant was in prison serving a sentence for conviction of a felony; he had been convicted of felonies involving violence; and based on his prior violent past and the violence of this crime, the jury could reasonably conclude that there was the existence of a probability that the Grant would commit criminal acts of violence that would constitute a continuing threat to society.

¶ 93 After reviewing the entire record in this case, we find that the sentence of death was not imposed because of any arbitrary factor, passion, or prejudice. The facts of this case and the overwhelming evidence of the aggravating circumstances simply warranted the penalty of death.

¶ 94 We find no error warranting reversal of Grant's conviction or sentence of death for first-degree murder, therefore, the Judgment and Sentence of the trial court is, hereby, **AFFIRMED.**

LUMPKIN, P.J., JOHNSON, V.P.J., and STRUBHAR, J., concur.

CHAPEL, J., dissents.

CHAPEL, Judge, Dissenting:

¶ 1 On November 13, 1998, John Marion Grant killed Gay Carter by laying in wait for her, grabbing her, dragging her into a tiny room at the Connor Correctional Center, and repeatedly and brutally stabbing her to death. Grant had previously worked for Carter, who was a civilian cafeteria supervisor. According to Grant she had always been kind to him, and he considered her his "friend." Grant's only prior dispute with Carter was a disagreement relating to his breakfast tray on the day before the murder and again on the day of the murder. On both occasions, however, he threatened Carter; and after breakfast was over on the second day, he killed her.

¶ 2 The vicious and unprovoked attack was observed by eyewitnesses, and Grant was apprehended afterward still holding the murder weapon. Thus there was never any doubt that it was Grant who killed Carter. In addition, because Grant had no significant history of mental illness, nor did any doctor ever determine that he was insane, an insanity defense had no realistic chance for success at trial. Furthermore, because Grant committed the murder while serving a 130–year prison sentence for four armed robbery convictions, two of the three aggravating circumstances alleged in his capital trial were essentially incontrovertible (*i.e.,* prior violent felony conviction(s) and that the murder was committed while serving a felony prison sentence), and the third was practically a given as well (*i.e.,* that he posed a continuing threat of future violence).

¶ 3 Consequently, the essential task of Grant's assigned counsel at trial, though difficult to be sure, should have been patently clear: give the jury a reason to spare his life. Counsel was certainly obligated to hold the State to its burden of proof throughout and to defend the case to the best of his ability. Yet the circumstances of the crime and Grant's history compel the conclusion that *effective* assistance could only be provided in this case by attempting to give the jury (or at least a single juror) some reason to spare Grant's life.[1]

¶ 4 The goal of persuading jurors to spare the life of a person that they have already convicted of first degree murder can be pursued at trial through any number of different approaches, such as attempting to "humanize" the defendant, suggesting that he deserves some sympathy or mercy because of the circumstances of his life history, presenting friends or family to plead for his life, *etc.*, either alone or in combination. Yet almost all of these approaches have one thing in common; they rely on the presentation of mitigating evidence relating to the individual defendant. Hence the centrality of mitigating evidence within a capital trial has been repeatedly recognized by the United States Supreme Court, this Court, and courts throughout the country.[2]

¶ 5 Such mitigating evidence can only be presented if it is first discovered. Hence the Supreme Court, this Court, and other courts have likewise insisted that effective assistance of counsel at trial requires that defense counsel diligently seek to obtain and develop mitigating evidence regarding the defendant.[3] And this obligation includes investigating and pursuing mitigating evidence relating to the defendant's background and family history.[4] Defense counsel who have

1. In Oklahoma a jury can only sentence a defendant to death if it first finds that at least one statutory aggravating circumstance exists in the case and that the aggravating circumstance(s) outweigh the mitigating circumstances in the case. *See* 21 O.S.1991, § 701.11. Yet even when a jury has made both of these findings, it nonetheless remains free to sentence a defendant to life or life without parole. *See Carpenter v. State*, 1996 OK CR 56, 929 P.2d 988, 1000; *Walker v. State*, 1986 OK CR 116, 723 P.2d 273, 284, *cert. denied*, 479 U.S. 995, 107 S.Ct. 599, 93 L.Ed.2d 600 (1986). Thus capital jurors always retain the right to spare the life of the defendant, regardless of the specific circumstances of the case. If even one juror refuses to sentence a defendant to death, the trial court must impose a sentence of either life or life without parole. *See* 21 O.S. 1991, § 701.11 ("If the jury cannot, within a reasonable time, agree as to punishment, the judge shall dismiss the jury and impose a sentence of imprisonment for life without parole or imprisonment for life.").

2. Mitigating evidence plays a central role in a capital jury's sentencing determination, both in the mandatory "weighing" of aggravating and mitigating circumstances and in the ultimate selection of penalty for defendants who are "death eligible," a selection process that is not bound by any particular guidelines or standards. *See, e.g., Williams v. Taylor*, 529 U.S. 362, 398, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000); ("Mitigating evidence unrelated to dangerousness may alter the jury's selection of penalty, even if it does not undermine or rebut the prosecution's death-eligibility case."); *Warner v. State*, 2001 OK CR 11, 29 P.3d 569, 575 ("It is beyond dispute that mitigating evidence is critical to the sentencer in a capital case."); *Wallace v. State*, 1995 OK CR 19, 893 P.2d 504, 510 ("It is beyond question mitigating evidence is critical to the sentencer in a capital case.") (citations omitted), *cert. denied*, 516 U.S. 888, 116 S.Ct. 232, 133 L.Ed.2d 160 (1995).

3. *See, e.g., Williams*, 529 U.S. at 393, 120 S.Ct. 1495 (reversing capital sentence where "it is undisputed that Williams had a right—indeed, a constitutionally protected right—to provide the jury with the mitigating evidence that his trial counsel either failed to discover or failed to offer"); *Abshier v. State*, 2001 OK CR 13, 28 P.3d 579, 600–01 (recognizing defense counsel's duty to investigate mitigating evidence in capital case), *cert. denied*, ––– U.S. ––––, 122 S.Ct. 1548, 152 L.Ed.2d 472 (2002); *Brecheen v. Reynolds*, 41 F.3d 1343, 1366 (10th Cir.1994) (emphasizing that capital defense attorney "has a *duty* to conduct a reasonable investigation, including an investigation of the defendant's background, for possible mitigating evidence") (emphasis in opinion), *cert. denied*, 515 U.S. 1135, 115 S.Ct. 2564, 132 L.Ed.2d 817 (1995); *Battenfield v. Gibson*, 236 F.3d 1215, 1226–34 (10th Cir.2001) (emphasizing critical importance of capital counsel's duty to seek out and develop mitigating evidence, even where defendant states that he does not want to present any mitigating evidence at trial).

4. *See, e.g., Williams*, 529 U.S. at 396, 120 S.Ct. 1495 (noting capital defense counsel's "obligation to conduct a thorough investigation of the defendant's background"); *Warner*, 29 P.3d at 575 (finding ineffective assistance of counsel where attorney failed to take necessary steps to ensure that defendant's mother was allowed to testify during second stage of capital trial); *Bre-*

diligently sought to obtain and develop such evidence enjoy broad discretion in deciding how to present it at trial and even whether to present it at all. Capital counsel have no discretion, however, to simply neglect to seek out such evidence.

¶ 6 Although a naked plea for mercy could possibly constitute effective assistance in a particular case (such as where a diligent investigation did not reveal viable mitigating evidence), such an approach can only be chosen after counsel first seeks to obtain mitigating evidence relating to the individual defendant. It is a cardinal rule of capital defense (and logic) that counsel cannot be exercising his or her "discretion" in neglecting to present particular mitigating evidence if counsel does not know that such evidence exists. Similarly, counsel cannot "reasonably" decide not to present a particular type of mitigating evidence—such as evidence involving a defendant's childhood and family history—if counsel does not first discover and develop such evidence to some degree, such that its potential impact can be understood and realistically evaluated.[5]

¶ 7 Although an attorney is entitled to make reasonable strategic decisions about which leads to investigate and how far to pursue particular investigations, strategic decisions made after incomplete investigations will be evaluated according to the reasonableness of the attorney's decision to limit his or her investigation, under all the circumstances of the case.[6] In a capital case, decisions about what approach to pursue and what evidence to present in the second stage, when made without adequate investigation of potential mitigating evidence, cannot be justified by merely invoking the mantra of "strategy." [7]

¶ 8 In his thirteenth proposition of error, Grant claims that his trial counsel was ineffective for failing to adequately investigate and present mitigating evidence from members of his family.[8] Grant sought an evidentiary hearing on the issue, and on January 4, 2002, this Court remanded this case to the district court for an evidentiary hearing limited solely to this issue.[9] The evidentiary

cheen, 41 F.3d at 1366 (duty to investigate possible mitigating evidence in capital case includes duty to investigate defendant's background); *Battenfield*, 236 F.3d at 1226–35 (granting second-stage habeas relief where counsel failed to interview defendant's parents and other relatives and friends about possible mitigating evidence in defendant's background).

5. *See Stouffer v. Reynolds*, 168 F.3d 1155, 1166–67 (10th Cir.1999) (rejecting argument that counsel's failure to present mitigating character evidence was "tactical decision," where counsel failed to investigate possible mitigating evidence and asserted strategy was illogical).

6. *See Strickland v. Washington*, 466 U.S. 668, 690–91, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) ("[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."); *Kimmelman v. Morrison*, 477 U.S. 365, 384, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986) (quoting *Strickland*); *see also Brown v. State*, 1994 OK CR 12, 871 P.2d 56, 76, *cert. denied*, 513 U.S. 1003, 115 S.Ct. 517, 130 L.Ed.2d 423 (1994).

7. *See Brecheen*, 41 F.3d at 1369 ("[I]t is important to note that 'the mere incantation of "strategy" does not insulate attorney behavior from review, an attorney must have chosen not to present mitigating evidence after having investigated the defendant's background, and that choice must have been *reasonable* under the circumstances.' ") (emphasis in opinion) (citations omitted); *Battenfield*, 236 F.3d at 1229 (finding that counsel's failure to investigate defendant's background left him "unaware at the time of trial of various mitigation strategies and accompanying pieces of evidence that could have been presented during the mitigation phase by [defendant] or his friends and family").

8. Claims of ineffective assistance for failure to adequately investigate and present mitigating evidence are treated in essentially the same manner as most other ineffective assistance claims, requiring both deficient attorney performance and prejudice to the defendant. *See Strickland*, 466 U.S. at 686–87, 104 S.Ct. 2052; *Williams*, 529 U.S. at 390–91, 120 S.Ct. 1495.

9. In order to grant this evidentiary hearing, this Court was required to find and did find that Grant had shown "by clear and convincing evidence that there is a strong possibility his trial counsel was ineffective for failing to develop and present mitigating evidence from members of [his] family." *See* Rule 3.11(B)(3)(b)(i), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22,

hearing was held on February 22, 2002, and the district court filed its findings of fact and conclusions of law regarding the remanded issue on April 3, 2002.

¶ 9 Although this Court gives strong deference to district court findings that are supported by the record, the majority opinion correctly recognizes that this Court retains the ultimate authority to determine whether trial counsel's performance constituted ineffective assistance of counsel.[10] Furthermore, trial court findings that are not supported by the record are not entitled to "strong deference." [11]

¶ 10 All nine of the family members whose affidavits were attached to Grant's application for an evidentiary hearing testified at the evidentiary hearing. These family members are related to Grant as follows: Ruth L. Grant (mother), Walter Grant (father), Clayton Black (maternal uncle), Ronnie Grant (older brother), LaRonda Hovis (oldest sister), Ruth Ann Grant Burley (older sister), Andrea Grant (younger half-sister), Gregory Grant (younger half-brother), and O.C. Frazier (youngest half-brother). Of these nine family members, six traveled from their homes in Portland, Oregon to attend the hearing.[12] All nine family members testified that they were never contacted by defense counsel regarding Grant's trial, but that they would have testified if they had been asked to do so.

¶ 11 Ruth, LaRonda, Ruth Ann, Andrea, Gregory, and O.C. testified that they were living in Portland during the time from the November 1998 killing of Gay Carter through Grant's February/March 2000 trial. Ronnie testified that he was living in Los Angeles during that time. Yet the district court specifically found that all nine family members "were findable and would have testified at trial if they had been asked." This factual finding is amply supported by evidence presented at the evidentiary hearing, and today's Court majority states that "we concur that the family members could have been contacted with the use of information located in Grant's prison records and [that] they would have been willing to testify at trial." The district court also found that "trial counsel did little to develop the mitigating evidence" that these persons could have offered. This finding is likewise amply supported by the record and is not disputed by today's majority.[13]

¶ 12 Nevertheless, the district court also concluded that "[n]ot calling family members to testify at trial was trial strategy and not an oversight on trial counsel's part." The district court did not make a specific finding

Ch. 18 App. (1998). Our evidentiary hearing remand ordered the district court to make findings about (1) the availability of the evidence and witnesses presented at the evidentiary hearing, (2) the probable effect of these witnesses and evidence if they/it had been presented at trial, (3) whether the failure to develop and present these witnesses and this evidence was a matter of trial strategy, and (4) whether the evidence and witnesses would have been cumulative or would have affected the jury's sentencing determination. *See* Rule 3.11(B)(3)(b)(iii). We also directed the district court to determine whether Grant waived his right to present mitigating evidence from his family, and if so, whether the waiver was knowing and intelligent.

10. *See* Rule 3.11(B)(3)(b)(iv).

11. *See Glossip v. State*, 2001 OK CR 21, 29 P.3d 597, 602 ("This Court will give the trial court's findings strong deference *if supported by the record*, but we shall determine the ultimate issue of whether trial counsel was ineffective.") (emphasis added) (citing Rule 3.11(B)(3)(b)(iv)); *see also Wood v. State*, 1998 OK CR 19, 959 P.2d 1, 17; *Humphreys v. State*, 1997 OK CR 59, 947 P.2d 565, 577, *cert. denied*, 524 U.S. 930, 118 S.Ct. 2329, 141 L.Ed.2d 702 (1998).

12. Ruth, LaRonda, Andrea, Ronnie, Gregory, and O.C. testified that they currently live in Portland, Oregon or a suburb thereof.

13. Grant's trial counsel testified at the evidentiary hearing that two different investigators (Steve Leedy and John Remington) worked on Grant's case and that he directed these investigators to try to locate members of Grant's family. He testified that Grant did give him names of some of his relatives and that he thought he gave these names to the investigators too. Trial counsel vacillated between saying that he did not know whether either of the investigators ever found any family members and saying that he knew that they were not able to do so. Counsel acknowledged that Grant brought him an envelope during the trial with his mother's name and a local return address on it, and that he gave the letter to Investigator Remington to attempt to contact her, but stated that he did not know what happened in that regard. Trial counsel acknowledged that he never asked for a continuance to find any of Grant's relatives.

about whether trial counsel's performance in this regard constituted "reasonably effective assistance," but the court's finding that counsel made a strategic decision not to present the testimony of anyone from Grant's family (without ever actually contacting or speaking with any such person), as well as the overall tone of the court's findings, suggests that the district court concluded that counsel's performance was adequate in this regard. In addition, today's majority makes its own determination that trial counsel's performance was adequate in this regard, seemingly based upon its own factual determination that Grant waived the presentation of evidence from his family.[14]

¶ 13 Yet the district court found that Grant did *not* waive the presentation of mitigating evidence from members of his family.[15] This finding is well supported by the record.[16] The majority does not find that the trial court's "no waiver" finding is erroneous or that it is not supported by the record. Hence the majority cannot rely on its own waiver finding to justify its conclusion that counsel's failure to seek out and develop mitigating evidence from Grant's family was reasonable.

¶ 14 In general, both the district court and today's majority opinion appear to confuse and conflate two distinct issues: (1) defense counsel's obligation to investigate and develop mitigating evidence regarding a capital defendant's background and family history, and (2) the subsequent strategic decision about what mitigating evidence to present to the jury. Grant's counsel did not make a strategic decision to not present the mitigating background and family history evidence that came out at the evidentiary hearing. Grant's counsel totally failed to discover this evidence, because he failed to contact anyone from Grant's family. Hence the district court's finding that defense counsel's failure to present the family testimony "was trial strategy and not an oversight on trial counsel's part" does not make sense and is not supported by the evidence.

14. The majority opinion's analysis is as follows: "We find that counsel's performance was not deficient. The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. . . ." This statement is followed by citations to cases that recognize the principle that defense counsel's actions must be evaluated in the context of the defendant's actions and that strategic decisions about the presentation of mitigating evidence can be made in consultation with the defendant.

15. The district court found that "it must be concluded that defendant did not specifically waive the presentation of this testimony."

16. Although this Court has recognized a defendant's right to waive the presentation of mitigating evidence during the second stage of his capital trial, we have insisted that any such waiver is valid only if the defendant is adequately advised of and understands the nature of mitigating evidence and its role in the capital sentencing process. *See Wallace,* 893 P.2d at 510–12. Consequently, we have established guidelines and a procedure to be utilized whenever a defendant desires to waive the presentation of mitigating evidence in his case. *See id.* at 512–13. This procedure was not followed in Grant's case, and the record contains no evidence of any statements to the trial court regarding Grant's desire to waive the presentation of mitigating evidence from his family.

The only evidence in the record that Grant "waived" the opportunity to present testimony from his family is the evidentiary hearing testimony of his trial counsel that Grant "indicated to me that he really didn't want his family to be involved" and that family testimony "was not something that [Grant] was interested in pursuing." On the other hand, the following evidence in the record strongly suggests that Grant did not waive the presentation of family testimony: (1) the fact that trial counsel and his investigators acknowledged having conversations with Grant about his family members and where they could be found; (2) the fact that counsel and the investigators do not suggest that Grant refused to provide family information, but rather that he provided what information he possessed; (3) the fact that counsel testified that he was familiar with the requirements for a waiver hearing in the event that a defendant desired to waive the presentation of mitigating evidence, but that he never considered seeking such a hearing in Grant's case; and (4) the fact that during the trial Grant provided counsel with a letter from his mother bearing a local return address.

In addition, the record in this case could not possibly support a finding that any waiver by Grant was "knowing and intelligent," since trial counsel acknowledged that he had no specific recollection of discussing with Grant (1) what the second stage of a capital trial was about, (2) the potential role and importance of family testimony in a capital trial, or (3) the fact that family members could be important sources of information in a capital trial, even if they did not testify.

¶ 15 If trial counsel had made reasonable efforts to locate and interview members of Grant's family and then decided not to present that testimony (*i.e.*, after first determining what that testimony was likely to be), a decision not to present the testimony could possibly have been a reasonable trial strategy.[17] Yet under the circumstances of this case, trial counsel could not have reasonably decided that testimony from members of Grant's family would not be helpful, unless he had first located and interviewed at least some of them.[18] Consequently, I conclude that defense counsel did not provide adequate assistance of counsel in regard to investigating and presenting mitigating evidence and that Grant has satisfied the "performance" prong of the test for second-stage ineffective assistance.

¶ 16 The closer question, in my opinion, is the issue of prejudice.[19] In order to obtain relief Grant must show that there is a "reasonable probability" that if trial counsel had presented the omitted mitigating evidence at trial, the jury "would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." [20] In making this prejudice determination, the newly proffered mitigating evidence must be considered along with the mitigating evidence that was presented and then weighed against the aggravating evidence that was presented.[21]

¶ 17 Although the district court emphasized that it hesitated to predict what a jury would do in any particular case, it concluded that Grant had not established prejudice from the failure to present the family testimony in his case. Specifically, the district court found (1) that the family testimony was "cumulative," (2) that it "would have had no positive effect on the jury," and (3) that it "would have had no effect on the jury's sentencing determination as the evidence of the three aggravating circumstances was overwhelming." After thoroughly reviewing the evidence presented by members of Grant's family at the evidentiary hearing (summarized below), I conclude that the district court's findings in this regard are not supported by the record.[22]

17. Trial counsel testified that he chose not to call any of Grant's family members to testify because Grant had been incarcerated continuously since he was 19 years old and had little contact with his family during this time period. Counsel concluded that any claims of enduring love by Grant's family members could appear insincere and would be vulnerable on cross-examination. Yet counsel does not appear to have considered or fully appreciated the fact that testimony from family members other than statements of affection for the defendant can be relevant and even critical to the second stage of a capital trial. In particular, counsel does not appear to have considered the potential value that testimony from members of Grant's family could have had in helping the jury understand Grant's background and the difficult circumstances in which he grew up. Furthermore, counsel does not appear to have considered the fact that a lack of continuing family support could potentially be a mitigating circumstance in itself, or the fact that most of Grant's family lived far from the place where he was incarcerated, which would have helped explain why family members did not visit more often. *See Williams*, 529 U.S. at 396, 120 S.Ct. 1495 (finding that counsel's failure to present mitigating evidence regarding defendant's childhood and family history, borderline retardation, and good behavior in prison was "not justified by a tactical decision to focus on [defendant's] voluntary confession").

18. *See Mayes v. Gibson*, 210 F.3d 1284, 1289–90 (10th Cir.2000) (failure to present mitigating evidence from members of defendant's family could not be justified as reasonable strategic decision where counsel never contacted potential witnesses: "Without inquiring into what the witnesses might say, counsel had no basis for deciding their testimony would be inconsistent with his defense theory."), *cert. denied*, 531 U.S. 1020, 121 S.Ct. 586, 148 L.Ed.2d 501 (2000).

19. Surprisingly, today's majority opinion focuses all of its analysis on the performance prong of Grant's ineffective assistance claim, addressing the prejudice claim with only the concluding (and conclusory) statement that "[e]ven if he had shown deficient performance, Grant could not show that he was prejudiced by the failure to present this evidence."

20. *See Strickland*, 466 U.S. at 695, 104 S.Ct. 2052; *Brown v. State*, 1997 OK CR 1, 933 P.2d 316, 322.

21. *See Williams*, 529 U.S. at 397–98, 120 S.Ct. 1495.

22. It should be noted that although the district court described the family testimony as "rehearsed," the court did not question the believability of the numerous statements of fact contained within this testimony, particularly those about Grant's childhood and family history. It

¶ 18 The family members painted a rather depressing picture of the circumstances into which Grant was born and in which he grew up. John Marion Grant was the sixth of nine children and the last fathered by his mother's former husband, Walter Grant.[23] Walter left the family home in Ada, Oklahoma approximately one month before John was born, leaving Ruth with six children to raise on her own. Walter moved to Los Angeles and never provided any financial support to Ruth or the children. Although the two oldest brothers eventually went to live with Walter in Los Angeles, Grant was left in Oklahoma and had very little contact with his father while he was growing up.

¶ 19 During the three years following Walter's departure and Grant's birth, Ruth had three more children (Andrea, Gregory, and O.C.), the last of which was named after their father, O.C. Frazier. O.C. Frazier never lived in Ruth's home with the children, and John never experienced having a male role model in the family home. Instead, the two oldest sisters in the family were expected to play very substantial roles in running the home and raising and disciplining the younger children, including Grant, even while they were still children themselves.

¶ 20 Ruth's only sources of income to support her large family were Aid to Dependent Children and some part-time work cleaning people's homes. LaRonda described their family as "dirt poor, extremely poor." The first family home in Ada had only three rooms and no indoor plumbing, and the family did not own a car. When Grant was approximately five years old, the family moved to Oklahoma City, where they lived next door to Ruth's brother, Clayton Black. Black lived across the street from some apartment buildings that were known as "the projects," and Ruth and the children eventually moved into these apartments. Family members testified that things got even worse in the new neighborhood, which was poor, tough, crime-ridden, run down, and dangerous, particularly in the projects. In 1979, Ruth and the children who were still in the home moved to Portland, Oregon to escape the neighborhood. Grant was unable to go with the family, however, because he was confined to a juvenile facility at the time.

¶ 21 The family members described Grant as being "sweet," "loving," "quiet," "sensitive," and "gentle" when he was a child. He loved animals and pets, especially dogs. Some of Grant's sisters testified that he did not get much attention from their mother and that he needed more love than he got. Many of the family members remembered Grant crying a lot as a child. Ruth noted that Grant first started having problems and getting into trouble when the city started busing the children to schools outside the neighborhood. Some of Grant's siblings testified that when Grant first started stealing as an adolescent, he was stealing things like clothing and shoes for the younger children in the family.

¶ 22 Grant's younger siblings testified that he was very protective of them and that he would come to the aid of his younger brothers when older boys in the neighborhood threatened them or tried to fight them. Gregory testified that Grant gave him "quite a bit of advice growing up" and that Grant attempted to steer him away from some of the "badder guys" in the neighborhood. He stated that even though Grant did not follow his own good advice, "he pretty much wanted to make sure that the people who were younger or his beloved brothers didn't get into the type of lifestyle he got into." Andrea testified that Grant was her "favorite brother" and that they were very close as children. O.C. likewise described Grant as a "cool brother" who was always there for him and who helped him out a lot.

¶ 23 LaRonda testified that Grant once helped her escape from an abusive boyfriend

should likewise be noted that within the State's "Proposed Findings of Fact and Conclusions of Law," which was filed with the district court after the evidentiary hearing, the State proposed that the court find as "facts" numerous specific statements made by members of Grant's family about his background, childhood, and character. The State's proposed findings nowhere suggest that the family testimony regarding Grant's childhood and background was not credible.

23. The children born to Ruth and Walter Grant, in the order of their birth, were Kenneth, Ronnie, LaRonda, Ruth Ann, Norman, and John.

and that she was very touched by the concern he showed for her and her children at that time. Gregory testified that Grant always loved small children, particularly his nieces and nephews. And all of the family members testified that Grant was never violent or verbally abusive within the family, even as an adolescent.

¶ 24 The family members also testified that they stilled loved Grant and that they would like the opportunity to maintain or renew their relationships with him. Some expressed regret about their failure to provide Grant with more support. All of the family members testified that if they had been given the opportunity to testify at Grant's trial, they would have asked the jury to spare his life.

¶ 25 The exact meaning of the district court's finding that the family testimony was "cumulative" is unclear. To the extent that the district court was finding that this testimony was cumulative in relation to the evidence put on during the second stage of Grant's trial, this finding is clearly contradicted by the record in this case. The only testimony relating to Grant's childhood and family life that was put on during the second stage of his trial was his own testimony that he had five brothers and three sisters, among which he was "somewhere in between." Grant also acknowledged that he was in a number of juvenile institutions during his teen years and that he left home at the age of seventeen. Grant's minimal description of the number of children in his family and some of his placements as a teenager certainly does not make the vast array of mitigating evidence presented by members of his family merely "cumulative." [24] Furthermore, to the extent that the district court was finding that the family testimony was cumulative in relation to itself (because many of the family members testified in the same way), such a finding could not justify trial counsel's failure to present testimony from any of the family members, but would suggest only that he did not need testimony from all of them.

¶ 26 I likewise conclude that the district court's findings that the family testimony would have had "no positive effect on the jury" and also "no effect" on its ultimate sentencing determination were erroneous and unreasonable. As the district court itself conceded, predicting what would and would not have mattered to a jury is necessarily a dubious and highly imprecise exercise. The district court refuses to countenance even the possibility that the extensive information provided by Grant's family about his difficult and deprived childhood, his personality and behavior within the family, some of the circumstances surrounding his initial delinquent behavior, some of his positive qualities, *etc.* (along with the pleas for mercy on their son, brother, and nephew), could have touched the hearts of one or more jurors to spare Grant's life. To me, this seems to deny the possibility for human compassion and mercy, even in the context of the "overwhelming" aggravating circumstances in the current case. I find the omitted mitigating evidence to be substantial and powerful, and I believe that one or more jurors could have been affected by it as well.

¶ 27 Even if this Court could feel somewhat confident in making a judgment (as we are here obligated to do) about whether a jury would care about Grant's background and deprived childhood, I do not understand why we would choose to err on the side of sending a man more quickly to his death, based upon speculation about what a hypothetical jury would do, rather than allow an actual jury to make that determination, equipped with all of the information that should rightfully be put before it. I conclude that Grant has established that there is a reasonable probability that at least one juror at his trial would have been affected by the omitted family evidence, so as not to vote for the death penalty in his case. Hence I find that the failure of defense counsel to investigate and present mitigating evidence from members of Grant's family constituted constitutionally ineffective assistance of counsel and that Grant was prejudiced by this fail-

24. Today's majority opinion states that "[t]he testimony Grant now claims his attorney was ineffective for not presenting would have repeated Grant's own account of his childhood." Because counting one's siblings cannot be reasonably construed as providing an account of one's "childhood," I find this statement to be ridiculous and patently false.

ure. This case should be remanded for a resentencing proceeding on this basis, and I dissent from the majority's refusal to do so.

¶ 28 The critical importance of the jury's decision about whether to spare the life of a capital defendant or sentence him to death is also at the heart of another issue upon which I dissent from today's majority opinion. In his first proposition of error, Grant challenges the trial court's denial of his for-cause challenges of prospective jurors Gee and Martin, based upon their unwillingness to consider one or both of the "non-death" sentencing options under Oklahoma law (*i.e.,* life and life without parole). Grant maintains that the court's failure to excuse these jurors for cause necessitated their removal through peremptory challenges, thereby prejudicially denying him the use of two of his nine statutory peremptory challenges.[25]

¶ 29 It is important to understand that Grant does not complain that a juror who was strongly biased toward the death penalty was allowed to serve in his case. Rather, he complains that his for-cause challenges of Gee and Martin were wrongfully denied, thereby forcing him to use two of his peremptory challenges to remove these persons from the jury.[26] Because the loss of a peremptory challenge due to the need to "correct" a trial court's improper denial of a for-cause challenge is not itself a constitutional violation,[27] Grant is only entitled to relief if he can show that his for-cause challenge of either Gee or Martin was wrongly denied *and* that the necessity of using a peremptory challenge to strike that juror prevented him from removing another "unacceptable" or "undesirable" juror from his panel.[28]

¶ 30 Grant properly preserved this claim at trial by asserting that the denials of his for-cause challenges of Gee and Martin were improper, using all nine of his peremptory challenges, requesting additional peremptory challenges, and specifically naming a juror (juror Hargrave) that he considered undesirable but whom he was unable to remove due to the necessity of using peremptory challenges on both Gee and Martin.[29] Today's majority opinion does not dispute that Grant properly preserved this claim.

¶ 31 The majority opinion does assert, however, that Grant "has not shown that he was forced, over objection, to keep an unacceptable juror" and then concludes that it "need not decide" the issue of whether the trial court abused its discretion in failing to remove juror Gee.[30] In effect, the majority

25. *See* 22 O.S.1991, § 655 (both parties entitled to nine peremptory challenges in first-degree murder cases).

26. Oklahoma law requires a party to "cure" a wrongful denial of a for-cause challenge through the use of a peremptory challenge. *See Ross v. Oklahoma,* 487 U.S. 81, 89, 108 S.Ct. 2273, 101 L.Ed.2d 80 (1988) (recognizing "long settled principle of Oklahoma law that a defendant who disagrees with the trial court's ruling on a for-cause challenge must, in order to preserve the claim ..., exercise a peremptory challenge to remove the juror") (citing cases).

27. *See id.* at 88 ("[W]e reject the notion that the loss of a peremptory challenge constitutes a violation of the constitutional right to an impartial jury."); *id.* at 89 ("[T]he 'right' to peremptory challenges is 'denied or impaired' only if the defendant does not receive that which state law provides.").

28. *See Hawkins v. State,* 1986 OK CR 58, 717 P.2d 1156, 1158 ("The long standing rule in Oklahoma is that an improper denial of a challenge for cause will not be prejudicial unless it can be affirmatively shown in the record that the erroneous ruling reduced the number of the appellant's peremptory challenges to his prejudice.... In order to show prejudice, the appellant must demonstrate that he was forced, over objection, to keep an unacceptable juror.") (citations omitted); *Thompson v. State,* 1974 OK CR 15, 519 P.2d 538, 541 (reversing conviction where defendant had to use peremptory challenge to remove juror who should have been removed for cause "and was thereby precluded from removing a prospective juror from the panel, whom he considered to be undesirable to his position"); *see also Warner v. State,* 2001 OK CR 11, 29 P.3d 569, 573–74 (quoting *Hawkins*); *Powell v. State,* 1995 OK CR 37, 906 P.2d 765, 772, *cert. denied,* 517 U.S. 1144, 116 S.Ct. 1438, 134 L.Ed.2d 560 (1996); *Brown v. State,* 1987 OK CR 181, 743 P.2d 133, 139.

29. *See Salazar v. State,* 1996 OK CR 25, 919 P.2d 1120, 1128; *Cannon v. State,* 1995 OK CR 45, 904 P.2d 89, 98, *cert. denied,* 516 U.S. 1176, 116 S.Ct. 1272, 134 L.Ed.2d 219 (1996); *Patton v. State,* 1998 OK CR 66, 973 P.2d 270, 283, *cert. denied,* 528 U.S. 939, 120 S.Ct. 347, 145 L.Ed.2d 271 (1999).

30. I agree with the majority opinion that whether juror Gee should have been struck for cause is the "harder issue," since juror Martin, unlike

opinion finds that because Grant has not shown "prejudice" from the district court's refusal to remove Gee for cause, it need not decide whether the district court abused its discretion in refusing to strike Gee. The majority opinion reflects a fundamental misunderstanding of the applicable legal standards for evaluating Grant's claim, as well as the nature and purpose of peremptory challenges within a criminal trial.

¶ 32 This Court has repeatedly held that "prejudice" in this context is established by showing that the defendant was injured by the trial court's improper denial of his for-cause challenge, because he was forced to use a peremptory challenge to get rid of the biased juror, which would otherwise have been available to strike another potential juror that the defendant considered "unacceptable" or "undesirable."[31] The central purpose of peremptory challenges is to allow parties to remove from the jury persons that they do not believe will be sympathetic to their position, even though the potential jurors do not meet the stringent legal standards of being "biased" and thereby removable for cause. The majority opinion notes that "Grant never sought to have Hargrave removed for cause." This statement is accurate, but irrelevant.

¶ 33 Grant's claim is not that Hargrave was removable for cause, but that she was an "undesirable juror" that he could have removed with the last of his nine peremptory challenges, if he had not been forced to use a peremptory challenge to remove juror Gee (who should have been struck for cause).[32] It is also irrelevant that Grant chose to use his available peremptory challenges to strike jurors other than Hargrave and that he likewise did not challenge these other potential jurors for cause. Again, the majority seems to forget that the heart of Grant's claim is that he was denied the use of all of his statutory peremptory challenges, the purpose of which is to allow him to remove persons from the jury that seem "undesirable," but who would *not* otherwise be removable for cause.

¶ 34 It does not matter that Grant chose to strike persons other than Hargrave; nor does it matter that none of the persons that he struck through peremptory challenges (with the exception of juror Gee) were removable for cause. We have never previous-

juror Gee, was ultimately quite clear that he would consider all three sentencing options (despite his initial statements that he would not consider any sentence less than life without parole for someone who committed an intentional murder). Because the loss of even one statutory peremptory challenge can entitle a defendant to relief, however, Grant only needs to show that juror Gee should have been struck for cause. Thus I will not further address Grant's claim in regard to Martin.

31. *See* cases cited *supra* in note 28. Today's majority opinion initially articulates Grant's claim about the prejudicial loss of a peremptory challenge correctly, but later confuses it with an entirely different claim (which Grant does not make) that the jury that actually decided his case was biased, because it contained one or more persons that should have been struck for cause. Hence today's majority opinion incorrectly states that Grant is required to show "that the jury sitting in the trial was not impartial" and later concludes that Grant is not entitled to relief because "he has not shown that the jury was prejudiced against him."

The opinion cites *Abshier v. State,* 2001 OK CR 13, 28 P.3d 579, *cert. denied,* 535 U.S. 991, 122 S.Ct. 1548, 152 L.Ed.2d 472 (2002), in support of this purported requirement. Yet in *Abshier,* unlike in the current case, the court majority affirmatively found that the challenged juror was not removable for cause. *Id.* at 603. Today's majority neglects to decide whether Gee should have been removed for cause. In addition, because the *Abshier* majority found that the trial court correctly denied the defendant's challenge for cause, the opinion's additional analysis about whether the defendant could have been "prejudiced" by the trial court's action is mere dicta. *Id.* at 603–04. I dissented from *Abshier* and specifically noted the error within the opinion's prejudice analysis. *See id.* at 617 (Chapel, J., dissenting).

The dicta of *Abshier* did not change the "long standing rule in Oklahoma," as articulated in *Hawkins* and its progeny, for establishing prejudice in this context. *See* cases cited *supra* in note 28. Grant is not required to show that the jury that decided his case was not impartial.

32. During voir dire juror Hargrave initially stated that she would automatically give the death penalty if she found that a person had committed first-degree murder. Although she was later rehabilitated, her initial "untutored" statements surely were enough to make her undesirable/unacceptable from Grant's perspective. The majority opinion does not deny that Hargrave was an "undesirable" or "unacceptable" juror from Grant's perspective.

ly required that a claimant in this context show anything more than that he used up all of his peremptory challenges and that he was still left with an "undesirable" juror; and we have never questioned a defendant's right to choose to strike one undesirable juror over another.[33] To demand some further showing to establish "prejudice" in this context is unfair, unreasonable, and corruptive of the very concept of peremptory challenges.

¶ 35 Although the majority fails to determine whether the trial court abused its discretion in failing to strike juror Gee for cause, I address the issue herein in order to show that Grant should have been granted a resentencing on this jury selection claim, as well as on the ineffective assistance claim addressed above.

¶ 36 The standard for evaluating whether a potential capital juror should be excused for cause based upon the juror's views on punishment is "whether the juror's views would 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.' "[34] It is well established that a juror who will automatically vote for the death penalty should be excused for cause.[35] Yet even jurors who do not clearly state that they will "automatically" vote for the death penalty may be biased in regard to sentencing, such that they should not be allowed to serve, and such bias need not be established with "unmistakable clarity."[36] As the Supreme Court has noted, "many veniremen simply cannot be asked enough questions to reach the point where their bias has been made 'unmistakably clear.' "[37] Our Court has likewise recently reaffirmed that " 'all doubts regarding juror impartiality must be resolved in favor of the accused,' " and that this " 'rule is intended to apply to both the trial courts and the Court of Criminal Appeals.' "[38]

¶ 37 Grant sought and was granted individual sequestered voir dire on the issue of potential jurors' ability to consider all three sentencing options for first-degree murder, and all of the prospective jurors were questioned extensively regarding their views on punishment. The key questioning of Gee (and many other prospective jurors) centered around the issue of whether he believed that all premeditated murder deserved the death penalty. During his initial questioning, Gee indicated at least six times that, in his opinion, anyone who commits premeditated murder should get the death penalty. On the other hand, Gee also maintained that he would not "automatically" give the death penalty for first-degree murder and that he would consider the sentences of life imprisonment and life without parole. Grant challenged Gee for cause at the conclusion of his initial questioning. The trial court denied this challenge, finding that Gee seemed confused.

¶ 38 During subsequent questioning the prosecutor explained that premeditation sufficient to constitute first-degree murder can be formed in an instant and summarized the type of aggravating and mitigating evidence that could be put on during the sentencing stage of a capital trial. After Gee then re-

33. *See, e.g., Thompson*, 519 P.2d at 539–41; *Salazar*, 919 P.2d at 1128; *Patton*, 973 P.2d at 283.

34. *See Wainwright v. Witt*, 469 U.S. 412, 424, 105 S.Ct. 844, 83 L.Ed.2d 841 (1985) (quoting *Adams v. Texas*, 448 U.S. 38, 45, 100 S.Ct. 2521, 65 L.Ed.2d 581 (1980)); *see also Warner*, 29 P.3d at 573 (quoting *Wainwright*); *Williams v. State*, 2001 OK CR 9, 22 P.3d 702, 709, *cert denied*, — U.S. ——, 122 S.Ct. 836, 151 L.Ed.2d 716 (2002).

35. *See Morgan v. Illinois*, 504 U.S. 719, 729, 112 S.Ct. 2222, 119 L.Ed.2d 492 (1992) (juror that will automatically give death sentence is not impartial, and death sentence imposed by jury containing even one such juror cannot be executed); *see also Cannon*, 904 P.2d at 97 ("A criminal defendant has a right to remove for cause any juror who would automatically vote for the death penalty on conviction regardless of mitigating evidence.").

36. *See Wainwright*, 469 U.S. at 424, 105 S.Ct. 844; *see also Warner*, 29 P.3d at 573 (quoting *Wainwright*).

37. *See Wainwright*, 469 U.S. at 425, 105 S.Ct. 844. Our Court has recently noted that jurors must be "willing to go into the trial with no preconceived notions regarding the appropriate penalty, death or life," and that jurors with a "strong bias towards the death penalty" are not impartial and should be excused for cause. *See Warner*, 29 P.3d at 573.

38. *See Warner*, 29 P.3d at 572 (quoting *Hawkins*, 717 P.2d at 1158).

asserted that he would follow the court's instructions and consider all three sentencing options, the State maintained that Gee was "rehabilitated" and that he had simply been confused.

¶ 39 Defense counsel then began re-questioning Gee, and the following exchange occurred:

Counsel: Let's pretend that you have already found Mr. Grant guilty. You heard all of the evidence and you found him guilty. You are convinced beyond a reasonable doubt that he's guilty of First Degree Murder, okay?

Gee: (Nodded head.)

Counsel: You got that?

Gee: Uh-huh.

Counsel: And part of that is that the State, part of that idea is that the State has proven to you that he intended to kill this woman, that he either thought about it for days or he just thought about it and did it, but he intended to kill this woman for no good reason. Okay?

Gee: (Nodded head.)

Counsel: Without hearing another thing, would you automatically give him the death penalty?

Gee: Now, I am going to have to think about.

Counsel: Okay. Think about it.

Gee: I'll have to think about that one.

Counsel: Think about it and give me your answer.

Gee: Yes.

Counsel: Yes you would?

Gee: Yes.

Counsel: Now, what if the Judge gave you other instructions that that happened—

Gee: I would go by his instructions.

From that point on Gee maintained that he would follow the Court's instructions, and defense counsel's questioning concluded as follows:

Counsel: Okay. So even though you were convinced that Mr. Grant here murdered somebody and intended to do that, it was not an accident or anything, intended to kill them and killed them, you would consider, you would follow the Court's instructions and consider giving him something less than the death penalty?

Gee: If the Court ordered, if the Court has asked us to do that.

¶ 40 Defense counsel renewed his challenge for cause, but the trial court denied it, stating, "And that request will be denied. As I stated when we started this re-questioning[,] I think he was confused and I think that he cleared that up. Now [he] fully understands what he's talking about." Gee then volunteered that he was "nervous" and that he "just lived out in the country too long, I guess." When the court asked if he felt like he now understood, Gee answered, "I think I understand it now. I got confused there for a while and I think I understand it. I'll go in there and weigh both sides and give it my best shot. That's all I can do." The trial court agreed, and Gee was returned to the jury box.

¶ 41 Whether Gee was biased in favor of the death penalty such that the district court should have struck him for cause is a close call. Even though Gee consistently maintained that he would follow the trial court's instructions and consider all three sentencing options, he also repeatedly and emphatically stated that, in his opinion, anyone who committed premeditated/intentional murder should get the death penalty. In *Morgan v. Illinois,*[39] the Supreme Court discussed the problem of prospective jurors who sincerely intend to follow whatever instructions the court gives them, but who likewise sincerely believe that anyone who commits first-degree murder should get the death penalty: "It may be that a juror could, in good conscience, swear to uphold the law and yet be unaware that maintaining such dogmatic beliefs about the death penalty would prevent him or her from doing so."[40] The *Morgan* Court recognized that persons who function under this "misconception" should not be al-

39. 504 U.S. 719, 112 S.Ct. 2222, 119 L.Ed.2d 492 (1992).

40. *Id.* at 735, 112 S.Ct. 2222.

lowed to serve.[41]

¶ 42 It appears quite possible that Gee was a juror of this type. He repeatedly admitted that he was confused; and even at the conclusion of his extensive questioning, he does not appear to have understood that his stated belief that the death penalty was the only appropriate penalty for a premeditated murder was inconsistent with his promise to follow whatever the Court ordered the jury to do.

¶ 43 Although the questioning of Gee did not make it "unmistakably clear" that he would be biased in favor of the death penalty, this kind of certainty is not required in this context. I conclude that Gee's repeated assertion that the death penalty is the only appropriate sentence for a premeditated murder should have been adequate to cause the district court to strike Gee for cause. While I acknowledge that the question of whether the district court abused its discretion by refusing to strike Gee is a close call, this Court should abide by its prior holdings that doubts regarding juror impartiality should be resolved in favor of the accused. There was good reason to doubt Gee's impartiality regarding sentencing, and Grant should not have been forced to use a peremptory challenge to keep Gee off his jury.

¶ 44 Thus Grant has established (1) that he was required to use a peremptory challenge to remove a juror who should have been struck for cause, (2) that he used all of his remaining peremptory challenges, and (3) that an undesirable juror was left on his jury panel. Consequently, Grant is entitled to relief on his jury selection claim, as well as on the ineffective assistance claim addressed above. Because both of these claims relate only to the jury's sentencing determination, however, they do not affect the legitimacy of Grant's first-degree murder conviction.[42] Although I agree with today's majority that Grant's murder conviction should be affirmed, I dissent from the Court's opinion and its refusal to provide Grant with a new capital sentencing proceeding. I conclude that Grant has established that he is entitled to sentencing relief based upon both his second-stage ineffective assistance claim and his jury selection claim, both individually and through their cumulative effect upon the sentencing stage of his capital trial.

41. *Id.* at 735–36, 112 S.Ct. 2222.

42. Grant's challenge to Gee only involved bias in regard to the penalty stage of trial. Hence the remedy for the district court's failure to remove Gee for cause is to remand the case for a new sentencing proceeding. *See Salazar,* 919 P.2d at 1127–20.

CERTIFICATION STUDY

RE: GRANT, John Marion — REPORT BY: Vaneria Rogers

COURT CASE NO: JF 78-422 — REPORT DATE: 4-27-78

AGE: 16 years, 11 months — HEARING DATE: 5-3-78

I. The record and previous history of the juvenile, including previous contacts with community agencies, law enforcement agencies, schools, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.

A. 2-15-73 - Grand Larceny and Malicious Destruction of Property.
10-18-73 - Unauthorized Use of a Motor Vehicle.
1-13-75 - Burglary In The Second Degree.
9-29-75 - Burglary In The Second Degree.
10-21-75 - Burglary In The Second Degree.

B. John has no previous adult record.

C. This young man and his family have been on welfare since 1961. At the age of 8 or 9 he was involved with the Salvation Army and went to their summer camp. On 12-2-73, John was placed in Missionary Cosmopolitan Home in Wewoka, Oklahoma.

D. According to the Uniform Juvenile Information System there is no record from any other county on him. His Juvenile Parole officer is Mr. Ray Gibson assigned in January of this year, he will be present at the hearing.

E. John is not in school. He hasn't been in school since his release from Helena Training School on 11-19-77. He was first expelled from Hoover Middle School in the 6th grade.

II. The juveniles home situation, environmental situation, emotional attitude and pattern of living.

A. (See attached report.)

B. John was living in the home with his mother and 4 other siblings at the time of the alledged offense.

C. This family resides in a low income, 3 bedroom apartment housing project. This family has been there since 1975. The rent is $135.00 but government supplemented. The family only pays $20.00 per month. In this project, there is little hope, drugs, lack of motivation and lots of unemployed people. The project is located in the lower income area at the end of a middle income area.

John's father, Walter Grant, 54 years, left his mother before he was born. His father only saw him about twice, at which time he was very young. There has been no contact in his pre-teen and adolesant years. Father believed to be residing in

Los Angeles, California, at this time.

Mrs. Ruth Lee Grant (Mother), is 53 years old and the mother of nine siblings. Five including John are still in the home plus a 10 month old grandchild. She reports that John is no trouble at home, just no motivation.

The only time, since visiting with John at Berry House, this counselor observed a soft tender feeling in John was the discussion of his young niece in the home. He was somewhat embarrassed that his true feelings came out. In this counselor's opinion, John is the only child removed from his home at a early age, institutionalized, and he has felt this very deeply. He however puts on a protective sheild by being passive aggressive to courts, laws, and social workers. This young man has had no good male figure in his life to pattern after. His hobbies are mechanics, electronics, and football. John wants electronic training.

D. John is not employed. His Juvenile Parole counselor and he were in the process of obtaining employment at the time of his incarceration.

E. He is the 4th boy and the sixth child born to Mr. and Mrs. Walter Grant.

F. This young man has never been on his own.

G. John worked at Quail Creek Golf and Country Club before his last committal to DISRS, (5-17-77). At which time he was offered a job on his return. However he didn't contact them on his return home.

H. John has never supported himself.

4-27-78/lw

OCJ 0005

October 29, 2014

Oklahoma Pardon and Parole Board
Attn: Dr. Marc Dreyer
First National Center
120 N. Robinson Avenue, Suite 900W
Oklahoma City, OK 73102

RE: Clemency Hearing for John M. Grant, DOC #102816, February 2015

Dear Dr. Dreyer:

My name is Laronda J. Hovis; I am John Grant's eldest sister of 58 years old, currently living in Portland, Oregon and am writing to plead for the life of my little brother.

He is guilty of the crime of murder, this I cannot deny. When I received this information so long ago, I was struck asunder and had to call my late husband (who was at work at the time) to come home because I needed his support after receiving such awful news concerning a close family member. I remember saying at the time, no one in our family has ever murdered anyone (as far as we knew).

The reason I'm writing and asking for leniency is due to the fact that he has been imprisoned for most of his life in form or another. John has never had a full and loving life as most of his siblings have had to enjoy and this breaks my heart.

I'm sure you have heard countless stories of sad upbringings from people on death row, which doesn't excuse their crime, but may have bearing on certain circumstances leading to his original conviction of armed robber so many years ago. Being the eldest child at home, having six siblings to take care of, due to the fact we had only one parent, I had the responsibility of seeing after the younger children. I wish now I had given him more attention, of course a child doesn't understand that at the time, looking back, I missed several opportunities to help guide him through life. May God forgive me.

We weren't shown any love, I didn't hear my mother say she loved me until I was a grown woman and then it was too late. We were not given any attention; we grew up on our own accord, like weeds in a desolate field, not tended to or cared about. No one, no one looked out for us. John it seems received the worse punishment for the slightest offenses, sent to a separate school than we were, and I believe neglect of this sort leads a person not to care for himself or others. Oh, if I had only known what would happen, I would gladly go back and redo our lives: be a better sister to all my siblings. But what could a child do when she didn't know what a healthy family looked like? Today, I would gladly give my life for him, if the law would allow it to happen.

I don't excuse what he did to another human being, he must have been very low to do such a thing and I feel deeply for the family of the victim. I'm sure they will never forget what happened to their loved one as with John's family.

If his execution is granted, he will be the third brother I have lost within the last five years, I'm already the eldest now of nine children and don't relish the honor. God forgive me, we had ignorant parents who I did not love because they were selfish and as many parents do, seem to think only of themselves and their immediate pleasures. I've tried to explain to my children regarding my grandchildren that you don't have a life of your own until they are old enough to take care of themselves. It hurts to see some of them not listening and I use John as an example of not wanting any of my children following this example.

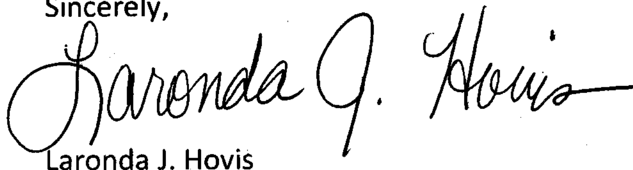
I believe our mother, in her later years, regretted the way she treated John, as she continued to work herself to the death to support him financially, for her sake I am glad she is no longer alive to witness his death or the deaths of her two older sons. Even his own biological father denied his relationship to John until his death and for that I cannot forgive his attitude towards his own child and son. Because of our parents, my children were raised differently than we were. I saw what could happen to a child that wasn't praised, kissed, hugged or worried over. I wasn't the best parent and made many mistakes (when I think on these mistakes my heart breaks), therefore I have asked the Lord to forgive me for not loving my parents as he has asked us to do.

On the radio last night (NPR), a Dr. Deb Shopshire (her name is surely spelled wrong), from Oklahoma and the director for children in foster care (can't remember her exact title, I was in bed when this program came on) was speaking of troubled youth needing a safe environment. While listening to her, the foster mother and the teenage boy talking, I wondered what would have become of John if a system was in place for him when he needed it. I wonder if he would've been better off living with good foster parents. Thank God there are people like them in the world to help children from abusive and troubled homes today.

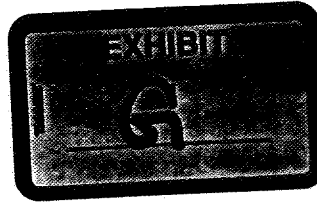
If clemency will not be granted to the least of these, I pray John will find Christ and that his soul will finally have peace at last.

Thank you for listening to my plea, I leave it to the parole board and God.

Sincerely,



Laronda J. Hovis



STATE OF OREGON)
) ss
COUNTY OF CLACKAMAS)

AFFIDAVIT OF ANDREA GRANT

I, Andrea Grant, being of lawful age and sound mind do swear and state the following:

1. My name is Andrea Grant, and I currently reside at 13455 S.E. Oakfield # 17C Milwaukee, Oregon 97222. I have personal knowledge of the facts stated in this affidavit.

2. John Marion Grant, the defendant in Osage County Case No. CF-99-28, is my half- brother. His conviction and death sentence from the trial of that case is now on appeal in the Oklahoma Court of Criminal Appeals in Case NO. D. 2000-0653.

3. I am the seventh of nine children born of my mother Ruth L. Grant. I am the first born of O.C. Frazier's children. My birth date is April 13, 1962. I was born one day and one year after my brother John Marion Grant. My mother had a baby every year for five years from 1960 to 1965. My older siblings are Kenneth, Ronnie, LaRonda, Ruth Ann, Norman, and John Grant. My younger siblings are Gregory and O.C. Frazier. I moved to Oregon with my mother and younger siblings when in 1979.

4. My brother John was the last child born to Walter and Ruth Grant. Walter Grant was never around while John was growing up and my mother was working to support us. My brother Norman, born one year before John, was favored because he has light skin. John was born and then myself. I always felt because I was female and the first born of O.C. Frazier this helped me get a little more attention in the family. John did not receive the care, attention or love he needed. He got whipped a lot and talked down to. His friends were delinquent, and their parents were not much better. Despite these troubles, he was kind and loving toward me.

5. Growing up, John was my favorite brother. He always tried to take care of the younger children. We did not have the basic items such as shoes and food. John would steal to provide necessities for us. My mother would never notice where the items came from. She was too busy. My mother had too many children so close together. John was soon arrested for stealing food and was sent away to detention centers. I missed him deeply when he was sent away to detention centers.

6. Although my brother was arrested for stealing, he was never a violent person. He was a good person, a favorite brother, who took it upon himself to meet my basic needs when he was too young to hold that kind of responsibility. There was no adult present to take care of my brother's needs. He wanted to play football and be like a regular kid, but, he was forced to take on too many responsibilities.

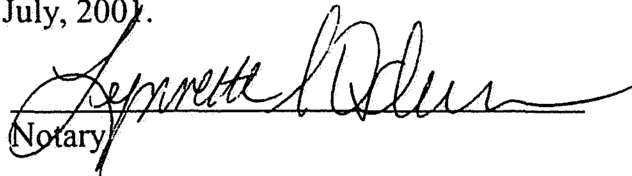
7 I do not want my brother to be executed. I did not testify at his trial because I was not aware of the proceedings. Nobody interviewed me or told me that the trial occurred or asked me to attend. I would like the opportunity to tell the court about my older brother . I would like to be there for him because he was always there for me. I would like to ask for mercy from the court and the victim's family.

Further Affiant Sayeth Not.

Dated this 23rd day of July, 2001.

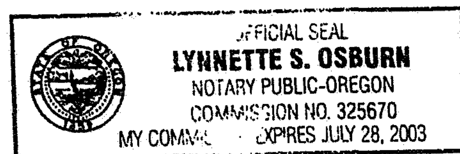
ANDREA GRANT, AFFIANT

Subscribed and sworn to me on this 23rd day of July, 2001.



Notary

My Commission expires: 07/28/03



AFFIDAVIT OF MARVIN SMITH

STATE OF OKLAHOMA	)	
	)	**ss.**
COUNTY OF OKLAHOMA	)	

Before me, the undersigned Notary, personally appeared Marvin Smith, known to me of lawful age, who being by me first duly sworn, upon his oath, deposes and says:

1. My name is Marvin Smith. John Grant is my cousin. His mother Ruth and my mother Rosie Smith are half sisters. John is a two years older than I am. We grew up in the same neighborhood, same apartment complex in Oklahoma City. It was an all black environment.

2. Our families did not have a lot of money. We all committed petty thefts to get money or items for our families because we did not have much. We would break into change machines to get the change.

3. John got into trouble and was sent to boys homes. Before he went to the boys homes John was a good kid. He was always smiling and a good person. He didn't bother anybody. After John returned from boys homes he was so different. He put up this tough guy front and was not going to be bullied by anybody. He wasn't afraid to fight anyone. It seemed like he was looking for excitement.

4. I didn't know what was going on with John, but whatever happened to him made him have mental problems. I told him I thought he needed help. John didn't think he did.

5. I have always thought John should have been put on medication to help him with whatever he was dealing with. Medication would have helped him a lot.

6. After the boys homes John was very neat and organized. He liked routine. He had to keep everything clean. He was never looking a mess. His pants and shirts had to be starched.

7. John and I caught a robbery case together. John and I were both adjudicated as adults and were placed in Oklahoma County Jail. John was 17 and I was 15 years old. It was horrible. Other inmates tried to take advantage of us because we were younger. We were babies compared to everybody else. John and I would get jumped and had to fight all the time. The guards would either encourage it or just sit there and watch. If a guy came in on a rape charge, the guards would announce to everyone why he was there, and lock him in with the inmates. The guy didn't last 30 minutes. It was not a safe place to be.

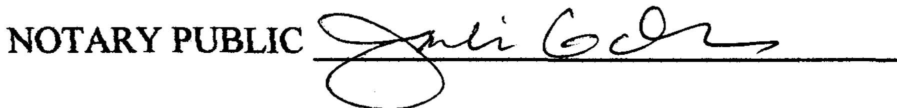
8. I heard on the streets John was having an affair with a corrections officer. I learned later that her name was Gay Carter. I was shocked because this was not like John. John was shy. Ms. Carter must have come on to John for this to happen because I had to set him up with the one girlfriend he ever had, Tracy Mitchell. Once John and Tracy had their first kiss, that was it. John was all about Tracy. John was a one woman man. They didn't break-up, John got locked up.

9. I heard from John's mother and his family about Ms. Carter's death. They told me Ms. Carter had become involved with another inmate and John snapped.

FURTHER AFFIANT SAYETH NOT.

Marvin Smith

Subscribed and sworn to before me this 24th day of November, 2014.

NOTARY PUBLIC 

1587

Name: GRANT (Last) JOHN (First) MARION (Middle) No. IS -B-

Institution: Boley State School For Boys Date Adm. 10-27-75

Birthdate: ~~4-12-61~~ Sex ~~Male~~ Race ~~Black~~ Comit. Co. ~~Oklahoma~~

Birthplace: Ada, Oklahoma Inactive No's.

Last Address: 3109 North Jordan, Oklahoma City, Oklahoma

Members of Household	Name	Birthdate	Rel. to Client
1.	Ruth Grant	42?	Mother
2.	Walter James	Unknown	
3.	Norman Grant	15	Brother
4.	Gregory Grant aka Frazier	11	Brother
5.	O.C. Grant CCU-123741	9	Brother
	Ruth Ann Grant CCU-123742	17	Sister
	Andra Grant CCU-129888	13	Sister

Okla. DISRS Issued 1-70 STATE OFFICE MASTER INDEX CARD SHS-19

SHS-19 STATE OFFICE MASTER INDEX CARD Okla. DISRS Issued 1-70

Case References: Name	Rel.	Case No.
GRANT, Ruth(mo.) C-174010 C-148228		
PR-7505 CCU-172824	Client	IS-H-4007

Transferred To	Last Status	Institution

STATE OF OKLAHOMA
DEPARTMENT OF PUBLIC WELFARE

MONTHLY DETENTION REPORT

Name of Institution BOLEY STATE SCHOOL for BOYS Month DECEMBER 1975

Child's Name and Case Number		Date and Reason for Detention or Separation	Date Released
OL, Rick	IS-B-1607	12-24-75 Fighting	12-29-75
NSON, James	IS-B-1340	12-24-75 Fighting houseparent	1-4-76
OMBS, Aaron	IS-B-1583	12-24-75 Up during bed hours with coat laying out	12-29-75
ON, Victor	IS-B-1617	12-30-75 Stealing	12-29-75
ARD, John	IS-B-1446	12-26-75 Runaway	12- 6-76
IER, Billy	IS-B-1146	12-26-75 Runaway	12- 6-76
, Dennis	IS-B-1614	12-26-75 Constantly disobeying houseparent	12-29-75
T, John	IS-B-1587	12-26-75 Runaway	12-29-75
, Jeffery	IS-B-1598	12-26-75 Runaway	12-29-75
, Donald	IS-B-1569	12-29-75 Non-cooperation with houseparent	1- 1-76
FFORD, Darryl	IS-B-1443	12-29-75 "" ""	1- 1-76
JET, MArk	IS-B-1594	12-29-75 "" ""	1- 1-76
ELINE, Jerry	IS-B-1223	12-31-75 Fighting a smaller boy	1-5-76

John Grant

January 8, 1975
Date Signed

R. L. Doyle
Superintendent

Okla. DPW Issued 1-70

SHS-14

DHS 0015

KC-148228

Name: GRANT, John Marion No. IS-B-

Last First Middle

Institution: Helena State School for Boys Date Adm. 5-17-77

Birthdate: 4-12-61 Sex M Race Black Comit. Co. Okla.

Birthplace: Ada, Okla. Inactive No's.

Last Address: 3103 N. Jordan, Okla. City, Okla. 73111

Members of family Name	Birthdate	Rel. to Client
1. Walter Grant	Age: Unk.	Father
2. Ruth Grant "Alexander"	51	Mother
3. Ken Grant	28	Brother
4. Ronnie Grant	24	Brother
5. LaRonda Grant	21	Sister

OVER--

Okla. DISRS Issued 1-70 STATE OFFICE MASTER INDEX CARD SHS-19

Family (Continued)

	Age	
6. Ruth Ann Grant	19	Sister
7. Norman Grant	17	Brother
8. Angela Frazier	15	Halfsister
9. Gregory Frazier	13	Halfbrother
10. O.C. Frazier	12	Halfbrother

Grant, Laronda (sis) CCU-193394

Transfers: Institution Institution Institution

Grant, O. C. (h-bro) CCU-123741

Cross References: Name Rel. Case No.

Grant, John Marion IS-B-1587 PR-7505 cl. CCU-172824

Grant, Ruth S-174010 mother C-148228

Grant, Ruth Ann sister CCU-123742

Frazier, Andra Jean h-sister CCU-129888

SHS-19 STATE OFFICE MASTER INDEX CARD Okla. DISRS Issued 1-70

STATE OF OKLAHOMA
DEPARTMENT OF INSTITUTIONS, SOCIAL AND REHABILITATIVE SERVICES

MONTHLY DETENTION REPORT

Name of Institution ______________________ Month ______________

Child's Name and Case Number	Date and Reason for Detention or Separation	Date Released
JONES, Pat (3833)	8-23 Ret. AWOL. went from checkout.	Not released
HARVEY, Tracy (3735)	8-24 Ret. AWOL. Went out window of cottage. stole school bus & wheat truck. Had fork that was bent in his room.	Not released
SMITH, Paul Daniel(4050)	8-24 Ret. AWOL. went out window of cottage. Had the tools to open his window & helped steal school bus & wheat truck.	Not released
WILLIAMS, Travis (4067)	8-26 Checked out for school then ran away.	Not released
CISZKOWSKI, Tony (3952)	8-26 Theft of radio	Not released
CLAY, Chris (3921)	8-27 Ret. from checkout with smell of alcohol on his breath.	8-30-77
EVINS, Randy (3624)	8-27 Arguing w/ hs. prt.	8-30-77
LESNEY, Mark (3695)	8-28 Ran away while on checkout	Not released
GRANT, John (4007)	8-28 Lying to Hs. Prt.	8-31-77
HOLLAND, Randy (3692)	8-30 Smoking marijuana	Not released
COLLINS, Joshua (3910)	8-30 Smoking marijuana	Not released
PIKE, James (3995)	8-30 Smoking marijuana	Not released
WALLER, Dennis (3834)	8-30 Ret. parole by burglary	Not released
ODLE, George (4058)	8-30 Ret. AWOL. Ran from dentist trip to Enid.	Not released

Sept. 5, 1977
Date Signed

David M. McCune[signature] R.C.
Superintendent

Okla. DISRS Issued 1-70 SHS-14

About this Gannett News Service special report . . .

GANNETT NEWS SERVICE
1627 K STREET, N.W.
SUITE 1200
WASHINGTON, D.C. 20006
(202) 862-4900

Dear Readers,

Beatings and other abuses of helpless children are more common reading for devotees of Charles Dickens than followers of modern American newspapers. It's a scandal of another age.

But on Feb. 7, 1982, the past suddenly leaped into the present for the citizens of Oklahoma. A series of stories by Gannett News Service brought home the startling fact that state employees were subjecting abandoned, orphaned, emotionally disturbed and delinquent children to a Dickensian kind of terror.

Institutionalized children were beaten, sexually assaulted, and confined for weeks on end in tiny isolation cells. Drug use was rampant and recruitment of young girls for prostitution a fact at one facility.

All of this, over a period of years, went on with the knowledge of high ranking state officials.

Story after story detailed the abuses, basing them on confidential documents from the files of the state's Department of Human Service, a unique governmental monolith that controls more than half the state budget without oversight from the legislature of the governor. But as damning and dramatic as those stories were, the worst was yet to come.

One month after the first series, a second set of stories unfolded, this time exposing even more numbing practices in state institutions for the retarded. Not only were whippings, rapes and assaults on defenseless mental incompetents commonplace, but children died under circumstances labeled clearly suspicious by nationally recognized medical experts consulted by GNS.

The stories are shocking and disconcerting to read, but they tell a tale that carries a lesson for all America. It's the story of a political system so huge and powerful that it could condone such abuse, hide it from the public eye, and still cling to life despite the eventual scandal.

Gannett News Service reporters John Hanchette and Carlton Sherwood and editor Brian Gallagher have followed the story for nine months as this report is published, and the developments have been many.

The juvenile institutions have been largely depopulated, millions of dollars have been spent to upgrade facilities for the retarded, major reform legislation has been passed, the politically titanic Human Services bureaucracy is besieged by myriad state and federal investigations, and the powerful political czar who controlled the institutions has resigned in disgrace.

Both series' and a sampling of what has transpired since are republished here. We hope you will find them enlightening. Additional copies can be obtained from Gannett News Service, 1627 K Street, N.W., Washington D.C. 20006.

Robert A. Dubill
Executive Editor
Gannett News Service

James Geehan
Vice President and General Manager
Gannett News Service

An index to Oklahoma Shame appears on Page 71. . .

AFFIDAVIT

COMMONWEALTH OF MASSACHUSETTS)
) SS.
COUNTY OF BARNSTABLE)

Steven A. Novick, being first duly sworn upon oath, deposes and states as follows:

1. I have been since 1973 and remain a member of the Oklahoma Bar Association, OBA #6723. In my former capacity as an employee of Legal Aid of Western Oklahoma, I investigated and served as lead class counsel in the case of *Terry D., et al. vs. L.E. Rader, et al.*, No. 78-4-T, in the United States District Court for the Western District of Oklahoma (hereafter "*Terry D.*"). I have been asked to prepare this affidavit by lawyers from the Federal Defender's Office to provide a summary of my knowledge of conditions and practices found to exist at Boley State School for Boys and Helena State School for Boys during the investigation and litigation of that case.

2. The *Terry D.* case was a civil rights class action challenge to what proved to be the widespread abuse and mistreatment of children within Oklahoma's juvenile institutions. These institutions included the Boley State School for Boys (hereafter "Boley") and the Helena State School for Boys (hereafter "Helena"). The initial period of investigation of these juvenile institutions spanned from 1976 through the end of 1977. The litigation was filed on January 4, 1978.

3. The investigation principally involved interviews with children who had been confined or who were still confined in these juvenile institutions, interviews with employees of the Oklahoma Department of Institutions, Social and Rehabilitative Services (the predecessor of the Oklahoma Department of Human Services), review of

agency documents secured from these employees, review of juvenile court case files, and the notes of reporters who had interviewed children. In November, 1997, I toured the Boley State School with lawyers from the National Juvenile Law Center (NJLC). The NJLC was a national program providing legal services to children in jails and state institutions. Lawyers from that program had visited dozens of juvenile facilities throughout the country in the course of their work. Following the tour, the NJLC lawyers told me that Boley was among the worst juvenile institutions they had ever seen. In the litigation, much of the information gained in the investigation was corroborated by documents secured through discovery.

4. Solitary confinement was routinely used to punish children for institutional rule infractions at both Boley and Helena. At Boley, solitary confinement was carried out in eight foot by eight foot cells located in one wing of a building. Each cell was furnished only with a metal combination sink/toilet and a mattress on a concrete pad. Cell doors were solid metal with a small window. There was a vertical slit window to the outside that permitted daylight to enter the cell, but the glass was opaque and did not permit a view to the outside. Children were confined in solitary confinement at Boley for at least twenty-three and one-half hours each day. For ½ hour each day, children were supposed to be allowed a period of exercise in the hallway between the cells. Showers were permitted every other day. If children were non-compliant or "acting out" in solitary confinement, they would be denied exercise and showers.

5. Solitary confinement at Helena was carried out in a separate building called Dodge House. Dodge House consisted of twelve cells with six cells flanking either side of a narrow corridor. The cells were very cramped, measuring only five feet

by eight feet in size. Ten of the twelve cells were furnished with a porcelain sink and toilet. Two of the cells had no facilities. Mattresses were placed on the floor. The cell doors were made of solid metal save for a six-inch square window facing the corridor. A narrow vertical window faced the outside, but the glass was opaque and did not permit a view to the outside. Like Boley, confinement was for 23 ½ hours per day with 30 minutes for exercise and a shower. Exercise and showers were denied to youngsters who "acted out" in confinement.

6. As noted, solitary confinement was used principally to punish youngsters for institutional rule infractions. Not surprisingly, the most common rule infractions were running away from the institution (called "AWOL"), fighting, and "talking back" to staff. Time in solitary confinement would be determined by the severity and chronicity of the infraction. For example, a first offense AWOL would typically draw 7 days in solitary confinement. For each additional AWOL, an additional 7 days would be added to the sentence in confinement. So, for the third AWOL, a youngster would serve 21days in locked isolation.

7. During periods of locked isolation in solitary confinement, youngsters at Boley and Helena would have virtually no contact with other people. Visitors were not allowed. Counselors rarely met with the confined children, and then only for very brief periods of time. No schoolwork was provided. Time in solitary confinement was not only a period of isolation, but was also a period of forced idleness.

8. Experts in the fields of child psychiatry and juvenile corrections roundly criticized the use of isolation in solitary confinement for any purpose other than very short-term control of out-of-control violent behavior. Dr. Robert Baxter, a child

psychiatrist, testified that periods of solitary confinement cause or exacerbate serious mental health problems in children and can often induce psychosis. Dave Fogel, a well-known expert in penology and juvenile corrections, testified that the routine use of solitary confinement increases anger in youth and promotes future violent and acting out behaviors. Indeed, door-pounding and kicking, uncontrollable screaming, and head-banging were common behaviors exhibited by the youth in solitary confinement. When youth exhibited these behaviors, they often would be confined in the cells with no facilities, which were used as "mental health" cells. If a youth confined in one of these cells had to use bathroom facilities, he had to bang on the cell door until a staff person came by to let him use a bathroom. According to statements from children, the staff only came around infrequently and some children were forced to urinate or defecate on the floor of their cell. Following their initial tour of Helena in January 1980, Dr. Baxter and Mr. Fogel were so concerned about the physical and psychological well-being of youth being confined in Dodge House they insisted that plaintiff's counsel take immediate action to secure a preliminary injunction to forbid the use of the detention facility. Within a week, such a motion, supported by strong affidavits from Dr. Baxter and Mr. Fogel, was filed with the Court. Two days after defendants were served with the motion, the defendants bulldozed Dodge House to the ground.

9. Sentences in solitary confinement of 20-30 days were common at both Boley and Helena. Some youngsters were held for longer periods. One youngster who was obviously in need of mental health care was held in the Dodge House at Helena for 108 days. When asked his opinion of confining youth in solitary confinement for 20-30 days under the conditions existing at Helena, the State's own expert child psychologist

testified, "I would investigate my staff." When asked about the youth held for 108 days in solitary confinement, he testified, "that would border on Hitlerism."

10. Youth at both Boley and Helena were subjected to a form of restraint that both the youngsters and the staff referred to as "hog-tying." Hog-tying consisted of having one's ankles shackled, wrists cuffed behind one's back, and then having the shackled hands and feet tied or chained together behind the back. In hog-tied restraint, a child would be bowed up backwards causing tension on both ankles and wrists. Hog-tying was imposed allegedly only when a youth was so violently out of control that restraint was necessary for his self-protection. In practice, however, hog-tying, like solitary confinement was employed as punishment for misbehavior or "talking back" to staff. For many children, hog-tied restraint was imposed for several hours or more. When youngsters in solitary confinement would act out in confinement -- *e.g.*, head banging, door pounding, etc. – the staff response was often to hog-tie the youngster while in solitary confinement.

11. Again, plaintiff's experts Dr. Robert Baxter and David Fogel condemned hog-tying as unnecessary, punitive, and exceedingly harmful to youth. Physically, hog-tying caused cuts and bruises, as well as injuries to tendons and ligaments. Psychologically, hog-tying induced panic and terror in youth and resulted in increasing the youth's anger and future assaultive behaviors.

12. The failure of staff to protect children from youth-on-youth violence and youth-on-youth sexual assaults was commonplace at Boley and Helena. Indeed, a common practice at both Boley and Helena was the staff use of the "bully system" to control youth within the institution. In the bully system, staff would grant favors to

designated larger and stronger youngsters in exchange for their use of force against smaller and weaker children as a way of "keeping the children in line." The inevitable consequence of the bully system was the systematic abuse of smaller and weaker children by larger and stronger youth while staff "looked the other way." This abuse ran the gamut from simple beatings to forcible rapes. Plaintiff's juvenile corrections experts opined that the use of the bully system was damaging to the victims of the "bullies," because of the physical and psychological abuse, and was likewise damaging to the "bullies," because it communicated to them that violence toward others was acceptable behavior.

13. Throughout all the juvenile institutions in operation in the late 1970s in Oklahoma, mental health care for disturbed children was virtually non-existent. Boley and Helena had employees called psychological technicians who were purportedly the front line of mental health care for the youth. The so-called psych techs typically had no more than a bachelor's degree and were ill equipped by education and training to deal with the serious mental health problems presented by many of the institutionalized youth. Moreover, the institutions had far too few psych techs to deal with the number of children who had serious mental health problems. The most counseling any youth would receive would be 30 minutes about once a week. Many youth waited several weeks or more before they could see a psych tech.

14. Many of the conditions and practices described in this affidavit, as well as other instances of systemic institutional abuse, were corroborated by the testimony of youth and U.S Department of Justice investigators at hearings before the United States Senate Subcommittee on Juvenile Justice in February and May of 1982. Notable among

the findings of the Subcommittee was not only the existence of widespread abuse of institutionalized youth, but also that the responsible agency officials had knowingly tolerated such abuse.

15. Lawyers from the Federal Defender's Office informed me that John Grant was confined at both Boley and Helena during the period of 1975 to 1977, and that he was disciplined repeatedly for such rule infractions as running away from these institutions and lying to staff. For these infractions, Mr. Grant would have certainly been subjected to increasingly lengthy periods of solitary confinement under the practices then extant at these institutions. As a resident of Boley and Helena during the two years immediately preceding the filing of the *Terry D.* case, the abuses uncovered by the litigation were rampant and unchecked. Therefore, it is likewise certain that Mr. Grant would have been subjected to various forms of abuse from either staff or other youngsters, or at least would have witnessed such abuse. It is notable that the defendants in the litigation went to extraordinary lengths in seeking to prevent the discovery of the litany of abuses that pervaded these institutions.

Steven A. Novick, Affiant

Throwaway Kids

Throwaway Kids was a two-part investigative report airing on the ABC News magazine *20/20* in 1981.

The report followed a nine-month undercover investigation by producers Karen Burnes and Bill Lichtenstein. The reports detailed the documented abuse, neglect, and preventable deaths among children, the aged, and those with mental illness who were in the care and custody of the Oklahoma Department of Human Services.

Producer Karen Burnes filming "Throwaway Kids" for ABC News 20/20 in Oklahoma, 1981.

Producer Bill Lichtenstein in Oklahoma during production of "Throwaway Kids" for ABC News 20/20, 1981.

The main focus of the reports were the state's "warehousing" of children, many of whom were in state custody for being abused or abandoned. In turn, the state received per diem federal funds for each child in its custody, but it failed to provide appropriate services for the children with the revenue.

At the time of the program, Oklahoma had no foster care system, so children who were abandoned, abused, neglected, or in need of supervision, were placed in large, outmoded, state-run institutions, many of which were located in rural towns of the state, and were without services or proper care. Lichtenstein and Burnes obtained thousands of pages of confidential "Abuse Reports," generated by state workers and kept by the Department of Human Services, detailing the mistreatment of children in state's custody, ranging from children being beaten by often unqualified staff, to kids being locked in isolation for weeks at a time. There were also numerous unexplained deaths at the state hospital for children with mental retardation, which the investigation showed were the result of neglect and abuse by state workers.[1]

Burnes and Lichtenstein were part of a team of reporters who collaborated on the investigation, which included ABC's Sylvia Chase, Pulitzer Prize-winners John Hanchette and Carlton Sherwood of Gannett News Service, and the investigative team from local TV station KOCO, which was an ABC afiiliate and was owned by Gannett. This unprecedented investigation, involving national and local broadcast and print reporters, culminated with articles published by Gannett, a special two-part report on *20/20*, "Throwaway Kids," produced by Burnes and Lichtenstein, and a series, "Oklahoma Shame," which aired locally in Oklahoma City on KOCO-TV. The series was honored with a 1982 Peabody Award and a National Headliner Award, and was nominated for a national news Emmy Award.

In 1982, only months after the reports ran, Lloyd E. Rader, Sr., the director of the Oklahoma Department of Human Services, resigned after 31 years with the department amidst a state investigation of financial misconduct involving patronage, illegal corporate hirings and abuse of the state bid system. In particular, Rader was accused of using state funds to hire private detectives to follow and harass the reporters investigating the Department of Human Services, and that he had used state workers to build a clinic for his son, Lloyd Rader, Jr., a doctor. The investigative team also uncovered what Rader referred to as his 130 page "legislative control file," containing the favors and patronage he had given to leading representatives in the state, up through Gov. George Nigh and U.S. Senator David Boran.[2]

Today, the Oklahoma Department of Human Services has almost eight thousand employees and a budget of $1.4 billion from state and federal funding.[3] Currently the Department is involved in another lawsuit,[4] with the advocacy group "Children's Rights," over its treatment of juveniles in state custody.

AFFIDAVIT OF LAURA CHOATE

STATE OF OKLAHOMA)
) **ss.**
COUNTY OF OKLAHOMA)

Before me, the undersigned Notary, personally appeared Laura Choate, known to me of lawful age, who being by me first duly sworn, upon her oath, deposes and says:

1. My name is Laura Choate. I was one of the eight named plaintiffs in the class action suit filed in 1978 which became known as the "Terry D lawsuit." This litigation was the basis for a national expose of the abuse and cruel treatment endured by children in the custody of the state of Oklahoma. This litigation resulted in dramatic changes to Oklahoma's juvenile justice system.

2. One of the changes from the Terry D. Lawsuit, was the founding of the Oklahoma Institute for Child Advocacy or OICA in 1983 to ensure the protection of Oklahoma's children. I was a founding board member and I am currently on the board now. I still work with OICA promoting continued change in how Oklahoma treats its children.

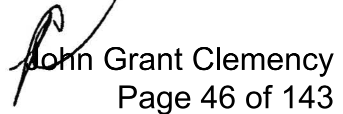
3. I have also worked directly with children and adolescents in various residential treatment and psychiatric facilities, including High Pointe.

4. I was living in an abusive situation at home. After running away several times only to be returned to the same abusive situation, I asked a police officer what I needed to do to not get returned to my home. He told me to commit a crime, which is what I did. After stealing multiple cars, I was sent to Girls Town. However, I traded one abusive environment for another. Girls Town was a living nightmare, just like the boys homes. We were repeatedly raped and beaten.

5. At the age of 16, I was emancipated and released from the facility and placed out on the streets in Oklahoma. I did not have a place to live or a job. I was not prepared to be out on my own. There were times I wanted to commit a crime so I could go back in. There I would have 3 hots and a cot and structure.

6. Meeting attorney Steve Novick and becoming involved in the Terry D. Lawsuit, gave me direction and focus. I could have easily ended up in prison or dead. The lawsuit gave me the opportunity and drive to stop what was happening at these facilities. I wanted to stop the screams of the deaf, mute girl being raped in the padded room.

7. I have been diagnosed with PTSD. Although I was surrounded by kids with this diagnosis and helping them deal with their PTSD, I did not realize I had it. It wasn't until I was in self-imposed inpatient treatment, on the ground, in the fetal position, crying, and

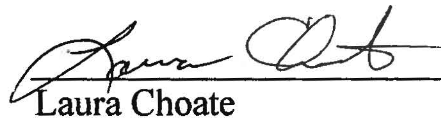


chewing on the end of a gun, that I was told I had PTSD. Once I heard this from someone, it all made sense.

8. From my experiences, women that have PTSD tend to internalize it. They become numb. I turned to alcohol to ensure I stayed numb. Men, however, tend to act out when experiencing PTSD.

9. Even with the support and direction I have found from the Terry D Lawsuit and advocating for children, I continued to struggle. I had a very difficult time in relationships. I was difficult to deal with. I have drank alcohol to try to numb the pain of what I have been through. I have seen a psychiatrist who prescribes me medication for anxiety and panic. It is an everyday effort to try to stay balanced. I can't imagine where I would be if I did not have supportive people in my life.

FURTHER AFFIANT SAYETH NOT.



Laura Choate

Subscribed and sworn to before me this 25th day of November, 2014.

NOTARY PUBLIC

'Hogtied', shackled and left

By JOHN HANCHETTE
and CARLTON SHERWOOD
Gannett News Service

Copyright 1982, Gannett News Service

OKLAHOMA CITY — One of the unique things about the recent lengthy federal court suit over conditions in the Oklahoma juvenile system was the agreement of expert witnesses on the conditions at children's homes and training schools here.

The plaintiff's psychiatrists said they were lousy.

The state's own psychiatrist said they were lousy.

The lawsuit was brought against the state and its veteran director of human services, Lloyd E. Rader, the legal guardian of every institutionalized child in the Oklahoma youth system, by a a trio of civil liberties groups seeking reform in the homes and schools.

To support their contention that child abuse was ingrained in the Oklahoma juvenile system, the civil liberties lawyers sought the assistance of two nationally known experts on youth, institutions and criminal justice. The plaintiffs got Dr. David Fogel and Dr. Robert F. Baxter to offer expert testimony.

Both men, after inspecting the Oklahoma juvenile system, made "declarations under penalty of perjury" for the court record. The documents provide a devastating indictment of a child-care operation that included detention and restraint practices for youngsters that might be considered severe in an adult prison.

Baxter, educated at the University of Michigan School of Medicine, is a prestigious examiner for the American Board of Psychiatry and Neurology and a psychiatric consultant to the National Institutes of Mental Health, and his specialty is the residential treatment of adolescents. He is currently director of child psychiatry at the University of Texas Medical Branch.

Foley is former executive director of the Illinois Law Enforcement Commission, former commissioner of the Minnesota Department of Corrections and a recognized expert on juvenile institutions, and is currently director of graduate studies in criminal justice at the University of Illinois.

Baxter characterized Oklahoma's youth detention practices as "exceedingly cruel and inhumane."

Foley said his reaction to conditions in Oklahoma's juvenile system "is one of personal shock and outrage."

"The conditions under which these children are incarcerated conform to no known corrections or treatment standards," he said. Oklahoma's lock-up system for children "in my view, constitutes cruel and inhumane punishment for children," he said.

As long as children are subjected to such isolation procedures, Foley said, a "serious emergency" exists.

What got Foley and Baxter particularly upset was the solitary confinement tactic used at Helena State School for Boys in a separate one-story building toward the rear of the grounds called Dodge House, a place whose characteristics, Oklahoma officials admitted, were similar to other detention facilities used throughout the system.

After court-ordered inspections of Helena, both experts described the isolation areas:

"Dimly lit" 5-by-8-foot cells with no view to the outside and solid metal doors with only an 8-inch-square observation panel in it. The sole furnishing was a small, non-spring mattress placed directly on the concrete floor.

"The interior of the cells are depressing," said Baxter, noting that units were "devoid of any personal items, posters, toys, games, crafts, or hobby materials."

No radio, no TV, no books.

No nothin'.

There is no ventilation system — heating or cooling — both men noted, and Foley added, "The result is that the air inside the cells is stale and foul-smelling."

"Personal contact between children and staff," noted Baxter, "is usually less than 30 minutes per day."

The "only method of communication once the doors are locked," said Foley, "is yelling or banging. Ironically, this behavior often leads to further discipline, which usually takes the form of longer confinement and-or shackling."

Then the descriptions grew even more gruesome. Baxter observed that when a child is put under restraint in his cell, "his ankles are bound together with shackles, his wrists are handcuffed behind his back and the child's ankles and wrists are then bound together by a leather strap.

"Incarceration in solitary lockup may be authorized for up to 20 days. I understand that this detention can be extended for misbehavior in the cells, such as writing or scratching one's name on the cell's interior."

Baxter observed more: "Children are locked in their cells for approximately 23 hours...a few minutes allowed for showers, and exercise is permissible in the small area beteween the cells for only 10 to 15 minutes each day.

"None of the educational, recreational, or treatment programs at the institution are available to children in solitary detention.

"Records indicate that children are segregated in Dodge House for up to 20 consecutive days. Such relative isolation, during the specific developmental phase in which association with members of the peer group is absolutely essential for emotional support and stability, has potentially devastating consequences. Youngsters are left with only their fantasies and thoughts in such circumstances.

"Anger and frustration only mount in an environment that permits no appropriate channels of expression."

The result of all this is bad news for society, Baxter told the court.

face-horo"In such circumstances," he said, "youngsters are at significant risk for self-abuse or destructive behavior (e.g. banging their heads on the wall, making suicide attempts) and for psychotic regression. In both cases, this may lead to behavior which is interpreted by unsophisticated staff as further evidence for the necessity of control and punishment. The unavailability of licensed psychologists or psychiatrists on a regular basis compounds this distressing situation.

"The method of physical restraint is highly anti-therapeutic and should be permissible only in situations where a child is a serious and evident danger to himelf and others."

Further, the psychiatrist noted, the "hogtied" position is "particularly barbaric" and unnecessary. Moreover, he said, in no case should even normal physical restraints be utilized for the periods of time reported.

Such incarceration, he said, "does not further any treatment program...nor can it be considered a viable treatment program in itself. Locked isolation under these conditions could not, under any circumstances, be considered treatment. My opinion is that such isolation is purely for punishment, and as such is exceedingly cruel and inhumane."

Added Foley: "Children are subject to being fully shackled in their cells for conduct no more serious than yelling or banging on their cell doors," and sentences from "five to 20 days appear to be routine."

Such "punitive confinement" for any duration "would be harmful to a mature adult," said Foley. "Hence, the incarceration of children in that facility for up to 20 days is likely to result in irreversible, emotional injury."

If Rader and his top aides were expecting any succor from their own top psychiatric consultant, Dr. Stuart B. Simon, they must have been disappointed. Simon, one of the top child psychiatrists in the state, also teaches the subject at the University of Oklahoma's Health Sciences Center.

The doctor was deposed in late summer of 1981 by Steven A. Novick, the Legal Aid of Western Oklahoma lawyer who handled most of the lawsuit's questioning.

Simon rolled along nicely through more than a hundred pages of testimony. He talked about theories of psychiatric practice, giving rather soft and philosophical answers on the dangers of excessive medication and use of restraints. He said he'd never seen hogtying of either children or adults in his 14 years of practice, and that handcuffing and ankle cuffing can lead to severe nerve, blood vessel and joint injury. He talked about hogtying children in terms no stronger than "counter-therapeutic."

Under Novick's persistent barrage, however, he began to let slip a few bombshells. Yes, he had seen 6-year-olds and 7-year-olds come into the institutions in restraints. Yes, he finally agreed, hogtying any child in any institution anywhere is "overkill." Yes, the 5-by-8-foot rooms used for detention "are way too small."

Then Novick started punching all the right buttons.

How about locking kids up for 20 days at a time in isolation rooms?

"It's cruel and inhuman," said Simon.

How about a child locked in an isolation room in excess of 100 days?

"I would say that would border on Hitlerism."

What would be the safe limit?

"The longest I would see would be 24 hours."

Had he ever confined a child in a detention unit?

"I cannot for the life of me recall that I've ever placed a youngster in seclusion."

What about the psychological consequences for a child locked up in an isolation room like the ones used by the state?

"This would be somewhat terrorizing to me. I would be somewhat fearful. I would be unclear as to my emotional role in life. I would be unclear if I'm being spied on. I wouldn't know from this if I have any contact on the outside — if it's real, imagined, or otherwise from what I've seen. I would have some probably very terrifying nights and bad dreams. I would be quite resentful. I would probably become quite belligerent, I would become quite angered with whoever put me in there. I'm not so sure I would resolve not to again ever get in that room."

Novick started asking about "permanent and irreversible psychological damage," and Simon began talking about Vietnamese prisoners and people who came out of Auschwitz. Yes, he said, each time a kid got locked up in isolation, the irreversible psychological damage would increase.

"It would make me highly suspicious of what is life all about," he said. "What are human beings about? Can you really trust an adult at all? Can I trust any interaction with anyone?"

And if the child made noise in such a cell and was hogtied for it, what then?

"I would investigate my staff."

Shortly after the transcripts of the questioning of all three psychiatrists were filed with the federal court; Lloyd Rader quickly and quietly ordered Dodge House torn down. The plaintiffs immediately filed papers with the court, noting that Rader had destroyed important evidence of the conditions and behavior described above. Dodge House, they contended, was not torn down to improve conditions — which still existed in other state juvenile homes —but because the plaintiffs had focused their evidentiary search there.

The destroyed restraints, paddles, oaken confinement chairs, shackles and other medieval punitive devices were never restored to the plaintiffs as evidence.

But the Dodge House cells were quietly replaced with new, expensive metal detention cages in remote corners of the Helena and Taft school dormitories

Legal rhetoric — 'No blood, no foul'

By JOHN HANCHETTE
and CARLTON SHERWOOD
Gannett News Service

Copyright 1982, Gannett News Service

OKLAHOMA CITY — One of the pecadillos of Oklahoma's juvenile system that civil liberties lawyers noticed centered on the practice of downgrading abuse complaints if the violence failed to cause serious injury.

It is, observed one of the attorneys, like some of the tough pro basketball games in which reluctant referees shy away from close calls unless there's hard evidence — the "no blood, no foul" rule.

Case files in the Department of Human Services show many instances in which a state employee was investigated for an alleged incident of child abuse, then dodged the ld boy filed a grievance that a Youth Guidance Specialist had put a knot in his forehead by hitting him when he tried to turn off a light that rvices Director Lloyd E. Rader that Marzett be fired because of his attitude. That was two years and 11 months ago. State personnel officials told GNS last week that Marzett is still at Boley, working in his old job.

John Greenly Cemetery

DECLARATION UNDER PENALTY OF PERJURY

STATE OF OKLAHOMA)
)
PITTSBURG COUNTY)

I declare under penalty of perjury that the following statements are true and correct:

1. My name is Ricky D. Mitchell. My Department of Corrections number is 104724. I am presently incarcerated at the Oklahoma State Penitentiary. I swear and affirm that the following statement is true and correct and it is what I would say if I were called to testify under oath in a court of law.

2. I was born in 1961. I have known John Grant since we were both 12 years old. We lived near each other in the Forest Oaks projects in Oklahoma City. We spent a lot of time together as kids both in Forest Oaks and in juvenile detention centers. I was with John at both Boley and Helena schools and then later at the Dick Conner Correctional Center.

3. When we were kids, John had it harder than most. No one watched him or kept an eye out for what he was doing. John got no guidance from his family or from the community. If anything, because he was taller than most kids and people seemed to expect him to act older than he was.

4. John and I messed around with kids on the street. The street kids gave us attention. Getting attention from the street kids got us attention from girls.

5. John and I were at Boley school at the same time. Boley was kind of a reformatory school where kids who had gotten in trouble with the law were sent. When John and I first went there it was a segregated facility.

6. At Boley, boys lived in dormitories, grouped by age. There were about 35 to 40 kids in each dormitory. There were people called "house parents" who were in charge of the entire school, but in the dormitories we were watched by guards who stood eight hours shifts.

7. At Boley, fighting amongst the boys was encouraged by the guards. It was not uncommon for the guards to say something like, "we aren't going to give you snacks

today, if you want some, go take them from the boys in the other dormitory." Then the guards would watch us fight. It was entertainment to them.

8. The kids would also fight amongst themselves just for fun. If you were being hurt by another kid, there was no help.

9. When you got into trouble at Boley, you would be put in the disciplinary unit. I was there many times. In the disciplinary unit I slept on the floor. I was hit by the guards. The guards would wake me up every hour to do exercise like pushups, or duck walking. I remember a guard saying to me that "it ain't in the law that we have to give you eight hours straight sleep." So they would wake me up every hour for punishment.

10. The guards routinely beat the kids. It happened to me, and I know it happened to John Grant. It would be a surprise if someone went to Boley and they didn't get whopped by the guards.

11. I escaped from Boley several times. But I always got caught and they brought me back and beat me up.

12. Psychologically, the treatment at Boley took some of the kids down. They were never the same after being there.

13. Helena school was just the same as Boley. Only John and I went there after the schools were desegregated. Before, Boley was all black and Helena all white. By the time we went to Helena, it was about 3 % black.

14. Being at Boley and Helena was just like being at the Oklahoma State Penitentiary ("OSP"). The fights are the same, except at OSP people use shanks and knives and at Boley they just used fists and sticks. Boley trained us for prison.

15. I heard that things changed at Boley after desegregation and a white kid's Mom brought a law suit over the conditions and treatment. But it was bad when John and I were there.

16. I have heard that at John's trial they used his prior offenses to say that he would be dangerous in the future. I can tell you that John had no real role in the robberies for which we were convicted. John had a gun, but it didn't have bullets or a firing pin. He couldn't have hurt someone with that gun even if he had wanted to. He never

raised his gun to anyone and just stayed in the background. I never knew John to be a violent person and I would have been willing to explain that to a jury if I had been asked.

17. I knew John when he was at the Dick Conner Correctional Center (DCCC). John had it hard there. He had a sentence for the robberies with firearm that was over a hundred years running wild. He blind pled to guilty and got more time than anyone else involved in the crimes. I always thought it was because he wouldn't testify against me at my trial in Oklahoma County. Neither Steve Irvin or I had sentences that even approached what John got. It shouldn't have happened that way.

18. John lost his family when he went to prison. They never contacted him or saw him. He never had any things to help the time in prison go better, like a TV or radio because he had no one to send him money.

19. I knew that he had a friendship with Gay Carter at DCCC. When Gay showed him what he thought was love and concern, it was important to him. He needed to have someone to cling to in his life. I think he was caught up in the emotion of the situation.

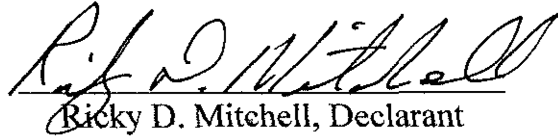
20. After John was fired from the kitchen, the rumors were all around the prison that Gay had filed a restraining order against John. They did have some kind of falling out, but I do not think it was true that there was a restraining order, because if there was, John would have been quickly moved. But the rumors were all around and John heard the rumors. Prison is just like a small town. Everyone knew.

21. Before the offense, John was saying that he was "tired" of this place. His family had left him. He mentioned a girlfriend he had long ago and wanted to go back in time. Psychologically he was bringing himself down. He was feeling like he had lost another family member when things went wrong with Gay. He was very lost.

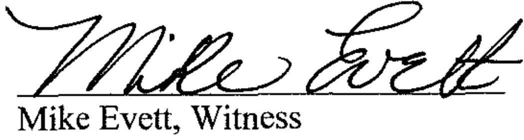
22. I was with John at breakfast the morning of Gay Carter's murder. I never saw anything before that day or on that day that made me think that John planned to kill Gay. He was completely normal that day. In fact, John and I had made a specific plan to meet that morning at the ball field. I am confident that John had no premeditated intent to kill Gay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of September, 2005.



Ricky D. Mitchell, Declarant



Mike Evett, Witness

AFFIDAVIT OF JOSEPH CRAWFORD

STATE OF OKLAHOMA)
) **ss.**
GREER COUNTY)

Before me, the undersigned Notary, on this 13th day of November 2014, personally appeared Joseph Crawford, known to me of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. My name is Joseph Crawford. My Department of Corrections number is #100838. I knew inmate John Grant as Lakeside. We first met at Joseph Harp Correctional Center.

2. When I was sent to Dick Conners Correctional Center (DCCC) I ran into Lakeside again. He told me he was on his way home. Lakeside had a job in the kitchen and had been working there for a long time.

3. Ms. Gay Carter was the supervisor over the kitchen. She had the reputation for being overly friendly with the inmates. She rubbed up on me when I was working in the kitchen. I didn't want to have any conflict with John, so I quit and went to work in the laundry. When I went back to my room I told my cell mate what happened and he said John was crazy about Gay and Gay was crazy about him. He said they were in love and had been together a long time.

4. Most of the time when contraband was brought into DCCC, or when there were relationships between staff and inmates, it involved the chow hall staff.

5. I was at DCCC when Gay Carter lost her life.

6. In 1966, at the age of 6 years old my twin brother and I were taken from our grandparents because they were not our legal guardians. We were sent to Taft, which was an orphanage. My grandparents eventually got us out in 1969 after filing the paperwork to become our legal guardians.

7. As a juvenile I was sent to Helena Boys Home. I was sent to Helena because of truancy, not because I committed any crimes.

8. Helena Boys Home had an all white staff. Helena was an all white town full of cowboys and farmers. Looking back these people were not trained to do that job. They were actual cowboys who treated us like animals. They said they wanted to show us boys from the city how things were done in the country. They would hit you in the ribs with their fists, hit you with wooden paddles, or beat you with radiator strips. It was like they wanted to beat the badness out of you. The more you rebelled the harder they were on you.

9. I got bounced around at Helena. I was punched and kicked. One guy, Mr. Sweat who was a professional bull rider, whooped me and hit me in the face and beat me down. One time a house parent woke me up in the middle of the night and talked to me like he cared. Then he said he had to do what he was getting ready to do and he started beating me. He didn't hit me in the face, but being punched and kicked in the ribs as a 15 year old hurt a lot. He said when you do wrong, you have to be punished. I don't remember what I did to have him do that me. He talked nice but it didn't turn out nice.

10. We had to ask permission to do anything, even go to the bathroom or speak to someone. If we did something without permission we would get hit or kicked first and then dragged to the Dodge House. Most of the time they beat you on the way to the Dodge House too.

11. The older bigger kids had authority over the younger smaller kids. The staff wanted it that way and required it. The bigger kids would make kids fight. If you lost, the staff would tell you that they heard you got whooped and you needed to learn to fight better.

12. If a house parent hurt you and you reported it, there would be retaliation. A lot of the times they would arrange a "blanket party." The house parent from another house would bring in boys from their house and these boys would throw a blanket over the kid as he slept and hold the blanket down as he got beat with soap in socks and boots and if you didn't have anything to hit him with, you used your hands. The staff were behind the whole thing happening.

13. If you were weak and did not fight, anything could happen to you, even sexual assaults from other boys. The weak had no chance of survival at Helena.

14. I spent some time in the Dodge House. The longest time I ever spent in there was a month. You were just in there by yourself with absolutely nothing. You weren't even given anything to read. In the morning they would take your mattress off the floor and make you spend time on the floor. Sometimes you didn't get a mattress in the first place or even a blanket. Some times they didn't feed you. It was horrible. There were times they would yank the mattress out from underneath me in the middle of the night while I was sleeping. Some of the kids would try to refuse to give up their mattress. It only resulted in being beat and more time in the Dodge House. Being there was really rough. I got to where I just preferred to be alone because I didn't trust anyone.

15. I eventually got out of Helena when my sister Lorene Crawford signed for me as my legal guardian. She was an orphan and was sent to the homes too. When she got out, she got herself together and came and got me.

16. I ended up worse when I left Helena than when I went in. It was more traumatizing than rehabilitating. A lot of the men here at Granite were in the boys homes. Many of us for worse crimes like robbery and murder. When I first got to DCCC, guys would ask me what took me so long to get there. Most of the kids in Helena just went straight to prison.

17. I did not learn anything from Helena. They were not interested in teaching us. They said we were going to school but when I got out and tried to enroll in high school they said I was actually a grade behind the grade I should have been.

18. I did not know Lakeside and I were at Helena together. I first met him at Joseph Harp. Lakeside was loud and would not let people push him around. Now that I know he was at Helena, I know that's where he learned that behavior. It made you more hateful. You had to do that to survive.

19. My twin brother never had to go to Helena. I think he has done better out in the world because he didn't have to experience what I did at Helena.

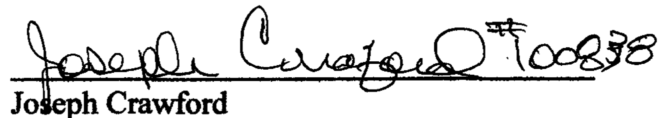
20. My older brother Bobby was at Helena before me. When I got there a staff member told me he remembered my brother because he punched my brother and knocked him through a wall.

21. I don't remember anything positive about Helena other than leaving.

22. I was on death row. I won my appeal and I am serving a life without parole sentence now.

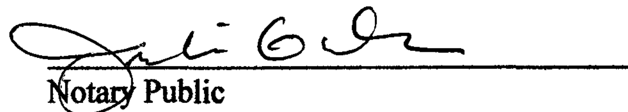
23. I was never interviewed by anyone from John Grant's defense team. I would have willingly testified to the above information if I had been asked.

FURTHER AFFIANT SAYETH NOT.



Joseph Crawford

Subscribed and sworn to before me this 13th day of November, 2014.



Notary Public

My Commission Number is: 05008474
My Commission Expires: 9/12/17

AFFIDAVIT OF DONNIE BACON

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

Before me, the undersigned Notary, personally appeared Donnie Bacon, known to me of lawful age, who being by me first duly sworn, upon her oath, deposes and says:

1. My name is Donnie Bacon. I was placed in boys homes in the late 70's and early 80's. The first time I went to one is because I skipped school.

2. At Boley, there were different cottages named after past Presidents of the United States. Each cottage had a House Parent. There were no individual rooms, but there were cubicles where each kid had his own bed.

3. I slept with a steel pipe beside me because a lot of things happened at night. There would be "blanket parties" where a group of boys would throw a blanket over you while you were asleep and beat the hell out of you. The House Parents knew it was going on. You couldn't miss it. We were basically in an open space, and the House Parent was in the middle. They could see when someone left their cubicle, but they let it happen. Sometimes they encouraged it and would even arrange for someone to get beat by other students. It was like fighting chickens.

4. Being in the boy's homes made me become a fighter. I never fought before I was sent there, but you have to fight to survive. Even if you lose, you know people might not mess with you because you will fight. I got to where I fought all of the time.

5. I was a bigger kid so I could take care of myself some, but the smaller kids had a lot happen to them. When I was at Boley I was trying to keep someone from picking on a 7 year old kid. The security guard was called and he was tanked up. He had been drinking. I had just gotten out of the shower when the guard put my jeans around my neck and choked me with them until I was about to pass out. Then he picked me up under my arms, lifted me above his head and slammed me on the floor. I was put in lock up. I had bruises from him kicking me in my ribs, but I never saw a nurse. They let me out of detention about 6 hours later.

6. I was put in detention a lot. Detention messes with you because there is nothing to do and you are locked in this little room with a toilet and a mattress on the floor. It's a psychological thing. They would put you in your underwear. There were no blankets or sheets. It was freezing cold. They weren't supposed to leave you in there for more than 5 days. They would leave you for 5 days, take you out for a hour and put you right back in.

7. I was in detention so much, I got used to it. At least I could sleep better because I knew no one could jump on me while I was in there.

8. I went to prison after I got out of the Boys' Homes. I think me being there made it more likely that I would end up in prison. They sure weren't rehabilitative. I wasn't the same kid when I left as I was before I went in.

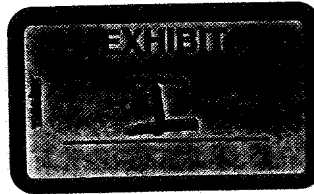
9. My older brother was sent to the Boys' Homes too. He was there in the early to mid 70's. It was worse then. He talked about whipping posts and the Dodge House (detention area) at Helena being even scarier than what I knew it to be.

FURTHER AFFIANT SAYETH NOT.

Donnie Bacon
DONNIE BACON

Subscribed and sworn to before me this 7th day of November, 2014.

NOTARY PUBLIC Julie Gardner



STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

AFFIDAVIT OF O.C. FRAZIER

I, O.C. Frazier, being of lawful age and sound mind do swear and state the following:

1. My name is O.C. Frazier, and I currently reside at 5258 N.E. 47TH Portland, Oregon 97218. I have personal knowledge of the facts stated in this affidavit.

2. John Marion Grant, the defendant in Osage County Case No. CF-99-28, is my half brother. His conviction and death sentence from the trial of that case is now on appeal in the Oklahoma Court of Criminal Appeals in Case NO. D. 2000-0653.

3. I am the last of nine children born of my mother Ruth L. Grant. O.C. Frazier is my father. My birth date is November 5, 1964 and I am three and one-half years younger than John. My brother John helped take care of me when I was young. John was always there for me and I could talk to him about anything. He was and still is a good person and brother.

4. I first noticed a change in my brother John when he came home from Boley Training School. John was younger than the other boys at the School. John told me the older boys taught the younger ones criminal things. When I visited the school, I thought it was a prison like atmosphere. My brother John said there was pressure to join gangs and always the threat of being beaten and the staff locked the children in small rooms at Boley. When John came home from Boley, he was not easy to talk to any more.

5. I would like a chance to speak out against my brother's execution and plead for his life. I realize the pain his act caused the victim's family, and I would like a chance to tell them how sorry I am for their loss. I would have been be willing to testify for my brother, but no one asked me to attend the trial or notified me of the proceedings.

Further Affiant Sayeth Not.

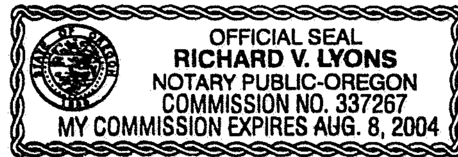
Dated this 9th day of July, 2001.

O.C. Frazier Sr
O.C. FRAZIER, AFFIANT

Subscribed and sworn to me on this 19th day of July, 2001.

Richard V. Lyons
Notary

My Commission expires: Aug 8th 2004



EXCERPTS FROM DECLARATION OF CRAIG HANEY, Ph.D., J.D. OF APRIL 23, 2002

1. ... I have been the recipient of a number of scholarship, fellowship, and other academic awards and I have published over sixty-five scholarly articles and book chapters on topics in law and psychology, including encyclopedia and handbook chapters on the backgrounds and social histories of persons accused of violent crimes, the psychological effects of institutionalization, capital punishment, and capital trial procedures and decisionmaking. ...I also have served as a consultant to numerous governmental, law enforcement, and legal agencies and organizations ...

...

6. For nearly 30 years, I also have been studying the psychological effects of living and working in institutional environments, primarily maximum security prisons. ...

...

8. ...I have served as a consultant on over 100 capital cases ...

...

SUMMARY OF EXPERT OPINIONS

13. There are four concepts frequently used by scholars and researchers who study traumatic social and institutional histories and the inter-related developmental factors that help to explain adult criminal behavior. The terms are aptly applied to John Grant's life in ways that explain the course that it took. The first is "psychologically unavailable caregiving"-a pattern of parenting that entails unresponsiveness, lack of involvement, and passive rejection in which the needs of the child are chronically overlooked and ignored. Unlike outright abandonment and abject neglect, psychologically unavailable caregiving occurs in an environment in which parents (most commonly, maternal caregivers) are simply overwhelmed by their own problems and the range of seemingly insurmountable day-to-day crises they confront. It is a pattern of dysfunctional parenting that has profound psychological consequences for the children who are exposed to it. As I will show below, it was a form of maltreatment to which John Grant was chronically subjected throughout his early life.

14. The term "criminal embeddedness" is used by criminologists to refer to the lives of children and adolescents that are rooted in criminal networks, that essentially immerse them in and around illegal activity, and that regularly place them in neighborhood and institutional relationships that revolve in some way around crime. John Grant's young life was "criminally embedded" in the classic sense of the term. He was surrounded by criminality in the projects where he lived and, unlike several of his siblings, he lacked any alternative role models on whom to depend for guidance, or upon whom he could model a more prosocial life course.

15. The term urban "war zone" was coined by psychologist James Garbarino to convey the sense in which many inner city children in the United States are being raised in communities that expose them to levels of violent trauma comparable to those suffered by the children of war-torn areas elsewhere in the world. The term accurately captures the feel of the violently traumatic events,

experiences, and conditions that have been more elaborately depicted in numerous ethnographic studies of life in the inner city and the "projects" that have been published over the last several decades. As these studies show, the children who are raised in these war zones sometimes adopt the fearsome postures of the aggressive "role models" around them, they sometimes cower in fear and attempt to find safety in timid withdrawal from the environment, and they sometimes range back and forth between these extremes and attempt whatever strategies they can to survive the dangers around them. John Grant grew up in an environment that had several elements of this kind of urban war zone. He is, unmistakably, one of its casualties.

16. The term "institutional failure" is used to describe a pattern of treatment in which persons are confined by the state in order to have a range of psychological, familial, social, or legal problems addressed only to find that those problems are ignored or, worse, to encounter conditions of confinement and forms of mistreatment that result in the exacerbation of their pre-existing problems and even the creation of new ones from which they did not suffer until institutionalized. John Grant's case provides clear evidence of institutional failure at several levels. As a juvenile he was removed from the home because of the adjustment problems from which he suffered. Tragically, however, he was placed in institutional environments more abusive and neglectful than the one from which he was removed. To a certain extent, the same pattern repeated itself during his lengthy period of adult incarceration. Despite having been diagnosed with serious psychiatric problems when he entered the Oklahoma Department of Corrections in late 1980, the record is clear that, over the next 18 years until the crime for which he was sentenced to death was committed, he did not spend a single hour in treatment or counseling (as had been clearly indicated in the Department's own intake assessment).

17. Properly told, stories like these carry tremendous mitigating significance. Capital jurors seek explanations for the lives of the people whose fates they determine. In John Grant's case, his life history contained numerous explanatory themes, precisely the kind that capital jurors find meaningful, persuasive, and mitigating in choosing life over death. Of course, such evidence must be carefully and diligently collected, it must be thoughtfully analyzed, and the testimony through which it is conveyed to the jury must be properly prepared and effectively presented. Undertaking these basic but essential steps-especially in a case like John Grant's where there was such a substantial amount of powerful mitigation to be presented-is what influences the outcome of a capital penalty trial.

18. Moreover, in this case, especially, the evidence upon which such an effective penalty phase presentation could have and should have been premised was readily available. Based on my experience serving as a trial consultant to capital attorneys for over 20 years, and providing advice, coordination, and supervision in investigating, preparing, and presenting social historical and other mitigating evidence, I believe that the investigation and preparation of John Grant's penalty phase was-or should have been-straightforward and relatively uncomplicated. Of course, no penalty trial is "easy" to prepare and present, and none of them can be effectively accomplished with only a minimum of effort, a hasty approach to preparation, or a thoughtless assessment the impact of the case on the jury that will listen to it.

...

Childhood History

23. John Grant was born April12, 1961, the middle child of Ruth Grant, an African American single mother who, at the time John was born, had five children whom she was attempting to raise on her own. She would have three more children in relatively quick succession. John was one of the middle children in a large family that was managed solely by Ruth, who remained a single mother throughout most of John's childhood. John's father, Walter Grant, had already left Ruth at the time John was born. He would play no significant parental role in the family either as a father figure to John or a source of economic or emotional support to Mrs. Grant or her children.

24. John's uncle, Clayton Black, confirmed that the Grant children had a hard, difficult life. His sister Ruth, John's mother, had nine kids and "she worked all the time. The kids had to raise themselves." In addition, John appeared to be in some sort of emotional distress from very early in his life. Clayton Black recalled that he "cried all the time."

25. According to Ronnie Grant, John's older brother, John's father left Oklahoma when John was still a young child. There was some confusion among at least some of the children about who, in fact, their father was. ... Norman ... recalled that "[t]he boys grew up with no male influence." It was not just that they lacked a father. Norman recalled that "[t]he grownups around the project [where they lived] were not worth a quarter." According to Norman and others, the projects attracted a bad element to the neighborhood and the children were necessarily exposed to it. Their mother, Ruth, was from a country background, and she was ill-equipped to handle such pressures.

26. Norman recalled that John was a caring young boy who liked to draw. He also wanted to play football. When some men in the projects offered to organize a football team, and solicited money to pay for it, John and Norman were excited. But the men absconded with the money and nothing ever came to pass with the idea.

27. Andrea Grant, John's younger sister, was very fond of John-he was, in fact, her favorite brother. She recalled that John received very little love or attention from their mother, Ruth, who whipped John "a lot," and talked down to him. Nonetheless, John assumed a protective role in the family and he did his best to care for the younger children. She recalled that "[t]here were times when we did not have any food or shoes and John would go to a department store ... and steal necessities. Our mother would never notice, she had too many kids too close together and had no time." There were a number of children in the projects getting into trouble and
their parents "were not much better." ...

28. Ruth Ann Grant, John's older sister, had fond but sad memories of her younger brother. Because she was only three years older than John, she had a great deal of contact with him when the two of them were young. She saw John as a very sensitive child who had apparent emotional problems from an early age. He cried all the time, but not to gain attention, as many

children do. Instead, John would often cry alone, "in secret." Ruth believes that John was very depressed, even as a young child. She reported that both she and her sister Laronda also suffer from depression. ... their mother was not able to provide the children with much guidance and even less nurturance. They were raised without affection or encouragement and, in retrospect, their childhood felt to her like "growing up without parents."

30. According to a "Certification Study" ... [John] and his family were on welfare for virtually John's entire life. ... In addition, John's family "reside[d] in a low income, 3 bedroom apartment housing project" where, in the words of the caseworker who completed the report "there is little hope, drugs, lack of motivation, and lots of unemployed people." John was described as having "had no male figure in his life to pattern after," was very deeply affected by having been removed from the family and institutionalized at a young age and, despite attempting to put up "a protective shield" to cover them, nonetheless still was capable of "soft tender feelings."

...

Institutional Failure

32. As is often the case with children who have been exposed to poverty, neglectful parenting, absent or inappropriate role models, and the negative influences of a crime-ridden neighborhood, John Grant began to experience emotional and behavioral problems as a relatively young child. Ordinarily, social services agencies are positioned to intervene in such cases, providing the family with additional resources with which to address these problems, or to selectively pursue out-of-home placements in which a higher level of care and guidance can be provided. ...

33. In John's case, his sister, Ruth Ann, recalled that John got into some trouble when he was still relatively young-10 or 11 years old-and that eventually he began to stay in juvenile facilities rather than at home. The juvenile confinement would have a significant negative impact on John.

...

35. When he was 13 years old, John entered the Oklahoma juvenile justice system on a longer-term basis. He was sentenced to six months each at the "training schools" at Boley and Helena. As a 15 year-old, he was sent to Berry House, a juvenile detention center run by Oklahoma County, in Oklahoma City. Berry House was essentially a holding facility.

36. Conditions at these facilities were severe and abusive and they would have had traumatic consequences for a young boy like John Grant. Another juvenile with whom John was confined at Boley, Ricky Mitchell, remembered that he and John were among the youngest children in their unit at the school (Kennedy House). He described Boley as "worse than prison," a place where the staff was abusive, where punishment was severe, and where there was fighting "every day." John attempted to escape from these abusive conditions by running away. He was placed in detention as a result.

37. The negative effects of these early institutional experiences were remembered by O.C. Frazier, one of John's younger brothers, who recalled visiting John at the juvenile facility in Boley.

He remembered that John appeared to be one of the younger boys at the Home, and that the older boys, who were more experienced at crime, taught John "bad things" while he was there. John was pressured at Boley to join gangs, and believed that he would be harmed if he tried to stay by himself. O.C. recalled that John was locked up in a small room at Boley for a period. He also remembered that John "was changed" when he came back from this experience and that it was no longer possible to talk to him.

38. At age 16, John was confined in the Helena School for Boys. He stayed there from May, 1977 through November, 1977, when he was paroled. ...

39. Coincidentally, in 1978, just after John was paroled from the Helena School for Boys, a class action lawsuit was filed in Terry D., et al. v. L.E. Rader, et al. ... The lawsuit alleged that the state's juvenile justice institutions had been operating as "merely maximum security prisons and places of cruel and inhuman treatment." Indeed, the attorneys for the juveniles reported that young wards in these facilities had been, in the words of one newspaper, "shackled, hog-tied, sexually and physically abused, placed in solitary confinement as punishment and that workers have withheld food and other necessary items as punishment."

40. In February, 1982, a series of scathing investigative news reports was published by the Gannett News Service, based on extensive interviews with juveniles and staff members, and on the detailed review of files from numerous agencies and institutions in the state's juvenile justice system. A legacy of shocking conditions and scandalous practices were uncovered, dating back for many years and certainly covering the period of time during which John Grant was confined in Boley and Helena. The investigative reports described "large, monolithic, strictly secured institutions on remote campuses" in which a history of practices was uncovered that was "so macabre that it would make Charles Dickens wince."15 These practices included "brutal attacks, sexual assaults, or punitive, ramrod discipline by state employees that medical experts call 'appalling' and barbaric.'"

41. The facilities at issue were precisely the ones in which John Grant was confined. For example, a veteran social worker at the Boley Training School told investigators that: "Students assigned at Boley would leave the institution with little knowledge other than training in unnatural sex and other undesirable activities." ... There were admitted instances of children being hogtied, and acknowledgment by officials that those children confined at Helena were sometimes placed "in solitary cells for as long as 20 or 30 days at a time." Even the director of the juvenile system at the time conceded that such practices "would drive you and I stark raving crazy."

42. Although these inhumane conditions and abusive practices had existed for many years, it was not until the passage of H.B. 1468 in 1982 that any significant progress was made in improving the facilities ... The Helena and Boley State Schools-both of which John Grant had attended-were closed as part of the progressive and humane reforms in the Oklahoma juvenile justice system. ...

43. When John left the juvenile institutions described above, he reentered free society

without having had the benefit of counseling or treatment for the problems that sent to these facilities in the first place. He had no marketable skills with which to-enter the workforce, and he bore the psychological scars of having been confined under brutal conditions and exposed to callous mistreatment. His adjustment to the free world was predictably fraught with problems. He committed several crimes and, a few months after his 18th birthday, was sent to the Oklahoma prison system.

44. An Oklahoma Department of Corrections psychological assessment completed in September, 1979, when John was 18 years old, indicated that, although John was "not a severe risk for violence or escape ... in stressful situations, he could become more difficult to manage than the average inmate." It also noted that "a major area in which the inmate needs help is that of exercising control over his own behavior." The record suggests that little or nothing was done to help John improve his ability to manage stress, and that, despite the assessment center's recommendation, no help in teaching him to exercise control over his own behavior was forthcoming.

45. His adjustment during this brief period of incarceration appeared positive. John worked in the kitchen (where he received at least one complimentary notation for the quality of his work) and in the packing house, and did well enough overall to be recommended for parole after serving less than a year in prison. He was paroled in April, 1980, just after he had turned 19 years old. However, despite his positive adjustment, it is important to note that nothing had been done to address the problems from which he had suffered since early childhood. John had gotten no counseling, treatment, or meaningful vocational training either in the juvenile institutions in which he was confined or during his brief stay in the adult prison system. The kind of problems that John manifested, ones deeply rooted in a traumatic, neglectful, and criminogenic childhood and exacerbated by painful experiences in an abusive and similarly criminogenic juvenile justice system, simply do not spontaneously remit.

46. Thus, in the summer after he was paroled, John engaged in a series of robberies. He was arrested in August, 1980. In December, 1980, at age 19, he was sentenced to 105 years in the Oklahoma Department of Corrections for three counts of robbery.

47. Upon his entrance to the Department of Corrections-about a year and a half later after the first intake evaluation was done at Lexington-another psychological assessment was completed. However, this one indicated that John's psychological condition had deteriorated considerably. He was still regarded as someone who was "not a severe risk for violence or escape" but was now someone who was likely to become difficult to manage "in stressful situations." In addition, however, the test results suggested "a strong likelihood of 'crazy' irrational behavior" and "[p]rompt referral to medical and counseling programs" was recommended.

48. The psychological assessment provided additional details, expressed in a way the conveyed the extreme seriousness of John's mental health problems: "Shows evidence of substantial generalized psychotic pathology which makes behavior bizarre and inappropriate. Antipsychotic drugs may improve performance. Recommend Stellazine (sic) or Haldol."

49. There is no evidence in the record, or from any other source, that, despite this dire warning and strong recommendation, anything was done to provide treatment to John Grant, or give him any of the access to "medical and counseling programs" that had been recommended. Moreover, there is no evidence in the record, or from any other source, that, despite this dire warning and strong recommendation, anything was ever done to provide John Grant with the potent anti-psychotic medications that were indicated to control his bizarre and inappropriate behavior and help him to function inside the prison setting. This is true despite the fact that John Grant would spend the next 17 years of his life incarcerated in a correctional system that, at the outset, had clearly identified his serious pre-existing psychological problems and prescribed appropriate, necessary treatment.

...

51. [The] problematic pattern-interpreting John's disruptive behavior as a willful disregard of prison rules and punishing it, rather than recognizing its connection to his underlying mental health problems and providing treatment-continued when John was transferred to a private prison in Texas. In 1995, as part of a group of Oklahoma inmates who were sent out-of-state to ease the high levels of overcrowding that plagued the Oklahoma prison system, John was sent to the Limestone County Detention Center, run by Capital Correctional Resources ("CCR"), a private corrections company. However, when a videotape from another CCR Texas facility showed inmates being abused by staff, officials from states that had inmates housed in these facilities began to investigate and return prisoners to their states of origin.

...

53. John was returned to the Oklahoma prison system in late February, 1997. At the time he arrived back in the Oklahoma system, a series of remaining issues were being addressed in final stages of a longstanding lawsuit, Battle v. Saffle, that had addressed a whole range of prisoner treatment and conditions of confinement-related issues in the Oklahoma prison system. Although John had been housed in the . Oklahoma system during earlier periods plagued by intense overcrowding22-triple ceiling was not uncommon in the early 1990s, and intolerable overcrowding was what had led to the ill-fated transfers of Oklahoma inmates to the private Texas prisons in the mid-1990s-those conditions had been largely alleviated by the time he returned in 1997. However, another issue-mental health treatment-had not. In fact, as a prisoner with identified, serious mental health problems, Mr. Grant was also the kind of prisoner for whom, as the Battle v. Saffle litigation showed, the Oklahoma correctional institutions still were ill-equipped to address.

54. As one of the *Battle v. Saffle* experts, Dr. Marion Page, opined in that case:

> Conservatively, 10-15% of the incarcerated population has a major psychiatric disorder. Once arrested and detained, preexisting mental illnesses may be exacerbated. In other instances, arrest and detention may precipitate mental illness. Furthermore, the conditions of incarceration may contribute to psychological disorders including suicidal ideations. These various elements come together to create a significant demand for mental health care service in the correctional setting.

55. In assessing the actual treatment available in the Oklahoma prison system, however, Dr. Page expressed a number of critical concerns. For example, Dr. Page questioned "whether the current system is accurately identifying the majority of [an] inmate's mental illness at the time of the screening" at the Lexington Assessment and Reception Center where John Grant first entered the system. Dr. Page's assessment of mental health staffing of the key facilities led to the conclusion that the Oklahoma prison system was suffering from "a recruitment emergency." It also showed that at the Oklahoma State Penitentiary where John Grant had been confined for a considerable period of time, there was a greater than 50% vacancy rate among allocated psychiatric and psychological staff (with 4.5 total psychiatrist and psychologist positions allocated and only 1.6 positions filled). In addition to the sheer number of vacancies, Dr. Page concluded that, with respect to those mental health staff who were employed in the system, "[i]nexperience is a concern ... "

56. Thus, the record of institutional failure in John Grant's case came full circle, just before he committed the crime for which he was sentenced to death. It began with his childhood confinement in substandard and abusive juvenile facilities and continued throughout his lengthy stay in the adult Oklahoma prison system. At no point is there any indication that he received any of the counseling and treatment that he clearly needed, and he appears to have been subjected to severe institutional conditions that would have worsened rather than alleviated his pre-existing psychological problems.

57. In fact, John Grant had the unfortunate experience of having been confined in Oklahoma's juvenile justice system during such a troubled period in its history that a lawsuit challenging substandard treatment and conditions of confinement was initiated. He then had the equally unfortunate experience of moving to the adult Department of Corrections during such a dismal period in its history that a similar kind of lawsuit was filed. Battle v. Saffle examined substandard treatment that had plagued the Oklahoma Department of Corrections during precisely the years in which John Grant was confined in precisely those institutions that were the focus of the litigation.

Longterm Consequences and the Mitigating Significance of John Grant's Social and Institutional History

58. The social historical factors and record of institutional failure I have summarized from John Grant's life are crucial to any meaningful understanding of his criminal behavior. They are equally important to any overall assessment of moral culpability of the kind that is essential in capital jury penalty decisionmaking. That is because of the widespread consensus that has existed for many years now among psychologists and other mental health professionals that early experiences play an extremely important formative role in shaping the course of subsequent psychological development, and that institutional failures in addressing the psychological problems that these early childhood experiences may create can significantly exacerbate them. Social and institutional histories profoundly influence the direction or course that a person's life has taken, the choices that a person makes (or even is capable of making) along the way, and the degree of moral culpability that rightly attaches to the otherwise blameworthy actions in which they may have

engaged.

59. The particular approach I have presented to understanding human behavior - what is sometimes called "the study of lives" - is a long-established framework in psychology and related disciplines. Put simply, the past greatly affects present and future outcomes, and what happens to us as children often has a significant influence on our thoughts, feelings, and actions as an adult. No one's life course can be fully and meaningfully understood without paying special attention to these issues.

60. The record to which I have referred so far in this case-the numerous investigative reports and transcripts on which I have relied, the extensive documentary record of John Grant's social history and institutional life-makes it painfully clear that John was subjected to a wide variety of powerfully negative influences and experiences that, in turn, profoundly affected his development and subsequent life course. That is, John was exposed throughout his life to an extraordinary number of what developmental psychologists have termed "risk factors." This risk-factors model of understanding the effects of past experience on subsequent development and adult behavior applies a basic psychological framework that was summarized in a widely-known and often-cited published review by Ann Masten and Norman Garmezy in 1985, some fourteen years before John's trial took place. Among their list of the risk factors that were known then to predispose children to later delinquency are many of the very things that characterized John Grant's early life: a social history marked by poverty, psychologically unavailable caretaking that included abandonment (by his father) and otherwise grossly inadequate nurturing and supervision, an absence of appropriate adult role models, and repeated exposure to violence and criminality.

61. Over the last 25 or more years, extensive empirical research on childhood risk factors has established the fact that poverty, abandonment, neglect, the presence of negative role models, and exposure to violence and abuse in the family as well as the larger community function to predispose children to a whole series of significant problems. For many children, these problems persist as they mature into adulthood. The long-lasting negative effects include emotional and psychological dysfunction, poor academic performance, drug and alcohol abuse, delinquency, criminality, and violence.

62. John Grant's social history provides very clear evidence of these risk factors at work. John was exposed to precisely those problematic conditions and forms of childhood maltreatment that we know are destructive of normal development and that place children seriously at risk. His adolescent years provide corresponding evidence of many of the very problems that the risk factors literature suggests are likely to be created as a result. Indeed, John's social history illustrates many of the ways that these risk factors can interact over a life course to produce exactly the kinds of emotional and behavioral problems-poor school performance, truancy, drug use, and eventual delinquency-that the research indicates they will.

63. Let me be more specific. I began my discussion of John Grant's social history by talking about "psychologically unavailable caregiving"and suggesting that his life provided a clear

example of this form of childhood maltreatment. This particular risk factor is recognized by experts to be rooted in an "environment of neglect" rather than "only an isolated incident." The long-term psychological effects of this form of parental maltreatment are cumulative, can produce very dramatic destructive consequences that include depression, negative emotion, poor impulse control, and high levels of dependency. Many children who suffer this kind of chronically neglectful upbringing do poorly in school, develop emotional problems, and turn to drugs to ease the psychological pain and sense of worthlessness that such maltreatment produces. A high percentage of them also engage in adolescent and adult criminal behavior.

64. In John's case, there is clear evidence that his natural parents were both psychologically (as well as, in the case of his father, literally)unavailable as caregivers throughout virtually his entire life. Although he manifested emotional problems from early in his life, throughout his childhood, John was described as someone who was largely overlooked and ignored. To be sure, there seems to be little doubt that this chronic and extreme form of neglect was primarily the result of the sheer number of seemingly insurmountable problems that his mother faced over the course of John's life-she and the Grant family confronted serious poverty, and there were many Grant children to care for. Yet, the consequences of the kind of psychologically unavailable caregiving that John received were painful and detrimental nonetheless.

65. I also referred at the outset to a pattern that criminologists and other researchers have termed "criminal embeddedness" or the degree to which people living in criminogenic contexts become immersed in a network of interpersonal relationships that increase their exposure to crime-prone role models. The "little hope, drugs, lack of motivation, and lots of unemployed people" to which John's caseworker referred in describing the projects in which John was raised was one critical context in which criminal behavior was learned. Another was his contact with older brothers who, as his mother noted when John was still a teenager, had themselves provided John with role models for illegal behavior that he appeared to be influenced by. And another was his early experience in inhumane juvenile justice institutions where he was surrounded by older and more sophisticated juveniles, in facilities that provided little or no meaningful programming or supportive care. Thus, the "criminal embeddedness" in John's life also occurred in institutional settings, where John was exposed to what were in essence "tutelage" relationships. That is, as an initially inexperienced young person in this system, John was influenced in a direct way by more sophisticated criminal actors around him-ones who were not only present in the neighborhood projects where John lived but also in the very juvenile institutions where the state of Oklahoma confined him.

66. John's early emotional problems, his early sadness and depression, his loneliness, and his involvement in criminal behavior as a young boy can only be understood in the context of this traumatic social and institutional history. The way in which these destructive events shaped John's development and warped his perspective on himself and the world around him represents a compelling summary of the available mitigation in his case. It is mitigation that was essential for trial counsel to carefully develop and effectively present at John's capital penalty trial. The Grant jury deserved an opportunity to hear this story, to appreciate its psychological and developmental significance, and to take it into account in deciding whether he should live or die.

67. Similarly, they also deserved an opportunity to hear the story of institutional failure that characterized John's teenage and adult years. That is, just as with John Grant's social and institutional history, his capital jury deserved an opportunity to understand how and why this record of juvenile and adult institutional failure on the part of the Oklahoma juvenile justice and adult prison systems helped to explain his life course and, to a certain extent, helped to explain his behavior on the day in which the crime for which he was sentenced to death occurred.

68. John's institutionalization in the abusive Oklahoma juvenile justice system failed to address the adolescent problems for which he was sent there. In addition, because of the extreme conditions and treatment to which he was subjected, this experience-is likely to have had long-lasting, ..traumatic, and criminogenic effects on him once released. Thus, he was, in many ways, exposed to the worst of both worlds in the Oklahoma juvenile justice system. On the one hand, he appeared to slip through the cracks of this system, confined in institutions that were ill-equipped to address his problems, and appearing never to have gotten proper or adequate treatment for his problems. Notwithstanding the clear intention that he receive careful supervision, guidance, and training during his juvenile institutionalization, this kind of necessary help never seemed to materialize. On the other hand, John was confined in harsh and threatening facilities, ones to which he had a difficult time adjusting and in which he became more alienated, depressed, and emotionally troubled. Far from ameliorating the psychological effects of his abusive upbringing, John's institutional experiences likely worsened his behavioral and emotional problems and further undermined his ability to adjust to the free society to which he was returned.

69. There is a large literature on the way in which precisely the kinds of juvenile justice conditions to which John Grant was exposed can profoundly affect psychological development and one's ability to reintegrate into the larger society later in life. There are many experts with expertise on these issues who could have and should have shared their knowledge about these issues with John Grant's capital jury. For example, in one of the early, classic studies of juvenile institutions, Bartollas, Miller, and Dinitz observed that, even under the best of circumstances, juvenile institutions can have damaging long-term effects on the young persons
confined in them:

> Society's definition of juvenile offenders as deviants and of their acts as reprehensible is brought home again and again in the institutional milieu ... [which] has adverse impact on the self-esteem of juveniles. On top of the loss of personal identity items and the inability to respond to fellow inmates as human beings in free intercourse is the degrading manner in which juveniles are treated by staff. The barking of orders, the harsh tone of voice, and the deriding comment have long been found in juvenile institutions and contribute to the reason why staff tend to be looked upon as hostile, indifferent, condescending, and self-seeking.

70. In addition, juvenile institutions sometimes force children to adopt violent behavior patterns as strategies to survive, patterns from which they might otherwise have refrained. Again, Bartollas, Miller, and Dinitz are instructive:

> The constant threat and occasional use of violence bring home vividly the terrifying nature of this social world. If physical strength is not one of his talents, the new inmate must either outsmart and outtalk those who attempt to exploit him, or he must feign bravery and toughness so convincingly that he is not challenged. Should his performance fail, he may be subject to the most devastating blow of all-he is sexually exploited.

...

73. But the pattern of institutional failure, and the negative effects of institutionalization, did not end in John Grant's life when he was released for these juvenile justice facilities. Indeed, he was incarcerated a short time later in an adult prison system that also was ill-equipped to address the problems from which John suffered. By the time of the crime for which he was sentenced to death, John Grant was a 37 year old man who had spent nearly half of his life in an adult prison setting where his psychological problems had been initially identified and then were totally ignored until, approximately 17 years later, he committed the crime for which he was sentenced to death.

74. Some of the institutional failure to which John Grant was subjected in the Oklahoma prison system may have resulted from the increasing population pressures that where mounting over the years in which John was housed there, culminating in the mid-1990s when the *Battle v. Saffle* litigation was renewed, in part over overcrowding-related issues. Prison systems that are overcrowded cannot adequately address the needs of their prisoners, especially prisoners who have special needs, such as those who are mentally ill. It also appeared from the *Battle v. Saffle* documents to which I referred earlier that the Oklahoma prison system continued to lack appropriate levels of experienced mental health staff at least through the decade of the 1990s.

75. But mentally ill prisoners are often ignored in prison systems, even those that are not overcrowded or not as significantly understaffed as Oklahoma. So-called "special needs" prisoners are often underserved, and their problems are often misinterpreted by prison staff to represent willful misbehavior or a flagrant disregard of prison rules rather than a manifestation of emotional or psychological disorders. When this happens, unfortunately, special needs prisoners suffer the worst of both worlds. That is, they fail to receive badly needed treatment for their psychological problems and are severely punished for their misbehavior (often in ways that actually worsen the problems from which they suffer).

76. A classic pattern emerges among prisoners who suffer from unrecognized or untreated psychological problems. Termed the "disturbed and disruptive prisoner" pattern or syndrome by distinguished penologist Hans Toch, it involves a record of persistent but typically minor disciplinary infractions that often appear to be the result of simple disobedience or the product of an unruly or disagreeable personality but which, in fact, result from underlying emotional disorders that fester and may even significantly worsen in prison. Because prisoners who suffer from this syndrome by definition are rarely treated for their underlying problems, and are often subjected to harsh punishment instead, their behavior may deteriorate subtly but consistently over time and may even result in a dramatic, violent outburst after years of only minor disciplinary infractions.

77. Of course, there is clear evidence (to which I have referred) indicating that John Grant suffered from an untreated but serious psychological problem. In addition, his prison behavior was consistent with the pattern of the "disturbed and disruptive" prisoner because, except for the crime for which he received the death sentence, it did not appear to appreciably change or improve over time. That is, prisoners of normal intelligence who are not mentally ill ordinarily mature with age and their behavioral infractions decline dramatically over time-particularly through their 30s, as they naturally give way to a younger and more easily provoked cohort of prisoners. Mentally-ill prisoners, however, often continue with their patterns of infractions (in part because the source of the misbehavior is internal-it arises from their own disorganized or disordered thinking or their unpredictable emotional reactions).

78. In fact, the institutional records of untreated mentally-ill prisoners often reflect exactly the pattern that Mr. Grant's does - a fairly consistent number of relatively minor infractions that appear to have no rhyme nor reason to them. Just as John Grant's record indicates he did, mentally-ill prisoners often make odd or irritating comments to other prisoners or to staff that may provoke fights or result in being written up for verbal disrespect. Because they are confused, or perceive reality differently from others, or suffer from paranoid thinking that leads them to attribute motives and intentions to others that they do not have, they are commonly in minor conflict with the people around them.

79. Not surprisingly, this behavioral pattern can significantly impact the institutional history of mentally-ill, "disturbed and disruptive" inmates. One commentator has described the vicious cycle into which these prisoners can fall:

> The lack of mental health care for the seriously mentally ill who end up in segregation units has worsened the condition of many prisoners incapable of understanding their condition. This is especially true in cases where prisoners are placed in levels of mental health care that are not intense enough, and begin to refuse taking their medication. They then enter a vicious cycle in which their mental disease takes over, often causing hostile and aggressive behavior to the point that they break prison rules and end up in segregation units as management problems. Once in punitive housing, this regression can go undetected for considerable periods of time before they again receive more closely monitored mental health care. This cycle can, and often does, repeat. *

*(79). Defense counsel's unwillingness or inability to put these issues not only deprived Mr. Grant of a significant piece of mitigating evidence but it also allowed the prosecutor to effectively use Mr. Grant's prison record against him. Thus he argued that Mr. Grant's prison record showed that "he gets in fights all of the time" and also to argue(improperly, in my opinion, because there was no testimony on which to base it) that Mr. Grant would likely be a future danger in prison and that this was a reason to kill him:"With his history from the time he was 15 years old his

conduct shows anyone who looks at it that he is capable in the future and quite probably may commit additional violent crimes against people ... It's on that basis that I submit to you that the death penalty in this case is the most appropriate punishment ... " Trial Transcript at 1608. Defense counsel's negligence thus allowed the prosecutor to turn what should have been mitigation (i.e., the way in which Mr. Grant's untreated and neglected mental illness interfered with his prison adjustment and resulted in excessive periods of disciplinary confinement) into an extremely potent form of aggravation (i.e., future dangerousness).

...

81. ... the nature and context of his incarceration and the roots of the pattern of what appeared to be the psychologically-driven misbehavior he engaged in needed to be explained to his jury. Based on the documents I have reviewed, defense counsel appears not to have understood, considered, or addressed any of these important issues.

...

83. Moreover, the absence of this information meant that the members of his jury would have little insight into the real causes and influences on John Grant's behavior, and they would likely have no choice but to fall back on the simplistic but inaccurate account with which the prosecutor would leave them at the conclusion of his second stage final argument: "Ladies and gentlemen, the reason this defendant sits here today before you is because he had chosen a way of life that most of us don't follow. He's chosen consciously to break the law and his history shows that pattern of decision after decision ... He's made bad choices. Some people just do that." (Trial Transcript at 1613).

84. Of course, the prosecutor's version left out most of what was important for the jury to know. It left out the real reasons for John Grant's life course, the real reasons for the disturbed and impaired decisions he sometimes made, and the real reasons he sometimes acted without reflective decision making at all. It also ignored all of the various ways in which adverse circumstances and deprivations and forms of mistreatment to which he was subjected but over which he had no control had profoundly shaped what he was capable of doing and deciding later in his life. Defense counsel's failure to provide the jurors with all of the information that the prosecutor's account had ignored or omitted, much of which I have described at length in the pages above, deprived them of any opportunity to genuinely understand the fate of the person whose fate they were asked to decide.

ANALYSIS OF PENALTY PHASE PREPARATION AND PRESENTATION

85. Research that has been conducted by myself, my graduate students, and a number of other scholars who have systematically examined the capital jury decisionmaking process indicates that the preceding information and analysis are absolutely essential in giving capital juries a meaningful understanding of the moral issues before them, and precisely the kind of evidence and testimony that they rely on to render life rather than death verdicts. Thus, John Grant's life story-

accurately and elaborately told-was crucial to any fair rendering of a capital sentencing verdict in his case. Time and time again, capital jurors who have been interviewed after death penalty trials talk about wanting to be provided with as much of this information as possible, about needing to know who the defendant is, how he had been treated in earlier, formative periods in his life, what led him to the crime that they convicted him of, and where his criminal behavior fit in the larger context of his life.

...

90. Unfortunately, Mr. Grant's defense counsel appears to have left many of the central and essential aspects of their penalty phase preparation and analysis until the very last minute. Indeed, one might argue that they waited until long after the very last minute. That is, critical tasks were being performed, expert assessments being made and opinions being formulated long after they could be adequately integrated into a meaningful and effective penalty phase case. In addition, many crucial tasks were simply never performed, and many extremely obvious, eminently feasible, and critically important investigative leads were never pursued. I can think of no legitimate justification for this belated and necessarily incomplete approach to such an important set of tasks.

91. In most capital penalty trials, expert mental health testimony of some sort is central to an effective case in mitigation. This is especially true in a case such as this one where serious emotional and mental health issues were present, where many members of the defendant's family were available to describe the Mr. Grant's early problems, and where his institutional psychiatric records indicated the existence of serious problems for which he remained untreated.

...

95. The record in John Grant's case indicates that few if any of these things were done properly. Mental health experts were not given the proper time to prepare their evaluations or to allow defense counsel to integrate the results of those evaluations into an overall defense strategy,* they were not given remotely adequate databases or documentary records with which to fully evaluate Mr. Grant, and they were not used intelligently or effectively in either the guilt or penalty phase of Mr. Grant's trial. Extremely significant issues and themes were entirely overlooked or touched upon in only superficial ways that failed to meaningfully convey their nature and importance to the Mr. Grant's jury.

> *(95). The record indicates that Dr. Montgomery, the key and only defense expert to testify in the guilt phase of Mr. Grant's trial, and the one on whom trial counsel claimed to rely also for crucial second stage evidence (even though trial counsel never bothered to call him in the second stage) was contacted for the first time in January, 2000, about a case that was scheduled to, and did, begin in February. This is not a remotely adequate amount of time in which to properly prepare for a case such as this, or for trial counsel to properly integrate Dr. Montgomery's insights and findings into a first or second stage defense. As I will show in the subsequent pages, Dr. Montgomery's lack of adequate preparation was painfully obvious in Mr. Grant's trial and exploited very effectively by the prosecutor.

96. There is no valid tactical reason that I know by which this shocking lapse in preparation can be understood or justified. It should have been obvious to trial counsel from the very first moment that they undertook Mr. Grant's defense that the case would revolve almost entirely around psychological or mental health issues. The only possible defense for a crime that had been witnessed by numerous persons and in which the defendant had directly implicated himself would be one that involved his mental state at the time. The crime itself had all of the trappings of an emotional outburst by a psychologically unstable and overwrought man. The crime occurred without obvious motivation or provocation, was committed in full view of a number of correctional officers, and was commenced in an area from which John Grant undoubtedly knew he would not escape. Once the crime was committed, Mr. Grant shut himself inside a closet and began stabbing himself with the weapon that had been used in the attack. He had to be forcibly removed by use of a shocking device. After the crime, although he appeared to be coherent, he was also described as "in a trance-like state" in the course of the post-crime interrogation.

97. In addition, Mr. Grant eventually offered an explanation of the crime that seemed to implicate the victim, Ms. Carter, with whom he claimed to have had a close personal relationship, the termination of which presumably led to his distraught, violent outburst. Defense counsel was clearly under an obligation to investigate this version of events and the psychological dynamics that gave rise to it. Thus, any meaningful interpretation of the scenario Mr. Grant provided would have required the assistance of mental health experts, both to understand Mr. Grant's state of mind in relationship to the victim, and perhaps even to have understood the victim's state mind in ways that would have explained her relationship with Mr. Grant.

98. I note in passing that Mr. Grant's version of these events was not entirely without corroboration. In fact, there were numerous sources of corroboration for this version of events in documents that I reviewed. For example, John's older sister Ruth Ann Grant believes that John was counting heavily on the victim, Gay Carter, to make a future together with him. She believes that Ms. Carter promised John that she would help him find an attorney to get him out of prison. Once John found out that Ms. Carter had been lying to him, however, according to Ruth, "he just gave up." O.C. Frazier, one of John's younger brothers, recalled essentially the same thing-that John and Gay Carter were lovers and that John "went off the deep end" when she started seeing someone else.

99. Inmates at the Dick Conner Correctional Center corroborated essential elements of John Grant's story as well. Steve Irvin reported that Ms. Carter's "face lit up" when she saw the defendant and, conversely, that she made Mr. Grant "happy for the first time" in his life. Another inmate, Ricky Mitchell recalled that John Grant "lost everything" when the victim rejected him-including his job at the prison-and that he was "lonely and miserable" when Ms. Carter broke off the relationship with him. Both inmates reported that the relationship was common knowledge among the staff. Claude Stith, John Grant's cellmate at the time of the crime, told Oklahoma State Bureau of Investigation (OSBI) agents that he had heard rumors that Gay Carter was John's "girlfriend" and observed John visiting the kitchen and dining hall where the victim worked often and that he often brought food back to the cell.

100. Indeed, Steve Moles, a Dick Conner Correctional Center Unit Manager reported to OSBI agents that there had been an internal investigation of Ms. Carter regarding inappropriate conduct with inmates. In addition, he acknowledged that, although he had never been able to prove the allegations, he, too, had heard rumors that the victim, Gay Carter, had some sexual contact with inmates and had occasionally smuggled contraband items to them.

101. I note also in passing that such relationships between prisoners and staff members are not unheard of in correctional settings. As noted above, in order to properly evaluate the plausibility of this potentially credible and obviously mitigating possibility, defense counsel would have needed mental health experts to assist in evaluating both Mr. Grant and, to the extent possible, help to uncover and interpret what could be learned about Ms. Carter and her possible motivations for or vulnerabilities to such relationships. Even (and perhaps especially) if defense counsel concluded Mr. Grant's version of events was incorrect, mental health experts would need to have been consulted about why he apparently believed this to be true, and to determine whether his belief was perhaps the product of paranoia or delusional thinking (even the result of the psychotic or "crazy" thinking with which Mr. Grant had been diagnosed when he first entered the Oklahoma prison system). The point is simply that this version of events was either accurate or not and, either way, defense counsel should have pursued it with the assistance of a mental health expert who was involved early in the case. As with many other essential aspects of this case, defense counsel appears to have pursued none of these necessary courses of action.

The Guilt/First Stage Trial

102. Focusing primarily on defense counsel's handling of the key defense guilt phase expert witness, psychologist, Dr. Dean Montgomery, I note below several glaring deficiencies with the way in which trial counsel prepared and presented him.

103. Based on the materials I have reviewed, I have concluded that trial counsel provided Dr. Montgomery with a clearly inadequate database on which to reach a complete and appropriate set of conclusions in Mr. Grant's case. Among the things trial counsel failed to provide to him were: the 1979 Psychological Report generated at the Lexington Assessment and Reception Center, Mr. Grant's medical file (that contained numerous references to his confinement in lock down and isolation), his Department of Corrections file (which contain numerous references to the nature of some of Mr. Grant's emotional and behavioral problems; Mr. Grant's juvenile records (which contained critical information concerning John's social and institutional history). In addition, he received Oklahoma State Prison records from Drs. Mason and Smith just a few days before he testified. I know of no valid tactical reason that would justify providing a key mental health expert witness in a capital trial with such an incomplete and partial database upon which to premise a crucial expert opinion.

...

111. It is difficult to imagine how Dr. Montgomery's guilt phase testimony could have been given much credibility after the prosecutor finished emphasizing this shockingly poor level of

preparation (a level of preparation for which defense counsel, not Dr. Montgomery, was clearly responsible). I can think of no valid reason, tactical or otherwise, for the failure to properly prepare a key expert witness in this manner and to render him vulnerable to such an embarrassing and credibility-destroying cross examination.

...

The Penalty/Second Stage Trial

113. Inexplicably, after failing to have Dr. Montgomery address the critical issue in the guilt phase of the case-John Grant's mental state at the time of the crime-trial counsel failed to re-call Dr. Montgomery to testify to critical penalty phase mitigation.*

> *(113). It is simply inconceivable that any competent counsel could have concluded, on the basis of Dr. Montgomery's superficial and truncated first stage testimony, that they had "elicited everything that I needed to get from him with regard to second stage, also," as trial counsel in this case testified in the evidentiary hearing before District Judge Pearman (Hearing Transcript at p. 64, emphasis added). This statement, as much as anything else I have reviewed, illustrates how poorly trial counsel seems to understand the nature and purpose of second stage mitigating testimony.

The typical approach to mental states issues in a capital penalty trial is to take full advantage of the fact that the legal standard for demonstrating a mitigating state of mind is much less onerous and much broader than the standard that applies to guilt-phase determinations. Because the legal 'standard is so much broader, so too are the parameters of relevant testimony. Psychological and psychiatric experts who are limited in guilt-phase testimony to issues that are connected to narrow guilt-phase defenses are permitted to testify in penalty trials about a whole range of issues that are potentially sympathetic to the defendant, to explain the nature of his problems in greater detail, and simultaneously humanize the defendant for the jury that has just convicted him of a terrible crime. It is one of the most important opportunities offered to the defense in capital cases and one that helps to ensure the reliability of capital penalty verdicts (i.e., what helps to guarantee that only those defendants most deserving of death receive it).

114. Based simply on his report, it is clear that Dr. Montgomery had a great deal of potential mitigating testimony to give, including: the fact that John was an apparently troubled youth"; that he had been subjected to an important form of institutional failure (i.e., namely that he had been identified nearly 20 years earlier as “crazy" and in need of immediate psychiatric programming in the Oklahoma prison system but never received any psychiatric help for his problems); that he currently suffered from a range of psychological problems that, even though not amounting to a defense to the crime for which the jury convicted him constituted significant mitigation (including "emotional lability, marked depression, significant anxiety, social reclusiveness, immaturity, and a propensity toward physical symptoms without known physical etiology"); that John Grant expressed "significant remorse for the actions which led to his charges";

and that at the time of the trial he was still "a significantly troubled man" in need of "psychiatric and counseling services for his emotional lability, depression and anxiety." Dr. Montgomery diagnosed Mr. Grant-in his report but not in his testimony-with major depressive disorder as well as with post-traumatic stress disorder. I can think of no valid tactical reason why defense counsel would decline to make use of the opportunity to present this kind of potentially powerful and critically important mitigating testimony.

115. Instead, the only mental health expert the defense attorney called at the second stage, penalty trial was a Department of Corrections employee, psychiatrist Darrell Schreiner. Presumably, Dr. Schreiner was the intended witness through whom the defense would present the "mitigation evidence" promised during the second stage opening statement. Namely, as counsel told the jury at the start of this phase of the trial: "[T]he evidence is going to show, I believe, that Mr. Grant suffers from a severe mental illness that clouds his reasoning and his ability to control himself and his ability to be in touch with reality."This, of course, would have been potentially effective mitigation, if trial counsel had presented it, and done so in a remotely effective, properly prepared fashion. Unfortunately, they did not.

116. Dr. Schreiner, the expert whom defense counsel presumably chose to deliver virtually their entire case in mitigation to the jury, had not even examined John Grant. Moreover, he was not familiar with at least some of the tests that had been administered to John at an earlier time, had reviewed only a file of Department of Corrections records that he acknowledged appeared not to contain key portions ("the mental health part"), opined that other examiners had not conducted complete mental health examinations of Mr. Grant (but also emphasized that he conducted none of his own), and repeatedly that he could not reach any definitive conclusions about Mr. Grant because he "hadn't gotten a chance" to evaluate him in preparation for his testimony in Mr. Grant's death penalty trial.

117. In fact, because defense counsel had not properly prepared Dr. Schreiner, he was not even able to answer a basic question that counsel himself had posed:

> Q. Based upon other documents that you've reviewed as well as that one, do you have an opinion as to whether the use of psychotropic or anti-psychotic medications would be a benefit to Mr. Grant?
>
> A. No, because I haven't seen him before. I haven't had a chance to do an evaluation.

It is difficult to interpret this exchange between defense counsel and his key penalty trial witness as indicating anything other than that counsel was posing questions that he had not reviewed beforehand with his witness and, therefore, for which he had no idea what answers would be given.

118 Indeed, it is difficult to fathom exactly what defense counsel's intention was in calling Dr. Schreiner to the witness stand. Counsel repeatedly asked his expert questions about

whether or not it would have been appropriate to have medicated Mr. Grant, whether the medication would have changed or altered his behavior, and so on. And Dr. Schreiner repeatedly replied that it "would depend on the individual." Since he had not ever evaluated Mr. Grant, as he repeatedly pointed out for the jury, he repeatedly demurred that was impossible for him to say one way or the other. I cannot understand how or why defense counsel believed there was anything mitigating about this testimony. In fact, in a sense, it detracted from the testimony that had been earlier provided - if only in passing - by Dr. Montgomery (who <u>had</u> evaluated Mr. Grant and who <u>had</u> opined that psychotropic medications would have made a difference).

119. Moreover, the price of this utterly pointless testimony was high indeed. On cross examination, the prosecutor predictably used Dr. Schreiner to further take issue with and undermine the testimony of Dr. Montgomery. Among the things that Dr. Schreiner opined on cross examination was that it would be impossible to make a diagnosis with the information contained in Dr. Montgomery's report, that he would not prescribe medication based on the information in Montgomery's report, that in his opinion no one had ever described Mr. Grant as a person having a mental illness.

120. In fact, Dr. Schreiner ended his testimony having, on balance, been a far more effective witness for the prosecution than defense. He contributed absolutely nothing to the defense mitigation case, did not remotely support the proposition defense counsel had promised the jury would be the core of their case in mitigation-that "Mr. Grant suffers from a severe mental illness that clouds his reasoning and his ability to control himself and his ability to be in touch with reality"so-and he nonetheless managed to undermine the testimony that Dr. Montgomery had presented in the first stage trial that at least tangentially supported ths notion.

121. In light of the prosecutorial tone of this witness's overall testimony, it is not surprising that, in the evidentiary hearing before District Judge Pearman, defense counsel appeared to have remembered Dr. Schreiner as a witness who had been called by the prosecutor in rebuttal to his own, rather than as a witness he called himself.

122. In addition to what trial counsel did wrong in the second stage of Mr. Grant's capital trial-primarily the extraordinarily ineffective and damaging way in which trial counsel handled Dr. Schreiner - there was a great deal that he simply did not do. In fact, in more than 20 years of having consulted on capital cases and, from time to time, having myself testified in them, written extensively about the nature of capital mitigation, and reviewed in appellate and habeas corpus proceedings such as this one scores of capital case transcripts, I have concluded that Mr. Grant's is one of the most incompetently assembled and presented that I have ever encountered.

123. I have already commented on his failure to re-call Dr. Montgomery to the stand in the second stage and have him elaborate on the range of other conclusions about Mr. Grant that he had reached (a number of which were contained in his report but which trial counsel failed to elicit during his testimony). In addition to Dr. Montgomery, other experts could have and should have been called to address in detail the numerous other issues that I have discussed earlier in this

Declaration (including the profound impact that Mr. Grant's social and institutional history had on his development and psychological makeup as well as the legacy of institutional failure to which he had been subjected and the ways in which his institutional behavior was likely the result of his underlying psychological problems, ones that would have been exacerbated by the disciplinary regimes to which he was subjected). The Grant jury never heard any explanatory expert testimony about any of these crucial issues and the reliability of their decisonmaking was compromised as a result.

124. Finally, in perhaps the most obvious and basic deficiency, in the case of a client whose family included two living parents and eight other siblings, trial counsel neglected to call a single family witness on Mr. Grant's behalf in the crucial sentencing stage of his capital trial. Not one family member was called in this life and death proceeding to provide the jury with a glimpse of the kind of life John Grant had led, to describe his many positive and endearing traits, to express their continued caring for him and the loss they would feel if he were to be executed, or to otherwise speak in any heartfelt way on his behalf. It is hard to imagine a more powerful implicit message-that this was a person without connections to other human beings, a person who has literally no one, not a mother or sibling who cares enough to appear for him, who is so alienated and dislikable that there is not one person who will come forward in the name of saving his life. Of course, none of these things were true. But, due entirely to defense counsel's ineffectiveness, John Grant's jury would never have the benefit of knowing the truth.

125. It is not clear how much basic familiarity defense counsel had with Mr. Grant's family history. At one point counsel asked Mr. Grant, "you have six brothers and sisters; is that correct?" and Mr. Grant had to correct him to the effect that he had "[f]ive brothers and three sisters." Whether counsel had any idea at all about the actual makeup of his client's family, as I said, he failed to call any of its members. It was a costly and, in my opinion, fatal error at least on par with all the others I have described. Indeed, there was a great deal of mitigating testimony that the family members could have and should have provided and I believe it would have made a significant difference in the outcome of John Grant's case. In the several paragraphs that follow, I have provided examples of just some of the mitigating and humanizing testimony that John's family members could have given before his jury but which, because of trial counsel's ineffectiveness, did not.

126. Andrea Grant, a younger sister who spent much time with John as they were growing up, regarded John as her "favorite brother," knew that John was badly treated by their mother (who was overrun with the responsibilities of raising nine children). She also knew and could have testified that John had assumed a caring, protective role with the younger children in the family, but that he succumbed to the many negative influences that surrounded the Grant family in the projects where they lived (influences to which she, too, would have succumbed had she not been able to find a stable family with whom to connect-a support system that John lacked). She would have testified at John's capital penalty trial about all of these critical, mitigating aspects of John's social history and psychological development if trial counsel had bothered to contact her about it.

127. O.C. Frazier, a younger brother, knew that John had been easy to talk to as an older

brother, but that he was someone who was changed for the worse as a result of difficult experiences in juvenile justice facility at Boley. O.C. perceived John correctly, as one of the younger inmates at Boley who was negatively influenced by older, more sophisticated juveniles who pressured him to join gangs. He also believed that John "went off the deep end" when he learned that the victim in this case, Ms. Gas (sic), was seeing someone else in the prison. He would have testified at John's capital penalty trial about these critical, mitigating aspects of John's institutional history, as well as his state of mind with respect to the victim, if trial counsel had bothered to contact him about it.

128. Ruth Ann Grant, an older sister of John's who spent a great deal of time with him as the two of them were growing up, knew about many of John's positive traits, as well as the extreme difficulties the children in the family faced as they were growing up in a household without much guidance and little or no nurturing support from parents. She knew also about the emotional problems John manifested from an early age, and that John's problems appeared to be a more serious case of the kind of depression that she and another sister also suffered from. Ruth Ann also was aware of and could have described the significant, negative changes that occurred in John as a result of his institutionalization. She, too, believed that John had become dependent on the victim and just "gave up" when he learned she was no longer interested in him. She would have testified at John's capital penalty trial about all of these critical, mitigating aspects of John's social history and psychological development, as well as his state of mind with respect to the victim, if trial counsel had bothered to contact her about it.

129. Norman Grant, an older brother who had remembered John as a nice, quiet boy who like to draw, who had little or no guidance as a child, who talked with him about being beaten and verbally abused in juvenile justice institutions, and who described his relationship with the victim and expressed remorse for what he had done would have testified in John's capital penalty trial about these important mitigating facts if trial counsel had bothered to contact him about it.

130. Ronnie Grant, an older brother who, along with another older brother, Kenneth, moved to Los Angeles with their father (who left John and John's mother behind), remembered that John had good traits as a child and that John wanted to do the right thing. He would have testified in John's capital penalty trial about these important mitigating facts if trial counsel had bothered to contact him about it.

131. I am aware that trial counsel has been asked directly about why he did not take even these utterly basic steps of at least calling family members to testify on his client's behalf. It is my opinion that trial counsel's alleged reasons for not calling any of John Grant's family members to testify in his capital trial, as offered at the evidentiary hearing before District Judge Pearman, are in some cases simply invalid, and in others simply incredible. For example, the claim that family witnesses were irrelevant because Mr. Grant "had been on his own pretty much" since age 15 is truly a non sequitur. Even if factually correct (which it was not), family witnesses still could have and would have testified about the crucial years until the age of 15. Moreover, since most young men leave home at around the age of 18, the import of defense counsel's claim is that there is something crucial about the years between age 15 (when Mr. Grant presumably left home) and age 18 (when

most people do) that rendered the testimony of family in this case irrelevant. That simply defies logic.

132. The same kind of illogic characterized the other reasons he offered.*

*(132). I will not belabor the issue of whether or not Mr. Grant himself expressed opposition to having his family member contacted. Given the nature of the rest of the trial preparation, based on the record I have reviewed, I would be very surprised if Mr. Grant was ever fully informed by defense counsel about the nature of mitigation, and the tenor and purpose of family member testimony during the second stage of a capital trial. It appears to be a concept with which defense counsel still seems unfamiliar. However, the issue is really irrelevant to the question of whether this kind of testimony should have been pursued. As defense counsel himself correctly noted: "I don't normally, I don't take that into consideration what the Defendant in a Capital murder case wants with regard to those kinds of issues. We would still follow-up as far as trying to find family and getting information independently." Hearing Transcript at 58. It is still not clear why that approach was not followed in Mr. Grant's case.

For example, the fact that family members "really hadn't had any contact with him" since John's incarceration (also not entirely true) in no way undermined the family members ability to testify about his early social and developmental history. In fact, this contention on trial counsel's part raises real questions about whether he really understood-or understands-what the concept of mitigation entails. Trial counsel's additional claim that "we couldn't really find them," was belied convincingly by Mr. Grant's family members themselves who made it clear that they were accessible and would have been willing to help. (Of course, the fact that Mr. Grant's appellate counsel appears to have had little trouble both finding and involving family members in subsequent proceedings is further indication that trial counsel did not approach the task with due diligence.)

133. As a result, a significant amount of powerfully mitigating testimony was forgone at trial. Defense counsel left Mr. Grant's jury with little or no mitigation to consider, and little or no testimony on which to base a life rather than death verdict. Despite the fact that much such mitigation was available-if only trial counsel had diligently searched for it, properly prepared witnesses to testify about it, and competently presented it during the trial itself.-the jurors never got the benefit of hearing any of it. Absent such mitigating evidence they likely felt, as most jurors do in such situations, that they had little choice but to reach the sentencing verdict that they did.

134. It is impossible to know the reasons for trial counsel's extraordinarily ineffective handling of Mr. Grant's capital case. In a sense, perhaps, the reasons are unknowable and, in any event, may not be necessary to uncover in order to resolve Mr. Grant's appeal. However, I have been informed by Mr. Grant's current attorneys and reviewed documents to the effect that, at the time of his capital trial, Mr. Grant's two trial attorneys, James and Amy Bowen, were married but also were in the process of obtaining a divorce. Without any detailed knowledge about the nature of their

relationship, I am unable to offer any opinion about the specific effect this is likely to have had on their performance or what, if any, role it may have played in accounting for what I believe to be, based on materials I have reviewed, woefully inadequate representation of Mr. Grant.

135. Of course, it is not difficult to foresee circumstances under which the particular nature of the case itself, and the defendant's claim that he had a relationship with the victim and was emotionally overwhelmed when that relationship terminated, would have placed a special strain on the two defense attorneys who were themselves in the process of ending their own relationship.

136. In addition, I can say generally that capital trials are extraordinarily stressful undertakings. When done properly, with the appropriate focus and investment of energy, they are emotionally draining experiences that strain the working relationships of professionals who engage in them and create special pressures on social and familial relationships as well. Indeed, training programs for capital defense attorneys often include sessions on the general topic of "surviving your case," that are directed at the extraordinary emotional toll that such work can take not just on the lawyers but also on those who are close to them (especially spouses). The addition of another emotionally wrenching experience (such as a pending divorce) would be difficult for a capital attorney to absorb in the course of a capital trial without creating the possibility that one's performance would suffer. The fact that the divorce involved both attorneys simultaneously-that is, partners who were divorcing each other in the course of the trial- I suppose should raise prima facie concerns about their overall emotional state.

137. But whatever the cause, there is simply no question that defense counsel's performance before and during Mr. Grant's trial clearly fell significantly below the standards of competence and effectiveness with which I am familiar in capital trials across the country.

CONCLUSION

138. In brief summary, it is my expert opinion that there was extensive mitigating evidence and testimony that could have been effectively developed and presented in John Grant's capital trial but was not. This included but was not limited to the psychologically unavailable caregiving and parental abandonment from which he suffered, the lack of positive role models and the negative, criminogenic neighborhood influences to which he was subjected in the projects where he grew up, the severe, abusive, and criminogenic juvenile institutionalization he experienced, the long and repeated history of institutional failure to which he was exposed, and the adult psychological, emotional, and behavioral consequences of this traumatic history and combination of risk factors that remained untreated in the Oklahoma prison system for 17 years after it was diagnosed and was handled in such a way that it likely exacerbated rather than alleviated his pre-existing problems.

139. These mitigating factors-especially when combined with the supportive comments of family members who still had positive memories of John's endearing traits and were prepared to testify in heartfelt ways about his importance to them-are powerful, moving, psychologically significant, and well-documented reasons to render a life rather than death sentence. That is, this is

precisely the kind of mitigation that capital jurors in other cases and persons eligible to serve on capital juries report have or would lead them to life rather than death verdicts.

140. I can perceive no legitimate reason why this kind of evidence and testimony was not effectively investigated, assembled and developed, and presented in John Grant's capital penalty trial. This is exactly the kind of evidence and testimony that was commonly understood-for at least 20 years before the Grant trial was conducted-to be essential to any fair application of the death penalty. It was regularly and routinely being presented by all of the competent attorneys throughout the country at the time of John Grant's trial and, indeed, for many, many years before.

AFFIDAVIT OF DONNA SCHWARTZ-WATTS

STATE OF SOUTH CAROLINA	)	
	)	**ss.**
COUNTY OF ANDERSON	)	

Before me, the undersigned Notary, on this 20 day of November, 2014, personally appeared Donna Schwartz-Watts, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. My name is Donna Schwartz-Watts, M.D. I am a Board Certified General Psychiatrist with Added Qualifications in Forensic Psychiatry. I am presently the Psychiatric Service Director at Patrick B. Harris Psychiatric Hospital in Anderson, South Carolina.

2. In addition to treating patients, I have clinical appointments at four medical schools where I teach medical students, residents in General Psychiatry, and resident in Forensic Psychiatry. I am a Department of Mental Health Professor of Psychiatry at the University of South Carolina School of Medicine. I am a Professor of Psychiatry at the Edward Via College of Osteopathic Medicine Carolinas Campus. I am a Professor of Forensic Psychiatry at the Medical University of South Carolina. I am an Associate Professor of Psychiatry at the University of South Carolina Greenville Hospital Systems.

3. I also engage in the private practice of Forensic Psychiatry.

4. In June, 2005, I was retained by the Office of the Federal Public Defender for the Western District of Oklahoma as a forensic psychiatric expert in *Grant v. Mullin*, Case No. 05-CV-0167 TCK-SAJ, in the Northern District of Oklahoma. I performed a forensic psychiatric evaluation of John Marion Grant and submitted a psychiatric evaluation and affidavit pertaining to same. Specifically, I performed a multiaxial assessment of Mr. Grant according to the standards of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (Fourth Ed.) ("DSM IV") based on personal examination and a review of records relevant to his case.

5. I have once again been contacted by the Office of the Federal Public Defender for the Western District of Oklahoma regarding Mr. Grant's upcoming execution and clemency hearing.

6. Pursuant to my previous evaluation, as well as my recent review of records, it was and is my opinion, to a reasonable degree of professional certainty, that:

A. Mr. Grant has witnessed, and been subjected to, many traumas which have been independently documented through medical records and family interviews.

However, he has been inconsistent in reporting symptoms related to those traumas, not for the purpose of exaggeration, but for the purpose of minimization. Because Mr. Grant minimizes his symptoms, he is not an adequate historian. Collateral information is crucial to understanding Mr. Grant's mental state and behaviors at the time of the offense. Because a family history was not originally obtained, no one working with Mr. Grant at the time of his trial was able to adequately assess his mental state.

B. Mr. Grant's psychiatric/psychological evaluation at the time of his trial was flawed because the defense expert, Dr. Dean Montgomery, had an inadequate developmental and/or family history. Because Mr. Grant's family members were not interviewed, Dr. Montgomery did not have adequate information to consider the reason for Mr. Grant's attachment to the victim, Gay Carter.

C. Mr. Grant's mental state at the time of the offense was impaired. Mr. Grant suffered from a series of mental illnesses including Major Depression, Post Traumatic Stress, and Reactive Attachment Disorder at the time of Ms. Carter's death.

D. Mr. Grant's crime against Ms. Carter was directly related to his mental illnesses. Due to his childhood neglect and deprivation, he had an intense and ultimately, unstable, attachment to Ms. Carter.

E. Mr. Grant has been a victim of a number of physical and possible sexual assaults while confined in the Department of Corrections. These assaults have exacerbated his anxiety disorder and his inability to form and maintain personal relationships. Further, Mr. Grant's exposure to periods of confined isolation as a child in various group homes exacerbated these same mental illnesses.

F. Mr. Grant's physical condition before the incident was severely impaired. He had been treated for a herniated disc that caused him difficulty on a daily basis. His pain was severe and would have affected his judgment and his ability to control his conduct.

G. Mr. Grant had limited ability to deal with stress during time of the offense.

H. Neuropsychological testing of Mr. Grant was performed in 2001 and revealed abnormal results. The results show evidence of cognitive disorders that indicate Mr. Grant has organic features to his illness which reduce his capacity to cope with stress and make reasoned decisions during periods of duress.

7. Further, it was and is my opinion, to a reasonable degree of medical certainty, that Mr. Grant suffers from three mental illnesses (Reactive Attachment Disorder, Major Depression,

and Post Traumatic Stress Disorder) that affected his conduct at the time of the offense for which he was convicted. These are serious, but treatable, mental illnesses that affect him on a daily basis.

8. Along with his mental illnesses, Mr. Grant suffers from various physical ailments as well. Most notably, Mr. Grant has been treated for visually significant primary chronic open angle glaucoma of both eyes. Review of his medical records from the Dean McGee Eye Institute shows that he has a history of ocular trauma to both eyes. He also has had bilateral cataracts as well as surgery (bleb revisions and shunts) on his eyes in both 2013 and 2014. He continues to have severe visual impairments.

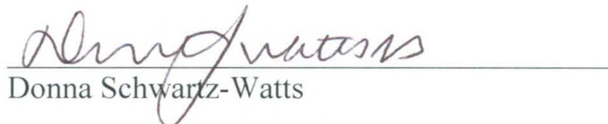
9. Mr. Grant's risk for violence has decreased significantly due to his current age, his health conditions, his lack of interpersonal relationships, and his housing status.

10. I have previously submitted recommendations that Mr. Grant remain in a single cell. Single cell housing can help manage the symptoms of Mr. Grant's mental illnesses. His mental illnesses are also treatable with medication.

11. I have reviewed the Declaration of Craig Haney, Ph.D., J.D. executed on April 23, 2002, and I concur with Dr. Haney's assessment of the various traumas Mr. Grant has been exposed to as well as the psychological significance of the same.

12. I swear and affirm that the foregoing statement is true and correct.

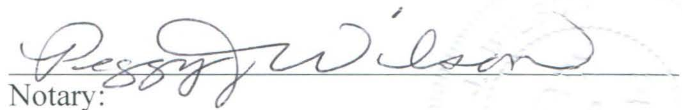
FURTHER AFFIANT SAYETH NOT.



Donna Schwartz-Watts

Subscribed and sworn to before me the 20 day of November, 2014.

Seal:



Notary:

My commission expires: January 22, 2017

AFFIDAVIT OF TERRY SMITH

STATE OF OKLAHOMA	)	
	)	**ss.**
COUNTY OF OKLAHOMA	)	

Before me, the undersigned Notary, personally appeared Terry Smith, known to me of lawful age, who being by me first duly sworn, upon his oath, deposes and says:

1. My name is Terry Smith. I am the President and CEO of the Oklahoma Institute for Child Advocacy or OICA. This organization was developed in 1983 as a result of an investigative report by a national news organization. The series was called Oklahoma Shame. The report exposed the cruelty and abuse experienced by Oklahoma children in state custody.

2. Prior to becoming the CEO of OICA, I worked with Oklahoma children, youth, and families for over 30 years. I served as a Juvenile Justice Specialist, District Supervisor, Deputy Director and Training Director for the Oklahoma Office of Juvenile Affairs. I have also managed the State and Federal Grants Department and developed Medicaid funding systems for youth in the juvenile justice system. Throughout my career, I have worked for agencies that serve both children who have been abused/neglected and youth who have committed crimes.

3. I have been told John Grant was first sent out of his home at the age of 11 years after being charged with nonviolent crimes including larceny and vandalism. In the 1970's this was common practice in Oklahoma. We now know that removing a child from their family is the worst thing you can do to a child, even if that family is dysfunctional. When an eleven year old commits a crime, it is usually more of a parent problem than a kid problem. Families are the source of these behaviors. A child is not born a criminal.

4. Today there are first time offender programs that hold the child accountable for his actions, and also provide treatment in areas of need. The system also helps parents be more accountable and provides education and treatment for them as well. Examples of specific treatment options for both parents and children are Substance Abuse, Gang Prevention, and Anger Management. None of these opportunities existed when John Grant needed them.

5. Research shows the earlier and deeper a child becomes involved in the juvenile system, the more likely it is they will be in the adult corrections system. This is why community based programs have been developed. Today, the State of Oklahoma has 42 youth service agencies that work with children and adolescents within their own communities.

6. Even though the juvenile system still has it's challenges, it has come a long way. There are agencies such as mine that provide advocacy and promote continued progression regarding the best ways to assist children during pivotal times in their lives. However, in the 70's and early 80's, there were very few services available for prevention and rehabilitation. Placing a child outside of the home without addressing his or her home life and the family's struggles will only exacerbate the situation.

7. I can say with confidence John Grant would not be where he is today if he had had the appropriate intervention at an early age.

FURTHER AFFIANT SAYETH NOT.

Terry Smith

Subscribed and sworn to before me this 24th day of November, 2014.

NOTARY PUBLIC ____________________

AFFIDAVIT OF JAMES BOWEN

STATE OF OKLAHOMA)
) **ss.**
COUNTY OF TULSA)

Before me, the undersigned Notary, on this 19th day of November, 2014, personally appeared James Bowen, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. I am employed as an attorney with the Oklahoma Indigent Defense System. I have been practicing law since 1989.

2. I represented John Marion Grant at his original trial. I was lead counsel.

3. At the time of Mr. Grant's trial, I was involved in three other capital cases (Murphy, McElmurry, Banks). These were four of the worst cases of my life. I ended up trying the cases back to back in a matter of a couple of months. On top of all of that, I was handling a number of other non-capital murder cases as well. I do not think it was possible to adequately prepare for that kind of schedule. It was a huge case load. Had I had more time, I could have prepared more thoroughly for Mr. Grant's case.

4. My co-counsel on Mr. Grant's case was Amy McTeer. Ms. McTeer had only recently been admitted to the Bar as an attorney at the time of Mr. Grant's trial. In fact, for most of the time leading up to trial, I think Ms. McTeer was only a research assistant.

5. Prior to Mr. Grant's case, Ms. McTeer and I were married. However, our divorce was finalized the month before Mr. Grant's trial. While at the time I thought I was putting aside our personal differences so that we could continue representing Mr. Grant together, I realize now that continued representation with my ex-wife was probably not a good idea. There were times it was difficult to communicate with Ms. McTeer because of her reaction to the recent divorce.

6. I realize now that under the new standards of *Wiggins v. Smith*, 539 U.S. 510 (2003), I was ineffective for failing to launch a proper investigation into Mr. Grant's mitigating evidence. While I had asked my investigator to try to call some of Mr. Grant's family members prior to trial, this did not happen. I realize now I should have called Mr. Grant's family, especially his mother, to testify on his behalf. We ended up not presenting any of his family members during second stage.

7. From subsequent counsel, I understand there was a lot of mitigation evidence available had we done a thorough investigation of Mr. Grant's life. I never asked Mr. Grant about whether he had a history of sexual or physical abuse in prison or in juvenile custody. While I talked with Mr. Grant some about his juvenile incarceration, I did not get much information. My guess at the time was that Mr. Grant just did not want to talk about his experiences in juvenile detention. Of course, had I been aware of a history of sexual abuse, I would have wanted to present that information to the jury.

8. From subsequent counsel, I understand Mr. Grant was first sent to a boys home at the age of 11 years old. As a juvenile, he was detained at several boys homes such as Boley and Helena. Mr. Grant was at these facilities prior to the reform of these institutions. This reform came about due to the exposure of rampant physical and sexual abuse occurring at these facilities. In addition, "detention," otherwise known as solitary confinement of the juveniles for extended periods of time, was found to be extremely detrimental to the psyche of the juveniles.

9. Mr. Grant told us prior to trial that he and Ms. Carter had had a sexual relationship. But, I thought that evidence would make the jury mad, *so I did not investigate it.* Looking back on things now though, I think I was wrong to dismiss this fact. I should have argued this was a heat of passion/manslaughter case. I see that it was error not to pursue this.

10. While Mr. Grant ended up testifying himself at trial, I don't recall him being adamant about taking the stand. I do not specifically recall whether or how I prepared Mr. Grant to testify in the second stage of the trial. I also do not know whether Mr. Grant understood the purpose of the second stage of a capital trial and what he should say when he testified.

11. Originally, I retained Kathy LaFortune, Ph.D. to evaluate Mr. Grant. When she was hired, Ms. LaFortune was an independent contractor. However, after Ms. LaFortune took a permanent job with the Oklahoma Indigent Defense Service, I transitioned Ms. LaFortune's work on Mr. Grant's case to Dean Montgomery, Ph.D. Ms. LaFortune was the one who suggested I retain Dean Montgomery.

12. After I retained Dean Montgomery, I asked him to evaluate Mr. Grant specifically for insanity, a defense raised at trial. Typically I review the report and notes of any mental health professional I retain, but I do not recall having chosen to review Dean Montgomery's notes.

13. I did not ask Dean Montgomery to review Mr. Grant's medical jacket either. I "perused" the medical jacket as did my investigator. I remember Mr. Grant had persistent tooth and hemorrhoid problems. I did not see any point in paying an expert to review the medical records.

14. Dean Montgomery and Kathy LaFortune were the only mental health professionals who I had evaluate Mr. Grant. I did not request or retain a neuropsychologist or a psychiatrist to evaluate Mr. Grant.

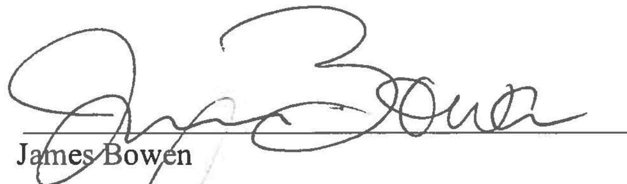
15. From subsequent counsel I learned Mr. Grant was evaluated by Neuropsychiatrist, Dr. Donna Schwartz-Watts. After evaluating Mr. Grant, Dr. Schwartz-Watts concluded Mr. Grant's mental state at the time of the offense was impaired because he sufferd from a series of mental illnesses including Major Depression, Post Traumatic Stress, and Reactive Attachment Disorder. Mr. Grant's crime against Ms. Carter was directly related to his mental illnesses, which I did not present to the jury.

16. I never felt like I had anything to bring to the table to approached ADA Keith Sims or DA Larry Stuart about a possible plea, and both were adamant that no offers would be made. If I had the above mitigating information, I would have approached opposing counsel to see if something could be worked out.

17. With the benefit of hindsight and experience, as well as the guidance set forth in *Wiggins v. Smith*, 539 U.S. 510 (2003), I realize there were a number of things I should have done and did not, during the course of my representation of Mr. Grant. The case has continued to haunt me.

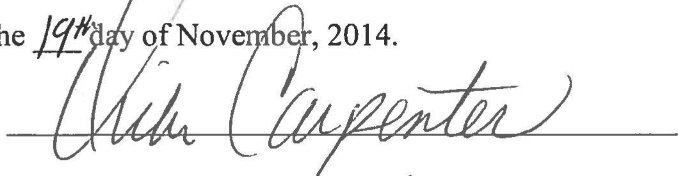
I swear and affirm that the foregoing statement is true and correct.

FURTHER AFFIANT SAYETH NOT.



James Bowen

Subscribed and sworn to before me the 19th day of November, 2014.



My commission expires: 6-18-2016, 20__

My commission number is: 04005471

OKLAHOMA STATE BUREAU OF INVESTIGATION

TLE OF
.EPORT INTERVIEW OF MICHAEL DEAN GOULD

MICHAEL DEAN GOULD, IM, DOB: 11/14/62, SSN: 440-56-9888, Cell # K218, Dick Conner Correctional Center, Hominy, Oklahoma, provided the following information:

GOULD was an inmate, DOC # 117942, at the Dick Conner Correctional Center, Hominy, Oklahoma. He was employed as a Tray Runner in the Dining Hall.

On November 13, 1998, GOULD was in the Dining Hall. Sometime after breakfast as the Dining Hall crew was completing cleanup, GOULD noticed that inmate JOHN GRANT who was known to GOULD as "LAKESIDE", was in the mop closet. GRANT was alone. GOULD did not really know GRANT so the two men did not speak. It was not uncommon for GRANT to visit the Dining Hall.

GOULD sat down at a small table across the room from the mop closet and began drinking a cup of coffee. As he sat there he noticed that Food Service Supervisor GAY CARTER entered the mop closet with GRANT. GOULD paid little mind as he had heard rumors that GRANT and CARTER had been involved in a sexual affair.

Almost immediately after CARTER entered the closet, GOULD looked away to sip his coffee. He then heard CARTER'S voice. CARTER'S voice was very garbled and he could not understand any of the words she spoke but the noise again attracted his attention to the mop closet.

GOULD looked to the closet and saw GRANT holding CARTER around her neck from behind. CARTER'S head was twisted to the right. The scene initially caused GOULD to believe that CARTER was suffering from a seizure and that GRANT was assisting her. GOULD began walking toward the two intending to offer his assistance. As he got closer, he saw GRANT either hit or stab CARTER in the neck or throat. GOULD thought GRANT may have cut CARTER'S throat. CARTER then began falling to the floor.

When CARTER fell to the floor, GRANT kneeled down and began stabbing her in the abdomen with a piece of metal. GRANT stabbed her repeatedly. GOULD ceased moving toward the two and out of fear for his own safety, left the area. Shortly afterward, Security Officers converged on the area. Later, GOULD saw CARTER and GRANT each removed from the building.

'ESTIGATION ON 11/13/98 AT HOMINY, OKLAHOMA BY PATRICK KENNEDY FILE CR 98-252

'ENSE HOMICIDE VICTIM GAY L. CARTER CASE AGENT KENNEDY

'ICE NERO DATE REPORTED 11/20/98 DATE TYPED 11/23/98 TYPIST kc APPROVED IND 014

doc contains neither recommendations nor conclusions of the OSBI. It is the property of the OSBI and is loaned to your agency; it and its content are not to be distri ide y ency.

The entire incident happened very quickly. GOULD heard no discussion or argument between GRANT and CARTER and the conversation he overheard was CARTER'S garbled voice. GOULD did not know why GRANT attacked CARTER.

END NOTE: GOULD was very hesitant to relate what he had witnessed. He repeatedly mentioned that others in the institution had "misguided loyalties" and that he could be in danger for assisting with the investigation.

OKLAHOMA STATE BUREAU OF INVESTIGATION

ΓLE OF
REPORT INTERVIEW OF CLAUDE EDWARD STITH

CLAUDE EDWARD STITH, BM, DOB: 08/30/57, SSN: 557-02-0713, Cell Number C-220, Dick Connor Correctional Center, Hominy, Oklahoma, provided the following information:

STITH was an inmate, DOC # 160008, at the Dick Connor Correctional Center. He was employed at Oklahoma State Industries. STITH had been the cellmate of JOHN GRANT for approximately the past one and one-half months.

GRANT was a very quiet cellmate. He did not talk much and did not socialize much. STITH had learned that before being assigned to STITH'S cell, GRANT had been in the Disciplinary Unit. Apparently he had been in a fight with someone in the kitchen and had lost his job. GRANT very much wanted his kitchen job back.

Although GRANT had never personally said anything about it, STITH had heard rumors that Food Service Supervisor GAY CARTER was GRANT'S girlfriend. STITH did not know whether the rumor was true and had never discussed it with GRANT. GRANT did often visit the dining hall and kitchen and often brought food back to the cell.

STITH had never seen GRANT with a knife or other weapons. GRANT did not seem to be an aggressive individual. Many inmates had knives, though, and it would not have been difficult for GRANT to have obtained one.

STITH did not know why GRANT would have attacked CARTER. He indicated that RICKY MITCHELL, STEVE IRVIN, and DANNY ARMSTRONG, might know more because they were associates of GRANT.

VESTIGATION ON 11/13/98 AT HOMINY, OKLAHOMA BY PATRICK KENNEDY FILE CR 98-252

FENSE HOMICIDE VICTIM GAY L. CARTER CASE AGENT KENNEDY

FICE NERO DATE REPORTED 11/20/98 DATE TYPED 11/23/98 TYPIST kc APPROVED IND 016

s do contains neither recommendations nor conclusions of the OSBI. It is the property of the OSBI and is loaned to your agency; it and its content are not to be distr
side gency

OKLAHOMA STATE BUREAU OF INVESTIGATION

TITLE OF REPORT INTERVIEW OF STEPHEN WILFRID MOLES

STEPHEN WILFRID MOLES, WM, DOB: 11/18/61, SSN: 440-66-5391, Unit Manager A/C Unit, Dick Conner Correctional Center (DCCC), Oklahoma Department of Corrections (ODOC), P.O. Box 220, Hominy, Oklahoma, 918/885-2192, provided the following information:

MOLES had been employed with ODOC for thirteen years and Unit Manager at DCCC for five months. MOLES' supervisor was LARRY ROBERSON.

On November 13, 1998, at approximately 0850 hours, MOLES was in Chief of Security CHARLES ARNOLD'S office when they received a call notifying them there had been an incident at the dining facility. DCCC employee GAY CARTER had been stabbed in the dining facility where she worked. ARNOLD left leaving MOLES behind. At 0855 hours, same date, ARNOLD contacted MOLES and asked him to get the video camera in order to record an inmate extraction at the dining facility. MOLES got the camera and went to the incident.

At 0856 hours, same date, MOLES arrived at the scene which was the utility closet located on the northeast corner of the building. Four correctional officers in protective gear and a shock-shield were present. As MOLES videotaped the incident the correctional officers opened the utility closet and subdued the inmate. JOHN GRANT a.k.a. LAKESIDE was located inside. The shock-shield was used two or three times before GRANT dropped his knife on the floor. MOLES saw the knife and it looked like a piece of steel that had been sharpened at one end. MOLES picked up the knife and handed it to ARNOLD. GRANT was removed and taken to medical for injuries. MOLES observed that GRANT had a puncture wound to the upper left chest and there was some blood on his shirt. GRANT also had an abrasion on his right arm.

MOLES knew GRANT because he was one of the inmates on his unit. MOLES knew that a few months ago GRANT had been removed from working at the dining facility due to his involvement in a fight.

MOLES was familiar with CARTER and her work. A few years ago there had been an internal investigation on CARTER regarding inappropriate conduct with inmates. There had been rumors that CARTER had had a sexual relationship with an inmate and was bringing things into the prison for the population. Nothing was ever proven. MOLES was not aware of any recent problems with inmates and CARTER.

INVESTIGATION ON 11/13/98 AT HOMINY, OKLAHOMA BY JON HUNTINGTON FILE CR 98-252

OFFENSE HOMICIDE VICTIM GAY CARTER CASE AGENT PAT KENNEDY

OFFICE NERO DATE REPORTED 11/16/98 DATE TYPED 11/18/98 TYPIST kc APPROVED [illegible] IND 010

This document contains neither recommendations nor conclusions of the OSBI. It is the property of the OSBI and is loaned to your agency; it and its content are not to be distr outside your agency.

AFFIDAVIT OF SCOTT NORRIS BIGHORSE

STATE OF OKLAHOMA)
) ss.
OSAGE COUNTY)

Before me, the undersigned Notary, on this 10th day of November 2014, personally appeared Scott Norris BigHorse, known to me of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. My name is Scott Norris BigHorse. I am presently the Executive Director of Youth Services of Osage County, in Pawhuska, Oklahoma.

2. I was employed at Dick Conners Correctional Center (DCCC) in Hominy, Oklahoma from 1988-2001. I served in various positions during my tenure there, including being the Assistant Commander of a 12-man emergency response team. I also served as a Sr. Correctional Training Officer. I worked closely with Chief of Security, Charlie Arnold.

3. DCCC was a medium security prison. We knew we were surrounded by inmates with shanks. When there would be a lock down we would find shanks everywhere - in flower beds outside, in hanging flower pots in the visiting room, in all kinds of places in the cells. And, those were the shanks we found. It was not at all unusual for any inmate to have a weapon.

4. I was working at DCCC on the day Gay Carter was killed. I had transported another inmate to the Osage County courthouse when I got the call.

5. There were problems at DCCC with staff members becoming involved in inappropriate sexual relationships with inmates. It was not that staff did not receive proper training. Training at the academy covered the prohibition against such alliances and during the 40 hour orientation period we held at DCCC we very thoroughly covered this issue and warned against it. It was a very serious security issue. In fact, new employees were taught at the academy and during their 40 hours of orientation at DCCC it could be felony charge to have a sexual relationship with an inmate.

6. It seemed like problems with staff members having inappropriate relationships with inmates occurred in the kitchen and the laundry at DCCC more than in other units. Those departments were located in one building. The kitchen and laundry prison staff were hired off the street and were not uniformed officers. Both departments utilized inmate workers daily. There was only one uniformed officer assigned to oversee the kitchen and the laundry.

SB

7. Before Gay Carter was killed, Ms. Pinkerton, who was the head of the laundry department held a birthday party. Ms. Pinkerton, other prison staff, and several inmates participated in this party in the laundry room. The way the prison grapevine is, it was not long after inmates were talking about the party and the word got out. Bill McKenzie was the DCCC officer who investigated it. He obtained a video-tape made of this party by one of the participants. I remember going to Charlie Arnold's office where several staff members were watching the video. I just looked at it long enough to see staff dancing closely with inmates and left the room. I remember a discussion about John Grant and Gay Carter being together at that party.

8. About a week before Gay Carter's death, John Grant was fired from his kitchen job over a fight he got into with another kitchen worker. He was sent to the disciplinary unit, or the "hole" as we called it. I was involved in investigating that incident and believed the fight was caused because Gay Carter essentially dumped John Grant for this Caucasian inmate.

9. No one from the district attorney's office of Mr. Grant's defense team ever interviewed me about what I knew about Gay Carter or John Grant.

FURTHER AFFIANT SAYETH NOT.

Scott N. BigHorse
Scott Norris BigHorse

Subscribed and sworn to before me this 10th day of November, 2014.

Sharon K. Robinson
NOTARY PUBLIC

My commission number is: 01015698
My commission expires: 10/31/17

AFFIDAVIT OF JOHN WARE

STATE OF OKLAHOMA)
) **ss.**
OSAGE COUNTY)

Before me, the undersigned Notary, on this 6th day of November 2014, personally appeared John Ware, known to me of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. My name is John Ware. I worked at Dick Conner Correctional Center (DCCC) from 1992 to 1999. I was a Sergeant for Chief of Security Charles Arnold. I worked in the K-9 unit and when I was not training dogs, I was running them. I mostly worked outside the perimeter of the prison.

2. Several inmates told me John Grant and Department of Corrections kitchen supervisor Gay Carter had an intimate relationship going on. I heard Grant got in a fight not too long before Gay was killed because he was jealous of Gay paying attention to another inmate. John had to go to the hole because of the fight and he lost his kitchen job. While John was in the hole, I heard Gay honeyed up with this other white convict who worked in the kitchen. When John got out of the hole, Gay wouldn't have anything to do with him. It was because of the rumors I heard that I told an OSBI agent Gay was "overly friendly" with Mr. Grant.

3. Relationships between staff and inmates compromise the safety of everyone in the prison. These relationships also account for how most of the contraband makes its way into the facility.

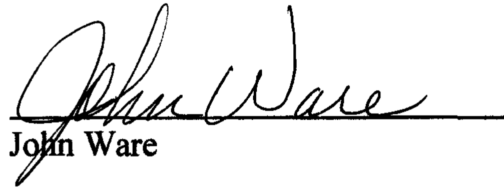
4. It was not at all unusual for inmates to possess homemade weapons or have them hidden in their cells or out in the yard at DCCC.

5. I have known many female staff members at DCCC that have been fired or forced out because they had inappropriate relationships with an inmate.

6. I knew inmate John Grant. He was always friendly to me and never caused any problems until this incident.

 JW

FURTHER AFFIANT SAYETH NOT.



John Ware

Subscribed and sworn to before me this 6th day of November, 2014.

NOTARY PUBLIC

My commission number is: 05008474

My commission expires: 9/12/17

AFFIDAVIT OF LINDA SORRELLS

STATE OF OKLAHOMA	)	
	)	**ss.**
OSAGE COUNTY	)	

Before me, the undersigned Notary, on this _____ day of November 2014, personally appeared Linda Sorrells, known to me of lawful age, who being by me first duly sworn, on her oath, deposes and says:

1. My name is Linda Sorrells. I worked at Dick Conner Correctional Center (DCCC) for twenty three years. My official last day was in April 2004.

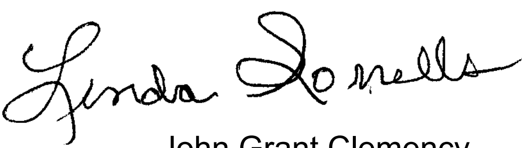
2. I started out at DCCC as a correctional officer and worked my way up to case manager by the time I retired.

3. I always accepted the inmates for who they were and did not treat them any differently just because they were inmates.

4. I know that I am out numbered when I am inside the prison. However, I have never felt that my life was being threatened. One time two guys told me to get out of their way as they ran by me, but I followed them instead. In front of me I saw this group of guys start stabbing this inmate over drugs. No one was trying to stop them. I decided it needed to stop. As I pushed my way through, the guys told me they didn't want to hurt me so the stabbing stopped. Unfortunately there were too many stab wounds and he died because we could not stop the bleeding.

5. The inmates could keyster a shank out of just about anything at DCCC. There were a lot of shanks hidden in the cells and out on the yard. I didn't know where the shanks were until after we had a shakedown.

6. A lot of contraband was brought in to DCCC because of inappropriate relationships between staff and inmates. I have observed several relationships occur between staff and inmates. Those women lost their jobs or were forced to resign because it is against DCCC's code of operations. One female who started at DCCC hating the inmates, ended up falling in love with one and marrying him. Another female fell in love, resigned her position, and after the inmate got out of prison, they moved in together. Another female denied having a relationship with an inmate despite the fact there were pictures and letters of her found in his cell. Even one of the females I was training fell in love with a guy doing LWOP and resigned. She had not been at

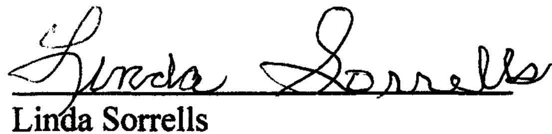


DCCC more than a month.

7. I was at work the day Carter lost her life. I was shocked when I heard what had happened to her and that it was John Grant who did it. He did not strike me as a violent offender.

8. I knew John Grant pretty well. He was on my caseload at one point at DCCC. He always had a smile on his face. He was very quiet and a hard worker. I thought he and I got along really well and that he got along well with other staff members.

FURTHER AFFIANT SAYETH NOT.



Linda Sorrells

Subscribed and sworn to before me this 6th day of November, 2014.

NOTARY PUBLIC

My commission number is: 05008474

My commission expires: 9/12/17

AFFIDAVIT OF RICKY ALEXANDER

STATE OF OKLAHOMA	)	
	)	**ss.**
GREER COUNTY	)	

Before me, the undersigned Notary, on this 13th day of November, 2014, personally appeared Ricky Alexander, known to me of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. My name is Ricky Alexander. My Department of Corrections number is #95922. I am presently incarcerated at the Oklahoma State Reformatory.

2. I knew inmate, John Grant, as Lakeside. We knew each other from my neighborhood in Oklahoma City. We called him Lakeside because he was always mellow and hanging out by the lake doing his thing.

3. Lakeside and I were at Dick Conner Correctional Center (DCCC) at the same time.
4. I knew Lakeside had been in a relationship with Gay Carter at DCCC for years. Their relationship was more than just physical, it was also emotional. Lakeside did not have any outside support from his family. Ms. Carter was his only support.

5. Ms. Carter played Lakeside like a yo-yo. The string was his brain and the yo-yo was his heart. Repeatedly she would pull him in and then throw him back out. Eventually that string breaks.

6. For years, Lakeside and Ms. Carter carried on their relationship. At least three times I saw someone else catch a spark in Ms. Carter's eye. When this happened, she would fire Lakeside from the kitchen. When she did this everyone knew there was someone in the shadows waiting to be with her. She would hire Lakeside back to work with her once she was through with the other person.

7. Ms. Carter had complete and total control over her relationship with Lakeside. She was not scared of Lakeside. If she had been scared, she could have had him easily transferred to a different facility or kept him from being around the kitchen.

8. There were several inmates involved in relationships with correctional staff at DCCC. It was a family affair; a lot of the kitchen staff were having sexual relationships with inmates and covering for one another.

9. There are only two women that worked in the kitchen at that time who were not being promiscuous. They were June Maxwell and Jo Kendricks.

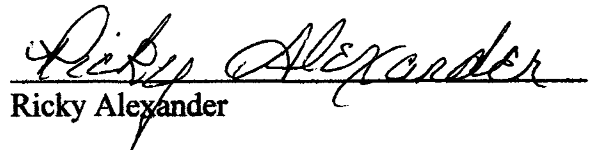
10. I knew the first person Gay Carter was ever in a relationship with. His name is Martin Day West. I knew him from Tulsa. We both worked in the kitchen together at DCCC. This was before Lakeside was ever in the picture. There were several others before Ms. Carter started playing Lakeside like a yo-yo.

11. While I was at Lexington Assessment and Reception Center in 1999, I worked in the kitchen as a cook. My supervisor was Ms. Rebekah Newkirk. We became friends. Once I was shipped to James Crabtree and she quit the DOC. We started communicating through mail. We got married in March 2001. This is just one example of the closeness that can occur between inmates and DOC staff members.

12. It would not have been unusual for an inmate at DCCC to have a shank on him at all times. Actually, it would be more unusual not to have one. DCCC is a medium security prison with 800 men. Just because you are in prison doesn't mean you are not going to be jumped or robbed. You need something to protect yourself.

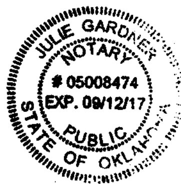
13. I was never interviewed by anyone from John Grant's defense team. I would have willingly testified to the above information if I had been asked.

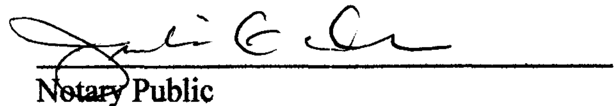
FURTHER AFFIANT SAYETH NOT.



Ricky Alexander

Subscribed and sworn to before me this 13th day of November, 2014.





Notary Public

My Commission Number is: 05008474
My Commission Expires: 9/12/17

AFFIDAVIT OF CHARLES ARNOLD

STATE OF OKLAHOMA)
) ss.
OSAGE COUNTY)

Before me, the undersigned Notary, on this 6th day of November 2014, personally appeared Charles Arnold, known to me of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. My name is Charles Arnold. I am currently the Chief of Police in Hominy, Oklahoma. Previously, I worked at the Dick Conner Correctional Center. When I retired from Dick Conners, I was the Chief of Security and had worked in that position for 15 years. I was serving in that position when Gay Carter's life was taken.

2. Because I was the Chief of Security I was privy to the events that occurred at the facility. Part of my job duties was to oversee safety issues. The development of inappropriate relationships between staff and offenders was definitely a security issue as i compromised everyone's safety.

3. It was not uncommon for female staff members, and sometime male staff members, to develop inappropriate, even intimate, relationships with the inmates. Although all staff went through training that warned about the consequences for such behavior, it still happened often. During my tenure, offending staff members were essentially told to hit the road when they were found to have inappropriate relationships with inmates.

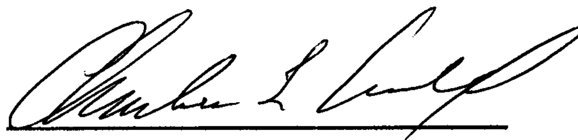
4. Although it is a felony for a staff member to have an intimate or sexual relationship with an inmate, at the time of this crime, we were not handing these cases over to the district attorney's office for prosecution.

5. Before Ms. Carter's death, there was an incident where staff and inmates had a birthday party and inappropriate behavior was observed on a videotape that had been made during the party. The videotape was eventually confiscated. Besides Ms. Pinkerton, who was in charge of the laundry department, I do not remember the other staff members who were involved but there were several. Warden Champion got a hold of that videotape and I watched it with him. The Warden was very mad about what he saw. I don't think Ms. Pinkerton, who is now deceased, was let go. I believe she may have received a reprimand with the hope this reprimand would change her behavior. Like I said, these types of relationships were common at Dick Conners unfortunately.

6. I testified at John Grant's trial about the weapon that was recovered. Nether the DA nor defense counsel ever asked me anything else about John Grant or Gay Carter.

7. Not too long before Gay Carter's death, John Grant and a white inmate got into a fight in the kitchen. Both of them were kitchen workers. This fight caused John Grant to lose his job in the kitchen. After Gay Carter's death it seemed odd to me Grant would go after Carter instead of the white guy that caused him to lose his job. I had an opinion that there was more to the story.

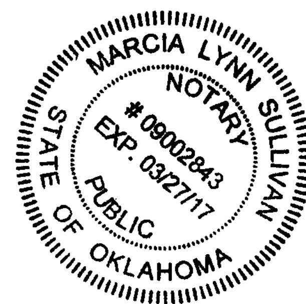
FURTHER AFFIANT SAYETH NOT.



Charles Arnold

Subscribed and sworn to before me this 6th day of November, 2014.

Marcia Lynn Sullivan
NOTARY PUBLIC



My commission number is: 09002843

My commission expires: 3-27-2017

OKLAHOMA CAPITAL TRIAL AND APPELLATE PROCESS

In Oklahoma, capital jury trials are conducted in two stages. In the first stage, the jury hears evidence regarding the alleged crime and decides a verdict of guilty or not guilty. If the jury finds the defendant guilty of first degree murder, the case progresses to the second stage. In the second stage, the same jury hears evidence regarding the defendant in order to decide a sentence. The three sentencing options are: life with the possibility of parole, life without the possibility of parole, and the death penalty.

During the second stage, the prosecution presents evidence of "aggravating circumstances" (also called "aggravators") in its bid for the death penalty. There are eight aggravating circumstances, enumerated by statute, that the prosecution can seek to prove, some of which include:

- The defendant was previously convicted of a felony involving the use or threat of violence to the person;
- The murder was especially heinous, atrocious, or cruel; and
- The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.

21 O.S. § 701.12. The prosecution may also present statements from the victim's family. 21 O.S. § 142A-8.

After the prosecution has presented its evidence, the defense may put forth evidence of mitigating circumstances (also called "mitigators"). Mitigating circumstances are "1) circumstances that may extenuate or reduce the degree of moral culpability or blame, or 2) circumstances which in fairness, sympathy or mercy may lead . . . jurors individually or collectively to decide against the death penalty." Instruction No. 4-78, OUJI-CR (2d). While the defense may propose specific mitigating circumstances for the jury's consideration, the jury is not limited to those specific circumstances t in its sentencing consideration. Instead, "[t]he determination of what circumstances are mitigating is for [the jury] to resolve under the facts and circumstances of [each] case." *Id.*

In order to consider the death penalty, jurors must unanimously find that the defendant was guilty of first degree murder. They must also unanimously agree that the prosecution established beyond a reasonable doubt the existence of at least one aggravating circumstance. *Id.* Jurors need not unanimously agree regarding the defense's mitigating circumstances, and the mitigating circumstances need not be proven beyond a reasonable doubt. *Id.*

To ultimately impose a death sentence, the jury must unanimously find that the aggravating circumstances outweigh the mitigating circumstances. Instruction No. 4-80, OUJI-CR (2d). But, even if the jurors make such a finding, they may still impose a sentence of less than death. *Id.*

After a defendant has been sentenced to death, he can appeal his conviction and sentence. First, a "direct appeal" is filed directly to the Oklahoma Court of Criminal Appeals ("OCCA"). After filing his direct appeal, a defendant can file an application for post-conviction relief, also with the OCCA. His application for post-conviction relief is limited to claims that were not available to be raised on direct appeal (e.g., ineffective assistance of appellate counsel). Rule 9.7B(2), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App.

Once the OCCA has denied him relief on direct appeal and/or post-conviction, a defendant may then petition the United States Supreme Court to hear his case; however, the Court agrees to hear only 100 to 150 (approximately 1 to 2 percent) of the more than 7,000 cases it is asked to review nationwide each year. About the Supreme Court, United States Courts, https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/about (last visited May 5, 2020).

After being denied relief at these stages, a defendant moves on to federal court where he can file a petition for a writ of habeas corpus. This petition alleges federal, constitutional violations; specifically, in these types of cases, a defendant's claims center around the State of Oklahoma's alleged violations of federal law before, during, and/or after the defendant's trial.

The Antiterrorism and Effective Death Penalty Act was enacted in 1996 ("AEDPA") and narrowly restricts federal habeas corpus review, requiring federal courts to give great deference to the state court that denied relief. 28 U.S.C. § 2254. For the most part, on federal habeas corpus, a defendant can only raise claims he already raised to the OCCA on direct appeal or post-conviction. *Id.* He must show that the OCCA acted not just erroneously but *unreasonably* in denying these claims. *Id.* To show a decision was made wrong is not enough in and of itself.

If the defendant does not obtain relief in district court, he can then appeal his case to the United States Court of Appeals for the Tenth Circuit. Again, the federal courts cannot grant relief even if it is determined there was indeed a constitutional violation below and even if a lower reviewing court was wrong in its determination unless the lower court was "unreasonable" its in wrong determination.

If denied relief at the Tenth Circuit, the defendant can again petition the United States Supreme Court to hear his case. Again, the Supreme Court rules make clear only a select handful of cases will be accepted for review.

It is after a capital defendant has exhausted these state and federal habeas corpus reviews, that he remains only to seek clemency from the governor, upon the recommendation of the Pardon and Parole Board. Unlike the habeas corpus reviews, clemency is not limited to review of only unreasonable decisions. The Pardon and Parole Board, as well as the Governor, may consider any and all factors presented. In so doing, clemency serves, amongst other things, as a failsafe for those errors not corrected under the courts' restricted review.

AFFIDAVIT OF CHERYL L. JOHNSON

STATE OF OKLAHOMA)
) ss
COUNTY OF KAY)

Before me, the undersigned Notary, on this 29th day of September, personally appeared Cheryl Johnson, known to me to be a credible person and of lawful age, who being by me first duly sworn, on her oath, deposes and says:

1. My name is Cheryl L. Johnson. I sat as a juror in the District Court of Osage County in Case No. CF-99-28, *The State of Oklahoma v. John Marion Grant.*

2. Although it was mentioned that Mr. Grant had a large family, none of his family testified. It appeared to me that Mr. Grant had no one other than his lawyers to plead for his life.

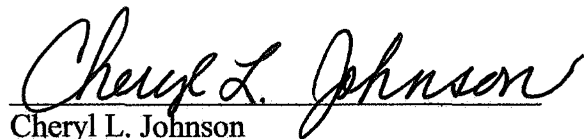
3. At the conclusion of the second stage, I did not want to give the death penalty. However, I did not feel like the defense lawyers provided me with enough evidence to justify a sentence less than death. I really wanted and needed an explanation for what happened (the crime) and more information about who John Grant was and why his life was worth saving. The defense lawyers did not provide me that. I believe that information would have been important in the deliberations, and I would have considered it if it had been presented.

4. I speculated that Mr. Grant and his victim had a romantic relationship and something went wrong between them, but neither side presented any evidence to support my theory. I was instructed only to consider the evidence presented so I did not factor my theory into my decision.

5. If the defense lawyers would have confirmed my suspicions regarding Mr. Grant's relationship with Gay Carter and explained the role his family history and childhood played in his ability to form and maintain relationships, I would have voted for a sentence less than death and maintained that position regardless of other jurors attempting to change my mind.

6. I swear and affirm that the foregoing statement is true and correct.

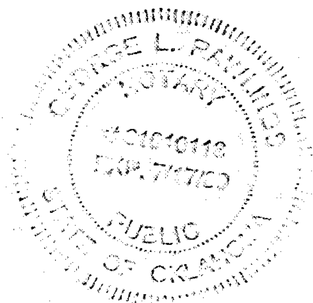
FURTHER AFFIANT SAYETH NOT



Cheryl L. Johnson

Subscribed and sworn to before me this 29th day of September, 2005, by the person known to me to be Cheryl L. Johnson.

Seal:



George Rawlings

My commission expires: July 17, 2009

My commission number is : 01010118

AFFIDAVIT OF AMY MCTEER

STATE OF OKLAHOMA)
) **ss.**
COUNTY OF OKLAHOMA)

Before me, the undersigned Notary, on this 6th day of November, 2014, personally appeared Amy McTeer, known to me to be a credible person and of lawful age, who being by me first duly sworn, on her oath, deposes and says:

1. I am one of the attorneys who represented John Marion Grant at his trial. I was his second chair attorney. Lead counsel was James Bowen.

2. I consider myself to have been ineffective in representing John Grant. I was a brand new attorney attempting to represent an individual on a capital case. I was recently divorced from my co-counsel, James Bowen. I was suffering from undiagnosed bipolar disorder. And, I was self-medicating with prescription drugs and alcohol both before, during, and after Mr. Grant's trial.

3. As I noted, Mr. Grant's lead attorney was James Bowen. James and I started dating when I was an intern. We eventually got married and I was appointed, at his request, to work with him on some of his capital cases. Mr. Grant's case was one of those cases. I wasn't really qualified to work on the case because I was a new attorney, and I wasn't prepared for a capital case.

4. Prior to Mr. Grant's trial, James walked out on me. I found out later he was having an affair. We got divorced shortly afterwards. Our divorce was finalized the month before Mr. Grant's trial. Looking back on things, I cannot believe we continued to try to represent Mr. Grant together. James would not listen to what I had to say as far as the case. He wouldn't even talk to me. How could there be any communication between co-counsel?!

5. I tried to tell James that we needed to tell the jury about Mr. Grant's relationship with Gay Carter. John had been up front with us and had told us he had been having an affair with her. I had also heard from various inmates in the system that this was true. But, James dismissed all this. He said he didn't want to upset the jurors by presenting any of this information. I tried to tell James this was our only chance at getting John a lesser offense like first degree manslaughter instead of first degree murder. James wouldn't listen though.

6. James made the decision to let me do the second stage closing. I didn't know what I was doing. I didn't even know there weren't witnesses to put up on the stand until we got to court. The mitigation was like nothing. Our investigator was lazy. He hadn't talked to any of John's family. I remember him saying "I made a few calls," but that was it.

7. I remember the day before I gave the second stage closing argument I took a lot of Xanax. I might have taken some the morning of the closing too. I don't remember for sure. I was so used to self-medicating. I had been doing it most all of my life. At the time of Mr. Grant's trial, I was using Xanax without a prescription. James Bowen knew this, but still had me do the closing argument.

8. Even though I don't think he necessarily drank during the actual trial, I know James had an alcohol problem as well.

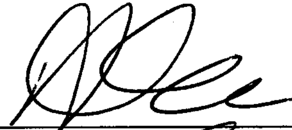
9. Since Mr. Grant's trial, I have gotten into a lot of legal trouble. My life has spiraled out of control, and I have lost my bar license. The Oklahoma Bar Association launched an investigation into my competency in 2012. It was during these proceedings that I was diagnosed as suffering from bipolar disorder. Now that I am properly medicated and not relying on illegal substances to control my symptoms, I can see how out of control my life was during all of those years.

10. I remember someone trying to come visit me a few years ago after John Grant's case was sent back to the Oklahoma Court of Criminal Appeals. This person was trying to ask me questions about my representation of John. I was unclear about my mental illnesses at that point so I did not understand how they affected my representation of John. I wish I would have been. I am able to say now, without hesitation, that I was ineffective in representing Mr. Grant.

11. It is really going to bother me if Mr. Grant is executed, knowing that I had a hand in what happened at his trial.

I swear and affirm that the foregoing statement is true and correct.

FURTHER AFFIANT SAYETH NOT.



Amy McTeer

Subscribed and sworn to before me the 18th day of November, 2014.

My commission expires: August 9, 2017

My commission number is: 13007328

AFFIDAVIT OF MARVIN YOST

STATE OF OKLAHOMA	)	
	)	**ss.**
COUNTY OF KAY	)	

Before me, the undersigned Notary, on this 14th day of September, 2005, personally appeared Marvin Yost, known to me to be a credible person and of lawful age, who being by me first duly sworn, on her oath, deposes and says:

1. My name is Marvin Yost. I sat as a juror in the District Court of Osage County in Case No. CF-99-28, *The State of Oklahoma v. John Marion Grant.*

2. During the second phase of Mr. Grant's trial when we were deciding Mr. Grant's punishment, I noticed that none of Mr. Grant's family were at the trial. During the deliberations, some of the other jurors questioned why none of Mr. Grant's family was there for him.

3. We, as a jury considered all of the information presented by both sides. I would have been comfortable with a life without parole sentence, but I did not feel like the defense presented enough of a reason to justify a sentence less than death.

4. I would have considered additional evidence from Mr. Grant's family in my decision if the defense had presented it.

5. I swear and affirm that the foregoing statement is true and correct.

FURTHER AFFIANT SAYETH NOT.

Marvin Yost

Subscribed and sworn to before me the 14th day of September, 2005, by the person known to me to be Marvin Yost.

Seal:

Notary

My commission expires: 7-17, 2009

My commission number is: 01010118

Sex scandal costs former appeals judge Steve Lile

By Nolan Clay and John Greiner • *Modified: September 16, 2008 at 8:02 pm* • *Published: September 16, 2008*

Three years ago, Steve Lile went from being one of the state's top judges to just another attorney because of a sex scandal at the state Capitol.
This morning, the state Supreme Court decided Lile couldn't even be an attorney any more.

Justices disbarred Lile, 60, "from the practice of law" because of the seriousness of his misconduct while a judge on the Oklahoma Court of Criminal Appeals.

The Supreme Court agreed he had committed multiple violations of the standards of conduct including actions that "undermined public confidence in the integrity of the judicial system."

Lile declined comment today. Last year, he said at a disciplinary hearing, "I was plain stupid. I wasn't thinking straight."

Lile resigned in 2005 from the Oklahoma Court of Criminal Appeals.

The Supreme Court found Lile had submitted false travel claims and false expense claims while a judge. He also had involved himself improperly in his son's drug cases and after an administrative assistant, Dawn Lukasik, was arrested in December 2004 for an alleged drug violation.

The assistant was not charged at the time.

Lile's troubles began after he hired Lukasik, a former lover, as his administrative assistant at the court at a time when his own marriage was failing. He said last year he discovered from her that they had a son together and the son, Loran Michael Wilson, was having drug problems.

She was 18 when their son was born. Lile was married and then 37.

The Supreme Court said he traveled at taxpayers' expense from June 24 to Oct 29, 2004, almost on a weekly basis to see his incarcerated son or to take care of legal and other issues involving his son.

"On some of the trips he was accompanied by Dawn Lukasik," the Supreme Court wrote. "He filed travel claims seeking reimbursement for these personal trips, claiming he attended project conferences, projects or meetings of the Regimented Inmate Discipline (RID) Program offered by the Department of Corrections. But there were no RID project conferences, projects or meetings on the dates for which he filed travel claims."

The Supreme Court said the false expenses claims were for purchases made by Lukasik, who was remodeling his office, and her daughter. "Some of those claims were for personal items unrelated to the remodeling," the Supreme Court said.

Before quitting as a judge, Lile reimbursed the state $1,523.64 for the travel and $1,560.43 for the "office" purchases made by Lukasik, or her daughter.

Lile was investigated by the state attorney general but not charged.

Lukasik was charged three times in 2005 on offenses related to methamphetamine and she admitted she had a drug problem. She eventually went to prison.

Lile represented Lukasik in the drug cases and married her when she was released from prison, records show.

(http://downloads.newsok.com/documents/091608_OKBar_vs_Lile.pdf)

peachment of Dr. Smith would not have touched on those questions at all, being unusable for any substantive purpose. In these circumstances, and given the guidance we have from our precedent, we simply do not see any basis on which we might reverse. *See Bland v. Sirmons,* 459 F.3d 999, 1029 (10th Cir.2006) (no cumulative error where "evidence supporting ... aggravating factors was overwhelming and the mitigating evidence weak"); *Willingham v. Mullin,* 296 F.3d 917, 935 (10th Cir.2002) ("[T]he strength of the State's case ... effectively undercut[ ] [petitioner's] assertion of actionable prejudice....").

Affirmed.

BRISCOE, Chief Judge, concurring in part and dissenting in part.

I agree with the majority that there is no merit to the two guilt-phase issues raised by Grant, i.e., the lesser-included instruction issue that is discussed in Section I of the majority opinion and the Confrontation Clause issue that is discussed in Section II of the majority opinion. As regards the lesser-included instruction issue discussed in Section I of the majority opinion, I rely on the OCCA's findings and conclusions that no lesser-included instructions were required under *Shrum v. State,* 991 P.2d 1032, 1036 (Okla. Crim.App.1999) because the evidence adduced at trial could not rationally support a verdict for either first degree manslaughter or second degree murder. I would not rely on this court's decision in *Hooks v. Ward,* 184 F.3d 1206, 1234 (10th Cir.1999) for the proposition that a state prisoner seeking federal habeas relief may not prevail on a *Beck* claim if a lesser-included instruction was not requested at trial. To be sure, the lead opinion in *Hooks* states "that a state prisoner seeking federal habeas relief may not prevail on a *Beck* claim as to a lesser included instruction that he or she failed to request at trial." *Id.* But that statement was not joined by the remaining two panel members and therefore is not binding on the panel in this case.[1] And while the majority cites to several post-*Hooks* cases for the same proposition, Maj. Op. at 1012, all of those cases cite back, erroneously, to the lead opinion in *Hooks.* We need not repeat that error here.

I must respectfully part ways with the majority when it comes to Grant's claim that his trial counsel was ineffective for failing to investigate and present available mitigating evidence during the sentencing phase of his trial. As I will outline below, the Oklahoma Court of Criminal Appeals (OCCA) erred in analyzing both prongs of the two-prong test for ineffective assistance outlined in *Strickland v. Washington,* 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The OCCA was plainly wrong regarding several of the facts it relied on in assessing the performance of Grant's counsel. And its misunderstanding of the mitigating evidence that was

1. I would reject this proposition in any event because it fails to take into account the fact that Oklahoma state law imposes a duty on a trial court to instruct on any lesser-included offense supported by the evidence, regardless of whether the defendant requests such an instruction or not. Indeed, the OCCA acknowledged that very rule of state law in its decision denying Grant's direct appeal. *Grant v. State,* 58 P.3d 783, 795 (Okla.Crim. App.2002) ("It is the trial court's duty to instruct the jury on all lesser related offenses that are supported by the evidence, even absent a request from a defendant."). And the OCCA has continued to apply that rule in more recent cases. *See Owens v. State,* 229 P.3d 1261, 1266 (Okla.Crim.App.2010) (concluding that trial court had a duty to instruct on lesser included offense regardless of the parties' requests, theories of prosecution or theories of defense).

actually available for use by Grant's defense counsel in turn colored its decision regarding the question of prejudice. Reviewing both of those prongs de novo, as we are obligated to do given the OCCA's errors, it is my view that Grant has established that he was deprived of the effective assistance of counsel and is thus entitled to federal habeas relief in the form of a new sentencing proceeding.

Finally, because I would remand for a new sentencing hearing, it is unnecessary for me to express any views regarding the impact of the trial court's erroneous admission of two "victim impact" statements.

I

Before addressing the merits of Grant's ineffective assistance claim, it is useful to first review (a) precisely what occurred during the sentencing phase of Grant's trial, and (b) the procedural history of Grant's ineffective assistance claim on direct appeal.

A. *The sentencing phase of Grant's trial*

During the sentencing phase of Grant's trial, the prosecution presented evidence to support three aggravating circumstances that it had alleged in its bill of particulars: (1) that Grant was previously convicted of three felony offenses involving the use or threat of violence to the person (specifically three prior robbery with firearms convictions, all occurring when he was nineteen years old), (2) that the murder of Gay Carter was committed by Grant while he was serving a sentence of imprisonment with the Oklahoma Department of Corrections (ODOC) on conviction of a felony, and (3) the existence of a probability that Grant would commit future criminal acts of violence that would constitute a continuing threat to society. To begin with, the prosecution expressly incorporated all of the guilt-phase evidence. In turn, the prosecution presented testimony from an ODOC employee who, based on Grant's official ODOC records, confirmed the existence of Grant's prior criminal judgments and sentences. Lastly, the prosecution presented victim impact testimony from June Prater and Larry Young. Prater, the sister of victim Gay Carter, read into the record a written victim impact statement prepared by the victim's daughter, Pam Carter. Young, a longtime friend of the victim and her family, read into the record a written victim impact statement prepared by the victim's brother, Roy Westbrook.

Grant's lead trial counsel, James Bowen, argued in his opening statement that "Grant suffer[ed] from a severe mental illness which cloud[ed] his reasoning and his ability to control himself and his ability to be in touch with reality," Trial Tr., Vol VI, at 1563, and thus "should not be given the death penalty," *id.* at 1564. The defense team, comprised of Bowen and attorney Amy McTeer, then proceeded to incorporate by reference all of Grant's guilt-phase evidence, and in addition presented the testimony of two witnesses: Grant and Daryl Shriner, a prison psychiatrist. None of Grant's family members were present or testified on Grant's behalf; indeed, none of them were aware of Grant's trial because they were not contacted by Grant's counsel. Grant testified in summary fashion regarding his childhood, noting that he had five brothers and three sisters and was "somewhere in between in terms of age." *Id.* at 1565. Grant also noted that he got in trouble with the law as a juvenile and had to go to three different juvenile facilities. *Id.* at 1566. Grant testified that, in 1980 shortly after he became an adult, he committed three robberies within days of each other, was charged and pled guilty to those robberies, and was sentenced to a total sentence of 130 years.

Id. at 1566–67. Grant apologized to Carter's family, and then testified, as he did during the guilt phase of trial, that he did not have any memory of the murder and did not know why he committed it. *Id.* at 1568–69. On cross-examination, the prosecution explored in somewhat greater detail Grant's juvenile and adult criminal history. Grant testified that he was twelve years old the first time he was sent to a juvenile facility, but he testified he did not have a recollection of his juvenile crimes. *Id.* at 1570–71. Grant testified that he was first committed to the custody of the ODOC in 1979 for accessory to burglary and accessory to robbery, and was paroled from ODOC custody in 1980. *Id.* at 1571. Grant testified that he had been on parole for approximately three months when he committed the three armed robberies that later resulted in his 130–year sentence. *Id.* at 1572. Grant admitted that he had been in trouble since he had been in the custody of the ODOC, including being in "[u]nauthorized areas and stuff, small stuff," *id.*, and had also been involved in fights in prison, including one altercation with a correctional officer shortly after he was imprisoned in 1980, *id.* at 1573. Lastly, Grant testified that he had no recollection where the murder weapon came from. *Id.*

Shriner, a psychiatrist employed at the facility where the murder occurred, testified that he had never talked to Grant, *id.* at 1582, but instead had reviewed ODOC's mental health files pertaining to Grant. *Id.* at 1580. Shriner testified that one of the records in the file recommended that Grant be given certain anti-psychotic drugs, but that there was no indication in any of the other records that Grant had actually been prescribed such medication. *Id.* at 1583, 1586. Shriner testified that, because he had never evaluated Grant, he did not have a personal opinion regarding whether such drugs would be beneficial to Grant. *Id.* Shriner also testified that a prison psychiatrist who had seen Grant recommended that Grant take medication for anxiety, but that Grant had refused it. *Id.* at 1590.

During sentencing-phase closing arguments, the attorneys sparred primarily over the existence of the third alleged aggravating circumstance, i.e., the existence of a probability that Grant represented a continuing threat. The prosecution argued that "[w]ith [Grant's] history from the time he was 15 years old his conduct shows anyone who looks at it that he is capable in the future and quite probably may commit additional violent crimes against people." *Id.* at 1608. McTeer argued in response that "there exist[ed] at least a question as to . . . Grant's mental stability," and that "[a]n evaluation and/or treatment and medication could in fact render him less dangerous to society." *Id.* at 1609.

After deliberating, the jury found the existence of all three alleged aggravating factors, including the continuing threat aggravator. The jury in turn fixed Grant's punishment at death for the murder.

B. Grant's direct appeal

The procedural history of Grant's ineffective assistance claim is very unusual in certain key respects and thus worth mentioning. Grant, who was appointed new counsel to represent him on direct appeal, alleged in his direct appeal that his defense attorneys were ineffective for failing to investigate and present mitigating evidence from his family members. The OCCA granted Grant's motion for an evidentiary hearing on the claim and remanded the matter to the state trial court. The state trial court conducted an evidentiary hearing, during which Grant's attorneys presented testimony from ten witnesses:

attorney Bowen and nine members of Grant's family, including his mother, father, siblings, and a maternal uncle. The hearing was continued to a later date so that the parties could present testimony from three Oklahoma Indigent Defense System (OIDS) investigators that worked on the case: two that worked with Grant's trial counsel prior to trial, and one that worked with Grant's appellate attorneys on the direct appeal. The trial court subsequently allowed the parties to submit that testimony by stipulation. The trial court then issued written findings of fact and conclusions of law responding to specific points outlined by the OCCA in its remand order. Although the trial court found that Grant did *not* waive the presentation of mitigating evidence from his family members, and that Grant's trial counsel, James Bowen, did little to develop the mitigating evidence, it concluded that Grant was not prejudiced by Bowen's failure to present mitigating testimony from Grant's family members.

On November 18, 2002, the OCCA issued a published opinion affirming Grant's conviction and death sentence. *Grant v. State,* 58 P.3d 783, 801 (Okla.Crim.App. 2002) (*Grant I*). The OCCA's decision was not unanimous, however. Judge Chapel filed a dissenting opinion concluding, in pertinent part, "that the failure of defense counsel to investigate and present mitigating evidence from members of Grant's family constituted constitutionally ineffective assistance of counsel and that Grant was prejudiced by this failure." *Id.* at 808–09. In turn, Judge Chapel concluded that the "case should be remanded for a resentencing proceeding on this basis." *Id.* at 809.

Following the OCCA's denial of his direct appeal, Grant filed a petition for writ of certiorari with the United States Supreme Court. On October 6, 2003, the Supreme Court granted certiorari, vacated the OCCA's judgment, and remanded the case to the OCCA "for further consideration in light of [its then recent decision in] *Wiggins v. Smith,* 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003)." *Grant v. Oklahoma,* 540 U.S. 801, 124 S.Ct. 162, 157 L.Ed.2d 12 (2003).

In *Wiggins,* the Supreme Court granted federal habeas relief to a Maryland state capital defendant on the grounds "that his attorneys' performance at sentencing," specifically the attorneys' failure to investigate potential mitigating evidence, "violated his Sixth Amendment right to effective assistance of counsel." 539 U.S. at 519–20, 123 S.Ct. 2527. In doing so, the Court emphasized that "[a] decision not to investigate ... 'must be directly assessed for reasonableness in all the circumstances,' " *id.* at 533, 123 S.Ct. 2527 (quoting *Strickland,* 466 U.S. at 691, 104 S.Ct. 2052), and "that 'strategic choices made after less than complete investigation are reasonable' only to the extent that 'reasonable professional judgments support the limitations on investigation,' " *id.* (quoting *Strickland,* 466 U.S. at 690–91, 104 S.Ct. 2052).

On remand from the Supreme Court, the OCCA reaffirmed its prior decision and rejected Grant's claim of ineffective assistance of counsel. *Grant v. State*, 95 P.3d 178, 181 (Okla.Crim.App.2004) (*Grant II*). Judge Chapel again filed a dissent, the opening two paragraphs of which stated as follows:

> Some people just can't take a hint. On October 6, 2003, the Supreme Court of the United States responded to John Marion Grant's petition for a writ of certiorari, arising from this Court's rejection of his direct appeal from his capital conviction, by granting the petition, summarily vacating the judgment of this Court, and remanding the case to this Court, "for further consideration in light

of *Wiggins v. Smith,* 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003)." In a capital case like Grant's—with further extensive review through the federal habeas corpus process inevitably following the direct appeal decision in this Court, and with a subsequent opportunity for the United States Supreme Court to intervene, through certiorari review of the decision of the United States Court of Appeals for the Tenth Circuit—intervention by the Supreme Court at this stage of the appellate process is rare and remarkable. One would think that this Court would issue a careful, thoughtful response. That has not happened.

> The Supreme Court has sent this Court a message, and its reference to the *Wiggins* decision would seem to make interpretation of this message a rather simple task. Yet today's Court majority chooses to ignore the message, through a pinched and shallow interpretation of *Wiggins* and a determination to maintain its earlier ruling. I believe that the Court's current actions will merely serve to delay, rather than to prevent, an eventual re-trial of the punishment stage of Grant's trial, thereby causing a pointless waste of monetary and human resources and an unnecessary extension of the stress and anxiety that accompanies all capital cases, for all of the persons affected by them.

Id. at 184 (internal paragraph numbers and footnotes omitted). As in his dissent from the OCCA's original opinion, Judge Chapel concluded that the proper remedy was "to provide Grant with a new capital sentencing, before a jury that is fully informed about the circumstances of the life whose fate they must determine." *Id.* at 190.

II

Turning now to the merits of Grant's ineffective assistance claim, I believe, for the reasons I shall outline below, that the OCCA erred in its analysis of both prongs of the *Strickland* test. In turn, reviewing both of these prongs de novo, I conclude that Grant's claim has merit and entitles him to federal habeas relief in the form of a new sentencing proceeding.[2]

A. The deficient performance prong of the Strickland test

The majority spends virtually no time discussing the deficient performance prong of the *Strickland* test, and instead summarily concludes, based upon the State's failure to dispute the district court's analysis on this point, that Grant's trial attorneys performed deficiently in failing to contact and interview the members of Grant's family to determine what mitigating evidence they could provide at the sentencing phase of Grant's trial. Although I fully agree that Grant's trial attorneys performed deficiently, I believe it is necessary to review the OCCA's analysis on this point because that analysis informed (or, more appropriately, misinformed) the OCCA's subsequent analysis of the prejudice prong of the *Strickland* test.

2. In reviewing the OCCA's *Strickland* analysis, I have followed the guidance afforded us in *Cullen v. Pinholster,* ––– U.S. –––, 131 S.Ct. 1388, 1398, 179 L.Ed.2d 557 (2011), by restricting my review to only the record that was before the OCCA when it resolved Grant's ineffective assistance claim. Although I question whether I am bound to do so, I have also limited myself to the same record in conducting my de novo review of Grant's ineffective assistance claim. I note, however, that my conclusions would not change were I to include consideration of the mitigating evidence now cited by Grant that was not before the OCCA at the time of its decision.

When it first decided Grant's direct appeal, the OCCA offered the following explanation in support of its conclusion that Grant's lead trial counsel, Bowen, did not perform deficiently:

> During the evidentiary hearing, [lead] trial counsel [Bowen] was asked why he did not call family members as mitigation witnesses. He testified that there were two main reasons. First, Grant told him that he basically had no contact with his family since he left home at the age of fifteen and was incarcerated since the age of nineteen. Grant indicated that he did not know where his family was located other than somewhere in Oregon. Grant told him that he didn't want his family involved in the proceedings. Regardless, Bowen did ask his investigators to try and contact Grant's family. One investigator testified that he was unable to locate Grant's family before trial. Appellant, John Grant, did not testify at this hearing.
>
> Secondly, Bowen testified that because the family members had no close contact with Grant in some twenty years, their testimony would be of little help. He felt like if they testified about their relationship, they would be vulnerable on cross-examination because they hadn't had any contact with him since he had been incarcerated.
>
> The trial court found, and we concur, that the family members could have been contacted with the use of information located in Grant's prison records and they would have been willing to testify at trial. The trial court also found that the witnesses' testimony would have been cumulative to each other and would not have had a positive impact on the jury. We agree.
>
> ....
>
> We find that counsel's performance was not deficient. The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. *Strickland,* 466 U.S. at 691, 104 S.Ct. at 2066; *Romano v. Gibson,* 239 F.3d 1156, 1181 (10th Cir.2001), *cert. denied,* 534 U.S. 1046, 122 S.Ct. 628, 151 L.Ed.2d 548 (2001).... Grant's wish to exclude his family from the proceedings controlled trial counsel's actions in this case.
>
> Trial counsel did present some mitigating evidence including Grant's own testimony and a prison psychiatrist. The prison psychiatrist testified that Grant had never been treated for any mental illness or syndromes.
>
> Grant testified about his childhood, that he had eight brothers and sisters and that he left home, for the first time, at the age of twelve. He testified that he had been in and out of institutions since his teen years. He testified that when he reached the age of seventeen he was sentenced to adult prison and served one year. He testified that once he got out he committed the robberies for which he was incarcerated when this crime took place. He apologized to the family of the victim. The mitigating evidence Grant now claims his attorney was ineffective for not presenting would have repeated Grant's own account of his childhood.
>
> Considering all of the evidence presented at trial and at the evidentiary hearing, we do not believe that trial counsel's conduct was "outside the wide range of professionally competent assistance." *Strickland,* 466 U.S. at 689, 104 S.Ct. at 2065. The presentation of this evidence would have reinforced Grant's status as a repeat offender who has spent the majority of his life in prison. He has had no meaningful contact with the family members who would have testified. They knew nothing about his conduct in prison. Even though they

> testified that they would have asked the jury to spare his life, this would have been expected by the jury and would not have made a difference in the sentence given.
>
> Grant has made no showing that the failure to find his family members and present their testimony at trial was the result of deficient performance, or that the failure rendered his sentence unreliable. *See Burger v. Kemp,* 483 U.S. 776, 795–96, 107 S.Ct. 3114, 3126, 97 L.Ed.2d 638 (1987). Even if he had shown deficient performance, Grant could not show that he was prejudiced by the failure to present this evidence.

Grant I, 58 P.3d at 799–800 (internal paragraph numbers omitted).

After the Supreme Court granted Grant's petition for writ of certiorari and remanded the case to the OCCA with directions to reconsider Grant's ineffective assistance claim in light of *Wiggins,* the OCCA reaffirmed its conclusion that Bowen did not perform deficiently:

> In our original opinion, we found that counsel's failure to contact family members did not fall "outside the wide range of professionally competent assistance." *Grant,* 2002 OK CR 36, ¶ 87, 58 P.3d at 800. Furthermore, we held that Grant could not show that the failure to present the testimony of family members rendered his sentence unreliable. *Grant,* 2002 OK CR 36, ¶ 88, 58 P.3d at 800. Grant could not show that he was prejudiced by counsel's conduct. *Id.* While counsel could have contacted family members through Grant's prison records, and did ask an investigator to attempt to contact the family, no contact was ever made.
>
> The *Wiggins* case does not change our decision. Counsel's decision in this case was driven by Grant's own request to not have his family contacted. *See Strickland,* 466 U.S. at 691, 104 S.Ct. at 2066; *Romano v. Gibson,* 239 F.3d 1156, 1181 (10th Cir.2001). Counsel's concern that the family members' testimony showing care for Grant would be overshadowed by their actions of limited contact during the past twenty years of his life was a valid concern. Counsel's decision was directed by his client. His knowledge of Grant's early life, through conversations with Grant, would not have been enhanced by interviewing family members. The Court in *Wiggins* emphasized, "*Strickland* does not require counsel to investigate every conceivable line of mitigation evidence no matter how unlikely the effort would be to assist the defendant at sentencing." *Wiggins,* 539 U.S. at [533], 123 S.Ct. at 2541. Counsel in this case followed the directions of his client and made a reasonable decision that investigation into Grant's family history by contacting family members was unnecessary. *Strickland,* 466 U.S. at 691, 104 S.Ct. at 2066.
>
> There are probably only few death penalty cases where counsel would not be ineffective for a failure to undertake an independent investigation of a defendant's early life by contacting family members. This is one of them. The factors that make counsel's independent investigation unnecessary was Grant's own desire to not have his family contacted and his twenty years of incarceration prior to this crime.

Grant II, 95 P.3d at 180–181 (internal paragraph numbers omitted).

The OCCA's analysis of the deficient performance prong thus rests on a number of factual findings. To begin with, the OCCA concurred with the state trial court's finding "that [Grant's] family members could have been contacted with the use of information located in Grant's pris-

on records and they would have been willing to testify at trial." *Grant I,* 58 P.3d at 799; *see Grant II,* 95 P.3d at 181 ("While counsel could have contacted family members through Grant's prison records, and did ask an investigator to attempt to contact the family, no contact was ever made."). But the OCCA also found that "Grant's childhood ... was a matter of choice," *Grant II,* 95 P.3d at 180, and that Grant, as an adult, "ha[d] had no meaningful contact with the family members who would have testified," *Grant I,* 58 P.3d at 800. The OCCA further found that the testimony of Grant's family members "would have repeated Grant's own account of his childhood," *id.,* and "would have been cumulative to each other," *id.* at 799. Relatedly, the OCCA found that trial counsel's "knowledge of Grant's early life, through conversations with Grant, would not have been enhanced by interviewing [Grant's] family members." *Grant II,* 95 P.3d at 181. Lastly, the OCCA found that "Grant specifically told counsel that he did not want his family contacted," *id.* at 180, and that trial counsel "followed the directions of his client." *Id.* at 181.

As I shall outline below, all but the first of these factual findings are clearly contrary to, and rebutted by, the record developed during the trial court's evidentiary hearing.[3]

1) The OCCA's first factual error

To begin with, the OCCA's characterization of Grant's childhood as a "matter of choice" is clearly erroneous and indeed offensive when viewed in light of Grant's life history, and is also contrary to well-established Supreme Court precedent. According to the testimony of Ruth Grant, Grant's biological mother, Grant was one of nine children, four of whom, including Grant, were fathered by a man named Walter Grant. Shortly after Grant's birth, Ruth testified, Walter Grant left Oklahoma with the two oldest children (Kenneth Grant and Ronnie Grant) and moved to Los Angeles. Ruth was left to raise her remaining children by herself with only part-time work and public assistance as their means of support. When Grant was approximately five years old, Ruth moved herself and her remaining children from Ada, Oklahoma, to Oklahoma City in search of a better job and better living conditions. But as all of Grant's family members agreed, Ruth's quest for better living conditions for her family was not successful. After living for a short time near her brother, Clayton Black, Ruth and her children moved into an apartment in a housing project located in a crime-ridden neighborhood of Oklahoma City. Because of Ruth's work schedule, and because his father had left the family years earlier,

3. I recognize there is a circuit split regarding the precise interplay of 28 U.S.C. § 2254(d)(2), which provides that federal habeas relief can be granted in favor of a state prisoner on the basis of a claim that was adjudicated on the merits in state court proceedings if the state courts' adjudication of the claim "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings," and 28 U.S.C. § 2254(e)(1), which provides that in federal habeas proceedings brought under § 2254, "a determination of a factual issue made by a State court shall be presumed to be correct" and "[t]he applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." *See Wood v. Allen,* 558 U.S. 290, 130 S.Ct. 841, 848 n. 1, 175 L.Ed.2d 738 (2010) (citing circuit cases that have addressed the issue). It is unnecessary for us to take a position on that issue in this case because, under any of the various formulations that have been employed by our sister circuits, the OCCA's presumptively correct factual findings have been rebutted by clear and convincing evidence and proven, both individually and collectively, to be unreasonable.

Grant and his siblings lacked adult supervision during most of their waking hours. Although it was undisputed that Grant thereafter began associating with a group of juvenile delinquents and in turn got into trouble for stealing, his younger sister Andrea Jean Grant explained that Grant's purpose in stealing was to obtain clothes and shoes for his younger siblings to wear. Hr'g Tr. at 81. And Grant's juvenile offenses resulted in his spending a significant amount of time in several state juvenile facilities, all of which purportedly were in deplorable condition. Thus, in sum, the essentially uncontroverted factual record firmly establishes that Grant, through no fault of his own, was subjected during his entire childhood to poverty and parental neglect.

Perhaps the OCCA's "matter of choice" statement was aimed more narrowly at Grant's juvenile criminal activities, rather than his entire childhood. But, even assuming that to be the case, the statement is clearly inconsistent with the more sympathetic views expressed by the Supreme Court regarding juvenile offenders. In *Roper v. Simmons,* 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), for example, the Supreme Court outlined "[t]hree general differences between juveniles under 18 and adults." 543 U.S. at 569, 125 S.Ct. 1183. "First," the Court stated, "as any parent knows and as the scientific and sociological studies . . . tend to confirm, [a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions." *Id.* (internal quotation marks omitted). "The second area of difference," the Court noted, "is that juveniles are more vulnerable or susceptible to negative influences and outsides pressures, including peer pressure." *Id.* "This is explained in part," the Court stated, "by the prevailing circumstance that juveniles *have less control, or less experience with control, over their own environment.*" *Id.* (emphasis added). "The third broad difference," the Court explained, "is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed." *Id.* at 570, 125 S.Ct. 1183. And the Court proceeded to note that juveniles' "own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment." *Id.* Consequently, the Court stated, "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." *Id.*

2) The OCCA's second factual error

The second factual error made by the OCCA was its finding that Grant, as an adult, "had no meaningful contact with the family members who would have testified" on his behalf. *Grant I,* 58 P.3d at 800. Shortly after Grant turned eighteen (in 1979), he was convicted of a felony in Oklahoma state court and sentenced to a term of imprisonment. While he was confined, his mother, Ruth Grant, moved from Oklahoma City to Portland, Oregon, and most of Grant's siblings moved with her. In 1980, Grant was released on parole, but soon thereafter committed several armed robberies in Oklahoma. Grant, who was then nineteen years of age, was convicted of those crimes in November 1980 and sentenced to a total term of imprisonment of 130 years in the custody of the Oklahoma Department of Corrections. Consequently, it became difficult for Grant's family, living in Oregon and of very mod-

est means, to personally visit him in prison in Oklahoma. Nevertheless, according to her testimony at the state evidentiary hearing, Ruth Grant returned to Oklahoma every year to visit Grant in prison (except for one year when Grant had been transferred to a facility in Texas). Ruth Grant further testified that she regularly wrote to Grant in prison, and that he had also written to her. At least four of Grant's siblings (LaRonda Joy Hovis, Ruth Ann Grant Burley, Andrea Jean Grant, and O.C. Frazier) testified that they also corresponded with Grant in prison or talked to him by telephone. Lastly, Grant's uncle, Clayton Black, testified that he visited Grant once or twice per year in prison, and would drive Grant's mother to the prison for her annual visit with Grant. Thus, in sum, the evidentiary hearing record established that Grant had several family members, including his mother, who maintained regular contact with him.

3) The OCCA's third factual error

The third factual error committed by the OCCA was its finding that the testimony of Grant's family members "would have repeated Grant's own account of his childhood." *Grant I,* 58 P.3d at 800. Grant testified on his own behalf during the sentencing-phase proceedings. During his testimony on direct examination, Grant noted that he had five brothers and three sisters and that he was "somewhere in between" in terms of his age. Trial Tr. at 1565. Grant did not testify at all regarding the events of his childhood from birth until age twelve. Instead, his testimony focused very briefly on the period of his life from age twelve, when he first left home, until age seventeen, when he left home for good. Grant testified that during that time period he got into trouble as a juvenile and was sent to different juvenile facilities. The remainder of Grant's testimony on direct examination focused on his criminal activities as an adult and his purported lack of recollection of murdering Carter. Quite clearly, Grant's testimony failed to provide the jury with any details of his childhood or the difficulties he faced as a child. Thus, contrary to the OCCA's findings, the testimony of Grant's family members would not simply have repeated Grant's own account of his childhood, and instead could have provided the jury with important mitigating evidence.

4) The OCCA's fourth factual error

The OCCA's fourth factual error was its finding that the testimony of Grant's family members "would have been cumulative to each other." *Grant I,* 58 P.3d at 799. To be sure, there was some overlap in the testimony provided by Grant's family members at the state evidentiary hearing. But a careful review of that testimony indicates that each of Grant's family members provided specific details not testified to by anyone else. For example, LaRonda Joy Hovis, the oldest of Grant's female siblings, was the only witness who specifically described the living conditions her family faced prior to their move to Oklahoma City. According to Hovis, her family (including at that time Grant's father and two oldest brothers) lived in a three-room house in Ada, Oklahoma, that lacked plumbing. Another significant example came from the testimony of Grant's younger sister, Andrea Jean Grant. She testified that, as a child, Grant stole in order to provide clothing and shoes for his younger siblings.

5) The OCCA's fifth factual error

The fifth factual error committed by the OCCA was its finding that trial counsel's "knowledge of Grant's early life, through conversations with Grant, would not have been enhanced by interviewing [Grant's] family members." *Grant II,* 95 P.3d at

181. At no point during the state evidentiary hearing did Bowen, Grant's lead trial counsel, testify that he spoke with Grant about the details of "Grant's early life." Nor did Bowen describe any of those details. Instead, Bowen's testimony suggests that any facts he learned about Grant's childhood came primarily, if not exclusively, from the defense's guilt-phase expert witness, psychologist Dean Montgomery. And even those details, according to the trial transcript, were far from complete.[4] Thus, in short, there is no evidentiary basis to support the OCCA's finding on this point.[5]

6) The OCCA's sixth factual error

The sixth factual error committed by the OCCA was its finding that Bowen "followed the directions of his client" and did not contact Grant's family members. *Grant II*, 95 P.3d at 181. During the state evidentiary hearing, Bowen testified that during their pretrial conversations, Grant "indicated . . . that he really didn't want his family to be involved." Tr. of Evid. Hr'g, at 54. But Bowen proceeded to testify, "I don't normally, I don't take that into consideration what the Defendant in a Capital murder case wants with regard to those kind of issues. We would still follow-up as far as trying to find family and getting information independently." *Id.* at 58. In other words, Bowen testified, Grant's "reluctance about getting his family involved did not deter me from attempting to—from directing my investigator to attempt to contact his family."[6] *Id.* at 61. And Bowen explained that he ultimately did not call any of Grant's family members to testify during the sentencing-phase proceedings because "as hard as we [Bowen and his investigator] tried we really couldn't find them [Grant's family members]," and because Grant "really hadn't had any contact with them to speak of in over twenty years." *Id.* at 56. But the record on appeal clearly indicates that both of these purported excuses are without support. In fact, Grant's family was easy to locate using information culled from Grant's prison records, and Grant's family did have contact with him during the twenty-plus years he was imprisoned.

7) The OCCA's resulting legal error

As I have noted, the OCCA ultimately concluded that Grant could not satisfy the first prong of the *Strickland* test because Bowen "made a reasonable decision that investigation into Grant's family history by contacting family members was unneces-

4. The majority also references Montgomery, albeit not by name but rather by the term "guilt stage expert," and suggests that Montgomery "talked about [Grant's] difficult childhood." Maj. Op. at 1023. A careful examination of Montgomery's testimony, however, indicates that he provided only minimal details about Grant's childhood (e.g., the fact that Grant was the sixth of nine children and never really knew his father).

5. Somewhat relatedly, Bowen's testimony at the state evidentiary hearing also established that he had a significant misunderstanding of how frequently Grant's family members had contact with Grant in prison. For example, it was Bowen's understanding that Grant's mother "had come to see him just a few times while he was incarcerated." Tr. of Evid. Hr'g, at 55. But the record firmly establishes that Ruth Grant visited Grant on an annual basis (with the exception of one year when he was confined in a facility in Texas).

6. The state trial court expressly found, after hearing this testimony, that Grant did not waive the presentation of mitigating evidence from his family members. And, as Judge Chapel aptly noted in his dissent, "[t]he record suggests that rather than *deciding* not to pursue mitigating evidence about Grant's early life from members of his family, Grant's counsel recognized that such information was relevant and potentially helpful, he just never accomplished the task of actually obtaining it." *Grant II*, 95 P.3d at 188.

sary." *Grant II,* 95 P.3d at 181. But the above-outlined factual errors, upon which the OCCA's legal conclusion was based, render the legal conclusion itself unreasonable. As noted, Bowen did not decide to forego investigation into Grant's family history. Rather, he and his investigator were purportedly unable to locate any of Grant's family members, even though Grant's post-trial OIDS investigator had no problem locating Grant's family members using the exact same information that was available to Bowen and his investigator prior to trial. And this failure to contact Grant's family members left Bowen with insufficient information upon which to decide whether the testimony of Grant's family members would be beneficial to Grant during the sentencing-phase proceedings. Moreover, to the extent Bowen based his decision not to call family members on Grant's purported lack of contact with them, Bowen clearly lacked sufficient and accurate information on that issue. As previously discussed, several of Grant's family members, most notably his mother, testified that they regularly visited or communicated with Grant in prison. Thus, in short, Bowen lacked sufficient information to make an informed and reasoned decision about what evidence to present or forego at the sentencing proceedings.

8) De novo review of the first prong of Strickland

Reviewing de novo the first prong of the *Strickland* test, it is clear, and the State effectively concedes, that Bowen's performance was deficient. As the Supreme Court stated in *Strickland* and reemphasized in *Wiggins,* "strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Wiggins,* 539 U.S. at 521, 123 S.Ct. 2527 (internal quotation marks omitted). In this case, the factual record fully exposes Bowen's failure to conduct an adequate investigation of Grant's family history, and thus he was completely unaware of critical mitigating information that Grant's family members could have provided. Consequently, Bowen's decision as to what evidence he would present during the sentencing-phase proceedings was in turn fundamentally flawed and cannot be labeled a "strategic choice." As Judge Chapel aptly noted in *Grant I,* "counsel cannot 'reasonably' decide not to present a particular type of mitigating evidence . . . if counsel does not first discover and develop such evidence to some degree, such that its potential impact can be understood and realistically evaluated." *Grant I,* 58 P.3d at 803. Thus, as Judge Chapel further noted, Bowen "could not have reasonably decided that testimony from members of Grant's family would not be helpful, unless he had first located and interviewed at least some of them." *Id.* at 806. And Bowen's failure in this regard is even more egregious in light of the fact that there appear to have been no other compelling mitigation strategies available to him. *See Grant II,* 95 P.3d at 189 (Chapel, J., dissenting) (noting that, unlike in *Wiggins,* Bowen could not have attempted to convince the jury in the sentencing-phase proceedings that Grant was not responsible for Carter's murder, nor could Bowen point to Grant's lack of a prior criminal history).

B. The prejudice prong of the Strickland test

That leaves the key question of whether Grant was prejudiced by the failure of his trial attorneys to investigate and present mitigating evidence from his family members. The OCCA purported to address this question on the merits in both *Grant I* and *Grant II.* In *Grant I,* the OCCA summarily concluded that "[e]ven if [Grant]

had shown deficient performance, [he] could not show that he was prejudiced by the failure to present this evidence." 58 P.3d at 800. In *Grant II,* the OCCA expanded slightly upon this conclusion, stating:

> There is no indication that had the jury been confronted with the testimony of family members the result of this proceeding would have been different. The jury found the existence of three aggravating circumstances. Grant was incarcerated for committing violent crimes. He violently and repeatedly stabbed a civilian kitchen worker while he was serving a sentence for a violent crime. The testimony of Grant's family members would not have swayed the jury from imposing the death penalty.

95 P.3d at 181 (footnote omitted).

Like its analysis of *Strickland*'s first prong, however, the OCCA's analysis of *Strickland*'s second prong was unquestionably impacted by its erroneous factual findings. Because the OCCA erroneously found that the testimony of Grant's family members "would [simply] have repeated Grant's own account of his childhood," *Grant I,* 58 P.3d at 800, it is not surprising that the OCCA in turn concluded that Grant was not prejudiced by Bowen's failure to present that testimony during the sentencing-phase proceedings. But, as I have already explained, the record on appeal firmly establishes that the testimony of Grant's family members would have expanded greatly upon "Grant's own account of his childhood." *Id.* Because the OCCA fundamentally misunderstood, and effectively discounted, the mitigating testimony that could have been presented by Grant's family members, the OCCA's adjudication of the second prong of the *Strickland* test 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)(2), and thus we are obligated to review that prong de novo. *See Wilson v. Workman,* 577 F.3d 1284, 1303 (10th Cir.2009) (reviewing de novo petitioner's ineffective assistance claim after first determining that OCCA's decision was based on an unreasonable determination of the facts).

In examining the constitutionality of capital sentencing proceedings, the Supreme Court has stated that "the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." *Woodson v. North Carolina,* 428 U.S. 280, 304, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976). This, the Court has held, ensures that "the sentence imposed at the penalty stage . . . reflect[s] a reasoned moral response to the defendant's background, character, and crime." *Abdul–Kabir v. Quarterman,* 550 U.S. 233, 252, 127 S.Ct. 1654, 167 L.Ed.2d 585 (2007) (internal quotation marks and emphasis omitted). The Court has also emphasized that "[t]he need for treating each defendant in a capital case with that degree of respect due the uniqueness of the individual is far more important than in noncapital cases." *Lockett v. Ohio,* 438 U.S. 586, 605, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978). That is because, the Court has explained, "[t]he nonavailability of corrective or modifying mechanisms with respect to an executed capital sentence underscores the need for individualized consideration as a constitutional requirement in imposing the death sentence." *Id.* And, consistent with these principles, the Court has held that, "[i]n assessing prejudice" de novo, "we [must] reweigh the evidence in aggravation against the totality of available mitigating evidence." *Wiggins,* 539 U.S. at 534, 123 S.Ct. 2527.

In conducting the mandated reweighing in this case, I agree with the following statement from Judge Chapel's dissent in *Grant II:*

> The question is not whether Grant's background, family history, and some of his positive traits could excuse his cruel murder of Gay Carter. They certainly could not. The question is whether there is a "reasonable probability" that at least one juror—and it would only take one—could be sufficiently moved by the circumstances of Grant's life to choose to spare that life from execution.

95 P.3d at 190.

Notably, Judge Chapel, in his dissent in *Grant I,* accurately described the mitigating testimony that Grant's family members could have offered at the sentencing-phase proceedings:

> The family members painted a rather depressing picture of the circumstances into which Grant was born and in which he grew up. John Marion Grant was the sixth of nine children and the last fathered by his mother's former husband, Walter Grant.[FN23] Walter left the family home in Ada, Oklahoma approximately one month before John was born, leaving Ruth with six children to raise on her own. Walter moved to Los Angeles and never provided any financial support to Ruth or the children. Although the two oldest brothers eventually went to live with Walter in Los Angeles, Grant was left in Oklahoma and had very little contact with his father while he was growing up.
>
> FN23. The children born to Ruth and Walter Grant, in the order of their birth, were Kenneth, Ronnie, LaRonda, Ruth Ann, Norman, and John.
>
> During the three years following Walter's departure and Grant's birth, Ruth had three more children (Andrea, Gregory, and O.C.), the last of which was named after their father, O.C. Frazier. O.C. Frazier never lived in Ruth's home with the children, and John never experienced having a male role model in the family home. Instead, the two oldest sisters in the family were expected to play very substantial roles in running the home and raising and disciplining the younger children, including Grant, even while they were still children themselves.
>
> Ruth's only sources of income to support her large family were Aid to Dependent Children and some part-time work cleaning people's homes. LaRonda described their family as "dirt poor, extremely poor." The first family home in Ada had only three rooms and no indoor plumbing, and the family did not own a car. When Grant was approximately five years old, the family moved to Oklahoma City, where they lived next door to Ruth's brother, Clayton Black. Black lived across the street from some apartment buildings that were known as "the projects," and Ruth and the children eventually moved into these apartments. Family members testified that things got even worse in the new neighborhood, which was poor, tough, crime-ridden, run down, and dangerous, particularly in the projects. In 1979, Ruth and the children who were still in the home moved to Portland, Oregon to escape the neighborhood. Grant was unable to go with the family, however, because he was confined to a juvenile facility at the time.
>
> The family members described Grant as being "sweet," "loving," "quiet," "sensitive," and "gentle" when he was a child. He loved animals and pets, especially dogs. Some of Grant's sisters testified that he did not get much attention from their mother and that he needed more love than he got. Many of the

family members remembered Grant crying a lot as a child. Ruth noted that Grant first started having problems and getting into trouble when the city started busing the children to schools outside the neighborhood. Some of Grant's siblings testified that when Grant first started stealing as an adolescent, he was stealing things like clothing and shoes for the younger children in the family.

Grant's younger siblings testified that he was very protective of them and that he would come to the aid of his younger brothers when older boys in the neighborhood threatened them or tried to fight them. Gregory testified that Grant gave him "quite a bit of advice growing up" and that Grant attempted to steer him away from some of the "badder guys" in the neighborhood. He stated that even though Grant did not follow his own good advice, "he pretty much wanted to make sure that the people who were younger or his beloved brothers didn't get into the type of lifestyle he got into." Andrea testified that Grant was her "favorite brother" and that they were very close as children. O.C. likewise described Grant as a "cool brother" who was always there for him and who helped him out a lot.

LaRonda testified that Grant once helped her escape from an abusive boyfriend and that she was very touched by the concern he showed for her and her children at that time. Gregory testified that Grant always loved small children, particularly his nieces and nephews. And all of the family members testified that Grant was never violent or verbally abusive within the family, even as an adolescent.

The family members also testified that they stilled loved Grant and that they would like the opportunity to maintain or renew their relationships with him. Some expressed regret about their failure to provide Grant with more support. All of the family members testified that if they had been given the opportunity to testify at Grant's trial, they would have asked the jury to spare his life.

Grant I, 58 P.3d at 807–08 (internal paragraph numbers omitted).

To be sure, none of this evidence would have squarely rebutted the three aggravating factors alleged by the prosecution and found by the jury. But a death sentence is not imposed simply by assessing the presence or absence of aggravating circumstances. The question of a defendant's moral culpability, for example, is a factor that has been repeatedly emphasized by the Supreme Court as one that can "provide [a] jury with an entirely different reason for not imposing a death sentence." *Abdul–Kabir*, 550 U.S. at 259, 127 S.Ct. 1654. And the Supreme Court has quite clearly held that a defendant's "childhood deprivation," *id.*, or "troubled history," *Wiggins*, 539 U.S. at 535, 123 S.Ct. 2527, is "relevant to assessing [his or her] moral culpability." *Id.*

In Grant's case, his jury, due to the decisions of his trial counsel, was given very little information about Grant's background and character. The jury did not hear from, nor even see, Grant's family members. The jury was truly left with the impression that no one cared whether Grant lived or died. Although Grant's counsel urged the jury during sentencing-phase closing arguments to "look at ... Grant as something other than a monster," Trial. Tr., Vol. VI at 1612, the jury in fact had no information that would have allowed it to do so. And the prosecution seized upon this lack of evidence during its sentencing-phase closing arguments, implying falsely that there was really no explanation for Grant's criminal history other than his own conscious and knowing

choices. *Id.* at 1608 ("He simply has chosen not to abide by the rules that we all abide by."), 1613 ("He's chosen consciously to break the law and his history shows that pattern of decision after decision after decision.... He's made bad choices. Some people just do that."). As a result, Grant's jury was in no position to adequately assess his moral culpability, nor in turn fully engage in what the Supreme Court has described as "the process of inflicting the penalty of death." *Eddings v. Oklahoma,* 455 U.S. 104, 112, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982) (internal quotation marks omitted).

Even if we assume, as the majority suggests, that the mitigating evidence that Grant's family members would have provided is less persuasive than the "powerful" mitigating evidence at issue in *Wiggins* (which included "severe privation and abuse in the first six years of [Wiggins's] life while in the custody of his alcoholic, absentee mother," and "physical torment, sexual molestation, and repeated rape during his subsequent years," *Wiggins,* 539 U.S. at 535, 123 S.Ct. 2527), I agree with Grant that *Wiggins* and cases like it "only give general guidance as to the types of evidence that constitute powerful and compelling mitigation evidence" and "which lessen the moral culpability of a capital defendant." Aplt. Reply Br. at 14. As previously stated, federal law entitles every capital defendant to individualized sentencing. *Lockett,* 438 U.S. at 604–05, 98 S.Ct. 2954 (holding that individualized consideration of a capital defendant must take place to ensure the constitutional imposition of the death penalty).

Had Grant actually received the individualized consideration that the Constitution entitles him to, I believe that the testimony of Grant's family members would have placed not only the murder, but Grant's entire criminal history, into a different, and more sympathetic context for the jury. Specifically, the testimony of Grant's family members suggests that Grant's first forays into crime were a product of the difficult environment in which he and his siblings were living, which included a lack of even the most basic of life's necessities. Indeed, the evidence suggests that Grant, who effectively acted as a caretaker for his younger siblings, began stealing to provide them with clothing and shoes. In turn, the testimony of Grant's family members suggests that Grant's experiences in juvenile facilities hardened him and likely lead to his committing crimes as a young adult. And, tragically, those crimes lead to him being sentenced at the age of nineteen to a life in prison. Of course, none of this evidence explains precisely why Grant killed Carter, nor does it excuse the murder. But, "[h]ad the jury been able to place [Grant's] ... life history on the mitigating side of the scale," I believe "there is a reasonable probability that at least one juror would have struck a different balance" and decided that life imprisonment was a sufficient penalty for the murder. *Wiggins,* 539 U.S. at 537, 123 S.Ct. 2527. Consequently, I conclude that Grant is entitled to federal habeas relief in the form of a new sentencing proceeding that satisfies the constitutional standards outlined by the Supreme Court.

defendant was competent and participated in the strategic decisions with counsel. Those decisions are supported by the record and distinguish the facts of this case from *Wiggins.*

¶ 16 I concur the judgment and sentence should be affirmed.

CHAPEL, Judge, Dissenting.

¶ 1 Some people just can't take a hint. On October 6, 2003, the Supreme Court of the United States responded to John Marion Grant's petition for a writ of certiorari, arising from this Court's rejection of his direct appeal from his capital conviction,[1] by granting the petition, summarily vacating the judgment of this Court, and remanding the case to this Court, "for further consideration in light of *Wiggins v. Smith,* 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003)." [2] In a capital case like Grant's—with further extensive review through the federal habeas corpus process inevitably following the direct appeal decision in this Court, and with a subsequent opportunity for the United States Supreme Court to intervene, through certiorari review of the decision of the United States Court of Appeals for the Tenth Circuit—intervention by the Supreme Court at this stage of the appellate process is rare and remarkable. One would think that this Court would issue a careful, thoughtful response. That has not happened.[3]

¶ 2 The Supreme Court has sent this Court a message, and its reference to the *Wiggins* decision would seem to make interpretation of this message a rather simple task. Yet today's Court majority chooses to ignore the message, through a pinched and shallow interpretation of *Wiggins* and a determination to maintain its earlier ruling. I believe that the Court's current actions will merely serve to delay, rather than to prevent, an eventual re-trial of the punishment stage of Grant's trial, thereby causing a pointless waste of monetary and human resources and an unnecessary extension of the stress and anxiety that accompanies all capital cases, for all of the persons affected by them.

¶ 3 I dissented from this Court's original decision in a published opinion.[4] Although I agreed with the Court that the first-degree murder conviction in Grant's case should be affirmed,[5] I concluded that Grant's death sentence should be overturned for two reasons: (1) his trial counsel failed to adequately investigate and present substantial mitigating evidence about his childhood and family history; and (2) the trial court erroneously refused to excuse a particular juror, resulting in the prejudicial denial of one of Grant's statutory peremptory challenges.[6]

¶ 4 The Supreme Court's reference to *Wiggins v. Smith* makes clear that it is the second-stage ineffective assistance of counsel claim that our Court is being instructed to reconsider.[7] In *Wiggins,* the Supreme Court found that Kevin Wiggins should be given federal habeas corpus relief, because "his attorneys' failure to investigate his background and present mitigating evidence of his unfortunate life history at his capital sentencing proceedings violated his Sixth

1. *See Grant v. Oklahoma,* 2002 OK CR 36, 58 P.3d 783.

2. *See Grant v. Oklahoma,* ––– U.S. ––––, 124 S.Ct. 162, 157 L.Ed.2d 12 (2003).

3. And for what it's worth, today's special concurrence does nothing to fill this void.

4. *See Grant v. State,* 2002 OK CR 36, 58 P.3d 783, 801–13 (2003) (Chapel, J., dissenting).

5. *Id.* at 801, 813. I noted that "there was never any doubt that it was Grant who killed [Gay] Carter," that Grant killed Carter by "repeatedly and brutally stabbing her to death," and that Grant's insanity defense "had no realistic chance for success at trial." *Id.* at 801.

6. I continue to maintain that both of these trial errors, considered both individually and cumulatively, necessitate a re-sentencing in Grant's case. *See id.* at 813.

7. *See Wiggins v. Smith,* 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003). Consequently, the juror removal/peremptory challenge claim, *see Grant,* 58 P.3d. at 809–13, is not discussed further herein. My analysis of Grant's second-stage ineffective assistance of counsel claim, on the other hand, formed the bulk of my original dissent, and is incorporated herein by reference. *See id.* at 801–09.

Amendment right to counsel."[8] The *Wiggins* Court concluded that this failure constituted ineffective assistance of counsel.[9] There can be no doubt that the legal issue before the Supreme Court in *Wiggins* is the same one now before this Court.[10]

¶ 5 Yet today's majority gives only partial, passing recognition to the legal principle that forms the foundation for the Supreme Court's ruling in *Wiggins* (and was likewise the basis of my earlier dissent). This principle for evaluating attorney performance was first articulated in *Strickland v. Washington*,[11] the Supreme Court's 1984 watershed decision that articulated the standards by which all ineffective assistance of counsel claims are evaluated. The *Strickland* Court recognized that when evaluating the performance of defense counsel:

> [S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.[12]

After recognizing this basic principle and quoting the first sentence of this passage from *Strickland*,[13] today's majority opinion simply goes on to say, "The facts and circumstances of Wiggins' case are diametrically opposed to the facts and circumstances of Grant's case."[14] Surely the Supreme Court

8. *Wiggins*, 539 U.S. at ——, 123 S.Ct. at 2531.

9. *Id.* at ——, 123 S.Ct. at 2543–44.

10. It should be noted, however, that the habeas context of *Wiggins* actually made the Supreme Court's review more constrained than that of this Court. *Wiggins* came before the Court in the context of a habeas corpus action, after both the Maryland Court of Appeals and the United States Court of Appeals for the Fourth Circuit rejected Wiggins' ineffective assistance claim. Thus the Supreme Court could only grant habeas relief to Wiggins upon a finding that the rejection of his claim by the Maryland Court of Appeals was not only *wrong*, it was *unreasonable*. *See id.* at ——, 123 S.Ct. at 2534–35 (explaining habeas standards of 28 U.S.C. § 2254(d), as interpreted in *Williams v. Taylor*, 529 U.S. 362, 409–11, 120 S.Ct. 1495, 1521–22, 146 L.Ed.2d 389 (2000), to require finding that state court decision was "objectively unreasonable," in addition to being wrong).

11. 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

12. *Id.* at 690–91, 104 S.Ct. at 2066. The Supreme Court quoted this portion of *Strickland* in *Wiggins*. *See Wiggins*, 539 U.S. at ——, ——, 123 S.Ct. at 2535, 2541; and I likewise quoted from this passage in my original dissent. *See Grant*, 58 P.3d at 803 n. 6.

13. *See* Court Opinion, p.179 (quoting first sentence from *Strickland* quotation *supra*).

14. *Id.* Today's special concurrence does the same thing. *See* Special Concurrence (Lumpkin, J.), p. 178 ("[I] write separately to emphasize several distinguishing differences between the facts of this case and those presented in *Wiggins* ...."). The special concurrence, however, has a particular ax to grind, *i.e.*, the seemingly obvious claim that "it is the client's case, not the lawyer's." *Id.* Although the special concurrence gives passing recognition to the lawyer's responsibility "to advise, inform, and consult with the client," *id.* at 179–80, the gist of the opinion is that an attorney should just follow his client's initially-stated preferences, without worrying much about advising the client about his rights, the risks of a particular approach, how trials (and particularly capital trials) are conducted, what is most likely in the client's best interests, *etc*. The case of *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), cited by the special concurrence, did indeed give Grant the right to represent himself. Grant wisely chose not to invoke this right, however, and instead relied upon his separate right to the *assistance* of counsel, which unfortunately, he did not adequately receive. The fact that Grant met the minimal legal standard of being a "competent client"—a description that appears repeatedly in the special concurrence—does not mean that he was equipped or adequately informed to make a reasonable and intelligent determination regarding the presentation of particular mitigating evidence in his case. The record does not support the claim that he actually made such a decision, nor would our own standards find that any such waiver by Grant could be upheld as being informed and intelligently made. *See Wallace v. State*, 1995 OK CR 19, 893 P.2d 504, 512–13, *cert. denied*, 516 U.S. 888, 116 S.Ct. 232, 133 L.Ed.2d 160 (1995).

hoped that this Court would do more than simply point out factual differences between these two cases.[15]

¶ 6 Within its attempt to distinguish Grant's case, today's Court majority makes a factual claim that appears to be the real basis of its decision, but which simply cannot be accepted at face value. The Court asserts, "Grant specifically told counsel that he did not want his family contacted because he basically had no contact with his family since the age of fifteen...."[16] The Court also writes that trial counsel's failure to contact members of Grant's family "was driven by Grant's own request not to have his family contacted."[17] Hence the majority apparently concludes, more vehemently than it did in its original opinion, that Grant waived the presentation of mitigating evidence from members of his family.[18]

¶ 7 On January 4, 2002, this Court remanded Grant's case to the district court for an evidentiary hearing on Grant's second-stage ineffective assistance of counsel claim.[19] Within our remand order we directed the district court to determine whether Grant waived his right to present mitigating evidence from his family, and if so, whether the waiver was knowing and intelligent. The evidentiary hearing was held on February 22, 2002, and the district court filed its findings of fact and conclusions of law regarding the remanded issue on April 3, 2002.

¶ 8 Grant's trial counsel testified at the evidentiary hearing that Grant "indicated ... that he really didn't want his family to be involved" and that family testimony "was not something that [Grant] was interested in pursuing."[20] On the other hand, trial counsel testified that he was aware that a defendant's waiver of his right to present mitigating evidence during the second stage of his capital trial is only valid if the defendant is adequately advised of and understands the nature of mitigating evidence and its role in the capital sentencing process.[21] Yet trial counsel acknowledged that he had no specific recollection of discussing with Grant (1) what the second stage of a capital trial was about,

15. And as my later analysis points out, the factual differences between the two cases can easily be interpreted to suggest that Grant is *more* deserving of capital sentencing relief than Wiggins, rather than less deserving, as today's majority concludes.

16. Court Opinion, p. 180.

17. *Id.* at 180–81. The Court later asserts that Grant's counsel's decision not to put on family testimony "was directed by his client" and states that "[c]ounsel in this case followed the directions of his client." *Id.* at 181.

18. Although the Court's original opinion referred to "Grant's wish to exclude his family from the proceedings," it did not explicitly conclude that Grant specifically told his counsel not to contact his family. *See Grant*, 58 P.3d at 800. Furthermore, the asserted rationale (from trial counsel) for not involving Grant's family (*i.e.*, the lack of contact with the family) was not actually attributed to Grant himself, *see id.*, as it is now. Today's special concurrence attempts to strengthen the claim that Grant "waived" the presentation of mitigating family evidence simply by restating the claim repeatedly, though without support from the record. The lack of evidentiary support for this claim is discussed *infra*.

19. In order to grant this evidentiary hearing, this Court was required to find and did find that Grant had shown "by clear and convincing evidence that there is a strong possibility his trial counsel was ineffective for failing to develop and present mitigating evidence from members of [his] family." *See* Rule 3.11(B)(3)(b)(i), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18 App. (2002) (articulating standard applied by this Court).

20. The Court majority's statement, quoted *supra*, about Grant specifically telling his counsel not to contact his family is not supported by any evidence in the record. It should likewise be noted that today's special concurrence similarly prefers to "summarize" and recast defense counsel's actual testimony, about Grant "indicat[ing] ... that he really didn't want his family to be involved," into a stronger, more *decisive* form than that actually given by counsel. *See, e.g.*, Special Concurrence, p. 179 ("[T]rial counsel consulted with the defendant and the defendant was an integral part of the strategic decision making process regarding mitigation evidence."); *id.* at 180–81 (referring to Grant's "directions" to his counsel, which defense counsel "followed," to rely on Grant's own testimony regarding his childhood). Nothing in the record supports the current claims that Grant was actually "directing" his counsel regarding the presentation of particular mitigating evidence.

21. *See Wallace*, 893 P.2d at 510–13. This Court noted in *Wallace*, "It is beyond question mitigating evidence is critical to the sentencer in a capital case." *Id.* at 510.

(2) the potential role and importance of family testimony in a capital trial, or (3) the fact that family members could be important sources of mitigating information, even if they did not testify.[22] Trial counsel likewise testified that he was familiar with the requirements for a waiver hearing, in the event that a defendant desired to waive the presentation of mitigating evidence, but that he never considered seeking such a hearing in Grant's case.[23]

¶ 9 After reviewing the totality of the evidence presented at the evidentiary hearing, the district court found that Grant did *not* waive the presentation of mitigating evidence from members of his family: "[I]t must be concluded that defendant [Grant] did not specifically waive the presentation of this testimony." This Court has repeatedly held that such factual findings are entitled to "strong deference," so long as they are supported by the record in the case.[24] And the record in Grant's case does indeed strongly support the trial court's "no waiver" finding of fact.[25] Hence the majority cannot rely on its own waiver finding to justify its conclusion that counsel's failure to seek out and develop mitigating evidence from Grant's family was reasonable.[26]

¶ 10 The majority also attempts to show that Grant's claim of ineffective assistance is less persuasive than that of Wiggins based upon the following assertions: (1) Wiggins had no prior criminal history, while Grant was incarcerated for prior robberies at the time he killed Gay Carter; (2) no evidence about Wiggins' life history and family background was presented at his capital sentencing, while Grant's counsel "allowed Grant to testify about his early childhood"[27]; and (3) Wiggins was horribly victimized as a child, through severe deprivation and physical and sexual abuse, while Grant was basically just a poor kid who chose a life of crime.[28]

¶ 11 It is true that Wiggins had no prior convictions at the time he killed seventy-seven year-old Florence Lacs.[29] It is also

22. Hence the record in this case could not possibly support a finding that any waiver by Grant was "knowing and intelligent." *See id.* at 512. The trial court did not even reach this secondary issue, since it concluded that no waiver occurred in Grant's case.

23. *See id.* at 512–13 (establishing district court procedure for determining whether capital defendant who desires to waive presentation of mitigating evidence is competent and is making a knowing and intelligent waiver decision). This procedure was not followed in Grant's case, and the record contains no evidence of any statements to the trial court regarding Grant's desire to waive the presentation of mitigating evidence.

24. *See* Rule 3.11(B)(3)(b)(iv), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18 App. (2002); *see also Glossip v. State*, 2001 OK CR 21, 29 P.3d 597, 602 ("This Court will give the trial court's findings strong deference if supported by the record, but we shall determine the ultimate issue of whether trial counsel was ineffective.") (citing Rule 3.11(B)(3)(b)(iv)); *see also Wood v. State*, 1998 OK CR 19, 959 P.2d 1, 17; *Humphreys v. State*, 1997 OK CR 59, 947 P.2d 565, 577, *cert. denied*, 524 U.S. 930, 118 S.Ct. 2329, 141 L.Ed.2d 702 (1998).

25. In addition to the facts noted above, the following evidentiary hearing evidence also supports the trial court's finding that no waiver occurred: (1) trial counsel and his investigators acknowledged having conversations with Grant about his family members and where they could be found; (2) counsel and the investigators indicated that Grant provided the family contact information that he had; and (3) during the trial Grant gave his counsel a letter from his mother, bearing a local return address. Nevertheless, the record is clear that not a single member of Grant's family was ever contacted regarding his trial.

26. Despite the Court's apparent reliance on its own finding of waiver, the Court never actually finds (in today's opinion or its prior opinion) that the trial court's contrary finding is either erroneous or not supported by the record. Today's special concurrence likewise implicitly finds that Grant "waived" the presentation of evidence about his childhood and family history—by "directing" his counsel not to pursue or present such evidence—yet never grapples with or even mentions the trial court's specific finding to the contrary.

27. *See* Court Opinion, p. 180.

28. *See id.* at 180.

29. The Maryland Court of Appeals wrote the following regarding the discovery of Wiggins' victim, who was found dead in her own bathtub:

> She was lying on her side, half covered by cloudy water. It appeared that a household cleaner and a bug spray had been poured or sprayed on her. She was wearing a white blouse and a blue skirt, but had on no underwear. The skirt had been raised to her waist. The apartment had been ransacked.

true that Grant was already serving a total of 130 years in armed-robbery prison sentences at the time he killed Gay Carter, and that this factor makes the prejudice prong of the ineffective assistance test more difficult for Grant to meet (compared to Wiggins). However, it likewise makes the performance prong of the ineffective assistance test easier for Grant to meet (relative to Wiggins), since the aggravating factors of Grant's criminal history and current incarceration made the need for significant mitigating evidence in his case more critical. Hence these considerations should have spurred Grant's counsel to pursue any such evidence even more diligently.

¶ 12 As I noted in my original dissent, when faced with a client who is obviously guilty of first-degree murder, and who committed this crime while already serving prison sentences for prior violent offenses, the essential task of defense counsel should have been obvious: "give the jury a reason to spare his life." [30] The strategic options open to Grant's counsel were extremely limited. He could not realistically contest Grant's guilt, nor did Grant's recent life history (of incarceration) offer much in the way of mitigating evidence. Hence defense counsel's "choice" to not fully pursue the strategy of at least discovering what Grant's childhood and early life were like simply cannot be cloaked in the mantra of a "reasonable strategic decision."

¶ 13 The record suggests that rather than *deciding* not to pursue mitigating evidence about Grant's early life from members of his family, Grant's counsel recognized that such information was relevant and potentially helpful, he just never accomplished the task of actually obtaining it.[31] As the *Wiggins* Court noted in regard to defense counsel in that case, the claim that Grant's counsel made a strategic decision not to diligently pursue mitigating family evidence "resembles more a *post-hoc* rationalization of counsel's conduct than an accurate description of [his] deliberations prior to sentencing." [32]

Wiggins v. State, 352 Md. 580, 724 A.2d 1, 4 (1999). The medical examiner determined that the cause of death was drowning. *Id.* Wiggins, who had been working as a painter in the victim's apartment building, was seen talking to Lacs on the evening she disappeared. A few hours later, Wiggins was driving Lacs' car to the home of his girlfriend, and together they went shopping over the next two days using Lacs' credit cards. They later pawned one of her rings and were eventually arrested, still driving Lacs' car. *Id.* at 4–5.

30. *Grant*, 58 P.3d at 802.

31. It should be noted in this regard that the trial court found that all nine of Grant's family members who testified at the evidentiary hearing "were findable and would have testified at trial if they had been asked." And today's Court majority acknowledges that "[w]hile counsel could have contacted family members through Grant's prison records, ... no contact was ever made." *See* Court Opinion, p. 180–81.

32. *Wiggins*, 539 U.S. at ——, 123 S.Ct. at 2538. The fact that trial counsel gave a reason for his purported "decision" not to put on evidence from members of Grant's family—namely, that the family had not been in substantial contact with Grant for a long time, making any claims about how much family members cared for him seem specious—does not mean that this Court must accept this testimony unquestioningly *or*, even if the reason asserted is sincere, that it should be considered "reasonable." The *Wiggins* Court did not fully accept the accuracy of defense counsel's after-the-fact testimony in that case, about the extent of his knowledge of Wiggins' life history at the time of trial. *See id.* ——, 123 S.Ct. at 2541 (speculating that rather than actually "lying," defense counsel could be suffering from "a mistaken memory shaped by the passage of time"). Similarly, the testimony of Grant's counsel about his "decision" not to put on any family testimony seems inconsistent with his separate testimony about the halfhearted and faltering attempts he did make (through investigators) to locate and interview members of Grant's family. And the claim in today's special concurrence that trial counsel "had his investigator continue to seek out family members up until the time of the sentencing phase of trial"—as if both trial counsel and the investigator diligently sought out family members, but were simply confounded by the enormity of the task, *see* Special Concurrence, p. 180—is not supported by the record in this case. In fact, the trial court specifically found that all of the family members were "findable," through Grant's prison records.

Furthermore, even actual strategic decisions by counsel are always subject to evaluation for their "reasonableness"; and given the circumstances of Grant's case, a decision not to diligently pursue family and life history evidence in his case simply could not be evaluated as "reasonable." *See Grant*, 58 P.3d at 802–06 (my original dissent). The fact that members of Grant's family might have had a hard time claiming that they had remained "close" to Grant through the years, does not change the fact that these individ-

¶ 14 As the *Wiggins* Court acknowledged, defense counsel in that case did pursue two other strategies during Wiggins' capital sentencing: (1) attempting to convince the jury that Wiggins was not responsible for the murder; and (2) noting Wiggins' lack of prior convictions.[33] Nevertheless, the Supreme Court concluded that these strategies did not exclude a further strategy of presenting mitigating evidence about Wiggins' tragic childhood, and more importantly, that these alternative strategies certainly could not explain defense counsel's failure to fully *investigate* and discover this mitigating evidence.[34] Since Grant's counsel did not even have any similar alternative strategies available to him, his failure to diligently pursue the family evidence is even less justifiable. And as the Supreme Court emphasized in *Wiggins*, counsel's failure to first adequately investigate and uncover this evidence made his "decision" not to present this (undiscovered) evidence during Grant's trial even less deserving of deference as a "reasonable strategic decision." [35]

¶ 15 The second ground upon which today's Court majority attempts to distinguish the current case from *Wiggins* is the factual claim that Grant actually did "testify about his early childhood," while no such testimony was presented in Wiggins' case.[36] Today's majority continues to insist that all of the information that came out at the evidentiary hearing about the bleak circumstances of Grant's childhood is pretty much equivalent to Grant's trial testimony that he had five brothers and three sisters, and he was "somewhere in between." [37] This is quite a stretch. Furthermore, it is hard to understand how the Court majority could categorize Grant's trial testimony about how he left home and began getting into serious trouble as an adolescent as information about his "early childhood," [38] or how this negative information could possibly have served as an adequate substitute for the very sympathetic facts about Grant's earliest years of life. As far as actual presentation of mitigating evidence about the defendant's childhood, the cases of Grant and Wiggins are equivalent: no such evidence was present to the juries in either case.

¶ 16 Finally, I take up the Court's third proffered reason for distinguishing Grant's case from that of Wiggins, which amounts to a claim that Wiggins is just more deserving of relief than Grant, because Wiggins had a worse childhood and Grant is a worse person. In attempting to make this argument, today's majority makes a factual claim that is radio-talk-showesque, especially from the perspective of anyone familiar with the horrifying realities of childhood abuse, neglect, and exploitation of any kind. The claim: it is the child's fault. The majority writes, "Grant's childhood, unlike Wiggins' life[,] was a matter of choice." [39] Wow.

uals possessed powerful, critical evidence about the difficulties and deprivation of Grant's early years. Today's special concurrence belittles the impact of family members pledging love and pleading for mercy, *see* Special Concurrence, pp. 180–81, while totally ignoring their crucial role as fact witnesses to Grant's childhood—a kind of tunnel vision similar to that of defense counsel.

33. *Wiggins*, 539 U.S. at ——, 123 S.Ct. at 2533.

34. *Id.* at ——, 123 S.Ct. at 2541–43.

35. *Id.* at ——, 123 S.Ct. at 2541 ("We base our conclusion on the much more limited principle that 'strategic choices made after less than complete investigation are reasonable' only to the extent that 'reasonable professional judgments support the limitations on investigation.' ") (quoting *Strickland*). I conclude in the current case, as the *Wiggins* majority did in that case, that Grant's counsel's "incomplete investigation was the result of inattention, not reasoned strategic judgment," *id.* at ——, 123 S.Ct. at 2542, and that counsel was "not in a position to make a reasonable strategic choice" about the presentation of family testimony in Grant's case. *Id.* at ——, 123 S.Ct. at 2543.

36. *See* Court Opinion, p. 180.

37. In its original opinion, the Court concluded that all of this family testimony "would have repeated Grant's own account of his childhood." *Grant*, 58 P.3d at 800. The Court's willingness to equate Grant's testimony about the number of children in his family with detailed evidence about the circumstances of his childhood is also evidenced in the Court's current assertion that defense counsel's "knowledge of Grant's early life . . . would not have been enhanced by interviewing family members." *See* Court Opinion, p. 181.

38. *See* Court Opinion, p. 180.

¶ 17 Grant *chose* to be abandoned by his father just after he was born; to be the sixth of nine children born to a mother who did not have the means or the wherewithal to care for her huge family; to never have a father figure living in his home; to be raised largely by his older sisters; to be "dirt poor," without indoor plumbing or a family car; to live in run-down, dangerous, and crime-ridden neighborhoods; to be bused to schools far from his home; *etc.* The majority apparently concludes that because the record does not suggest that Grant was "abused sexually or physically by those in authority over him" (as Wiggins was), and because Grant "chose to steal at an early age," his entire depressing childhood was his own "choice," and really not particularly mitigating at all.[40]

¶ 18 The majority also apparently sees nothing mitigating in the testimony of Grant's sister that his early thefts involved getting clothing and shoes for his younger siblings. It strikes me that Grant has run across a remarkably unsympathetic Court, but I am not so sure that a jury would be so unwilling to see Grant's sad childhood for what it was and to see the mitigating impact of this personal history.[41] The question is not whether Grant's background, family history, and some of his positive traits could excuse his cruel murder of Gay Carter. They certainly could not. The question is whether there is a "reasonable probability" that at least one juror—and it would only take one—could be sufficiently moved by the circumstances of Grant's life to choose to spare that life from execution.[42] I continue to believe that there is enough of a chance that this could happen that we should leave it to an *actual jury,* provided with the array of mitigating evidence that Grant's original jury never heard, to make this call. This Court should not be making this life and death determination.

¶ 19 I continue to dissent from this Court's unwillingness to provide Grant with a new capital sentencing, before a jury that is fully informed about the circumstances of the life whose fate they must determine.

2004 OK CIV APP 59

Shawn M. HORVAT, Appellant,

v.

STATE of Oklahoma, ex rel. the DEPARTMENT OF CORRECTIONS, and State of Oklahoma, ex rel. the Merit Protection Commission, Appellees.

No. 99,976.

Released for Publication by Order of the Supreme Court of Oklahoma.

Court of Civil Appeals of Oklahoma, Division No. 2.

April 13, 2004.

Background: Department of Corrections (DOC) employee appealed from decision of the District Court, Tulsa County, Gregory K. Frizzell, J., entering summary judgment in favor of DOC and the Merit Protection Commission (MPC).

Holding: The Court of Civil Appeals, Tom Colbert, C.J., held that MPC's rule that appeal is filed on the day it is received, rather than on the day it is mailed, violated State Constitution.

Reversed and remanded.

39. *Id.* at 180.

40. *See id.* at 180.

41. The cynicism of this Court regarding Grant's case is also revealed in the following statement: "There are probably only [sic] few death penalty cases where counsel would not be ineffective for a failure to undertake an independent investigation of a defendant's early life by contacting family members. This is one of them." *Id.* at 181. How convenient.

42. *See Wiggins,* 539 U.S. at ——, 123 S.Ct. at 2543 ("Had the jury been able to place petitioner's excruciating life history on the mitigating side of the scale, there is a reasonable probability that at least one juror would have struck a different balance.").

OKLAHOMA STATE DEPARTMENT OF CORRECTIONS

New Arrival / Adjustment Review / Earned Credit Level - Nov 2008

DOC# 102816

Offender Information

Facility OSP — Facility Arrival Date 11/14/1998 — LARC Arrival Date 12/30/1980

Name GRANT, JOHN M — DOC Number 102816 — Gender MALE — Date of Birth 04/12/1961

Date of Assessment 07/01/2021 — Housing Restrictions YES — Identification NO

Name o[redacted]

Address[redacted]

Sentence Information

85% NO — 57 O.S. 1991 Sec 521 eligible no data

PPWP eligibility NO — Days Remaining DEATH

Assessed Security MAX — Security Points 4 — Assigned Security MAX — Mandatory Override? LIFE/LIFE WITHOUT PAROLE

Misconduct History — Active Misconduct Points 0 — Date of last Misconduct 11/04/2009

Parole Date not eligible — Parole Stipulations None found

Parole Conditions None found

Escape History NO ESCAPES OR ATTEMPTS — Escape Points 0

Facility	Security Level	From Custody	Escape Date	Apprehension Date

Escape Comment

Current Patterns of Behavior

Performance Rating = Poor, Good, Excellent, Outstanding

Staff OUTSTANDING — Program Participation no data — Job no data

Other Offenders OUTSTANDING — Personal Hygiene OUTSTANDING — Living Area OUTSTANDING

Program / Job Evaluations

Month/Year	Rating	Assignment
05/2021	Good	Unassigned: Unassigned by Staff - Did not refuse job.
04/2021	Good	Unassigned: Unassigned by Staff - Did not refuse job.
03/2021	Good	Unassigned: Unassigned by Staff - Did not refuse job.
02/2021	Good	Unassigned: Unassigned by Staff - Did not refuse job.

Case Plan

Initial Plan

Needs	Plan of Action	Projected Enrollment	Completion	Restrictions/Comments

Updated Plan

Needs	Plan of Action	Projected Enrollment	Completion	Comments
NO ASSESSED NEEDS/PROGRAM	No Plan Needed			

OKLAHOMA ST TE DEPARTMENT OF CO RECTIONS

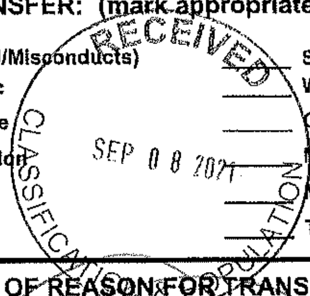
FACILITY ASSIGNMENT FORM (FAF)

Recommending Facility: OKLAHOMA STATE PENITENTIARY **Date:** 08/26/2021

Offender's Name: GRANT, JOHN M (Last, First) **Race:** Black **Sex:** Male

DOC Number: 102816 **Request Number:** 1026145

I. TYPE OF TRANSFER: (mark appropriate items)



___ Security (SHU/Misconducts) ___ Segregated Housing Unit
___ Programmatic ___ Wheelchair
___ Administrative ___ Court Hearing
___ Non-association ___ Medical Problems
X Routine ___ Mental Health
___ Temporary Placement

Security Level after Classification:
X Maximum
___ Medium
___ Minimum
___ Community Placement

II. DESCRIPTION OF REASON FOR TRANSFER:

THIS UCC RECOMMENDS FOR INMATE TO REMAIN OSP MAX DUE TO BEING ON LONG TERM SEGREGATION AND IS AWAITING THE DEATH PENALTY.

III. FACILITY CLASSIFICATION COMMITTEE ACTION

Concur: Yes ✓ No ___ If No, Reason: ___

Chairperson: [signature] Case Manager/Committee Member: [signature] ROBINSON, AMBER L

Offender's Signature: Refused to sign Contract Monitor: ___

Routine: [signature] Case Manager IV Date: 9/7/21

Facility Head Review: [signature] Date: 9/7/21

Final Facility Recommendation: ___ Maximum ___ GPS ___ Medium ___ Minimum ___ Community Placement

IV. Deputy Director/Administrator Classification and Population:

Concur: (Yes) No Signature: [signature] act Adm Office: Class/Pop Date: 9-8-21

Concur: Yes No Signature: ___ Office: ___ Date: ___

V. POPULATION OFFICE ACTION

Concur: ✓ Do Not Concur ___ Date of Assignment: / /

The Offender is assigned to: OSP/MAX 9-8-21 Waiting List: Yes ___ No ___

Date of Transfer: / /

[signature] Population Officer Date

___ Denied ___ Coordinator of Population Date

Reason: Death Penalty

* Don't submit Death Row for skp down.

no jobs

DOC 060204A Section 4 (R 7/14) OMS0102D AMBERROB 08/26/2021 15:10

OKLAHOMA DEPARTMENT OF CORRECTIONS
INTRA-FACILITY ASSIGNMENT FORM

FACILITY: Oklahoma State Penitentiary DATE: 12/31/2019

SECTION I: IDENTIFICATION

INMATE NAME: Grant, John DOC NUMBER: 102816 RACE: B SEX: M

OFFENSE: Murder in the first degree SENTENCE YEARS: ~~Life~~ Death MONTHS: 0 DAYS: 0

ASSIGNED SECURITY: Maximum PAROLE STATUS: C.R.D (MM/YY): /

.0

SECTION II: ASSIGNMENT ACTIONS

TYPE OF ACTION	EFFECTIVE DATE FROM	TO	MM/DD/YY
JOB ASSIGNMENT	Idle	Unit Orderly	~~12/31/2019~~ 1-8-2020.
HOUSING ASSIGNMENT			/ /
PROGRAM ASSIGNMENT			
OTHER			

SECTION III: EARNED CREDIT RESTORATION

FACILITY	OFFENSE	DATE MM/YY	CREDITS LOST	CREDITS RESTORED
		/		
		/		

TOTAL RESTORED:

NEW C.R.D. (MM/YY): /

SECTION IV: APPROVAL

FACILITY CLASSIFICATION COMMITTEE/UNIT TEAM

COMMENTS:
UCC RECOMMENDS THIS PROGRAM/JOB PLACEMENT.

Margaret Green
CHAIRPERSON

[signature]
MEMBER

OTHER

John M Grant 102816
INMATE SIGNATURE DOC NUMBER

APPROVING AUTHORITY REVIEW:

CONCUR: X DENIED: MODIFIED TO:

[signature] CMS IV 01 108 2020
SIGNATURE TITLE DATE

ORIGINAL: FIELD FILE
COPY: INMATE

DOC 060203B Section 3 (R0595)

AFFIDAVIT OF OSCAR PATTERSON III

STATE OF OKLAHOMA	)	
	)	**ss.**
COUNTY OF HUGHES	)	

Before me, the undersigned Notary, on this 12 day of November, 2014, personally appeared Oscar Patterson III, known to me of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. My name is Oscar Patterson, III. I am serving a life without parole sentence at Davis Correctional Facility in Holdenville, OK. I was on death row in 2000, at Oklahoma State Penitentiary in McAlester, OK. I left death row in 2002, when my re-trial resulted in a life without parole sentence. I met John Grant while I was on death row. We were cell mates for one year.

2. I was moved in the cell with John after I had a fight with my cell mate. This was the first time I had ever met John. John was cool and I never had any problems with him. We got along with one another. John was laid back.

3. Back then we were allowed to go to yard six people at a time. I went out on yard. John never went to the yard. He did not interact with other people. He was more of a loner. I think he tried to stay away from people to stay out of trouble because of his charges. The guards knew from the beginning what John was charged with and were picking at him. The guards were treating him bad and bulldogging him. They just picked at him and did kiddie stuff. They would do stuff like mess up his food trays or short him on food. Sometimes they would call him last for canteen. Sometimes John would ask them to go get the Captain, but most of the time he would just say something to me about it. I never heard him holler or act out with the guards about it. John told me when he first got there the guards beat him up and drug him down the stairs.

4. I moved out of the cell with John because Danny Hooks who was on death row needed a cell mate and I knew Danny and I was closer to him. At that time John also had someone he wanted to live with and that cell was available. So we just swapped cell mates.

5. I got lucky to get John as a cell mate because you usually go through a lot of bad cell mates before you get to someone you can deal with.

6. I swear and affirm that the foregoing statement is true and correct. I never met with any of his prior defense teams until I spoke with the Federal Public Defender's Office. I did not testify or provide a written statement until now, but I would have been willing to testify if called.

OKLAHOMA STATE DEPARTMENT OF EDUCATION

SANDY GARRETT, SUPERINTENDENT

2500 NORTH LINCOLN BOULEVARD OKLAHOMA CITY, OKLAHOMA 73105-4599

10/30/91

OFFICIAL G. E. D. SCORE REPORT

JOHN M. GRANT
BOX 548
LEXINGTON ,OK 73051-0000

SSN : 000-00-1491

BIRTH DATE: 04/12/61

CERTIFIED: 10/30/91

CERTIFICATE # 132831

FOLLOWING ARE THE EXAMINEE'S TEST SCORES:

NO. AND NAME OF TEST	STANDARD SCORE	PERCENTILE RANK
1. THE WRITING SKILLS TEST	46	36
2. THE SOCIAL STUDIES TEST	61	88
3. THE SCIENCE TEST	56	75
4. THE READING SKILLS TEST	59	80
5. THE MATHEMATICS TEST	47	36
TOTAL SCORE:	269	
AVERAGE SCORE:	53.80	
RESULT:	PASSED	

CERTIFICATE OF HIGH SCHOOL EQUIVALENCY

#132831

JOHN M. GRANT
BOX 548
LEXINGTON OK 73051-0000

DIJ 0120

This is to certify that the person named hereon has shown evidence of general educational development equivalent to a liberal high school education by scores made on THE GENERAL EDUCATIONAL DEVELOPMENT TESTS. This is not a high school diploma and cannot be exchanged for one.

By official action of the State Board of Education, in recognition of this achievement, this certificate is hereby awarded.

Given at Oklahoma City, Oklahoma, this 30TH day of OCT. 19 91

Sandy Garrett

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION