INSTRUCTION NO. 16

Mitigating circumstances are those factors which, while they do not constitute a legal justification or excuse for the commission of the offense in question, may be considered, in the estimation of the jury, in fairness and mercy, as extenuating or reducing the degree of the defendant's moral culpability.

You may consider any aspect of the defendant's character or record and any of the circumstances of the offense as a basis for a sentence less than death.

INSTRUCTION NO. 17

Murder of the first degree may be mitigated by any of the following circumstances, even though the mitigating circumstance is not sufficient to constitute a defense or reduce the degree of the crime:

(1) The defendant has no significant history of prior criminal activity.

(2) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(3) The victim was a participant in the defendant's criminal conduct or consented to the act.

(4) The defendant was an accomplice in a murder committed by another person and his participation in the defendant's criminal conduct or consented to the act.

(5) The defendant acted under duress or under the domination of another person.

(6) The youth of the defendant at the time of the crime.

(7) Any other mitigating circumstances.

INSTRUCTION NO. 12

The burden rests upon the prosecution to establish any aggravating circumstance beyond a reasonable doubt and you must be unanimous in your finding as to each aggravating circumstance.

INSTRUCTION NO. 19

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

MRippo-07029-01091

INSTRUCTION NO. 20

The jury is instructed that in determining the appropriate penalty to be imposed in this case that it may consider all evidence introduced and instructions given at both the penalty hearing phase of these proceedings and at the trial of this matter.

INSTRUCTION NO. 21

In your deliberation you may not discuss or consider the subject of guilt or innocence of a defendant, as that issue has already been decided. Your duty is confined to a determination of the punishment to be imposed.

INSTRUCTION NO. 22

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

INSTRUCTION NO. 23

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 24

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. When you have agreed upon your verdicts, they should be signed and dated by your foreman.

INSTRUCTION NO. 25

The Court has submitted two sets of verdicts to you. One set of verdicts reflects the three possible punishments which may be imposed. The other verdict is a special verdict. They are to reflect your findings with respect to the presence or absence and weight to be given any aggravating circumstance and any mitigating circumstances.

INSTRUCTION NO. 26

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law was given you in these instructions, and return a verdict which, according to your reason and candid judgment, is just and proper.

Given March 14, 1996

Gerald J. Bongiovanni

Declaration of Elisabeth B. Stanton

I, Elisabeth B. Stanton, hereby declare as follows:

1. I am a paralegal employed by the Federal Public Defender and assigned to work on Michael Rippo's case. I am charged with obtaining and maintaining documentary evidence.

2. I have reviewed the files provided by the Nevada Department of Corrections relating to Mr. Rippo's prior incarceration between 1982 and 1989, relative to his institutional behavior.

3. Mr. Rippo first appeared before the parole board in March 1985 and was denied parole consideration for an additional two years. The board noted "poor institutional behavior" and "several misconduct reports" while Mr. Rippo was at Southern Nevada Correctional Center.

4. In March 1986, Mr. Rippo was convicted (by prison officials) of "possession of dangerous contraband," and sentenced to 180 days in disciplinary segregation.

5. In May 1986, while in disciplinary segregation, Mr. Rippo was transferred to Northern Nevada Correctional Center for "mischief" and other incidents, including exposing his genitals to a corrections officer.

6. In July 1986, Mr. Rippo requested to be moved to protective custody and was transferred to Nevada State Prison general population.

7. In August 1986, Mr. Rippo was transferred back to Northern Nevada Correctional Center to general population. There he remained disciplinary free (from May 1986) and participated in a full-time academics programs, obtaining a "Street Readiness" certificate, his GED was completed March 9, 1983, he had three months of vocational studies, and six months of jog training in dry cleaning.

8. In May 1988, Mr. Rippo refused a urine test and was sanctioned seven days in disciplinary segregation.

9. The parole board noted in June 1988, that the entirety of his prior incidents consisted of: possession of a buck knife, exposure of genitals to an officer, delaying or hindering an officer in performance of his duties, being out of place for count, using abusive language to staff, and having numerous minor general violations.

10. On March 5, 1987, Mr. Rippo received a one-year denial from the parole board, which cited four incidents, all general violations, disobeying order by staff; abusive language; failure to appear at count; and delaying, hindering, or interfering with a corrections employee.

11. In May 1988, Mr. Rippo was transferred to NSP as he was investigated for possible involvement in an Over-40 Store robbery; that he was implicated in drug dealing; and was accused of being an enforcer while in general population. He admitted to running his own illegal

store. By July 1988, Mr. Rippo received a letter from Director of Corrections Summer indicating nothing further linked him to the Over-40 Store robbery and his was exonerated. He remained disciplinary free for 10 months.

12. The parole board report also noted that he was in full-time academics from March through September 1987; he was hired by Prison Industries vinyl factory and continued in full-time school as well; he was assigned to a yard labor crew for six months while he was in school and assigned to another yard labor crew at Nevada State Prison. He planned to enroll in college in the fall. His programming was noted as above average.

13. In September 1988, Mr. Rippo was charged with fighting but that was re-filed as assault and battery and Mr. Rippo pled guilty. He was sanctioned 365 days in disciplinary segregation. After five months, a review of the offense caused Mr. Rippo to be returned to general population because the "assault and battery" was in actuality a fight between inmates.

14. In March 1989, Mr. Rippo received a general violation for refusing to return to his cell and thus violated a direct order. He received a sanction of two weeks canteen restriction. It is noted that he is in education courses in computers and math, that he is a non-problematic inmate at Nevada State Prison, and that his program participation is considered excellent.

15. The reports relied upon are attached to this declaration.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 15, 2008, in Las Vegas, Nevada

Elisabeth B. Stanton

NORTHERN NEVADA CORRECTIONAL CENTER
INSTITUTIONAL PROGRESS REPORT
MARCH, 1987 AGENDA

2-5-87

| | | | |
|---|---|---|---|
| NAME: | RIPPO, MICHAEL | OFFENSE: | SEXUAL ASSAULT CC BURGLARY |
| NSP NO: | 17097 | SENTENCE: | LIFE/WITH CC FIVE YEARS |
| AGE: | 22 | SENTENCE DATE: | 4-27-82 |
| DOB: | 2-26-65 | C.J. CREDITS: | 90 DAYS/80 DAYS |
| POB: | NEW YORK, NEW YORK | DATE RECEIVED: | 5-5-82 |
| TERMER STATUS: | FIRST | WEAPON: | KNIFE |
| COUNTY: | CLARK | MIN. ELIG. PAROLE DATE: | 5-87 |
| PLEA: | GUILTY/GUILTY | CURRENT PRISON EXP. DATE: | LIFE |
| DETAINERS: | NONE NOTED | ETHNIC: | CAUCASIAN |
| MILITARY: | NONE | PROBATION: | NOT GRANTED |

OFFENSE SUMMARY:

On January 16, 1982, Michael Rippo entered the house of a twenty-four year old female and forced her into the living room at knife point. After he subsequently bound the victim, he placed a coathanger around her neck, an electric cord around her feet, and inserted his penis into her vagina. The victim was also beat about the head, and Rippo subsequently fled the scene in the victim's car.

On January 22, 1982, Michael Rippo burglarized a Las Vegas residence of a watch, $25.00 in coins, and a record collection.

INSTITUTIONAL ADJUSTMENT:

Michael Rippo appeared before the Parole Board in March of 1985 and received a two year denial. Since that time, Rippo remained at SNCC until he was transferred to NNCC in June of 1986 based upon his poor institutional behavior. While at SNCC, Rippo was subjected to several misconduct reports. On March 10, 1986, Michael Rippo was found in possession of dangerous contraband, which consisted of a six inch adjustable wrench, a brass fitted pipe, a pair of Num Chucks, a compass, and a nine inch buck knife. As a result of this incident, Rippo was assessed 180 days of disciplinary segregation. While housed in disciplinary segregation, Rippo was involved in unusual behavior, such as breaking his cell window and dismounting his bed frame. There is also an incident noted in May of 1986, in which Rippo exposed his genitals to an officer. At NNCC, Rippo remained in the General Population until he requested Protective Custody status on July 21, 1986. Rippo claimed that he owed $4,700.00 to an inmate in the General Population and feared for his life. As a result of this Protective Custody request, Rippo was transferred to the Nevada State Prison. At NSP, Rippo related that he did not have any enemy situations, therefore, he was placed in the General Population. Around August 22, 1986, Rippo was interviewed by the Director and granted a final chance to reside in NNCC's General Population. Rippo returned to NNCC on Augsut 25, 1986. Rippo related to this writer that he requested Protective Custody status solely to be with his homosexual friend. Since returning to NNCC, Rippo has remained in the General Population and has maintained a disciplinary free record.

PROGRAM PARTICIPATION:

Since appearing before the Parole Board in March of 1985, Rippo has been enrolled in Full-Time Academics. He is currently studying Math and Spanish. He plans to become an Engineer upon release. It is also noted that Rippo has received a certificate for completion of the Street Readiness Program on October 24, 1984. Rippo also passed his GED test on March 9, 1983, with a score of 54.4. Michael Rippo's prior progress report also reflects that he completed three months of vocational studies and six months of on the job training for dry cleaning.

RELEASE PLANS:

Michael Rippo plans to parole to Boston, Massachusetts and reside with some friends. He has no concrete employment upon release, however, plans to obtain a job working at an auto body shop in Boston, Massachusetts. Rippo also presented an alternative plan to Las Vegas, Nevada. He related that he could reside with his mother and obtain employment either with Triple A Aluminum or with a local catering service.

SUMMARY:

Michael Rippo is a 22 year old first termer who has now served approximately five years two months, which includes ninety days of county jail credit of a life with concurrent five year sentence for Sexual Assault and Burglary, which occurred in Clark County, Nevada. This will be Rippo's second Parole Board appearance. He appeared before the Parole Board in March of 1985 and received a two year denial.

A review of Rippo's prior criminal record reflects no prior adult misdemeanor or felony convictions. However, Rippo has spent time in the Spring Mountain Youth Authority in March of 1981. It is noted that he was sent to the center as a Runaway and for Burglary charges.

In Discussing the instant offense, Rippo related that he is not a rapist. He related that he thought the victim's house was empty and merely wanted to get some sleep there. When he entered the residence, the victim appeared from the back room. He related that he never had sex with a woman before, and forced himself upon her. Rippo related that he had no morals at that time and is sorry that the incident ever occurred. In regards to drugs or alcohol, Rippo denies any type of usage or addiction.

Since appearing before the Parole Board in March of 1985, Rippo remained at SNCC until he was transferred to NNCC in June of 1986 as a result of his poor institutional behavior. At SNCC, Rippo incurred misconduct reports which related to possession of dangerous contraband, destroying his bedframe, breaking his cell window, and exposing his gentals to correctional staff. With exception to a short stay at NSP, Rippo has remained in NNCC's General Population since August of 1986. Since transferring to the Northern facilities, Rippo has maintained a disciplinary free record. At the present time, Rippo remains in NNCC's General Population and is attending Full-Time Academics on a regular basis.

Michael Rippo plans to parole to Boston, Massachusetts and reside with some friends. He has no employment upon release, however, plans to obtain a job working in an auto shop in the Boston area. Rippo also presented an alternative plan to Las Vegas, Nevada, where he will reside with this mother. He related that employment awaits him either working for Triple A Aluminum

SUMMARY CONT'D:

or a local catering service.

If parole is granted, it should be with the following stipulations; 1) Attend outpatient mental health counseling, 2) drug testing, 3) search, and 4) maintain steady employment and residency.

MIKE SHEEHAN,
CORRECTIONAL CLASSIFICATION COUNSELOR I

MS/pag

I have read my Parole Board Report.

MICHAEL RIPPO, NDP #17097

INSTITUTIONAL RECOMMENDATION:

Recommend Denial

JOHN SLANSKY, WARDEN
NORTHERN NEVADA CORRECTIONAL CENTER

NEVADA DEPARTMENT OF PRISONS
STATUTORY TIME FORFEITURE REFERRAL REPORT

DATE: June 1, 1988

| | | | |
|---|---|---|---|
| NAME: | RIPPO, MICHAEL | OFFENSE: | SEXUAL ASSAULT |
| NDOP #: | 17097 | SENTENCE: | LIFE/W |
| AGE: | 23 | SENTENCE DATE: | 4/27/82 |
| ETHNIC: | CAUCASIAN | DATE RECEIVED: | 5/5/82 |
| TERMER STATUS: | FIRST | MIN.ELIG. PAROLE DATE: | 5/89 |
| DETAINERS: | NONE NOTED | CURRENT PRISON EXP. DATE: | LIFE |

STATUTORY OFFENSE:

On May 10, 1988, an officer at NNCC ordered I/M Michael Rippo to submit to a urinalysis test. Michael Rippo refused this urine test. As a result of his refusal, Michael Rippo was charged with MJ-36: An attempt or conspiracy to commit a major violation.

DISCIPLINARY COMMITTEE ACTIONS:

On May 17, 1988, Michael Rippo appeared before the NNCC Disciplinary Committee and pled guilty to the above charge. Based on his guilty plea, he was found guilty of MJ-36 and assessed 7 days disciplinary detention. This matter was referred to the Director for possible loss of stat time and Michael Rippo was awarded 30 days canteen restriction.

PRIOR FORFEITURES & RESTORATIONS OF STATUTORY CREDITS:

None noted. 4/82 :35C: FORFEITURE

SUMMARY:

Michael Rippo is a 23 year old first termer who has now served approximately six years, five months, of a Life With the Possibility of Parole sentence for Sexual Assault which occurred in Clark County, Nevada. Michael Rippo is scheduled to appear before the Parole Board in May of 1989.

Prior to this statutory offense, Michael Rippo has incurred numerous misconduct reports. These misconduct reports consisted of, but are not limited to: possession of a buck knife, exposing his genitals to an officer, delaying, hindering an officer from duties, out of place for count, using abusive language toward staff, and numerous minor general violations. As a result of his prior disciplinary record, Rippo was transferred to NSP on several occasions and spent several stays in disciplinary detention.

Based on the severity of this statutory offense coupled with Rippo's poor disciplinary record, it is recommended that he lose an appropriate number of statutory good time credits.

MJ-36 CATEGORY B LOSS OF 60 TO 119 DAYS STATUTORY GOOD TIME CREDITS

SUBMITTED BY:

MICHAEL J. SHEEHAN, CCC/I

MJS/mb

INSTITUTIONAL RECOMMENDATION:

Loss of statutory credits for a Category "B" offense

LAWRENCE C. BRINKMAN, WARDEN
NORTHERN NEVADA CORRECTIONAL CENTER

PAROLE PROGRESS REPORT
NEVADA STATE PRISON
SEPTEMBER 1988 AGENDA

| | | | |
|---|---|---|---|
| NAME: | RIPPO, MICHAEL | OFFENSE: | SEXUAL ASSAULT CC BURGLARY |
| NSP#: | 17097 | SENTENCE: | LIFE WITH CC 5 YRS |
| AGE: | 23 | SENTENCE DATE: | 4-27-82 |
| DOB: | 2-26-65 | COUNTY JAIL CREDIT: | 90 DAYS |
| POB: | NEW YORK, NEW YORK | DATE RECEIVED: | 1-27-82 |
| TERMER STATUS: | FIRST | WEAPON: | KNIFE |
| COUNTY: | CLARK | MIN. ELIG. PAROLE DATE: | 9-1-88 |
| PLEA: | GUILTY | CURRENT PRISON EXP. DATE: | LIFE |
| DETAINERS: | NONE NOTED | ETHNIC: | CAUCASIAN |
| MILITARY: | NONE | PROBATION: | NOT GRANTED |

OFFENSE SUMMARY:

Criminal Case No. 57388, Sexual Assault: On January 16, 1982, Michael Rippo entered the home of a 24 year old female and forced her into the living room at knife point. He subsequently bound the victim, placed a coat hanger around her neck, an electric cord aroung her feet and inserted his penis into her vagina. The victim was also beat about the head. The subject fled the scene in the victim's car.

Criminal Case No.57389, Burglary: On approximately January 22, 1982, Michael Rippo burglarized a Las Vegas residence of a watch, $250.00 in coins, and a record collection. He was arrested at the Clark County Juvenile Home.

INSTITUTIONAL ADJUSTMENT:

Michael Rippo appeared before the Parole Board on March 5, 1987 at NNCC, at which time he received a one year denial. His disciplinary record at NNCC consisted of four separate incidents involving general violations, which include Disobedience of an Order From Any Staff Member, Abusive Language, Failure to Appear for Count, and Delaying, Hindering, or Interfering With a Correctional Employee. On May 26, 1988, Rippo was transferred to NSP for possible involvement in the Over-Forty Club/Store robbery at NNCC, implication in drug dealing and being an enforcer within the general population. An investigation revealed that over $80.00 in rolled quarters was found in his living area two days after the robbery, which made him suspect to illegal dealings. Rippo admitted to running his own illegal store.

On July 15, 1988, Mr. Rippo received a letter from Director Sumner stating that the investigation of the incident revealed that nothing further had been found linking Rippo to the Over-Forty Store robbery. Due to being exonerated from any involvement in the robbery, Mr. Rippo was approved to be transferred back to NNCC when space is available. Since being at NSP, Mr. Rippo has resided in general population and has currently maintained ten months disciplinary free conduct.

PROGRAM PARTICIPATION:

While at NNCC, Mr. Rippo was enrolled in Full-Time Academics on a regular basis from March 1987 to September 1987. In mid-September, he was hired in the Prison Industries Vinyl Factory and continued to attend school full-time as well, for 1½ months. Rippo was assigned to the Yard Labor Crew periodically for six months while attending school, until his transfer to NSP. He has been assigned to Yard Labor Crew at NSP since July 1988 and has been working as a painter in the new Unit 8. Mr. Rippo states he is enrolling in college this fall.

RELEASE PLANS:

Mr. Rippo plans to parole to Las vegas and stay with his mother, Carol Duncan, at 5765 North Campbell Road, Las Vegas, Nevada 89219; phone 702-645-1580. He would like to attend college and work toward an electrical engineering degree and can also work at Triple A Aluminum, where his mother is employed.

SUMMARY:

Michael Rippo is a 23 year old first termer who has now served approximately six years and four months, which includes 90 days of county jail credit, of a Life With the Possibility of Parole concurrent five year sentence for Sexual Assault and Burglary which occurred in Clark County, Nevada. This will be his third appearance before the Nevada Parole Board.

A review of Mr. Rippo's prior criminal record reflects no prior adult misdemeanor or felony convictions. However, Rippo was confined at the Spring Mountain Youth Authority in March 1981. It is noted that he was placed in the center as a runaway and for burglary charges.

In a brief discussion with Mr. Rippo regarding his instant offense, he says he feels shameful. He claims he did not have sex with the victim, he just inserted his finger in her vagina. Mr. Rippo maintains that he has never had sex with a woman before. He also denies any type of addiction to drugs or alcohol. In past progress reports it is noted that Mr. Rippo claimed that the use of PCP was his main problem in his instant offense. During this interview, he claimed he had no problems with drugs. Mr. Rippo makes no mention of the fact that his victim was bound and beaten during the sexual assault.

Mr. Rippo's institutional adjustment in the last year has been much improved. He has had ten months disciplinary free conduct and his programming both at NNCC and NSP have been noted as above average. The NNCC Education Department considers him to be an excellent student with a high capacity for learning. His overall progress in prison shows marked potential for success in school and in the work community.

Although recent improvement in Mr. Rippo's institutional adjustment and programming is noted, any parole consideration at this time would be seen as premature due to his lengthy sentence structure and the serious nature of his offense.

for J. D. Shannon
STEPHANIE NIXON, CCC I
NEVADA STATE PRISON

RECOMMENDATION:
Denial

H. L. Whitley
H. L. WHITLEY, WARDEN
NEVADA STATE PRISON

NEVADA STATE PRISON
STATUTORY TIME REFERRAL REPORT

DECEMBER 16, 1988

| | | | |
|---|---|---|---|
| NAME: | RIPPO, MICHAEL | OFFENSE: | SEXUAL ASSAULT CC BURGLARY |
| NDP#: | 17097 | SENTENCE: | LIFE WITH THE POSSIBILITY OF PAROLE CC 5 YEARS |
| AGE: | 23 | | |
| ETHNIC: | CAUCASIAN | SENTENCE DATE: | 01/27/82 |
| TERMER STATUS: | FIRST | DATE RECEIVED: | 01/05/82 |
| DETAINERS: | NONE NOTED | MINIMUM ELIGIBLE PAROLE DATE: | 09/01/89 |
| | | CURRENT PRISON EXPIRATION DATE: | LIFE |

STATUTORY OFFENSE:

On November 14, 1988 Inamte Michael Rippo, through his own admission, assaulted Inmate Danny Bailey outside Unit One. As a result of this, Michael Rippo was charged with MJ-2: Assault and MJ-3: Battery.

DISCIPLINARY COMMITTEE ACTION:

On November 18, 1988 Michael Rippo appeared before the Nevada State Prison Disciplinary Committee and pled guilty to the above charges. Based on his guilty plea, he was found guilty of MJ-2 and MJ-3. He was sanctioned 365 days in disciplinary segregation and a referral to the Director for possible loss of statutory time, Category "A".

PRIOR FORFEITURES AND RESTORATIONS OF STAT CREDITS:

| DATE | AMOUNT OF TIME | ACTION (FORFEIT/RESTORE) |
|---|---|---|
| 06/01/88 | 90 DAYS | FORFEIT |
| 04/86 | 280 DAYS | FORFEIT |

SUMMARY:

Michael Rippo is a 23 year old first termer who has now served approximately six years eight months with a Life With the Possibility of Parole concurrent 5 Year sentence for the crimes of Sexual Assault and Burglary, both of which occurred in Clark County, Nevada.

Prior to this statutory offense, Michael Rippo has incurred numerous disciplinary reports. These disciplinary reports include possession of a bucknife, exposing his genitals to an officer, delaying, hindering an officer from duties, out of place for count, using abusive language towards staff and numerous minor general violations. Prior to the instant offense, Mr. Rippo's institutional adjustment had been much improved. He had ten months disciplinary-free conduct and was programming well.

Because of the serious nature of the present offense for which he has been convicted, an appropriate loss of statutory time credits is warranted in this case.

SUBMITTED BY:

JOSEPH D. SHANNON
NEVADA STATE PRISON

NOTED:

AT L. WHITLEY, WARDEN
NEVADA STATE PRISON

**PAROLE PROGRESS REPORT**
**NEVADA STATE PRISON**
**SEPTEMBER 1989 AGENDA**

| | | | |
|---|---|---|---|
| **NAME:** | RIPPO, MICHAEL | **DETAINERS:** | NONE NOTED |
| **NSP#:** | 17097 | **PROBATION VIOLATOR:** | NONE NOTED |
| **AGE:** | 24 | **WEAPON IN CRIME:** | KNIFE |
| **ETHNIC:** | CAUCASIAN | **PROJECTED DISCH. DATE:** | LIFE |
| **COUNTY:** | CLARK | **PAROLE ELIG. DATE:** | 09/01/89 |
| **TERMER STATUS:** | FIRST | **CURRENT CASE NUMBER:** | CL-57388 |
| **DATE RECEIVED:** | 05/05/82 | **CURRENT COUNT NUMBER:** | I |

**SENTENCE STRUCTURE:**

Offense: Sexual Assault cc Burglary
Sentence: Life With cc 5 years

**OFFENSE SUMMARY:**

Criminal Case No. 57388, Sexual Assault: On January 16, 1982, Michael Rippo entered the home of a 24 year female and forced her into the living room at knife point. He bound the victim and placed a coat hanger around her neck and an electric cord around her feet and inserted his penis into her vagina. The victim was also beat about the head. The subject fled the scene in the victim's car.

Criminal Case No. 57389, Burglary: On approximately January 22, 1982, Michael Rippo burglarized a Las Vegas residence of a watch, $250 in coins, and a record collection. He was arrested at the Clark County Juvenile Home.

**INSTITUTIONAL ADJUSTMENT:**

Since his last Parole Board appearance at Nevada State Prison in September of 1988, Michael Rippo incurred a general violation infraction for fighting, however, the charges were later refiled and new charges of MJ-2: Assault and MJ-3: Battery were filed against Michael Rippo. He was assessed by the NSP Disciplinary Committee a sanction of 365 days in Disciplinary Segregation for his participation. Michael Rippo served approximately five months of his 365 days Disciplinary Segregation sanction and was brought up before the full Classification Committee for possible reintegration into general population. A review of the incident by the committee concluded with the decision to return Michael Rippo to general population status because the incident was viewed as a fight. Prior to his release to general population, Michael Rippo incurred a general violation on March 30, 1989 for disobedience of a direct order. The incident revolved around his refusal to return to his cell. NSP Disciplinary Committee found Michael Rippo was guilty of refusing to return to his cell and he was assessed two weeks canteen restriction.

**PROGRAM PARTICIPATION:**

Michael Rippo has enrolled in the Nevada State Prison education program. He is currently taking courses in computer and math.

**RELEASE PLANS:**

Michael Rippo will obtain residency with his mother, Carol Duncan, in Las Vegas, Nevada if given favorable parole action. He has obtained a position with the Triple A Aluminum Company in Las Vegas, Nevada and will be working at that facility if released. He has also indicated plans of attending college and obtaining a degree in electrical engineering and computer science for future goals.

**SUMMARY:**

Michael Rippo is a 24 year old first termer who has served approximately seven years and six months, which includes 90 days of county jail credit, of a Life With the Possibility of Parole oc five year sentence for the Sexual Assault and Burglary which occurred in Clark County, Nevada. This will be his fourth appearance before the Nevada Parole Board.

A review of his prior criminal record indicates an arrests and conviction on the charges of Being a Runaway and two counts of Burglary. He was committed to the Spring Mountain Youth Camp in April of 1981 and was later paroled in August of 1981. His next arrest pertains to his instant offense in which he was certified as an adult at the age of sixteen. He is now serving that sentence.

Michael Rippo admits to committing his crime and is remorseful for having to have placed the victim through such trauma. Michael Rippo has stated over and over that he is remorseful for his crime and can offer his sorrow to the victim at this point in time. He indicated he was thrown out of a residence earlier that day and needed a place to stay. He observed three people leaving the apartment that day and proceeded to enter the apartment after they left only for the purpose of sleeping. Once inside the residence, Michael Rippo observed a female person sleeping in one of the bedrooms. He couldn't offer any other explanation on why he committed the crime except that his youthful age was definitely a factor in his crime.

His institutional adjustment has steadily increased over the number of years he has spent incarcerated. He is currently a non-problematic inmate at the Nevada State Prison. His program participation is viewed as excellent at this time with his continued efforts to maintain his goals in life through continued education programs.

James Baca

JAMES BACA, CCS I
NEVADA STATE PRISON

NOTED:

PETER DEMOSTHENES, WARDEN
NEVADA STATE PRISON

RIPPO, MICHAEL NSP #17097 SEPTEMBER 1989 AGENDA

TRAN

CASE NO. C106784

DEPT. NO. XX

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

| | |
|---|---|
| THE STATE OF NEVADA,<br>Plaintiff,<br>vs.<br>MICHAEL D. RIPPO,<br>Defendant. | REPORTER'S TRANSCRIPT OF DEFT'S MOTION FOR APPT. OF COUNSEL |

BEFORE THE HON. DAVID T. WALL, DISTRICT COURT JUDGE
MONDAY, FEBRUARY 11, 2008
8:30 a.m.

APPEARANCES:

For the Plaintiff: STEVEN S. OWENS, ESQ.
Deputy District Attorney

For the Defendant: DAVID S. ANTHONY, ESQ.
Federal Public Defender

Reported by: Angela K. Lee, CCR #789

LAS VEGAS, CLARK COUNTY, NEVADA
MONDAY, FEBRUARY 11, 2008
8:30 a.m.

* * *

P R O C E E D I N G S

THE COURT: All right. On top of 1, State of Nevada versus Rippo, C106784. Record reflect the absence of the defendant. He's in the Nevada Department of Corrections. I'll waive his presence today. Mr. Owens is here on behalf of the State, and Mister --

MR. ANTHONY: Anthony.

THE COURT: -- Anthony is here from the Federal Public Defender's office. It's a request for appointment of counsel, that is that the Federal Public Defender remain on as counsel of record without any order appointing the defendant any fees; is that right?

MR. ANTHONY: That's correct, Your Honor.

THE COURT: Any objection?

MR. OWENS: I don't take a position on that, Your Honor.

THE COURT: All right.

All right. I'm going to grant that request.

The calendar shows a March 3rd hearing. Is that all briefed and --

MR. OWENS: We need a briefing schedule. If

you've got it on calendar for March 3rd, you probably ought to vacate that. I'm going to need about 60 days to respond. I usually do a motion -- a response and motion to dismiss, and --

MR. ANTHONY: We usually ask for about 30 days to file an opposition.

THE COURT: All right. So you don't have any -- the petition has already been filed?

MR. ANTHONY: It has. It has, Your Honor.

THE COURT: All right. I'm going to vacate the March 3rd date. I'm going to give the State 60 days from today; is that right?

MR. OWENS: Yes, that would be great.

THE COURT: And that would be --

THE CLERK: April 14th.

THE COURT: -- to file an opposition. And then 30 days thereafter for a reply.

THE CLERK: May 12th.

THE COURT: And about two weeks after that for hearing for argument only.

MR. ANTHONY: Mr. Owens, do you want to reply to the motion?

MR. OWENS: No. I'm good.

THE CLERK: It will be May 28th because Monday is the holiday.

THE COURT: May 28th at 8:30.

MR. ANTHONY: Okay.

MR. OWENS: Yes, that should be fine.

THE COURT: All right.

All right. Thank you. And you'll need to prepare an order on the appointment.

MR. ANTHONY: Thank you.

THE COURT: All right.

MR. OWENS: Thanks, Your Honor.

ATTEST: Full, true, and accurate transcript.

Angela K Lee

ANGELA K. LEE, CCR #789

REQT
FRANNY A. FORSMAN
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Attorneys for Petitioner

FILED

2008 FEB 15 P 3:14

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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| MICHAEL DAMON RIPPO,<br><br>Petitioner,<br><br>vs.<br><br>E. K. McDANIEL, Warden, and CATHERIN CORTEZ-MASTO, Attorney General of the State of Nevada,<br><br>Respondents. | Case No. C106784<br>Dept. No. XX<br><br>Date of Hearing: N/A<br>Time of Hearing: N/A<br><br>(Death Penalty Case) |

**NOTICE OF ENTRY OF ORDER APPOINTING COUNSEL**

PLEASE TAKE NOTICE that an Order Appointing Counsel was filed in this matter on February 13, 2008.

DATED this 15th day of February 2008.

FRANNY A. FORSMAN
Federal Public Defender

STEPHANIE KICE
Assistant Federal Public Defender

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of February 2008, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER** on the following parties by delivering to prison authorities an envelope containing a copy if the foregoing, addressed as follows, and with authorization for payment of full payment of first class postage:

Catherine Cortez Masto
Attorney General
Heather Procter
Deputy Attorney General
Criminal Justice Division
100 North Carson Street
Carson City, Nevada 89701-4717

David Roger, Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Employee of the Federal Public Defender

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Attorneys for Petitioner

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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|---|---|
| MICHAEL DAMON RIPPO,<br><br>Petitioner,<br><br>vs.<br><br>E. K. McDANIEL, Warden, and CATHERIN CORTEZ-MASTO, Attorney General of the State of Nevada,<br><br>Respondents. | Case No. C106784<br>Dept. No. XX<br><br>Date of Hearing: _____<br>Time of Hearing: _____<br><br>(Death Penalty Case) |

**ORDER APPOINTING COUNSEL**

Petitioner, Michael Rippo, in his Motion for Appointment of Counsel, requested his current counsel, the Office of the Federal Public Defender, represent him in this habeas corpus proceeding. On February 11, 2008, the matter came on for hearing. Good cause appearing,

IT IS HEREBY ORDERED that the Office of the Federal Public Defender through David Anthony, Assistant Federal Public Defender, is appointed to represent Mr. Rippo during the

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pendency of this post-conviction habeas corpus proceeding.

DATED this 11th day of February 2008.

DAVID T. WALL

District Judge

Submitted by:
FRANNY A. FORSMAN
Federal Public Defender

DAVID ANTHONY
Assistant Federal Public Defender

**RSPN**
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

| | | |
|---|---|---|
| THE STATE OF NEVADA,<br>Plaintiff,<br>-vs-<br>MICHAEL DAMON RIPPO<br>#0619119<br>Defendant. | ) | CASE NO: C106784<br>DEPT NO: XX |

**STATE'S MOTION TO DISMISS AND RESPONSE TO DEFENDANT' PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

DATE OF HEARING: 5/28/08
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through STEVEN S. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

This MOTION and RESPONSE is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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## POINTS AND AUTHORITIES

## STATEMENT OF THE CASE

(The Statement of the Case was adopted from the State's Response Brief, SC No. 44094)

**Original Proceedings in State District Court**

On June 5, 1992, Michael Damon Rippo (hereinafter "Defendant") was indicted by a Clark County Grand Jury for the crimes of Murder (Felony - NRS 200.010, 200.030), Robbery (Felony - NRS 200.380), Possession Stolen Vehicle (Felony - NRS 205.273), Possession of Credit Cards Without Cardholder's Consent (Felony - NRS 205.690), and Unauthorized Signing of Credit Card Transaction Document (Felony - NRS 205.750), committed at and within Clark County, on or between February 18, 1992, and February 20, 1992.

Notice of Intent to Seek the Death Penalty was filed on June 30, 1992, listing the following aggravating circumstances: 1) the murders were committed by a person under sentence of imprisonment; 2) the murders were committed by a person who was previously convicted of a felony involving the use or threat of violence to another person; 3) the murders were committed while the person was engaged in the commission of or an attempt to commit robbery; and 4) the murders involved torture, or the mutilation of the victim.

On July 6, 1992, the Honorable Gerard Bongiovanni continued the arraignment to July 20, 1992 on the grounds that Defendant had not yet received a copy of the Grand Jury transcript. On July 20, 1992, Defendant again appeared before Judge Bongiovanni and entered pleas of not guilty to all of the charges against him. Defendant waived his right to a speedy trial and upon agreement of both the State and Defendant, trial was scheduled for February 8, 1993. The Court also ordered that discovery would be provided by the District Attorney's Office.

At a motion hearing on January 31, 1994, counsel for Defendant informed the Court that he had subpoenaed both of the Deputy District Attorneys prosecuting this case, John Lukens and Teresa Lowry. Mr. Dunleavy stated that the Deputy District Attorneys had conducted a search pursuant to a search warrant and that in the process of seizing items in

the search, the attorneys became witnesses for the defense. Counsel for Defendant further argued that the entire District Attorney's Office should be disqualified from the prosecution of this case. The Court ordered that the motion be submitted in writing and supported by an affidavit.

On March 7, 1994, an evidentiary hearing was held regarding Defendant's Motion to Disqualify the District Attorney's Office. Deputy District Attorney Chris Owens represented the State. Two days later the motion to remove Chief Deputy District Attorney Lukens and Deputy District Attorney Lowry from the case was granted. The Court, however, refused to disqualify the entire District Attorney's Office and ordered the appointment of new District Attorneys. The Court was informed that Chief Deputy District Attorneys Dan Seaton and Mel Harmon were going to replace Lukens and Lowry on March 11, 1994.

A status hearing was held on March 18, 1994 and was continued on the basis of the State's request to amend the indictment and new discovery provided to the defense. The District Court denied the State's request to amend the indictment. The State filed for a Writ of Mandamus, which was granted on April 27, 1995. An amended indictment was filed on January 3, 1996, which included felony murder, aiding and abetting.

Jury selection began on January 30, 1996, and the trial commenced on February 2, 1996. A continuance was granted for Defendant to interview witnesses from February 8, 1996, to February 20, 1996. The trial commenced again on February 26, 1996.

Final arguments were made on March 5, 1996, and guilty verdicts were returned on March 6, 1992, of two counts of First Degree Murder, and one count each of Robbery and Unauthorized Use of a Credit Card. The penalty hearing was held from March 12, 1996 to March 14, 1996. The jury found the presence of all six aggravating factors and returned with a verdict of death.

On May 17, 1996, Defendant was sentenced to: Count I - Death; Count II - Death; Count III -Fifteen (15) years for Robbery to run consecutive to Counts I and II; and Count IV- Ten (10) years for Unauthorized Signing of Credit Card Transaction Document, to run consecutive to Counts I, II, and III; and pay restitution in the amount of $7,490.00 and an

Administrative Assessment Fee.

The Judgment of Conviction was filed on May 31, 1996.

**Direct Appeal – SC No. 28865**

A direct appeal was taken challenging Defendant's conviction and sentence. On October 1, 1997, the Nevada Supreme Court rejected Defendant's contentions and affirmed Defendant's judgment of conviction and sentence of death. See Petitioner's Exhibit, Vol. 3, Ex. 201. The opinion was published in Rippo v. State, 113 Nev. 1239, 949 P.2d 1017 (1997).

Defendant filed a Petition for Rehearing on October 20, 1997. On February 9, 1998, Defendant's petition for rehearing was denied. A Petition for Writ of Certiorari was filed with the United States Supreme Court and subsequently denied on October 5, 1998. Rippo v. Nevada, 525 U.S. 841, 119 S.Ct. 104 (1998). The Remittitur was filed on November 3, 1998.

**First Petition for Writ of Habeas Corpus (State)**

Defendant filed a Petition of Writ of Habeas Corpus (Post Conviction) on December 4, 1998. On August 8, 2002, Defendant filed a Supplemental Points and Authorities in Support of Petition for Writ of Habeas Corpus. On October 14, 2002, the State filed an opposition. On February 10, 2004, Defendant filed a Supplemental Brief in Support of Defendant's Petition for Writ of Habeas Corpus (Post-Conviction). On March 12, 2004, Defendant filed an ERRATA to Supplemental Brief in Support of Defendant's Petition for Writ of Habeas Corpus (Post-Conviction). On April 6, 2004, the State filed a response.

On August 20, 2004, an evidentiary hearing was held. Defendant's trial attorneys, Steve Wolfson and Phillip Dunleavy testified. At that hearing, the district court ruled that Defendant had not received ineffective assistance of trial counsel. On September 10, 2004, the evidentiary hearing continued. On that day, Defendant's appellate counsel, David Schieck testified. The district court ruled that Defendant had not received ineffective assistance of appellate counsel. An order denying the Petition for Writ of Habeas Corpus (Post-Conviction) was filed on December 1, 2004.

**Appeal from Denial of Post-Conviction Relief – SC No. 44084**

On October 12, 2004, Defendant appealed from an order of the district court denying his post-conviction petition for a writ of habeas corpus.

The Nevada Supreme Court affirmed Defendant's conviction and issued an opinion on November 16, 2006. See Rippo v. State, 122 Nev. ___, 146 P.3d 279 (2006). The Remittitur was filed on January 19, 2007.

**Federal Habeas Proceedings**

On April 18, 2007, Defendant filed a Petition For Writ Of Habeas Corpus in federal court (Case No: 2:07-CV-00507-ECR-PAL).

**Second State Petition for Writ of Habeas Corpus (State)**

The instant petition was filed on January 15, 2008.

## STATEMENT OF FACTS

(The Statement of the Facts were adopted from the State's Response Brief, SC No. 28865)

On February 20, 1992, the bodies of Denise Lizzi and Lauri Jacobson were found in Jacobson's apartment at the Katie Arms Apartment Complex. The bodies were found by the apartment manager, Wayne Hooper.

On February 17 or 18, 1992, Hooper noticed Lauri Jacobson driving away from the apartment building in her black Datsun with a tire that was nearly flat. She was being followed by a red car. The red car belonged to Wendy Liston, who followed Jacobson to Discount Tire in her car and dropped her back off at her apartment.

By February 20, 1992, Hooper became concerned about Jacobson because her car had not been moved for some time and she had not paid her rent. Mr. Hooper decided to go up to the apartment and see what was going on. Mac Holloway, the security guard at the building accompanied Mr. Hooper to the apartment. Hooper knocked a number of times on the door, and upon failing to get any response, used his master key to unlock the door. Upon entering, the apartment appeared to have been ransacked. Hooper walked over to the bathroom and closet light switches and turned them on at the same time. Upon turning on the lights, he noticed the two bodies in the closet. The bodies were next to each other, lying face down.

Mr. Hooper left the apartment, informed his wife of the bodies and she called the police.

Officer Darryl Johnson, along with his partner Officer Gosler, was the first responding officer to the scene. There, he met with the maintenance man and Hooper and after hearing what they had discovered, he entered the apartment. He also observed the two women lying face down in the closet area. Homicide was then called to the scene as was Mercy Ambulance. The ambulance attendant checked the bodies for any signs of life, but did not move them or change their positions in any way.

Crime scene analysts arrived on the scene and conducted an investigation. Allen Cabrales testified that when he arrived there were two victims, both lying face down on the floor in the closet. Analyst Cabrales detected no evidence of forced entry to the apartment. When found, Denise Lizzi was wearing only a pink pair of panties, a white sweatshirt, a black muscle shirt and a pair of white socks. Lauri Jacobson was wearing a white T-shirt, blue sweat pants and a pair of white socks.

A Hamilton Beach iron was recovered from a trash bag in the kitchen area and a Clairol hair dryer was recovered from underneath the east day bed. Both of the appliances were missing their cords. Also recovered was a black leather strip found in a trashcan in the bathroom; a telephone cord found by the entertainment center in the living room; and two pieces of black shoelace found on the carpet below Denise Lizzi in the closet. Glass fragments were also recovered. They had been scattered about on the living room-kitchen floor area.

Dr. Green's testimony of Denise Lizzi's autopsy indicated that when she was found she had a gag placed in her mouth, which was a sock pushed into her mouth and secured by a black brassiere, which encircled her head. He further testified that there was evidence that restraints were used. Pieces of cloth were found tied around each of her wrists, each with one end free.

Dr. Green testified that the gag had been pushed back so far into the mouth that at least part of it was actually underneath Lizzi's tongue and was pushing it towards the back of her throat, closing the epiglottis and blocking her airway. Lividity of the body indicated that

Lizzi had been lying face down after death. Very early decomposition changes had begun taking place.

Lizzi's injuries included: scraping injuries of the skin of the forehead, on the chin, under the chin, and on her right cheek; cutting wounds of the neck; and lines from a two-wire lamp cord being wrapped around her neck. The neck wounds were characterized as stab wounds of slightly less than half an inch long and fairly shallow. The wounds showed evidence of bleeding and were caused by an item with a fairly sharp point. There were wrist and ankle ligature marks on the body. She also had tiny pinpoint hemorrhages in the insides of her eyelids and on the white parts of her eyes.

As to Lizzi's internal injuries, Dr. Green testified to finding a great deal of hemorrhage in the deeper tissues of the neck and ligaments, which controlled the voice box. Dr. Green testified that the results were indicative of both manual and ligature strangulation. He testified that it looked as though some effort had been made at manual strangulation and that the ligature strangulation probably came later on.

Lizzi's death was due to asphyxia, or lack of oxygen, which Dr. Green held could have come either from the gag or from the strangulation or both. Dr. Green was not able to testify as to whether the stab wounds or the ligature wounds occurred first. Both methamphetamine and amphetamine were found in Lizzi's system. Time of death was determined to have been 36 to 48 hours earlier.

As to Lauri Jacobson, Dr. Green testified that her state of decomposition was more advanced than that of Denise Lizzi. He found a scratch on her neck, which went from about the midline of the neck toward the left, and ended in a very superficial penetrating stab wound. There was bruising behind her right ear with a quarter inch V shaped penetrating stab wound about a quarter of an inch deep. There was a small penetrating stab wound underneath her chin in the middle of her neck, as well. There was also a two and a half inch scratch on her right forearm, which Dr. Green believed occurred after her death.

The internal examination of Lauri indicated a great deal of hemorrhage in the soft tissues around the muscles in the neck, around the thyroid gland and the presence of a

fracture of the cartilage, which formed the larynx.

Dr. Green testified that the damage was consistent with manual strangulation. Death was due to asphyxiation due to the manual strangulation. No drugs were identified in either her liver or kidneys. Dr. Green testified that it appeared that she had been dead longer than Lizzi but he could not be absolutely certain. No evidence of ligature marks was found on Lauri.

Linda Errichetto, Director of Laboratory Services for the Las Vegas Metropolitan Police Department Forensic Laboratory, testified that there was no evidence of sexual activity on either Lauri or Lizzi.

Diana Hunt was arrested and charged with the killing and robbery of Denise Lizzi and Lauri Jacobson on April 21, 1992. Ms. Hunt testified as part of a plea negotiation at the trial of Michael Rippo. She described the events of the murder for the jury.

Ms. Hunt stated that she was Defendant's girlfriend at the time of the murders. They had lived together in a house on Gowan Road in Las Vegas for about three weeks, but at the time of the murders they had moved in with Deidre D'Amore. Hunt testified that on February 17, 1992, Defendant had helped Lauri Jacobson move.

On February 18, 1992, Defendant woke Hunt up in the morning and told her they had to go. They went to the Katie Arms Apartments and found Lauri Jacobson at home alone. Hunt testified that Defendant and Lauri Jacobson began injecting themselves with morphine.

Denise Lizzi arrived and Lauri briefly left the apartment to go outside and speak to her. While Lauri was out of the apartment, Defendant closed the curtains and the window and asked Diana Hunt to give him the stun gun that was in her purse. Defendant then made a phone call.

After a few minutes, Lauri and Lizzi returned to the apartment. Lizzi went into the bathroom and Lauri joined her. Defendant brought Diana Hunt a beer and told her that when Lauri answered the phone, Diana should hit Lauri with the bottle so that Defendant could rob Lizzi. When Hunt stated that she did not want to hit Lauri, Defendant told her to do as she was told.

A few minutes later the phone rang. Lauri came out of the bathroom and answered the phone. Diana hit Lauri with the bottle and she fell to the floor in a daze. When Diana hit Lauri, Defendant went into the bathroom, where Lizzi was.

After striking Lauri, Diana heard the stun gun going off and heard Defendant and Lizzi yelling. Defendant was fighting with Lizzi and wrestled her across the hall into a big closet. Diana continued to hear the stun gun going off, so she ran to the closet where she observed that Defendant had wrestled Lizzi to the ground and he was sitting on her and stunning her with the stun gun. Diana told the Defendant to stop and he told her to shut up.

Diana went back out into the living room and helped Lauri sit up. Defendant then emerged from the closet with a knife in his hand. Diana had never seen the knife before. Defendant used the knife to cut the cords off various appliances in the apartment.

Defendant told Lauri to lie down. She argued with him but ended up complying. Defendant instructed her to put her hands behind her back and tied them. He then tied her feet. Defendant put a purple bandana in her mouth and tied it around her head.

Diana could hear Lizzi, still in the closet, crying. She went and looked in the closet and saw Defendant in there with Lizzi. He had tied her hands behind her back and was asking her lots of questions about where drugs were and other things.

At that point, Wendy Liston approached the apartment. Defendant stuffed something in Lizzi's mouth to keep her quiet. Diana pleaded with Defendant to just leave the apartment, but he shoved her and told her not to tell him what to do. Diana was crying and Defendant put his hand over her mouth and told her to quit crying. Liston came to the door of the apartment and was knocking and yelling for Lauri. Lauri was still gagged and was unable to answer.

After Liston left, Defendant's attitude changed. He said that he was sorry that he got out of control and said that if everyone cooperated everything would be alright. Defendant then walked out to where Lauri was lying bound on the floor and began stunning her with the stun gun. Diana attempted to get the stun gun away from him but ended up tripping over Lauri and falling.

Defendant then took out another cord or belt-type object and put it through the ties on Lauri's feet and wrists and put it around her back which enabled him to pick her up like a suitcase and drag her across the floor. Defendant dragged her in that fashion across the floor to the closet. Lauri was choking as Defendant dragged her.

Diana crawled across the floor and began throwing up in a trash bag. She heard a noise coming from the closet and went over to see what it was. She saw Defendant with his knee in the small of Lizzi's back, pulling on an object he had placed around her neck, choking her. Defendant was pulling so hard that the whole front of Lizzi's body was up off of the ground and Defendant's arms were straining. Diana testified that the noise that Denise Lizzi was making was a noise that she had never heard the likes of, an animal noise.

The next thing Diana was aware of was Defendant shaking her, telling her that they needed to go. Diana accused Defendant of choking the women and he told her that he had just cut off their air and that they had to hurry up and leave before they woke up. Both of the women were lying face down and they were both still tied up. Defendant instructed Diana to put everything into a gym bag he was holding. Defendant also wiped the apartment down with a rag.

Diana and Defendant left the apartment and Defendant closed the door and locked the deadbolt lock. Defendant walked Diana to the Pinto they were driving and told her to stop crying and go home and wait for him. He told her that nobody had gotten hurt and that nobody had to. Diana went to Deidre D'Amore's house in the Pinto. Diana testified that after hearing the noise made by Lizzi and seeing what happened, she knew that the women were not alive.

Diana testified that at one point during the clean up of the apartment, Defendant went into the closet, took off Lizzi's boots, rolled her over, undid her pants and pulled them off. Diana asked Defendant what he was doing and he stated that he had bled on her pants and that he had to remove them. Defendant also untied Lauri's hands and feet before he left the apartment.

Later that evening, Defendant called Diana at Deidre's house. He told her to meet him

at his friend's shop and gave her directions. Diana then went to the shop, which belonged to Tom Sims. When she arrived, Defendant was there with Sims and another man. He told her that he had a car for her and showed her a maroon Nissan that she believed belonged to Denise Lizzi, although he did not tell her who it belonged to at the time. Defendant told her that he stole the car from some people who would be out of town and instructed her to get some paperwork for the car. Diana felt that she could get the paperwork from her friend, Tom Christos. On Defendant's orders, Diana drove the Nissan to Tom Christos' residence.

On February 19, 1992, Diana met up with Defendant and they went to the Meadows Mall. On the way, Defendant told Diana that he had purchased an air compressor and some tools on a credit card earlier that morning. They then went to a shop in the mall and purchased sunglasses. Defendant paid for the glasses using a gold Visa card.

Later that day, back at Deidre's house, Diana went into Defendant's wallet when he was upstairs to take some money to get away from him because she was scared. Diana was scared to call the police, as Defendant had threatened to kill Deidre and her little girl if Diana went to the police. Diana did not find any money in Defendant's wallet but she took a gold Visa card belonging to Denny Mason.

Diana then went back to Christos' house where she was supposed to pick up the paperwork for the car, but the paperwork was not ready. However, it was Teresa's, Christos' girlfriend's, birthday, so she went out to celebrate with Diana. Because they were dressed up, they took the Nissan.

They started to go back to Christos' after picking up the Nissan, but Teresa was crying and stated that he had been beating her and that she did not want to go back there. Instead of going home, they went to a bar named Marker Downs. They also went to the shopping mall. Defendant had discovered that the card was missing and was calling around telling her to give it back. Diana told him that she would meet him at the mall to give the card back and that Defendant had to bring her some money. Defendant never showed up at the mall so Diana decided to use the card to purchase perfume for Teresa for her birthday.

After leaving Marker Downs, Teresa and Diana went to another bar named Club

Rock. Diana called Christos from the bar and told her that Teresa was drunk and that she needed to bring her home. Christos was mad and told her that he did not want her back. Diana got a room at the Gold Coast and she and Teresa went back there with some people they had picked up at the bar. The room was paid for with Denny Mason's credit card.

Sometime during the night with Teresa, Diana went to a friend's house and got some spray paint. She got some primer and sprayed the front fender of the Nissan. While she was at the house where she got the paint, Diana heard that the murders had been discovered. She knew for sure then that she was driving Lizzi's car so she drove it to the Albertsons on Rainbow and left it there.

Around February 29, 1992, with Deidre's help, Diana attempted to get in touch with Kyle Edwards of the Las Vegas Metropolitan Police Department. She got in touch with Edwards as Defendant was trying to get into Deidre's apartment. Defendant came into the house and Diana left. Either that same day or the next, Diana called back to Deidre's house and asked her if Defendant was there and Deidre said that he was not. Diana went over to the house to get the rest of her belongings and Defendant was waiting in the house for her. As she got in her car to leave, Defendant got in also. Defendant refused to get out of the car and kept telling Diana not to leave. Diana started driving to a friend's house and Defendant told her that he wanted to kill a lot of people, including her and started telling her what he would do to her if she left. She suggested that they go to the police but Defendant said no. During the conversation, Defendant told her that he had cut the women's throats and had jumped up and down on them. He also described setting up the phone call to distract Lauri with his friend Alice. At one point, the car ran out of gas and Diana ran out of the car and flagged down the first car that came by. She went to the gas station up the road and called her friend Doug. When she got back to the car, some of the belongings were missing.

Diana went to a home on Nelson Street owned by her friend Brenda's uncle. Defendant later showed up at the residence. Diana did not expect him and did not want to see him again. Diana and Defendant had a confrontation outside of the residence. Defendant began yelling at Diana and she yelled back that he had killed those girls and that she could

prove it. Defendant ran around the front of Deidre's truck that he had driven and began punching Diana in the face. Others, including Michael Beaudoin and Brenda were present for the fight. Defendant continued to hit Diana in the face and then began stunning her with the stun gun. Defendant then began choking Diana and banging her head. When Diana became aware that she was passing out she looked at Michael Beaudoin and told him that she could prove it. With that, Beaudoin pulled Defendant off of her. Diana suffered black eyes and a split lip. The police arrived but Defendant had run away.

Diana gave a statement to the police later the next morning. Out of fear for her safety, she did not tell the officers what she knew about the murders. She informed the officers that she was leaving town for Yerington, Nevada. She was arrested in Yerington on April 21, 1992. Pursuant to a plea negotiation, Diana pled guilty to robbery and received a fifteen-year sentence. In return, she agreed to cooperate with the prosecution in this case.

Diana told the jury that before the murders Defendant had been upset with Lauri and Lizzi for burning him in a drug deal. She further testified that prior to the murders Defendant had used her to demonstrate to his friends how to restrain someone by tying her hands and feet with a karate belt.

Tom Christos corroborated Diana's claims that she had gone to him regarding altering the color and acquiring paperwork for a maroon 300ZX. He further testified that on February 20, 1992, Defendant called his house looking for Diana. Defendant left a message for Diana that "The cat is out of the bag."

Michael Beaudoin testified that he had met with Defendant, who showed him Lizzi's empty wallet and one of her garage openers. He also stated that on February 29, Defendant was fighting with Diana, punching her and stunning her.

David Levine, a friend of Defendant's in jail, testified that he had a lot of conversations with Defendant while they were in jail together. Defendant told him that he had killed the two girls. At one point, Defendant wrapped a sheet around the veins in his arm, and then wrapped a three pronged extension cord around his arm and tapped his veins. Defendant stated that was how he "did" Lizzi.

Denny Mason testified at the trial that Denise Lizzi was his girlfriend off and on for four or five years. He testified that about a week before the murders he gave Lizzi his credit card to buy some things for his house. When shown charge slips, he could not account for charges on his bill to: SunTeleGuide, Gold Coast Hotel and Casino; The Sunglasses Company; 7-Eleven; and Texaco, Inc. He could also not account for charges made on his Dillards Card on Feb. 19, 1992. Mason further testified that the charge slip from Sears was not in the handwriting of Denise Lizzi.

Tom Sims testified that Defendant showed up at his shop on February 18, 1992 with the maroon Nissan. Defendant offered to sell the car to Sims. When Sims asked about the ownership of the car, Defendant told him that someone had died for it. Sims told Defendant that he wanted nothing to do with the car and to get it away from his shop.

Sims testified that Defendant left his shop and the car for a period of time and returned with Diana Hunt. Defendant had a great deal of money with him that he said he had obtained by winning a royal flush. Sims told Defendant that he wanted the car gone by the next morning and it was.

On February 21, 1992, Sims heard a report that two women had been killed and one of them was named Denise Lizzi. This struck Sims because Defendant had given Sims tapes with the initials D.L. on them. Sims then became suspicious and looked at a suitcase Defendant had left with him. The nametag on the suitcase indicated that it belonged to Lauri Jacobson.

Sims next came into contact with Defendant on February 26, 1992, when Defendant called and asked to come by and pick up some morphine that he had left in Sims' refrigerator. Sims did not want to meet with Defendant at his shop, so he met him in a Kmart parking lot. When Sims asked about the murders, Defendant confessed to them. Defendant told Sims that he had choked those two bitches to death. He added that he had killed the first one accidentally so he had to kill the other.

Defendant also told Sims that as he was carrying one of the girls into the back her face hit the coffee table. He informed Sims that Diana Hunt had been with him at the

apartment. Sims asked Defendant if he thought he could trust Diana and Defendant replied that Diana had hit one with a bottle and he trusted her.

Sims asked Defendant why one of the girls had been found without pants on and Defendant replied that he had bled on the girl during the murders and bled on her pants so he had to dispose of them. Defendant told Sims that the girls were both "fine" and that he could have fucked both of them but he did not, which meant that he was cured.

Carlos Caipa, an employee of Sears, testified that in February, 1992, he was employed in the hardware department at Sears. He identified Defendant as the man who purchased a compressor, sander, spray gun, and couplings, all with extended warranties, with Denise Lizzi's credit card. He stated that the name on the card was Denise Lizzi and the signature on the card was that of Denny Mason.

William Leaver, questioned document examiner with the Las Vegas Metropolitan Police Department testified that he had examined documents identified to The Sunglasses Company and Sears signed D. Mason. He stated that there were similarities between the signatures on the slips and the known writing of Defendant.

The jury found Defendant guilty of two counts of first-degree murder, and one count each of robbery and unauthorized use of a credit card.

During the penalty hearing, numerous witnesses came forward to testify about Defendant's past criminal conduct and about the effect the murder of these two girls had on the family and friends.

Laura Conrady testified about her brutal rape at the hands of Defendant in January 1982. She told the jury that she was awakened with a knife to her throat and Defendant sitting on top of her. Laura clearly identified Defendant as the man who assaulted her. Defendant was wearing gloves and in one hand was the butcher knife and the other was over her mouth. Defendant asked her where her money was but she did not have any.

At some point, Defendant tied up Laura's hands with her bathrobe tie and her feet with cords that she believed Defendant cut off of her vacuum cleaner. When Laura asked Defendant who he was and how he got there, he hit her and told her to shut up. Defendant

cut the sweatshirt off of Laura with his knife by slitting it down the back. At that point, Laura was naked from the waist up, so she asked Defendant if she could put some clothes on. Defendant went to her drawer, threw everything out, and told her to put on a tube top that he found. Soon after, Defendant cut off Laura's sweat pants. He asked her if "she wanted to fuck." Laura testified that she got hysterical at that point and was begging Defendant not to do anything. Defendant laughed at her. Defendant asked Laura if she had any scissors and she told him they were in the living room. Defendant got the scissors, placed Laura, still tied up, in a chair and cut off some of her hair.

Defendant then used the scissors to cut the cords off Laura's legs. At one point, Laura felt as though she was going to throw up. Defendant used a cord that he put around Laura's neck to drag her into the bathroom. Defendant then took Laura into the bedroom, told her that he wanted to fuck and put her on the bed. Defendant cut off her panties with the knife, spread her legs and said: "I want to fuck." Defendant pulled his pants down, got on top of Laura and raped her. Defendant penetrated Laura but did not ejaculate.

After he was finished, Defendant got up and pulled Laura into the other room by her tube top. Defendant was touching her breasts in a sexual fashion as they walked into the living room. Defendant took Laura to a sofa and sat her down. He then cut off the tube top, gagged her with it and tied it in the back. Defendant took the knife and was going around her nipples with it. He told Laura that one time he cut a girl's nipples off, but she was already dead. Defendant also took a fountain pen and inserted it into Laura's vagina.

As Laura became more upset, Defendant got more violent. He pushed her onto the floor face down and kicked her while she was on the ground. Laura was lying naked on the floor, in a crouched position and Defendant began to beat her with nunchucks. Laura felt that she was about to pass out but felt that if she did, she was going to die. She worked the tube top out of her mouth and begged Defendant not to hurt her anymore. Laura even offered Defendant her car if he would just leave.

Defendant told Laura that he could not leave because she knew what he looked like. As he said this, Laura noticed that Defendant was pointing the knife at her back. Laura said

that she would not tell anyone and Defendant told her that if she did, he would come back and kill her.

Sometime during the attack, Defendant unwound wire hangers to make them into a long piece. He wrapped them around Laura's neck and was pulling on them. Laura could not breathe and felt as though she was going to die.

Laura told Defendant where her car keys were and he went and got them. Defendant left and Laura went to the kitchen and cut her bindings off. She went and got her robe and tried to use the phone, which did not work. Laura then went and got help from a neighbor.

As a result of the attack, Laura received fifteen stitches behind her ear, a concussion, black, swollen eyes and a huge bump on her leg that might have been the result of a bone chip. Laura never went back to the apartment. She testified that even to this day, she is never alone, and watches carefully over her children.

Jack Hardin testified about his investigation of the burglary of a Radio Shack in 1981. He told the jury about receiving a tip that identified the suspects as Defendant and another individual. Hardin responded to the address belonging to the other individual's father. As Hardin introduced himself to Mr. Stevenson, the father, the boys (Defendant and the other individual) were tipped off about the officers' presence and fled. Officers pursued the boys and they were apprehended. Inside the residence, Officer Hardin found a great deal of computers and property belonging to Radio Shack. Also recovered was a .22 caliber blue steel Luger, a .22 caliber Luger revolver; a .357 Luger and a .25 caliber Bauer.

Defendant was eventually booked for three counts of burglary and two counts of possession of stolen property. At a plea hearing, Defendant admitted committing the burglaries. The losses sustained by the businesses involved were in the amounts of $10,186.84 and $3,142.27. Defendant was committed to Spring Mountain Youth Camp on April 29, 1981 and released on August 26, 1981.

John Hunt testified that on December 18, 1981, he was called to the home of JoAnne Pinther based on her report that her son had information about burglaries in the area, including one at her own home. The boys questioned by Officer Hunt told him about a

person dealing in stolen property and that he received it from Defendant and another boy. Defendant was a runaway at the time, so officers went to the other boy's home to investigate. Inside the attic of that home officers found two rifles, a shotgun and four handguns. The other boy in the burglaries implicated the Defendant.

On January 20, 1982, Defendant was in juvenile custody for a different charge and was served with the burglary warrants. Defendant admitted to the burglaries but refused to cooperate with the officers.

The reason Defendant was in custody on January 20, 1982, was because he had been arrested outside the home of Katherine Smith on January 18, 1982. Defendant was waving a handgun around and trying to gain entry into Ms. Smith's home.

Other witnesses were presented for information on Defendant both by the State and by Defendant. Defendant also exercised his right of allocution. After all the witnesses were heard and closing statements, the jury returned verdicts of death, finding all six charged aggravating factors.

## ARGUMENT

## I. DEFENDANT'S PETITION SHOULD BE SUMMARILY DISMISSED.

### A. Defendant's Petition Is Procedurally Time Barred Under NRS 34.726

"Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory." State v. Eighth Judicial Dist. Court, 121 Nev. 225, 112 P.3d 1070, 1074 (2005). Post-conviction habeas petitions that are filed several years after conviction unreasonably burden the criminal justice system. Id. "The necessity for a workable system dictates that there must exist a time when a criminal conviction is final." Id. Under the mandatory provisions of NRS 34.726(1), a defendant must file a petition that challenges the validity of a judgment or sentence within one year after entry of the judgment or if an appeal has been taken from the judgment, within one year after the Nevada Supreme Court issues its Remittitur.

> 1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, *if an appeal has been taken from the judgment,*

*within 1 year after the Supreme Court issues its remittitur.* For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:

(a) That the delay is not the fault of the petitioner; and
(b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

Id., (emphasis added). The one year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly construed. In Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late, pursuant to the "clear and unambiguous" mandatory provisions of NRS 34.726(1). Gonzales reiterated the importance of filing the petition with the district court within the one year mandate, absent a showing of "good cause" for the delay in filing. Id., 118 Nev. at 593, 53 P.3d at 902.

Here, Defendant's petition does not fall within the statutory time limitation. Defendant's Judgment of Conviction was filed on May 31, 1996. Defendant's conviction and sentence of death were affirmed on October 1, 1997, and the remittitur issued by the Nevada Supreme Court on November 3, 1998. Therefore, absent a showing of good cause, Defendant's window for filing any petitions for post-conviction relief unequivocally expired on Tuesday, November 9, 1999. This instant petition was filed on January 15, 2008, almost nine years after the statutory expiration. Consequently, Defendant's petition is procedurally time barred and should be dismissed, absent a showing of good cause and prejudice.

**B. Defendant's Petition Should Be Dismissed As It Is Successive Under NRS 34.810.**

In addition to being procedurally time barred, Defendant's petition is also successive pursuant to NRS 34.810(2). NRS 34.810(2) requires dismissal of claims which could have been raised in earlier proceedings or which were raised in a prior petition or proceeding and determined on the merits unless the Court finds both good cause for failure to bring such issues previously and actual prejudice to the defendant. Pertinent portions of NRS 34.810 provide:

2. A second or successive petition must be dismissed if the judge or justice

determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the Defendant to assert those grounds in a prior petition constituted an abuse of the writ.

3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving specific facts that demonstrate:

(a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and
(b) Actual prejudice to the petitioner.

Id. Here, Defendant filed his first Petition for Writ of Habeas Corpus (Post-Conviction) on December 4, 1998, and a Supplemental Points and Authorities in Support of Petition for Writ of Habeas Corpus on August 8, 2002. Defendant acknowledges that many of the issues raise in the instant petition were previously raised in prior proceedings. Specifically, Defendant states the following were already raised in either his first habeas petition or on direct appeal.

Claim 1 – on direct appeal

Claim 2 – on direct appeal

Claim 5 – in first post-conviction habeas petition

Claim 7 – in first post-conviction habeas petition

Claim 9 – on direct appeal

Claim 12 – on direct appeal and in first post-conviction habeas petition

Claim 13 – on direct appeal

Claim 15 – in petition for rehearing from the affirmance of the denial of post-conviction relief

Claim 16 – in post-conviction proceedings

Claim 17 – raised and entertained on the merits on appeal from the denial of post-conviction relief

Claim 19 – in post-conviction proceedings

Claim 21 – on direct appeal

Thus, as Defendant readily admits in the instant petition, several of the issues raised in the instant successive petition were previously raised in his first post-conviction petition and on direct appeal. That Petition was denied *on the merits* by the district court on December 1, 2004. Since the previous petition was already filed and denied on the merits,

the instant petition is a successive petition and therefore, should summarily be dismissed absent a showing of good cause and actual prejudice.

**C. Defendant's Failure To Raise The Claims In His Earlier Petition Or On Direct Appeal Constitutes A Waiver.**

Several of Defendant's claims should have been raised in his first post-conviction petition or on direct appeal, but were not. As such, Defendant's failure to raise these issues previously constitutes a waiver pursuant to NRS 34.810(1)(b), which reads:

> 1. The court shall dismiss a petition if the court determines that:
>
> (b) The Petitioner's conviction was the result of a trial and the grounds for the petition could have been:
> (1) Presented to the trial court;
> (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or post-conviction relief; or
> (3) Raised in any other proceeding that the petitioner has taken to secure relief from his conviction and sentence, unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

Id. Here, Defendant raises several issues for the first time in the instant petition. Defendant should have raised these issues earlier and his failure to do so precludes him from doing so in this instant petition. In Franklin v. State, 110 Nev. 750, 877 P.2d 1058, overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999), the Nevada Supreme Court held:

> [A]ll ... claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings. These claims could include a challenge to the constitutional validity of the statute on which the conviction was based; a challenge to the sentence imposed on constitutional or other grounds; a claim that the state breached the plea agreement at sentencing; a challenge to the procedures employed that led to the entry of the plea, if that challenge does not address the voluntariness of the plea; and a claim that the district court entertained an actual bias or that there were other conditions that rendered the proceedings unfair. This list is intended to be illustrative, rather than inclusive.

Id., 110 Nev. at 752, 877 P.2d at 1059; see also Valerio v. State, 112 Nev. 383, 388, 915 P.2d 874, 877 (1996) (concluding that the defendant's failure to raise new claims in his first post-conviction petition barred him from raising them in his later petition, and that defendant failed to demonstrate good cause.)

As these claims should have been raised earlier in Defendant's first habeas petition or on direct appeal, Defendant's failure to do so preclude him from raising them in the instant post-conviction petition. Accordingly, absent a showing of good cause or prejudice, these claims should be dismissed.

**D. Defendant Has Failed To Demonstrate Good Cause Or Prejudice For His Violation of NRS 34.726 and NRS 34.810.**

Since Defendant filed his petition well in excess of the one year time bar of NRS 34.726, successive under NRS 34.810, and waived pursuant to NRS 34.810(1)(b), the only way for this Court to entertain his petition would be if Defendant showed good cause or actual prejudice for failing to comply. A defendant can show good cause only in those rare situations where a failure to entertain the issue would result in "a fundamental miscarriage of justice...resulting from a failure to entertain the claim." Hogan v. Warden, 109 Nev. 952, 959, 860 P. 2d 710, 715 (1993), (quoting McClesky v. Zant, 499 U.S. 467 (1991)). Further, beyond showing a mere possibility of prejudice, the defendant must show that actual prejudice "worked to his actual and substantial disadvantage, in affecting the state proceeding with error of constitutional dimensions." Id., (quoting United States v. Frady, 456 U.S. 152, 170 (1982)); see also Kimmel v. Warden, 101 Nev. 6, 692 P.2d 1282 (1985); Bolden v. State, 99 Nev. 181, 659 P.2d 886 (1983). Finally, once the State raises procedural grounds for dismissal, the burden then falls on the defendant "to show that good cause exists for his failure to raise any grounds in an earlier petition and that he will suffer actual prejudice if the grounds are not considered." Phelps v. Dir. of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003), (quoting Colley v. State, 105 Nev. 235, 236, 773 p.2d 1229, 1230 (1989)).

To establish good cause, a defendant must demonstrate that some impediment external to the defense prevented compliance with the mandated statutory default rules. Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); see also Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003), (citing Pellegrini v. State, 117 Nev. 860, 886-

87, 34 P.3d 519, 537 (2001)); Passanisi v. Director 105 Nev. 63, 769 P.2d 72 (1989); Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v. Dir. Of Prisons, 104 Nev. 656, 764 P.2d 1303 (1988). Valid impediments external to the defense giving rise to "good cause" could be "that the factual or legal basis for a claim was not reasonably available to counsel, or that 'some interference by officials' made compliance impracticable." Hathaway, 119 Nev. at 252, 71 P.3d at 506, (quoting Murray v. Carrier, 477 U.S. 478, 488 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904, (citing Harris v. Warden, 114 Nev. 956, 959-60, 964 P.2d 785, 787 n.4 (1998)).

Good cause exists if the defendant can demonstrate that the delay was not the defendant's fault, and that he will be unduly prejudiced by the dismissal of the petition as untimely. NRS 34.726(1). In Passanisi v. Director, Dept. of Prisons, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989), the Nevada Supreme Court denied the defendant's petition where the defendant filed a habeas petition without first timely filing for post-conviction relief and did not show good cause for his failure to file the proper petition within the statutory period. The Court stated that in order to overcome the one year time bar, a defendant must demonstrate both good cause for his failure to timely file and actual prejudice. Id., 105 Nev. at 65, 769 P.2d at 74. The Court went on to explain that absent "any impediment external to the defense which prevented him from filing a timely petition for post-conviction relief ... [a defendant] cannot overcome the procedural default." Id., 105 Nev. at 66, 769 P.2d at 74. In that case, the Court concluded that the district court properly dismissed the defendant's habeas petition without holding an evidentiary hearing because the defendant failed to assert any impediment external to the defense which prevented him from timely seeking post-conviction relief. Id. 105 Nev. at 66, 769 P.2d at 74.

On rare occasions, the Court has found that an impediment external to the defense occurred. In Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994), the Court found that although it lacked jurisdiction to hear an untimely appeal, good cause existed for excusing defendant's procedural default because there were erroneous rulings by the state courts and the federal district court in denying defendant's first petition. Reiterating its earlier holding

in Passanisi, the Court stated, "[t]o establish good cause to excuse a procedural default, a defendant must demonstrate that some impediment external to the defense prevented him from complying with the procedural rule that has been violated." Lozada, 110 Nev. at 353 n.2, 871 P.2d at 946 n.2, (citing Passanisi, 105 Nev. at 66, 769 P.2d at 74). However, in finding that good cause existed, the Court carefully noted that its conclusion was "based on the fact that the defendant timely and properly presented his claim in a petition for post-conviction relief." Id., 110 Nev. at 358, 871 P.2d at 949.

More recently, the Court noted that, "[g]enerally, 'good cause' means a 'substantial reason; one that affords a legal excuse'." Hathaway, 119 Nev. at 248, 71 P.3d at 506. In Hathaway, the Court followed the Ninth Circuit's holding in Loveland v. Hatcher, 231 F.3d 640 (2000), wherein "a petitioner's reliance upon his counsel to file a direct appeal is sufficient cause to excuse a procedural default if the petitioner demonstrates: '(1) he actually believed his counsel was pursuing his direct appeal, (2) his belief was objectively reasonable, and (3) he filed state post-conviction relief within a reasonable time after he should have known that his counsel was not pursuing his direct appeal.'" Hathaway, 119 Nev. at 248, 71 P.3d at 507-508 (citations omitted). And in Gonzales, the Court recognized the possibility that "a petitioner may be able to demonstrate good cause to excuse the untimely filing of a post-conviction petition based on official interference with the timely filing of a petition." Gonzales, 118 Nev. at 595, 53 P.3d at 904.

On the other hand, in Phelps, 104 Nev. at 660, 764 P.2d at 1306, the Court found that the defendant's alleged organic brain damage, limited intelligence, and poor assistance in framing and presenting issues did not rise to the level of good cause needed to overcome the procedural bar to successive petitions. Likewise, in Calambro v. State, 114 Nev. 961, 964 P.2d 794 (1998), the defendant was found competent in spite of having a mental deficiency. Calambro involved a defendant who received the death penalty for a particularly heinous double-murder. The defendant waived his right to appeal and informed the district court he wanted to proceed with his execution. Id., 114 Nev. at 963, 964 P.2d at 795. Prior to the defendant's execution, the Court held an expedited hearing to determine the defendant's

competency. Id., 114 Nev. at 964, 964 P.2d at 796. In spite of the evidence presented at the hearing that the defendant was borderline mentally retarded, suffered a psychiatric disorder, and had poor command over the English language, the Court nonetheless concluded that the defendant was competent to waive his appeal and that his waiver was valid. Id., 114 Nev. at 967, 964 P.2d at 798.

In the instant case, Defendant alleges good cause exists for his failure to raise Claims 3-6, 8, 10, 11, 14-16, 18, and 20-22, in an earlier proceeding. Defendant further contends that good cause exists for re-raising the following claims again in the instant petition – Claims 1, 2, 5, 7, 9, 12, 13, 15, 17, 19, and 21. However, as more fully discussed, infra, Defendant has failed to demonstrate good cause sufficient to overcome the many procedural bars.

In addition, Defendant has failed to establish that the dismissal of his petition would amount to prejudice. In order to establish prejudice, the defendant must show "not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions." Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993). The district court and the Nevada Supreme Court have reviewed the record several times and found that Defendant's conviction and subsequent sentence were based upon sufficient evidence. Defendant does not provide any new evidence that would negate his guilt. He merely repeats his claim that errors committed by his attorneys, the State, and the district court prevented the jury from making a proper decision.

In conclusion, Defendant fails to show that an impediment external to the defense prevented him from complying with the procedural rules. Lozada, 110 Nev. at 353, 871 P.2d at 946. There were no actions by any government officials or other parties which made discovery of the claimed grounds for relief impracticable within the one year time frame. The delay and successiveness of the instant petition are solely Defendant's fault.

**E. Procedural Default Rules Are Consistently Applied**

Defendant broadly asserts that the Nevada Supreme Court and the district courts in

Nevada do not have to follow the procedural rules contained in NRS 34.720 and NRS 34.810 because those rules are not consistently applied. In essence, Defendant claims that this Court should ignore the law because it has been ignored in the past. Based on the foregoing, Defendant's claim that the procedural bars are not consistently applied is without merit.

Overall though, Nevada has consistently applied procedural rules. Legislatively mandated procedural bars are not simply a legal technicality. They serve a vital role in maintaining the viability of the criminal justice system. In regards to the significance of procedural rules, the court in United States v. Seigel, 168 F. 2d 143, 146 (D.C. 1948) stated:

> [R]easonable adherence to clear, reasonable and known rules of procedure is essential to the administration of justice. Justice cannot be administered in chaos. Moreover the administration of justice involves not only meticulous disposition of the conflicts in one particular case but the expeditious disposition of hundreds of cases. If the courts must stop to inquire where substantial justice on the merits lies every time a litigant refuses or fails to abide the *reasonable and known rules of procedure*, there will be no administration of justice. *Litigants must be required to cooperate in the efficient disposition of their cases.*

Id. (emphasis added).

As the Nevada Supreme Court noted in Pellegrini v. State, 117 Nev. 860, 34 P.3d 519, 530 (2001), "the legislative history of the habeas statutes shows that Nevada's lawmakers never intended for petitioners to have multiple opportunities to obtain post-conviction relief absent extraordinary circumstances." Furthermore, legislative imposition of statutory time limits "evinces intolerance toward perpetual filing of petitions for relief, which clogs the court system and undermines the finality of convictions." Id., 117 Nev. at 860, 34 P.3d at 529. Defendants are entitled to "one time through the system absent extraordinary circumstances." Id.; see also Woofter v. O'Donnell, 91 Nev. 756, 762, 542, P.2d 1396, 1400 (1975) ("[w]here the intention of the Legislature is clear, it is the duty of the court to give effect to such intention and to construe the language of the statute so as to give it force and not nullify its manifest purpose.")

Nevada courts, and the Nevada Supreme Court in particular, have been under regular attack by petitioners, like Defendant, who claim Nevada does not consistently apply its

procedural bars. See e.g., Loveland v. Hatcher, 231 F.3d 640 (9th Cir. 2000) (denying claim made that Nevada does not consistently apply NRS 34.726(1), the one year limit for filing habeas petition). These attacks have continued even though both the Nevada Supreme Court and the Ninth Circuit have ruled that "a petitioner must establish 'good cause' and 'actual prejudice' to overcome a post conviction procedural bar." Valerio v. State, 112 Nev. 383, 390, 915 P.2d 874 (1998). In Petrocelli v. Angelone, 248 F.3d 877 (9th Cir. 2001), the Ninth Circuit found that the Nevada Supreme Court had consistently applied the procedural bar in NRS 34.800. As long as the State rules are consistently applied, the federal courts must show deference to the State court's application of procedural bars. Loveland, 213 F.3d at 640.

The United States Supreme Court has also addressed the importance of procedural bars. In Bousley v. United States, 523 U.S. 614, 629 (1998), the Court stated "[n]o criminal law system can function without rules of procedure conjoined with a rule of finality." In Murray v. Carrier, 477 U.S. 478, 479 (1986), the United States Supreme Court stated that "[a] State's procedural rules serve vital purposes on appeal as well as at trial and on state collateral attack, and the standard for cause should not vary depending on the timing of a procedural default." The Court went on to say "[a]ttorney error short of ineffective assistance of counsel does not constitute cause for a procedural default even when that default occurs on appeal rather than at trial. To the contrary, cause for a procedural default on appeal ordinarily requires a showing of some external impediment preventing counsel from constructing or raising the claim. Murray, 477 U.S. at 492.

Even in the context of capital cases, courts have recognized the important function of procedural bars in appellate litigation. The California Supreme Court has held:

> California law also recognizes that in some circumstances there may be matters that undermine the validity of a judgment or the legality of a defendant's confinement or sentence, but which are not apparent from the record on appeal, and that such circumstances may provide a basis for a collateral challenge to the judgment through a writ of habeas corpus. At the same time, however, our cases emphasize that habeas corpus is an extraordinary remedy that "was not created for the purpose of defeating or embarrassing justice, but to promote it" (In re Alpine (1928) 203 Cal. 731, 744, 265 P. 947), and that the availability of the

> writ properly must be tempered by the necessity of giving due consideration to the interest of the public in the orderly and reasonably prompt implementation of its laws and to the important public interest in the finality of judgments. For this reason, a variety of procedural rules have been recognized that govern the proper use of the writ of habeas corpus, including a requirement that claims raised in a habeas corpus petition must be timely filed.

In re Robbins, 18 Cal.4th 770, 777, 959 P.2d 311, 316-316 (1998).

Defendants are now focusing on getting the lower courts to disregard the state procedural bars (as Defendant is attempting to do in this case), actions that could eventually result in a finding that Nevada ignores its own rules and statutes (and give the federal courts license to ignore the State court decisions). The Nevada Supreme Court has recognized this itself and previously granted similar writs in State v. District Court (Snow), Docket No. 37309 (Order Granting Petition, March 7, 2001) and State v. District Court (Cavanaugh), Docket No. 41993 (Order Granting Petition, April 28, 2004) ordering the District Court to dismiss the petition because of procedural bars. The dismissal of Defendant's petition properly supports the consistent application of procedural time bars as well as the concerns of both this Court and the U. S. Supreme Court with the finality of convictions.

The district court is bound to follow what the Nevada Supreme Court holds. The Nevada Supreme Court has stated that the State's procedural default rules **are** consistently applied. See e.g., Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001); State v. Eighth Judicial Dist. Court, 121 Nev. 225, 112 P.3d 1070, 1074 (2005).

**F. Defendant's Petition is Barred by Laches Under NRS 34.800**

NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period exceeding five years between the filing of a judgment of conviction, an order imposing a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction..." The statute also requires that the State plead laches in its motion to dismiss the petition. NRS 34.800. The State pleads laches in the instant case.

Defendant was sentenced in this case after jury trial on May 17, 1996. The Judgment of Conviction was filed on May 31, 1996. A direct appeal was taken and the Remittitur was

issued on November 3, 1998, affirming Defendant's conviction and sentence. Defendant filed this instant habeas petition on January 15, 2008. Since over nine (9) years has elapsed between the date of remittitur on Defendant's direct appeal and the filing of the instant petition, NRS 34.800 directly applies in this case.

The claims in Defendant's petition are mixed questions of law and fact that will require the State to prove facts that are approximately twelve (12) years old from the date of defendant's conviction and over sixteen (16) years old from the date of the crime. NRS 34.800 was enacted to protect the State from having to go back years later to re-prove matters that have become ancient history. There is a rebuttable presumption of prejudice for this very reason and the doctrine of laches must be applied in the instant matter. If courts required evidentiary hearings for long delayed petitions such as in the instant matter, the State would have to call and find long lost witnesses whose once vivid recollections have faded and re-gather evidence that in many cases has been lost or destroyed because of the lengthy passage of time. Therefore, this Court should summarily deny the instant petition according to the doctrine of laches pursuant to NRS 34.800, as the extreme delay in filing the instant petition is unexcused.

## II. DEFENDANT'S CLAIMS ARE FURTHER PRECLUDED FROM REVIEW BY THE DOCTRINE OF THE LAW OF THE CASE.

The Nevada Supreme Court affirmed Defendant's conviction and sentence of death after considering on the merits many of the same issues presented in the instant petition. The Court issued an opinion of its decision in Rippo v. State, 113 Nev. 1239, 946 P.2d 1017 (1997), and also in Rippo v. State, 122 Nev. ___, 146 P.3d 279 (2006). Thus, these claims are barred from reconsideration by the law of the case doctrine. Where an issue has already been decided on the merits by the Nevada Supreme Court, the Court's ruling is law of the case, and the issue will not be revisited. Pellegrini v. State, 117 Nev. 860, 888, 34 P.3d 519, 538 (2001) (holding "[u]nder the law of the case doctrine, issues previously determined by this court on appeal may not be reargued as a basis for habeas relief"); Valerio v. State, 112 Nev. 383, 386, 915 P.2d 874, 876 (1996). The law of a first appeal is the law of the case in

all later appeals in which the facts are substantially the same; this doctrine cannot be avoided by more detailed and precisely focused argument. Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975); see also McNelton v. State, 115 Nev. 396, 415, 990 P.2d 1263, 1275 (2000). Consequently, the doctrine of the law of the case forecloses Defendant from reviving the following claims.

**A. Claim 1: Alleged Bias of the Trial Court and the State**

Defendant asserts that he is entitled to automatic reversal of his conviction and sentence of death because of Judge Gerald Bongiovanni's association with Denny Mason and his business associate, Ben Spano, and the State's alleged involvement into the federal criminal investigation against Bongiovanni.

With regards to Bongiovanni, Defendant claims that Bongiovanni was unable to fairly and impartially preside over Defendant' case because of the federal investigation into Bongiovanni's criminal case and LVMPD's involvement in the investigation. However, this issue was already raised and addressed by the Nevada Supreme Court in Defendant's direct appeal, and therefore, is barred from reconsideration by the law of the case. On direct appeal, the Court, citing to Jacobson v. Manfredi, 100 Nev. 226, 679 P.2d 251 (1984), stated:

> [N]o evidence exists, beyond the allegations set forth by the defense, that Judge Bongiovanni knew either Denny Mason or his alleged business partner. Even if a relationship existed, Rippo has not shown that the judge's alleged acquaintance with Mason's business partner would result in bias.

Rippo, 113 Nev. 1239, 946 P.2d 1017. As the Nevada Supreme Court already ruled on the merits of this issue, the Court's ruling is now the law of the case and bars further consideration of the issue. McNelton, 115 Nev. at 415, 990 P.2d at 1275.

Moreover, to the extent that Defendant asserts that Bongiovanni's mere non-disclosure of a prior association with Mason and Spano is conclusive proof that Bongiovanni harbored bias against Defendant, see Petitioner's Writ, p. 44, Defendant's reasoning is misplaced. Just because a judge may have a pre-existing professional relationship with the parties or witnesses in a legal proceeding does not require automatic disclosure of such relationship. Thus, Bongiovanni's failure to disclose his relationship with Spano is hardly

conclusive proof of judicial bias.

Furthermore, as the Court explained in Jacobson, 100 Nev. at 230-1, 679 P.2d at 254:

> *[A] judge ... need not disqualify himself merely because he knows one of the parties.* [A judge] must have neighbors, friends, and acquaintances, business and social relations, and be a part of his day and generation. Evidently the ordinary results of such associations and the impressions they create in the mind of the judge are not the "personal bias or prejudice" to which the statute refers. ...
>
> *The mere allegations that Judge ... had a prior professional relationship with [the defendant's father] and a current professional relationship with [the defendant's aunt] do not demonstrate judicial bias sufficient* for us to hold that it was an abuse of discretion to strike appellant's motion for recusation.

Id., (emphasis added). Thus, even if Bongiovanni failed to disclose his association with Mason and Spano, mere association is not enough to overcome the "substantial weight" given to Bongiovanni's decision not to voluntarily recuse himself. PETA v. Bobby Berosini, 111 Nev. 431, 437, 894 P.2d 337, 341 (1995), (citing Goldman v. Bryan, 104 Nev. 644, 649, 764 P.2d 1296, 1299 (1988) (explaining that "[w]hen a judge determines that he may not voluntarily disqualify himself, his decision should be given "substantial weight" and should not be overturned absent a clear abuse of discretion.")

Additionally, Defendant claims that the State lied about its involvement in the federal criminal investigation, and failed to disclose the fact that the State was conducting an internal audit of cases wherein Bongiovanni presided. However, as this issue was raised and addressed on the merits in Defendant's direct appeal, the law of the case applies and the issue is precluded from further consideration. In Rippo, 113 Nev. at 1248, 946 P.2d at 1023, the Nevada Supreme Court held:

> No evidence exists that the State was either involved in the federal investigation or conducting its own investigation of Judge Bongiovanni. A federal investigation of a judge does not by itself create an appearance of impropriety sufficient to warrant disqualification. No factual basis exists for Rippo's argument that Judge Bongiovanni was under pressure to accommodate the State or treat criminal defendants in state proceedings less favorably.

Id. As the Nevada Supreme Court has already ruled on this specific issue, it is barred from reconsideration by the law of the case doctrine. Hall, 91 Nev. at 315, 535 P.2d at 798.

Even assuming, *arguendo*, that the State was involved in the federal criminal

investigation, Defendant has failed to establish how the State's involvement rendered Bongiovanni bias in Defendant's particular case. Nothing in Defendant's recitation of the State's alleged involvement in the investigation has any bearing on Defendant's case. A generalized claim that the State was involved in the federal criminal investigation against Bongiovanni does not warrant automatic reversal of Defendant's conviction and sentence. As the Court cautioned:

> We further note that Judge Bongiovanni's disqualification in the instant case would lead to his disqualification in all criminal cases he heard while subject to the federal investigation. Such a result would be unsupportable.

Rippo, 113 Nev. at 1249, 946 P.2d at 1023. Accordingly, Defendant has not overcome his burden of demonstrating sufficient factual grounds that Bongiovanni was biased. PETA, 111 Nev. at 438, 894 P.2d at 341 ("[A] judge is presumed not to be biased, and the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification.")

**B. Claim 7: Failure To Define Deliberation.**

The State respectfully refers this Court to Argument IV, infra, for a full discussion of this claim.

**C. Claim 9: Alleged Intimidation of Alice Starr and Failure to Recuse the Office of the District Attorney.**

Defendant alleges he was deprived of his right to present a defense because the State intimidated and threatened Alice Star into not testifying on behalf of Defendant. However, the Nevada Supreme Court addressed this exact issue on Defendant's direct appeal. In Rippo, 113 Nev. at 1251, 946 P.2d at 1025, the Court held:

> The testimony of the officers and of Starr indicates that the officers did not draw their weapons in an attempt to intimate Starr. However, Luken's statements to Starr, made after she had been arrested for possession of drugs during a search conducted by four State authorities, may have been intimidating. Starr, however, testified that she did not feel threatened by Lukens or compelled to change her testimony. Furthermore, Lukens and Lowry were disqualified from the case as a result of their participation in the search. Therefore, we conclude that prosecutors' conduct did not constitute witness intimidation warranting reversal.

Id. Thus, the Nevada Supreme Court's ruling is now the law of the case, and the issue is barred from further consideration. See Hall, 91 Nev. at 315, 535 P.2d at 798 (holding the law of first appeal is the law for all subsequent proceedings wherein the facts are substantially the same).

The Court's holding was based on the following set of facts, as set forth in the Court's opinion.

> Officer Roy Chandler, one of the two officers present at the scene, testified at an evidentiary hearing that Starr's sister responded to their knock on the door, admitted the officers and the prosecutors, and told them that she and her two children were the only ones in the house. Starr, however, suddenly came out of the kitchen area. Surprised at Starr's presence, the officers checked the residence for other individuals. The officers removed their guns from their holsters. Starr corroborated the officer's version of the events, testifying [during the grand jury proceedings] that the officers did not draw their guns until she appeared from the kitchen.

Id., 113 Nev. at 1247, 946 P.2d at 1022. Although Starr did not testify at the trial, she did testify at the grand jury hearing. Id., 113 Nev. at 1251, 946 P.2d at 1025, fn. 4.

In addition, Defendant's claim that the trial court erred by failing to disqualify the entire Office of the District Attorney because prosecutors Lukens and Lowry continued to substantially participate in the trial was also raised on Defendant's direct appeal, and denied by the Nevada Supreme Court.

> We conclude that Rippo failed to make a showing of extreme circumstances warranting disqualification of the entire district attorney's office. First, the fact that Lukens was present for opening statement and followed the order of the witnesses may show a continued interest in the trial, but it is not evidence of continued involvement. Second, although Lukens acknowledged that he "had occasion to have discussions with [Hunt] this week," no evidence exists as to the content or nature of the conversations. Third, the judge admonished Lukens not to speak further with any witnesses, and no evidence has been presented that Lukens failed to abide by this order. The district court's disqualification of Lukens and Lowry was sufficient to ensure that Rippo received a fair trial. Thus, we conclude that the district court did not abuse its discretion in failing to disqualify the prosecutor's office.

Id., 113 Nev. at 1255-56, 946 P.2d at 1027-28 (internal citations omitted). Since the Nevada Supreme Court already ruled on this specific issue, it is barred from reconsideration by the law of the case doctrine. McNelton v. State, 990 P.2d 1263, 1276 (2000) (where an issue has already been decided on the merits by the Nevada Supreme Court, the Court's ruling is law

of the case, and the issue will not be revisited.)

**D. Claim 12: The Presentation Of Victim Impact Statements And Photo Albums During The Penalty Phase.**

Defendant contends that the trial court erred in allowing victims impact statements of family members of both victims and photo albums during the penalty phase because the testimonies of the five family members were prejudicial, irrelevant, and did not speak to the value of the life of either victim. In addition, Defendant argues that trial counsel and appellate counsel were ineffective for failing to raise and properly preserve the issue for appeal. However, contrary to Defendant's repeatedly generalized and haphazard assertion that counsel failed to raise the issue for appellate review, this exact issue was raised on Defendant's direct appeal and in his first post-conviction habeas petition. See Petitioner's Ex. #216, pp. 80-3. Accordingly, it is the State's position that the instant claim should be dismissed as successive and barred by the doctrine of the law of the case.

In the published opinion, the Nevada Supreme Court considered Defendant's claim, and concluded:

> We conclude that each testimonial was individual in nature, and that the admission of the testimony was neither cumulative nor excessive. Thus, we conclude that the district court did not abuse its discretion in allowing all five witnesses to testify.

Rippo, 113 Nev. at 1261, 946 P.2d at 1031. In Footnote 12 of the opinion, the Court specifically referenced some of the same statements made by Orell Maxwell (Jacobson's mother-in-law), Nicholas Lizzi (Lizzi's father), and Nicholas Lizzi, Jr. (Lizzi's brother). See Id., 113 Nev. at 1262, 946 P.2d at 1031, fn. 12.

Citing to Payne v. Tennessee, 501 U.S. 808, 82, 111 S.Ct 2597, 2608 (1991), the Court further held that the testimony of each witness was relevant to Defendant's "moral culpability and blameworthiness. Id.; see also Atkins v. State, 112 Nev. 1122, 1136, 923 P.2d 1119, 1128 (1996) (prosecutor's statements that defendant "brutally murdered" and "savaged" the victim were proper to describe the impact of the crime on the victim and her

family, cert. denied, 520 U.S. 1126, 117 S.Ct. 1267 (1997))." Rippo, 113 Nev. at 1262, 946 P.2d at 1031.

The Court also held that the testimony of Orell Maxwell was "relevant to the jury's determination of the appropriate sentence." Id. The Court observed that defense counsel did not object to Orell Maxwell's testimony until after all five witnesses had testified, and even then, defense counsel moved to strike the death penalty. Id. Accordingly, the Court concluded that the trial court did not abuse its discretion by permitting Maxwell to testify as a second witness on behalf of victim Jacobson. Id. Since Defendant raised this same issue on direct appeal, and the Nevada Supreme Court dismissed it, the issue is now barred from reconsideration by the law of the case doctrine.

Finally, to the extent that Defendant contends that the trial court abused its discretion in admitting a photo album/scrape book of the victims, Defendant's claim must be dismissed as waived pursuant to NRS 34.810 and Franklin, 110 Nev. at 750, 877 P.2d at 1058, with no good cause and prejudice shown for the failure to raise the claim in an earlier proceeding.

**E. Claim 13: The Torture Aggravator.**

Defendant argues that the Nevada Supreme Court's interpretation and application of the torture aggravator is unconstitutional as vague and arbitrary, and thus, renders his death sentence as per se invalid. In specific, Defendant contends that the Nevada Supreme Court applied the wrong statute to his case in that the Court should have applied NRS 200.033(8) instead of NRS 200.030. In so doing, Defendant is essentially asking the District Court to do something for which this Court has no authority to do – to sit in review of the Nevada Supreme Court.

Article 6, Section 6 of the Nevada Constitution defines the jurisdiction of the Nevada District Court, and states, in relevant part, "The District Courts in the several Judicial District of this State have original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts. They also have final appellate jurisdiction in cases arising in Justices Courts and such other inferior tribunals as may be established by law." Thus, the District Court does not have jurisdiction to review decisions by the Nevada Supreme Court,

and as such, Defendant's claim should be dismissed.

Moreover, even if this Court did have jurisdiction to sit in appellate review of the Nevada Supreme Court's decision, Defendant's claim was raised in his direct appeal and rejected by the Nevada Supreme Court. Thus, his claim is barred from further consideration by the doctrine of the law of the case. On direct appeal, the Nevada Supreme Court held:

> When we review the facts of this case and consider the entire episode as a whole – the strangulation and restraint, accompanied by the frightful, multiple blasts with a painful high voltage stun gun – we conclude that even though the stun gun shocks were not the cause of death, there is still evidence, under our interpretation of murder perpetrated by means of torture, to support a jury finding that there was, as an inseparable ingredient of these murders, a "continuum" or pattern of sadistic violence that justified the jury in concluding that these two murders were "perpetrated by means of ... torture."

Rippo, 113 Nev. at 1264, 946 P.2d at 1033. The Court's holding was based on a finding that Defendant's repeated use of the stun gun on both victims was for a "sadistic purpose."

> There seems to be little doubt that when Rippo was shocking these victims with a stun gun, he was doing so for the purpose of causing them pain and terror and for no other purpose. Rippo was not shocking these women with a stun gun for the purpose of killing them but, rather, it would appear, with a purely "sadistic purpose."

Id. Thus, the Court concluded that:

> [T]here is evidence which would support a finding of "murder by means of ... torture" because the intentional infliction of pain is so much an integral part of these murders. Person who taunt and torture their murder victims as part of the killing process will not be allowed to escape the murder-by-torture aggravating factor merely because the torturing is not the actual cause of death.

Id., 113 Nev. at 1264, 946 P.2d at 1032. As the Nevada Supreme Court has already ruled on this issue, it is the State's position that this issue is precluded from reconsideration by the law of the case doctrine. Hogan v. Warden, 109 Nev. 952, 958, 860 P.2d 710, 715 (1993) (stating that "[t]he doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.")

Notwithstanding this Court's lack of authority to review the Nevada Supreme Court's ruling, Defendant contends that the Nevada Supreme Court's interpretation and application of the torture aggravator is unconstitutional. In specific, Defendant contends that the torture

aggravator is constitutionally vague because the term "violence" does not function to narrowly tailor the category of those eligible for the death penalty and that the use of the word "sadistic" is identical to the "horrible, atrocious, and cruel" language that the United State Supreme Court rejected. However, it is the State's position that Defendant's contention is without merit and that Defendant has failed to meet his burden of proving that the Nevada Statute on the torture aggravator is unconstitutional.

"The due process clause of the United States Constitution "does not require an impossible standard of specificity" in penal statutes. The test of granting sufficient warning as to proscribed conduct will be met if there are well settled and ordinarily understood meanings for the words employed when viewed in the context of the entire statutory provision."" Wilmeth v. State, 96 Nev. 403, 610 P.2d 735 (1980), (citing Woofter v. O'Donnell, 91 Nev. 756, 762, 542 P.2d 1396, 1400 (1975)). Statutes are generally presumed constitutional, and the burden is on the challenger to prove its invalidity. Childs v. State, 107 Nev. 584, 587, 816 P.2d 1079, 1081 (1991); see also Allen v. State, 100 Nev. 130, 133, 676 P.2d 792, 794 (1984) (reiterating that the appellant bears the heavy burden of overcoming "the presumption of constitutional validity which every legislative enactment enjoys.")

Here, Defendant has failed to demonstrate that NRS 200.033(8) – on torture aggravator – is constitutionally vague. Defendant argues that the aggravating circumstance of NRS 200.033(8) is unconstitutionally vague as applied by the Nevada Supreme Court. However, this argument has previously been brought before the Nevada Supreme Court and rejected. See e.g., Brown v. State, 113 Nev. 305, 933 P.2d 187 (1997); Wesley v. State, 112 Nev. 503, 916 P.2d 793 (1996); Pertgen v. State, 110 Nev. 554, 875 P.2d 361 (1994).

"Torture" for purposes of murder by torture and torture as an aggravating circumstance involves "a calculated intent to inflict pain for revenge, extortion, persuasion or for any sadistic purpose" and intent "to inflict pain beyond the killing itself." Hernandez v. State, 118 Nev. 513, 532, 50 P.3d 1100, 1113 (2002), (citing Domingues v. State, 112 Nev. 683, 917 P.2d 1364 (1996); see also Rodriguez v. State, 117 Nev. 800, 32 P.3d 773 (2001)

("While most killings involve infliction of pain, most murders do not qualify as "torture" murders, for purposes of aggravating circumstances for imposition of death penalty of murder involving torture, as "torture" involves calculated intent to inflict pain for revenge, extortion, persuasion, or for any sadistic purpose.")

In Hernandez, 118 Nev. at 532, 50 P.3d at 1113, the Court rejected the defendant's claim that he merely intended to kill the victim and not torture her. Although the jury found that the victim was dead when the defendant inserted a knife in her vagina, the Court nevertheless found that the total sum of the defendant's actions – where the defendant beat her, stabbed her repeatedly, strangled her, and thrusted the knife into Donna's vagina – "reflect[ed] an intent to inflict pain beyond the killing itself for a sadistic purpose." Id., 118 Nev. at 532-3, 50 P.3d at 1113. Thus, the Court concluded that the evidence was sufficient to prove torture as an aggravator under NRS 200.033(8) and murder by torture under NRS 200.030(1)(a). Id., 118 Nev. at 533, 50 P.3d at 1113.

More recently, the Nevada Supreme Court in Weber v. State, 121 Nev. 554, 587, 119 P.3d 107, 129 (2005) affirmed this definition of "torture" for purpose of aggravating circumstances. The evidence in that case showed that the defendant tied the victim's hands and legs together, weighed him down, taped his eyes and mouth shut, and placed a black plastic bag over his head. Id. The autopsy showed that the victim bled and vomited from his nostrils and suffered a slow death. Id. Finding that the manner in which the defendant killed the victim was sadistic and calculated and that the victim died a slow and painful death, the Court concluded that the evidence supported the aggravator under NRS 200.033(8). Id. In so concluding, the Court explained, ""Torture" requires that the murderer must have intended to inflict pain beyond the killing itself. Torture involves a calculated intent to inflict pain for revenge, extortion, persuasion or for any sadistic purpose." Id., (quoting Domingues, 112 Nev. at 702 917 P.2d at 1377).

In this case, the evidence presented at trial demonstrated Defendant's intent to inflict pain beyond the killing itself. Defendant repeatedly used a stun gun on each of the female victims, bound and gagged them, carried one of the victims across the room while she

choked on the gag placed inside her mouth, forced them into a closet, and then ultimately strangled them to death. They heard how he then systematically cleaned up the crime scene including removing one victim's boots and pants to conceal his own blood. Thus, the Nevada Supreme Court did not err in its interpretation and application of the torture aggravator as applied to the instant case.

Moreover, the jury was properly instructed with regards to the torture aggravator. At the penalty phase of the trial, the jury was instructed as follows:

> Jury Instruction #9:
>
> You are instructed that the following factors are circumstances by which Murder of the First Degree may be aggravated:
> ...
> 6. The murder involved torture.

Petitioner's Ex. #327 (Jury Instruction #9).

In addition, Jury Instruction #15, instructed:

> The essential elements of murder by means of torture are (1) the act or acts which caused the death must involve a high degree of probability of death, and (2) the defendant must commit such act or acts with the intent to cause cruel pain and suffering for the purpose of revenge, persuasion or for any other sadistic purpose.
>
> The crime of murder by torture does not necessarily require any proof that the defendant intended to kill the deceased nor does it necessarily require any proof that the deceased suffered pain.

Petitioner's Ex. #327 (Jury Instruction #15). Where the district court has issued instructions that specifically define the applicable terms for the jury, the Nevada Supreme Court has found that NRS 200.033(8) is constitutional. See e.g., Brown v. State, 113 Nev. 305, 933 P.2d 187 (1997) (Jury instructed regarding definition of "mutilate"); Parker v. State, 109 Nev. 383, 849 P.2d 1062 (1993) (Jury instructed regarding definition of "mutilate"); Robins v. State, 106 Nev. 611, 798 P.2d 558 (1990) (Jury instructed regarding definition of "torture"); Rogers v. State, 101 Nev. 457, 467, 705 P.2d 664, 671 (1985) (Court held that statute provided adequate guidance to the jury when the district court defined the terms "torture" and "mutilate"); Cf. Pertgen v. State, 110 Nev. 554, 561, 875 P.2d 361, 365 (1994) (Court held that failure to define "torture" for jury did not satisfy the Godfrey requirements).

Accordingly, Defendant has utterly failed to demonstrate that NRS 200.033(8) is unconstitutional or was applied in an unconstitutional manner, and as such, Defendant is not entitled to automatic reversal of his convictions and sentences.

Finally, insomuch as Defendant contends, without any legal authority, that Ms. Hunt's testimony does not support the jury finding that Defendant used a stun gun in perpetrating his crimes, the Nevada Supreme Court in Phenix v. State, 114 Nev. 116, 118 954 P.2d 739, 740 (1998), relied on Rippo, 113 Nev. at 1263, 946 P.2d at 1032, and noted that in Rippo, the testimony of the witness (Diana Hunt) was sufficient to sustain a finding of a ""pattern or continuum" of sadistic violence."

**F. Claim 17: Jury Instruction On Weighing Of Mitigating Circumstances.**

The State respectfully refers this Court to Argument IV, infra, for a complete discussion of this issue.

**G. Claim 19: Reasonable Doubt Instruction.**

The State respectfully refers this Court to Argument IV, infra, for a complete discussion of this issue.

**H. Claim 21: Cumulative Error.**

The State respectfully refers this Court to Argument XII, infra, for a complete discussion of this issue.

## III. CLAIM 2: DEFENDANT'S FAILURE TO RAISE HIS "BRADY" CLAIMS CONSTITUTES A WAIVER OF THE ISSUE.

### A. Witness Thomas Sims

Defendant alleges that the State failed to disclose exculpatory material and benefits conferred upon witness, Thomas Sims. Specifically, Defendant contends the State obtained the following "benefits": (1) continuance in Sims 1993 arrest for possession of heroin with intent to sell (C136066), (2) reduced charges in Sims 1993 arrest felony possession of marijuana case (JC: 93-F-9533X), (3) dismissal of 1993 domestic violence charge (DC #: 93-M-12323X), and (4) dismissal of 1994 domestic violence charge. Defendant further claims that the State persuaded the federal authorities from filing a federal gun charge

against Sims, and that the State failed to disclose alleged wire tap communications relating to Sims. However, it is the State's position that since Defendant failed to raise these issues in either his first post-conviction petition or on direct appeal, he waived his right to raise them now. See NRS 34.810; Phelps v. Director of Prisons, 104 Nev. 656, 659, 764 P.2d 1305 (1988) (once the State raises procedural grounds for dismissal, the burden then falls on the defendant to demonstrate both good cause for his failure to present his claim in earlier proceedings and actual prejudice); Thomas v. State, 114 Nev. 1127, 1149, 967 P.2d 1111, 1125 (1999) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings.") Moreover, Defendant has not shown good cause for failing to raise these claims in an earlier proceeding; thus, Defendant's claim should be dismissed.

Assuming the State withheld this alleged information, Defendant has failed to allege with specificity how or when he came to discover it so that this Court can decide whether it has been timely raised. Once the basis for a claim becomes known to the Defendant the procedural bars do not allow him to further delay in bringing the claim. Defendant has the burden of making the requisite showing and has failed to do so in his petition.

Nonetheless, should this Court find that Defendant demonstrated good cause sufficient to overcome these procedural bars, the State submits that Defendant's bare claims are unsubstantiated by any factual support, and utterly belied by the record. Hargrove, 100 Nev. at 503, 686 P.2d at 225 (holding that claims asserted in a post-conviction petition must be supported by specific factual allegations, which if true, would entitle the petitioner to relief. "Bare" and "naked" allegations are insufficient as are those belied and repelled by the record.)

Defendant claims that prosecutor John Lukens was instrumental in obtaining numerous continuances in the 1993, drug possession case (C136066). However, not only has Defendant provided no evidence to substantiate his claim, Defendant's claim is repelled by the record. On direct examination, Sims testified that he was an ex-felon and that he has had his share of "run-ins with law enforcement." TT, 02/07/96, pp. 69-70. Sims also stated

that he had no desire to cooperate with the police or testify at trial.

Q: My question was in response to – the first part of your comment, you indicated you had your share of run-ins with law enforcement.
A: Yes, I have.

Q: In fact, you are a convicted felon?
A: Yes, I am.

Q: For that reason, it is a role that you feel comfortable with, to be cooperating fully with law enforcement?
A: Not at all.

Q: Even on March the 2nd, 1992, did you want to be involved in this investigation the police were conducting regarding the murder of two young women?
A: No, I didn't.

Q: Did you have any desire at some point to be a witness in a court of law to the information you had?
A: Not at all.

TT, 02/07/96, p. 70. On cross-examination, Sims once again informed the jury of his status as a three time ex-felon and further told the jury that he currently had a charge pending against him. TT, 02/07/96, pp. 78-9. Sims denied making a deal with the State in exchange for his testimony. TT, 02/07/96, p. 78.

Then on February 26, 1996, defense counsel again cross-examined Sims and questioned him extensively about his prior and current crimes, the possible punishments for each crime, the nature of the crimes and whether he had brokered a deal with the State in exchange for his testimony. TT, 02/26/96, pp. 9-19. Once again, Sims readily admitted his criminal history but denied making any deals with the State. TT, 02/26/96, pp. 9-19.

Finally, on re-direct, Sims was questioned for a fourth time regarding his criminal history.

Q: Mr. Sims, regarding the charges that have been pending since May, 1993 –
A: Uh-huh.

Q: -- do you have an attorney who is representing you?
.....
A: Robert Archie.

Q: Has Mr. Archie also represented you on other matters?
A: Yeah, Mr. Archie has been my attorney since 1978.

Q: You have rather extensive experience with the criminal justice system.
A: Yes, I do.
.....
Q: *Have you ever entered into any type of negotiation with law enforcement, whether it's the Las Vegas Metropolitan Police Department, or representatives of the office of the District Attorney, regarding some type of exchange for information or testimony you will provide in the Rippo case in return for benefits on the charges you have pending?*
A: *No, sir.*
Q: *Are you expecting any benefits?*
A: *No, sir.*
.....
Q: You were asked what the nature was of the pending case. Are there three counts?
A: I thought there were only two.
.....
Q: *Do you know, Mr. Sims, why the case is still pending that you were arrested for in May, 1993?*
A: *No, I don't*; just something my lawyer handles.
Q: Do you trust the judgment of your attorney, Robert Archie?
A: Totally.
Q: You indicated you've been involved with him since the late 1970's?
A: That's correct.
Q: *Does your pending case have anything whatsoever to do with this case?*
A: *No, it doesn't.*
Q: Is your testimony influenced in any way by that fact?
A: No.

TT, 02/26/96, pp. 20-23 (emphasis added). Thus, contrary to Defendant's contention that the State "failed to correct Mr. Sims testimony on re-direct," see Petitioner's Writ, p. 49, the State explicitly questioned Sims on re-direct about the three year continuance and repeatedly asked whether his testimony was tied to promises or benefits by the State.

As amply demonstrated, Sims did not receive any benefits from the State in exchange for his testimony, and Defendant has not offered any evidence to the contrary. Accordingly, Defendant's claim is utterly without merit.

**B. Witness Michael Beaudoin.**

Defendant also contends that the State failed to disclose alleged benefits conferred upon witness Michael Beaudoin by the State. Defendant claims that Beaudoin received the

following benefits in exchange for his testimony: (1) OR release in his then-pending case, (2) dismissal of charges in case number 92-F-1613X, and (3) dismissal of charges in case number 95-FH-0518X. Defendant also claims that the State failed to disclose his arrest for possession of controlled substance in case number 95-F-07735X and the existence of bench warrants against Beaudoin at the time of his testimony. Finally, Defendant lists other case numbers (89-F-6462, 90-F-05534A, 91-F-4782B, 92-F-1931X, 92-T-1630X, 92-F-01631X, 95-FH-0518X, and 95-F-07735X) and alleges that Beaudoin received "other disclosed benefits" in these cases. See Petitioner's Writ, p. 51. However, as Defendant failed to raise these issues on direct appeal or his first post-conviction petition, it is the State's position that Defendant's failure to raise them previously constitutes a waiver, and absent good cause showing and actual prejudice, Defendant's claim should be dismissed. Phelps, 104 Nev. at 659, 764 P.2d at 1305; Thomas, 114 Nev. at 1149, 967 P.2d at 1125.

Defendant certainly knew of Beaudoin's then-pending charges and his prior felony convictions at the time he commenced post-conviction proceedings. At trial, Beaudoin testified on direct examination that, on February 1, 1992, he was in jail on drug charges. TT, 02/29/96, pp. 211-12. At the conclusion of his direct examination, Beaudoin stated that he had two prior felony convictions related to drugs. TT, 02/29/96, p. 254. Then on re-direct, the State asked Beaudoin about his then-pending charges and whether he was offered any deals in exchange for his testimony. Beaudoin denied receiving any benefits for his testimony in the instant case. TT, 03/01/96, pp. 62-3. During cross-examination, defense counsel questioned Beaudoin about his February 1, 1992, arrest, and certain events which occurred while Beaudoin was in jail. Beaudoin testified that he was picked up on a bench warrant and spend 30 days in jail pursuant to plea negotiations. TT, 03/01/96, pp. 25-6.

> Q: Now, there came a time when you were arrested on some drug charges, like February 1st or 2nd or 1992; is that correct?
> A: I made a plea bargain; they gave me probation; and part of the agreement was that *I spend (sic) 30 days in jail.*
> .....
> Q: Okay. So you knew you were going to be going? I mean, they didn't just come and pick you up; you knew you had 30 days to do and when it was going to start, that kind of thing?

A: *Well, it went into warrant.*

Q: *Oh, okay. It went into warrant. ...*

TT, 03/01/96, pp. 25-6 (emphasis added). Although defense counsel had a fair and full opportunity to cross-examine Defendant about his prior felony convictions, bench warrant for his then-pending case, and whether he had or anticipated on receiving any benefit for his testimony, defense counsel did not do so. Thus, to the extent that Defendant complains that the State did not disclose this information, Defendant's claim fails.

Finally, with regards to Defendant's generalized blanket statement that Beaudoin received "other undisclosed benefits" in other cases starting in 1989 to 1995, Defendant's is not entitled to relief. Notwithstanding that Beaudoin's earlier cases from 1989 to 1991 have no bearing on the instant matter, claims asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. As Defendant's claim is utterly devoid of any factual support, Defendant's claim must be dismissed.

**C. Witness Thomas Christos**

Similarly, Defendant's claim that the State failed to disclose material exculpatory and impeachment information related to witness Thomas Christos 1994 arrest for felony home invasion should be dismissed. Notwithstanding that Defendant's claim is procedurally barred from review pursuant to NRS 34.810 and Phelps, 104 Nev. at 659, 764 P.2d at 1305, Defendant claim also lacks merit. Once again, Defendant has provided no factual support for his claim other than the tenuous argument that because Christos' case was eventually dismissed after three years, it could only be the result of some type of benefit the State inured on him. Thus, Defendant is not entitled to relief on this claim. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

**D. Witnesses David Levine and James Ison.**

Defendant further claims that witnesses David Levine and James Ison testified about

certain details related to the murder, and that the details had been provided to them by law enforcement. Defendant relies on a letter, purportedly written by David Levine, in Valencia County, New Mexico, dated November 20, 2007, and by Jason Ison in Guilford County, North Carolina, dated November 30, 2007. See Petitioner's Ex. 235 and 234, respectively. In the letter allegedly written by Levine, Levine claims that Defendant never told him about the use of an extension cord or stun gun; and in the letter allegedly written by Ison, Ison similarly claims that Defendant never told him how the victims were strangled or where the bodies were placed. Aside from the fact that neither of the letters are notarized or in any way authenticated, each letter was written over 11 years after Defendant's trial.

More importantly, a careful reading of the trial transcripts reveals that Defendant's present claim really centers around the discrepancies in the testimony given by each witness. During his testimony, Levine was repeatedly questioned about the two statements he gave to the police. In Levine's initial statement to the police on April 22, 1993 – that Defendant did not tell him how the murders were committed – and his later statement to the police on April 27, 1993 – that Defendant demonstrated to him how he strangled the victims using his veins. TT, 02/29/96, pp. 185-95.

With regards to Ison, defense counsel repeatedly questioned Ison on cross-examination regarding the two versions of the murder Defendant allegedly gave him and to which Ison testified to on direct examination. TT, 03/01/96, pp. 156-8, 162-4.

Thus, it appears Defendant was acutely aware of the discrepancies in testimony given by each witness. Thus, inasmuch as Defendant now complains about these discrepancies for the first time, and presents letters allegedly authored by Levine and Ison, Defendant has not demonstrated good cause for his failure to present these claims earlier. As these claims should have been raised earlier in either Defendant's post-conviction petition or on direct appeal, it is the State's position that Defendant's failure to do so bars review of these claims. Since Defendant has shown no good cause for his delay in presenting these issues earlier, the State submits that they should be dismissed.

**E. Witness Diana Hunt.**

Inasmuch as Defendant claims that the State failed to disclose information certain medical and psychiatric information about witness Diana Hunt, Defendant's claim is without merit. Pursuant to Brady v. Maryland, 373 U.S. 83 (1963), the State is obligated to disclose exculpatory evidence to the accused. When the State suppresses evidence favorable to the accused, the defendant is denied Due Process. Id. Specifically, Brady requires the State to provide information in its possession that is both favorable to the accused and material to guilt or punishment. In determining whether evidence is Brady material, the Court should consider: (1) whether the prosecution suppressed the evidence after a request from the defense; (2) whether the evidence was favorable to the defense; and, (3) the materiality of the evidence. Rippo v. State, 113 Nev. 1239, 1257, 946 P.2d 1017, 1028 (1997), (quoting Moore v. Illinois, 408 U.S. 786, 794-95 (1972)).

Evidence is material when there is a reasonable probability that if the evidence had been disclosed the result might have been different. Evans v. State, 117 Nev. 609, 626, 28 P.3d 498, 510 (2001). A reasonable probability exists when it is established that the outcome of the trial has been undermined by the nondisclosure. Lay v. State, 116 Nev. 1185, 1194, 14 P.3d 1256, 1262 (2000). Brady issues present mixed questions of law and fact and are reviewed *de novo*. Lay, 116 Nev. at 1193, 14 P.3d at 1262.

Defendant has not established how this evidence is favorable to his case. In fact, Defendant cannot establish that this was important to his case because he cannot establish that the evidence would have been admissible at trial. It is highly unlikely that the specific information pertaining to Hunt's mental illness would have been admissible at trial. Consequently, the evidence cannot be deemed favorable to Defendant's case or material.

**F. Alleged Prosecutorial Misconduct.**

Finally, Defendant presents a laundry list of alleged assignments of error by the State during its closing argument at both the guilt and penalty phase, and contends that the cumulative effect of the State's alleged error rendered his trial unfair. First, Defendant claims the State improperly aligned itself with the fact-finding function of the jury by using

the words "we" and "I" throughout closing argument. However, as defense counsel failed to object to ***any*** of the alleged "sixty-plus" improper comments cited in Defendant's petition, it is the State's position that Defendant's failure precludes appellate review. Claims of prosecutorial misconduct that were not objected to at trial will not be reviewed on appeal unless they constitute "plain error." Leonard v. State, 17 P.3d 397, 415 (2001); see also Mitchell v. State, 114 Nev. 1417, 971 P.2d 813, 819 (1998). Plain error exists only in exceptional circumstances when a substantial right of a defendant is affected. United States v. Olano, 507 U.S. 725, 733-35, 113 S.Ct. 1770, 1777-78 (1993).

The United States Supreme Court has explained that the plain error doctrine is limited and "authorizes the Courts of Appeals to correct only 'particularly egregious errors...that seriously affect the fairness, integrity or public reputation of the judicial proceedings.'" United States v. Young, 470 U.S. 1, 15 (1985), (quoting United States v. Frady, 456 U.S. 152, 163 (1982). The Court held that the plain error rule is to be used "sparingly" and only when there has been a fundamental error so basic and prejudicial that justice could not have been done, or when the error deprives the accused of a fundamental right. Young, 470 U.S. at 15.

Defendant has neither shown plain error nor that any of the prosecutor's statements resulted in the denial of due process. The State submits that all of Defendant's belatedly raised objections of prosecutorial misconduct should be ignored.

However, even if this Court wishes to entertain the merits of Defendant's claims, the Nevada Supreme Court rejected the identical argument made by the defendant in Schoels v. State, 114 Nev. 981, 987-8, 966 P.2d 735, 739 (1998), and held, "Collective pronouns such as "we", "us", and "our" are appropriate if they are used to indicate citizens or human beings rather than to align the prosecution with the jury in determining a defendant's punishment." Thus, the Court concluded that the State's use of such words did not constitute prosecutorial misconduct. Id., 114 Nev. at 988, 966 P.2d at 739. In addition, as noted by the Nevada Supreme Court in Rippo, 113 Nev. at 1260, 946 P.2d at 1030, "the district court instructed the jury to base its decision on the evidence before it, not on the attorneys' argument." Thus,

any alleged error was cured by the court's proper admonishment to the jury that their decision is independent from the State, see Snow v State, 101 Nev. 439, 448, 705 P.2d 632, 639 (1985), and Defendant has failed to demonstrate any resulting prejudice from the prosecutor's statements.

Defendant also points to certain statements made by prosecutor Harmon and contends that the State expressed his personal belief during closing argument. Petitioner's Writ, p. 57. However, Defendant's assertion completely misconstrues the State's statement. In its entirety, the statements read as follows:

> Wayne Hooper – or was it – yes, *I believe Mr. Hooper*, the manager, was one of the persons whose prints were used in comparison. TT, 03/05/96, p. 197.
>
> AND,
>
> And she testified that she's had – in all 16 years of experience as a criminalist, and 13 and a half years with the Las Vegas Metropolitan Police Department, she's qualified about 300 times – and *I believe this is very nearly a direct quote*: In her opinion, in all her years as an expert, she has only found several cases where hairs were relevant to guilt linking evidence. TT, 03/05/96, pp. 201-2.
>
> AND,
>
> *I recall Bob Sergi, from Spring Mountain*, sitting up here and going through a litany of things that they try to do for the young men who go up there. TT, 03/14/96, p. 143.
>
> AND FINALLY,
>
> Remember – just by way of analogy, remember Laura Martin testifying that she thought she heard him on the telephone, and the only words that she could hear him say was: Are you coming? Well, that would infer to us, *I think, that someone else had contemplated coming over and joining in*. TT, 03/14/96, pp. 144-5.

Thus, read in context, it is abundantly clear that prosecutor Harmon was not injecting his personal viewpoint during closing argument but rather reciting, *to the best of his ability and memory*, evidence presented at trial. A prosecutor must be allowed to argue the facts of the case as they apply to the law. The above comments cannot be construed as prosecutorial misconduct, much less under the appropriate plain error standard.

Moreover, insomuch as Defendant claims the State impermissibly shifted the burden by commenting on the absence of testimony in support of Defendant's case, improperly

commented on other bad acts not admitted into evidence, and "instructed the jury to send a message to the community," the Nevada Supreme Court rejected each of these claims in Defendant's direct appeal. First, the Court found that the prosecutor did not manifestly intend his comments as a reference to Defendant's failure to testify on his behalf. Rippo, 113 Nev. at 1254, 946 P.2d at 1026-27. Second, with regards to the prosecutor's statement about interviews and "things" that occurred outside the courtroom including statements that Defendant repeatedly hit Hunt and used a stun gun on her, the Court found the prosecutor's comments were improper. Id., 113 Nev. at 1255, 946 P.2d at 1027. However, in light of the overwhelming evidence of Defendant's guilt, the Court concluded the statements were harmless. Id. Third, the Court concluded that the prosecutor's statements to the jury constitute an explanation of the rationales supporting the death penalty. Id., 113 Nev. at 1260-61, 946 P.2d at 1030-31. "This is a proper area for prosecutorial comment." Id.

Finally, to the extent that Defendant claims the State impermissibly interjected his personal beliefs about the evidence, the Nevada Supreme Court also rejected this argument for lack of merit. Rippo, 113 Nev. at 1255, 946 P.2d at 1027.

> We conclude that the statements do not contain prosecutorial vouching. The prosecutor did not characterize the testimony of the witnesses, nor did he express a personal belief concerning the evidence before the jury.

Id. Thus, the Court's ruling is now the law of the case, and as such, the issues are precluded from further review.

## IV. CLAIMS 3, 4 AND 5: DEFENDANT HAS FAILED TO DEMONSTRATE GOOD CAUSE FOR OVERCOMING THE MANY PROCEDURAL BARS TO DEFENDANT'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL.

Defendant alleges several assignments of error with regards to his representation at trial and during the appeals process. The majority of these issues were raised in either: (1) Defendant's Supplemental Points and Authorities in Support of Petition for Writ of Habeas Corpus, filed on August 8, 2002, (2) Defendant's Supplemental Brief in Support of Defendant's Petition for Writ of Habeas Corpus, filed on February 10, 2004, or (3) Defendant's 2005 direct appeal to the Nevada Supreme Court. Thus, the majority of

Defendant's claims are not only successive but also precluded from reconsideration by the law of the case doctrine.

The district court held a two-day evidentiary hearing on the sole issue of effective assistance of counsel. At the conclusion of the August 20, 2004, evidentiary hearing, wherein Defendant's trial counsel, Steve Wolfson and Phillip Dunleavy, testified, the district court correctly determined that Defendant received effective assistance of trial counsel.

> THE COURT: ... *I don't see there has been a standard of representation below that which is effective under the Strickland test.* Some examples here, but in a general proposition much of what is said here is – I don't mean to be derogatory, but it's Monday Morning Quarterbacking.
>
> It's, you know, what if, yes, might have, you know, this witness could have.
>
> *With hindsight, of course, there are many things that could be said about a trial that could be done differently. I don't think that goes to counsel's ineffectiveness*, because much of what you're suggesting – and I've used the word – requires clairvoyance.
>
> How would you know what law is going to be four years later, three years later? ...
>
> ... a Defendant in a capital case is entitled to a fair trial.
>
> He or she is not entitled to a perfect trial. ...
>
> These gentlemen look to me like they worked this thing to death, frankly. I don't mean to be flip. This went on and on. *Looks like they had so many bases covered they did yeoman's job.*
>
> *I'm going to find that they did not fall below the standard.*

Reporter's Transcript of Proceedings, 08/20/04, pp. 97-8 (emphasis added).

Then, on September 10, 2004, the district court received the testimony of Defendant's first appellate counsel, David Schiek, and properly concluded that Defendant received effective assistance of appellate counsel. See Reporter's Transcript of Proceedings, 09/10/04, pp. 58-60. The Findings of Fact and Conclusions of Law was filed on December 1, 2004.

On October 12, 2004, Defendant filed a direct appeal (SC No. 44084). Among the issues presented, Defendant appealed the district court's finding that Defendant received effective assistance of trial and appellate counsel. The Nevada Supreme Court summarily

dismissed most of Defendant's ineffective assistance claims for lack of merit, and specifically addressed only those claims which warrant further discussion: (1) the 46 month delay before proceeding to trial, (2) trial counsel's failure to object to prison photograph, (3) appellate counsel's failure to raise claims of ineffective assistance of trial counsel, (4) appellate counsel's failure to challenge the constitutionality of the premeditation and deliberation jury instruction, and (5) appellate counsel's failure to raise a Batson violation. See Rippo, ___ Nev. at ___, 146 P.3d at 285-7.

The Court affirmed the district court's finding and concluded that Defendant received effective assistance of trial counsel. Specifically, the Court found that: (1) Defendant's claim that he was prejudiced by the 46 months delay is unsupported by any specific factual or legal support, (2) Defendant's claim that trial counsel failed to object to the admission of the prison photograph is unsupported by the record, (3) appellate counsel was not ineffective for not challenging the jury instruction on premeditation and deliberation, and (4) Defendant failed to meet the three-part standard under Batson, and as such, appellate counsel was not ineffective for not raising this issue on appeal.[1] Id. Since the Nevada Supreme Court has already ruled on these specific issues, it is the State's position that the issues are barred from further consideration by the law of the case doctrine. Pellegrini v. State, 117 Nev. 860, 888, 34 P.3d 519, 538 (2001) (holding the law of first appeal is the law for all subsequent proceedings wherein the facts are substantially the same). "The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument substantially made after reflection upon previous proceedings." Hall, 91 Nev. at 316, 535 P.2d at 798-99.

Moreover, to the extent that Defendant raises new arguments to his ineffective assistance claim, Defendant's claim is both time-barred under NRS 34.726 and successive pursuant to NRS 34.810.

To avoid the procedural defaults under NRS 34.726 and 34.810, Defendant has the

[1] The Court declined to address Defendant's claim that appellate counsel was ineffective for failing to raising claims of ineffective assistance of trial counsel as the issue was not addressed during the evidentiary hearing. Id., ___ Nev. ___, 146 P.3d at 286.

burden of pleading and proving specific facts that demonstrate both good cause for his failure to present his claims in earlier proceedings and actual prejudice. Hogan, 109 Nev. at 959, 860 P.2d at 715, (quoting McClesky, 499 U.S. at 467); Phelps, 104 Nev. at 659, 764 P.2d at 1305. As Defendant has not shown actual prejudice and good cause for his failure to present these new arguments in an earlier proceeding, Defendant has not overcome any of the procedural bars to warrant further review of this claim. Accordingly, Defendant's ineffective assistance claim should be summarily dismissed.

However, should this Court find that Defendant has met his burden of establishing good cause and actual prejudice, the State responds as follows.

**A. Standard of Review for Trial Counsel.**

In order to assert a claim for ineffective assistance of counsel, Defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland v. Washington, 466 U.S. 668, 686-687, 104 S.Ct. 2052 (1984); Ennis v. State, 122 Nev. 694, 137 P.3d 1095, 1102 (2006). Under this test, Defendant must show: (1) that his counsel's representation fell below an objective standard of reasonableness; and (2) that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. Strickland, 466 U.S. at 687-688 and 694, 104 S.Ct. at 2064; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting Strickland two-part test in Nevada). "A court may consider the two test elements in any order and need not consider both prongs if the defendant makes an insufficient showing on either one." Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1997), (citing Strickland, 466 U.S. at 697, 104 S.Ct. at 2064).

"Judicial review of a lawyer's representation is highly deferential, and a defendant must overcome the presumption that a challenged action might be considered sound strategy." State v. LaPena, 114 Nev. 1159, 1166, 968 P.2d 750, 754 (1998), (quoting Strickland, 466 U.S. at 689, 104 S.Ct. at 2052); see also Homick v. State, 112 Nev. 304, 310, 913 P.2d 1280, 1285 (1996) ("[The presumption that trial counsel was effective and fully discharged his duties] can only be overcome by strong and convincing proof to the

contrary"). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975), (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970)). Defendant must show that the representations of defense counsel were not within the range of competence demanded of attorneys in criminal cases. Hill v. Lockhart, 474 U.S. 52 (1985). Strategy or decisions regarding the conduct of defendant's case are "'virtually unchallengeable absent extraordinary circumstances.'" Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996), (quoting Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990). Defendant has no constitutional right to "meaningful" representation, but only to objectively reasonable representation. See Morris v. Slappy, 461 U.S. 1 (1983); Strickland v. Washington, *supra.* As further demonstrated below, Defendant has failed to satisfy his burden under Strickland.

**B. Claim 3: Defendant Received Effective Assistance of Counsel Throughout The Penalty Phase.**

Defendant contends that trial counsel was ineffective during the penalty phase for failing to investigate and present mitigating evidence in the form of several lay witnesses, various school, prison, and psychological reports, and certain expert witnesses. Specifically, Defendant claims that trial counsel should have: (1) interviewed and called several witness to testify about Defendant's childhood, (2) presented evidence of Defendant's conduct during his incarceration, (3) presented evidence of Defendant's alleged neurological deficits, and (4) called an expert witness to testify about the effects of drug use. Defendant further alleges that a substantial amount of mitigating evidence existed which counsel failed to investigate and present to the jury, and that a more thorough investigation would have revealed a childhood of physical, emotional and sexual abuse, juvenile incarceration, methamphetamine abuse, and neurological dysfunction. Petitioner's Writ, p. 65.

However, Defendant fails to specify what a more detailed investigation and presentation would have revealed such as would have made a more favorable outcome probable. A defendant who contends that his attorney was ineffective because he did not

adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 87 P.3d 533, 538 (2004). Also, "[w]here counsel and the client in a criminal case clearly understands the evidence and the permutations of proof and outcome, counsel is not required to unnecessarily exhaust all available public or private resources." Id. 120 Nev. at 192, 87 P.3d at 538. Although Defendant lists these several witnesses who would have allegedly testified and "portrayed a compelling picture of the physical, emotional, and sexual abuse and neglect,"[2] see Petitioner's Writ, p. 67, Defendant fails to enumerate what effect they would have had on the outcome of the trial.

During the penalty phase, Defendant presented three witnesses, James Cooper (vocational education instructor and chaplain for Nevada State Prison), Robert Duncan (husband of Carole Duncan – mother), and Stacie Ann Roterdam (formerly Stacie Campanelli – sister). TT, 03/14/96, pp. 6-56.

Mr. Cooper testified that he has known Defendant since Defendant entered the prison system in 1982. TT, 03/14/96, p. 7. While in prison, Defendant never caused any trouble or had any disciplinary problems. TT, 03/14/96, pp. 9-10, 13. Although it is common for inmates to get tattoos within the first year of incarceration – as a sign of belonging to a prison gang – to the best of his knowledge, Mr. Cooper stated Defendant never got tattooed. TT, 03/14/96, pp. 11-2. Mr. Cooper further testified that Defendant has changed for the better and that Defendant has been "reaching out more toward the Lord." TT, 03/14/96, p. 12. When asked whether Defendant would cause problems if he received life in prison, Mr.

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[2] Included among those Defendant claims trial counsel should have interviewed are members of Defendant's family as well as childhood friends: Domiano Campanelli (Defendant's biological father), Carole Ann Campanelli (sister), Ruth Rippo (maternal grandmother), Dolores Rippo (maternal aunt), and Isabel Campanelli-Ahern (paternal aunt); John Stephenson, Jr. (friend), Cary Joya (friend), Christ Wright (friend), and Alice Starr (friend after he was paroled). Additionally, Defendant lists family members of his step-father, James "Ollie" Anzini, including Melody Anzini (Ollie's sister), Sari Henslin (Ollie's ex-wife), Robert and Jay Anzini (Ollie's sons), Patsy and Jessica Asaro (sister of Sari and ex-sister-in-law of Ollie). Also included are friends of Defendant's mother, Antoinette and Donald McNamara. Finally, Defendant alleges that trial counsel's lack of thoroughness led to inadequate testimony of Carole Duncan (mother) – via letter – and Stacie Campanelli (younger sister). Defendant contends that had trial counsel interviewed each individual on the list, he would have discovered the "need to present the testimony of all of these witnesses." See Petitioner's Writ, pp. 73-97.

Cooper affirmatively stated, "Not only would he not be a problem, I think he'd be an asset to the institution," and that "... he'll get a job. He'll work a job and stay out of trouble, and he wouldn't play those prison games." TT, 03/14/96, p. 13.

Mr. Duncan married Defendant's mother in 1984. TT, 03/14/96, p. 22. Mr. Duncan first met Defendant while Defendant was in prison. TT, 03/14/96, p. 23. After being released from prison in 1989, Defendant lived with his mother and Mr. Duncan. TT, 03/14/96, p. 25. During that period of time, Defendant and Mr. Duncan became close. TT, 03/14/96, pp. 25-6. Mr. Duncan stated that Defendant worked several jobs and did well, "advancing his salary or bettered his position," good with money, and in fact, "was good at everything he did." TT, 03/14/96, pp. 26-8, 31. Mr. Duncan testified that he felt Defendant did not receive the proper counseling or support after leaving the prison system and that Defendant would have benefited had he received more supervision and guidance from a parole officer. TT, 03/14/96, pp. 29-30, 32.

Defendant's sister, Stacie Ann Roterdam spoke about growing up with Defendant, and how Defendant was a loving and supportive brother, always encouraging her to do better and making her laugh. TT, 03/14/96, p. 42. Stacie said that Defendant was "a great brother." TT, 03/14/96, p. 42. Stacie testified that their step-father, James Anzini, was very hard on Defendant, "always pushing him and telling him that he's never going to amount to nothing." TT, 03/14/96, p. 43. Stacie also stated that their step-father would degrade women in front of Defendant and "tell him that women were no good." TT, 03/14/96, p. 43. Defendant's step-father was a gambler and would often take Defendant's paycheck or allowance with empty promises to repay the money. TT, 03/14/96, p. 42. Stacie stated that Defendant has "always been intelligent" and "gotten good grades," and even obtained some type of degree or diploma while in prison. TT, 03/14/96, pp. 47-8.

The jury also heard from Defendant's mother, Carole Duncan, and her doctor, by way of letters. 03/14/96, pp. 63-74. Defendant's mother explained how Defendant's biological father had abandoned the family when Defendant was only five years old and that he had been an alcoholic and "never honored his responsibilities." TT, 03/14/96, p. 64. Defendant

was a loving brother and outgoing child. TT, 03/14/96, pp. 64-5. Eventually, Carole married Jim (James Anzini). TT, 03/14/96, p 65. Jim gambled and would take Defendant's paycheck with empty promises of returning the money. TT, 03/14/96, p. 66. When Defendant was 15 years old, he started getting into trouble, and eventually ended up at Spring Mountain Youth Camp, at the request of Carole and Jim. TT, 03/14/96, pp. 67-8. Carole stated that Defendant had always received nothing by praise in his school reports and employers reports. TT, 03/14/96, pp. 69-70.

Carole spoke of the effect that Jim's cancer and eventual death had on Defendant, and how Defendant appeared to take it hard. TT, 03/14/96, p. 70. Carole stated that during this period of time, things were tense and she spent very little time with Defendant. TT, 03/14/96, pp. 67-70. Then after one particular fight, Defendant ran away and she did not see him again until after he was arrested. TT, 03/14/96, pp. 70-1. Defendant was only 16 years told at the time of the offense. TT, 03/14/96, p. 71. While in prison, Defendant has earned a GED, completed a two year electronics course, obtained a Pell grant for college credits, and taught himself a foreign language. TT, 03/14/96, p. 72.

Finally, the jury heard from Defendant, himself, wherein Defendant expressed remorse for his actions. TT, 03/14/96, pp. 74-7. In light of the testimony presented in mitigation, and the overwhelming evidence presented at trial, which detailed the horrific manner in which Defendant killed the victims, it is difficult to imagine that the jury would have been persuaded by stories from Defendant's grandmother, maternal and paternal aunts and friends. The jurors heard how Defendant planned to rob the victims, how he repeatedly used a stun gun, forced them into a closet, bound and gagged them and then ultimately strangled them to death. They heard how he then systematically cleaned up the crime scene including removing one victim's boots and pants to conceal his own blood. They heard how he told a friend that he had "choked the two bitches to death." The jury learned that on the evening of the murder, Defendant helped himself to one of the victims' car. He told a friend someone "had died" for the car. Defendant went on a shopping spree using a credit card belonging to one of the victims' boyfriend.

Thus, trial counsel was presented with an extremely delicate balancing act. The Nevada Supreme Court has long held that once counsel is appointed, the day-to-day conduct of the defense rests with the attorney, and it is he, not the client, who has the immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop. Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002). It was a sound strategy decision for trial counsel to avoid bombarding the jury with cumulative and redundant testimony and anecdotes about Defendant's happy childhood turn sour because of an abusive step-father and allegedly detached mother, and then further present testimony about how Defendant has been a model prisoner. Such testimony could quite possibly have resulted in offending the jurors by attempting to portray Defendant as a victim himself. As such, Defendant has failed to show his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's errors, there is a reasonable probability that the results would have been different.

Finally, to the extent that Defendant contends that counsel did not present any mitigation evidence at the penalty phase, Defendant's contention is without merit, and wholly belied by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) ("Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record.) During closing argument trial counsel did indeed argue mitigating circumstances including (1) that Defendant had an emotionally disturbed childhood (2) that he got lost in the juvenile system (3) that Defendant is a person who needs help which the prison system could provide and (4) that he has kept a clean record history in prison. The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978), (citing, Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)). Thus, Defendant's contention that defense counsel did

not present any mitigation evidence is without merit.[3]

### C. Claim 4: Defendant Received Effective Assistance of Counsel During Voir Dire.

Defendant alleges that trial counsel was ineffective during voir dire proceedings. "It is well settled that the Sixth and Fourteenth Amendments guarantee a defendant who is on trial for his life the right to an impartial jury." Ross v. Oklahoma, 487 U.S. 81, 86 (1988). To that end, the District Court enjoys broad discretion in ruling on challenges for cause. Blake v. State, 121 Nev. 779, --, 121 P.3d 567, 577 (2005). Additionally, the scope of voir dire rests within the sound discretion of the trial court, whose decision will be given considerable deference on appeal. Johnson v. State, -- Nev. --, 148 P.3d 767, 775 (2006); Summers v. State, 102 Nev. 195, 199, 718 P.2d 676, 679 (1986).

The correct standard for determining when a prospective juror should be excused for cause because of his or her views on the death penalty is whether the juror's ability to perform his or her duties in accordance with the instructions would be substantially impaired because of those views. Weber v. State, 121 Nev. 554, 580, 119 P.3d 107, 125 (2005). When a defendant exercises a peremptory challenge to ultimately excuse a juror whom the trial court declined to excuse for cause, any claim that the jury was partial must focus on the jurors who were ultimately selected. Ross v. Oklahoma, 487 U.S. at 86; see also Weber, 121 Nev. at 580, 119 P.3d at 125. Likewise, when a Defendant claims that the trial court improperly limited his voir dire of a potential juror thus preventing the exercise of a challenge for cause, but uses a peremptory challenge to excuse that juror, the inquiry is the same. Wesley v. State, 112 Nev. 503, 511, 916 P.2d 793, 799 (1996).

In light of the above, Defendant has not alleged or shown that any of the seated jurors was actually biased against him. As such, he has not established that counsel's conduct fell

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[3] Moreover, to the extent Defendant contends appellate counsel was ineffective for failing to raise the same claims on appeal, Defendant has not demonstrated that but for appellate counsel's error, the omitted issue would have had a reasonable probability of success on appeal. See Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir. 1992); Heath, 941 F.2d at 1132.

below an objective standard of reasonableness. Furthermore, he has not established that but for counsel's alleged errors there is a reasonable probability that the outcome would have been different. Thus, Defendant is not entitled to relief.

Defendant contends that the use of the phrase "equal consideration" during voir dire by the district court, the State and defense counsel as well as on the jury questionnaire was erroneous and per se prejudicial. To be qualified to serve as a juror in a capital case a juror has to be able to consider all of the penalties provided by state law. While the Nevada Supreme Court has recently cautioned future courts against the use of the "equal consideration" language because the language is misleading, see Leonard v. State, 117 Nev. 53, 68, 17 P.3d 397 (2001), in this particular case, the "equal consideration" language was used by the district court and the parties in questioning venire persons to identify individuals who would not set aside or subordinate personal views and abide by their oath as a juror to follow the law as instructed by the court.

Notwithstanding Defendant's failure to object to the use of the "equal consideration" language, Defendant has also failed to point to any specific incident where a juror was actually removed for cause on the basis that they were incapable of giving "equal consideration" to all the possible punishments. As such, Defendant's claim should be dismissed.

**D. Claim 5: Defendant Received Effective Assistance of Counsel Throughout the Guilty Phase.**

Defendant raises several claims in alleging that trial counsel was ineffective throughout the proceedings. However, as the following claims were previously raised in Defendant's prior post-conviction habeas petition, the claims are successive pursuant to NRS 34.810.

The following claims of ineffective assistance of counsel are successive: (1) failure to adequately confer with Defendant regarding pre-trial strategic and failure to adequately

investigate,[4] see Petitioner's Writ, filed 08/08/02, pp. 38-45, (2) failure to object and move to exclude the testimony of Thomas Sims regarding Defendant's statement that he must be cured because he "could have fucked both of them, but didn't ...", pp. 37-8, 47-9 (3) failure to object to the admission of an alleged prison photo of Defendant,[5] pp. 45-7, (4) failure to object and properly cross-examine the coroner, Dr. Green, regarding the stun gun, pp. 52-5, (5) calling prosecutor John Lukens to the stand, p. 55, (6) opening the door to evidence of threats made on witness David Levine's life, pp. 55-8, (7) failing to investigate and cross-examine Diedre D'Amore, Diane Hunt, and Terry Perrilo, pp 60-1, and (8) failure to present evidence of prosecutor William Hehn's statement that there was not enough information to convict Defendant, p. 62.

Defendant seems determined to re-litigate several of the issues in his instant petition, which have been previously raised and adjudicated by the Court in Defendant's prior post-conviction habeas appeal. However, as these claims were already raised and decided on the merits by the district court, the claims are successive pursuant to NRS 34.810(b). Moreover, as Defendant has failed to demonstrate good cause and actual prejudice, the State submits that Defendant's claim of ineffective counsel is barred from further consideration.

Finally, inasmuch as Defendant alleges for the first time that trial counsel was ineffective for allowing the State to refer to the victims as "girls" and for failing to file a motion in limine to preclude the State from referring to the victims as "girls," this claim

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[4] Specifically, Defendant's petition alleges that investigator Ed Wimberly failed to do anything, and that investigator Ralph Dyment had insufficient time to investigate and interview the following: (1) obtain all prison and jail records, (2) Cindy Garcia, (3) Brenda Brummett, (4) Deirdre D'Amore, (5) Mark Karigianes, (6) Jimmy Yates, (7) Martin Paris, (8) Steve Clark, (9) Valentino Franco, (10), Pat Trowbridge, (11) David Ray Bean, (12) Terry Conger, (13) Debbie Kingery, (14) Kim and Paula Crespin, (15) Carole Campanelli, (16) Mike Colby, (17) Christine Ann Gibbons, (18) Ricky Price, and (19) Christopher Lloyd. Petitioner's Writ, filed 08/08/02, pp. 38-43.

[5] In addition to being successive, this claim is also barred by the law of the case doctrine, as discussed, supra. Hogan v. Warden, 109 Nev. 952, 958, 860 P.2d 710, 715 (1993) (stating that "[t]he doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.")

Moreover, as noted by the State during the August 20, 2004, evidentiary hearing, see RT, 08/20/04, pp. 46-7, and by the Nevada Supreme Court in Rippo, ___ Nev. at ___, 146 P.3d at 286, Defendant has failed to support his argument with any citation to the record. Thus, the State can only speculate whether the picture attached as Petitioner's Exhibit #323 is the picture in question.

must be dismissed. Not only has Defendant failed to support his allegation with any citation to the record, Defendant should have raised this claim earlier but did not. Since Defendant has offered no explanation why this unsubstantiated claim was not raised earlier, this claim is barred from consideration.

## VI. CLAIMS 6, 7, 11, 16, 17, and 19: JURY INSTRUCTION CLAIMS.

Defendant raises several errors in the jury instructions. Specifically, Defendant complains that: (1) the aiding and abetting instruction fails to properly instruct the jury on the requisite *mens rea* for accomplice liability, (2) fails to define "deliberation", (3) fails to instruct the jury that the aggravating circumstances must be proven beyond a reasonable doubt, and (4) the reasonable doubt instructions minimized the State's burden of proof. Defendant also contends that the district court erred in denying Defendant's request to give a precautionary instruction on the credibility of witness Diana Hunt. However, as Defendant failed to object to any of the jury instructions, Defendant failed to preserve this issue for appellate review. Accordingly, it is the State's position that Defendant's jury instruction claims are barred from consideration on appeal. "When a defendant's counsel has not only failed at trial to object to jury instructions, but has agreed to them, the failure to object or to request special instructions precludes appellate consideration." Bonacci v. State, 96 Nev. 894, 899, 620 P.2d 1244, 1247 (1980); see also McKenna v. State, 114 Nev. 1044, 1052, 968 P.2d 739, 745 (1998) (failure to object to a jury instruction at trial bars appellate review unless the error is patently prejudicial.)

The Nevada Supreme Court will review the matter, *sua sponte*, only if there is plain error or constitutional error. Anderson v. State, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005), (quoting Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003)). Plain error has been defined as that which is "'so unmistakable that it is apparent from a casual inspection of the record." Nelson v. State, ___ Nev. ___, 170 P.3d 517, 524 (2007), (quoting Garner v. State, 116 Nev. 770, 783, 6 P.3d 1013, 1022 (2000), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002); see also Patterson v. State, 111 Nev. 1525, 907 P.2d 984, 987 (1995). "[T]he burden is on the defendant to show actual prejudice or a

miscarriage of justice." Rowland v. State, 118 Nev. 31, 38, 39 P.3d 114, 119 (2002), (quoting Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054 (1993), vacated on other grounds, 516 U.S. 1937, 116 S.Ct. 691 (1996)); see also McConnell v. State, 120 Nev. 1043, 1058, 101 P.3d 606, 617 (2004), (citing Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001) (where defendant fails to object, defendant must show that the error was plain and affected his substantial rights, i.e., was prejudicial).

"[A]n improper instruction rarely justifies a finding of plain error." United States v. Still, 857 F.2d 671 (9th Cir. 1988), (quoting United States v. Glickman, 604 F.2d 625, 632 (9th Cir. 1979)). "It is the rare case in which an improper instruction will justify reversal of a criminal conviction when no objection has been made in the trial court." Henderson v. Kibbe, 431 U.S. 145, 154, 97 S.Ct. 1730, 1736 (1977). "The question ... is "whether the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process," not merely whether "the instruction is undesirable, erroneous, or even 'universally condemned.'" Id., 431 U.S. at 154, 97 S.Ct. at 1736-37, (quoting Cupp v. Naughten, 414 U.S. 141, 146-7, 94 S.Ct. 396, 400 (1973)).

Here, defense counsel failed to preserve the issue of jury instructions for appeal. During the settling of jury instructions, the Court gave each party ample opportunity to object to the proposed jury instructions, or request additional jury instructions. TT, 03/05/96, pp. 4-8. Defense counsel requested an additional jury instruction but did not object to any of the proposed jury instructions. TT, 03/05/96, pp. 5-7. Consequently, Defendant's failure to object constitutes a waiver and Defendant may not raise this issue on appeal unless he can establish that the alleged error was both plain and affected his substantial rights. McConnell, 120 Nev. at 1058, 101 P.3d at 617.

As fully set forth below, infra, Defendant has utterly failed to meet his burden of establishing that the alleged error was of such magnitude as to require automatic reversal of his convictions and sentences.

**A. Claim 6: Aiding And Abetting Jury Instructions.**

In this case, Defendant was neither charged nor convicted under the theory of

accomplice liability. Defendant's was indicted with Counts 1 and 2 – Murder (Felony - NRS 200.010, 200.030), Count 3 – Robbery (Felony - NRS 200.380), and Count 4 – Unauthorized Signing of Credit Card Transaction Document (Felony - NRS 205.750). Accordingly, Jury Instruction #4 informed the jury:

> Count I - MURDER
>
> Defendant MICHAEL DAMON RIPPO did, on or between February 18, 1992, and February 20, 1992, then and there willfully, feloniously, without authority of law, with malice aforethought and premeditation and/or during the course of committing Robbery and/or Kidnapping and/or Burglary, kill LAURI M. JACOBSON, a human being, by strangulation, *Defendant being aided or abetted by DIANA LEE HUNT in the perpetration of said crime* by Defendant and/or DIANA LEE HUNT entering 3890 South Cambridge, Apt. 317, Las Vegas, Clark County, Nevada, by Defendant deciding to rob LAURI M. JACOBSON and/or DENISE M. LIZZI, by Defendant privately discussing how the crime was to be committed with DIANA LEE HUNT, by Defendant surreptitiously arranging to have another person make a diversionary telephone call to LAURI M. JACOBSON so that she might more easily be overpowered, by DIANA LEE HUNT striking LAURI M. JACOBSON on the head with a bottle, by Defendant using a stun gun to subdue DENISE M. LIZZI, by Defendant binding the hands and feet and tying gags around the mouths of both female victims, by Defendant demanding to know the location of drugs, money, and other valuables; Defendant being assisted by DIANA LEE HUNT in forcefully removing property from the person or presence of the two victims, Defendant and/or DIANA LEE HUNT killing LAURI M. JACOBSON and/or DENISE M. LIZZI, Defendant wiping off surfaces touched inside the apartment and Defendant and DIANA LEE HUNT then fleeing the scene of the crime with a stolen 1988 Nissan automobile, a stole Citibank Gold Visa Credit Card, and other stolen property.
>
> Count II - MURDER
>
> Defendant MICHAEL DAMON RIPPO did, on or between February 18, 1992, and February 20, 1992, then and there willfully, feloniously, without authority of law, with malice aforethought and premeditation and/or during the course of committing Robbery and/or Kidnapping and/or Burglary, kill DENISE M. LIZZI, a human being, by strangulation, *Defendant being aided or abetted by DIANA LEE HUNT in the perpetration of said crime* by Defendant and/or DIANA LEE HUNT entering 3890 South Cambridge, Apt. 317, Las Vegas, Clark County, Nevada, by Defendant deciding to rob LAURI M. JACOBSON and/or DENISE M. LIZZI, by Defendant privately discussing how the crime was to be committed with DIANA LEE HUNT, by Defendant surreptitiously arranging to have another person make a diversionary telephone call to LAURI M. JACOBSON so that she might more easily be overpowered, by DIANA LEE HUNT striking LAURI M. JACOBSON on the head with a bottle, by Defendant using a stun gun to subdue DENISE M. LIZZI, by Defendant binding the hands and feet and tying gags around the mouths of both female victims, by Defendant demanding to know the location of drugs, money, and other valuables; Defendant being assisted by DIANA LEE HUNT in forcefully removing property from the person or presence of the two victims, Defendant and/or DIANA LEE HUNT killing LAURI M. JACOBSON and/or DENISE

> M. LIZZI, Defendant wiping off surfaces touched inside the apartment and Defendant and DIANA LEE HUNT then fleeing the scene of the crime with a stolen 1988 Nissan automobile, a stole Citibank Gold Visa Credit Card, and other stolen property.

Petitioner's Ex. #219 (Jury Instruction #4) (emphasis added). After a fourteen day jury trial, the jury found Defendant guilty of all four counts – two counts of First Degree Murder, one counts each of Robbery and Unauthorized Use of a Credit Card. (AA, Volume II, page 000412).

Although Defendant alleges that there was question as to whether Diana Hunt killed the victims, she was not tried as a co-conspirator (or an accomplice) to the murders. At the time of trial, Hunt pled guilty to robbery. This fact was made known to the jury. Accordingly, there is absolutely no evidence that Defendant was prejudiced in anyway by the jury instructions regarding accomplice liability.

**B. Claim 7: Failure To Define Deliberation.**

In Claim 7, Defendant once again takes issue with the exact same jury instruction he complained about on direct appeal and in his first post-conviction habeas petition.[6] See Petitioner's Ex. #138, pp. 39-40 (Defendant's Appeal From Denial Of Petition For Writ Of Habeas Corpus, filed 05/19/05); see also Petitioner's Writ, filed 08/08/02, pp. 83-5.

On direct appeal, Defendant's argument was cloaked under the guise of ineffective assistance of counsel. In the instant petition, Defendant alleges that Jury Instruction #9 deprived him of due process and equal protection because: (1) the jury instruction failed to define "deliberation," and (2) the jury instruction "virtually insures" unequal treatment of

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[6] Jury Instruction #9 reads:

> Premeditation is a design, a determination to kill, distinctly formed in the mind at any moment before or at the time of the killing.
>
> Premeditation need not be for a day, an hour or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the premeditation is followed by the act constituting the killing, it is willful, deliberate and premeditated murder.

Petitioner's Ex. #219 (Jury Instruction #9).

similarly situated defendants. Defendant further claims that the jury instruction failed to distinguish between first and second degree murder and thereby violates the narrowing requirement necessary for a sentence of death. However, in Rippo v. State, 122 Nev. ___, 146 P.3d 279, 286 (2006), the Nevada Supreme Court addressed Defendant's argument and found that defense counsel's failure to object to the jury instructions at trial precludes further consideration of the issue.

> This claim was not preserved for review by this court on direct appeal, so counsel would have had to show that any error was plain and affected Rippo's substantial rights. Rippo contends his counsel should have challenged "the Kazalyn instruction" that this court abandoned in 2000 in Byford v. State. But Byford is not retroactive, and use of the Kazalyn instruction in a case predating Byford is no ground for relief. Rippo has failed to demonstrate any deficient performance by counsel. The district court did not err by denying this claim.

Id. This ruling is now the law of the case, and bars further consideration of the issue. Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (Claims that have already been litigated and settled on appeal are barred based on the law of the case doctrine.) Any error in failing to more fully define deliberation is harmless beyond a reasonable doubt because of the overwhelming evidence of a willful, premeditated and deliberate as demonstrated by the fact that there were two victims who were both strangled and tortured over a prolonged period of time. Therefore, in addition to being time barred and successive, this ground is barred by the law of the case doctrine.

**C. Claim 11: No Cautionary Instruction Given Regarding Testimony of Diana Hunt.**

Defendant alleges that the trial court erred in denying defense counsel's request for a jury instruction on witnesses who receive benefits from the State. However, as Defendant failed to raise this claim in an earlier proceeding, it is the State's position that Defendant's claim should be dismissed as time barred and successive pursuant to NRS 34.726 and NRS 34.810, respectively. Moreover, as Defendant has failed to demonstrate good cause or actual prejudice as a result of the allegedly error, Defendant's claim must be dismissed. Phelps v. Director of Prisons, 104 Nev. 656, 659, 764 P.2d 1305 (1988) (once the State raises

procedural grounds for dismissal, the burden then falls on the defendant to demonstrate both good cause for his failure to present his claim in earlier proceedings and actual prejudice).

Nonetheless, should this Court find that Defendant demonstrated good cause sufficient to overcome these procedural bars, the State further submits that Defendant's claim is without merit. Cautionary instructions dealing with the credibility of a witness is required only where the "testimony is uncorroborated and favored when the testimony is corroborated in critical respects." Buckley v. State, 95 Nev. 602, 604, 600 P.2d 227, 228 (1979), (citing Crowe v. State, 84 Nev. 358, 367, 441 P.2d 90, 95-6 (1968) (finding that the district court did not err in refusing to give the cautionary instruction relating to witnesses credibility where the testimony was substantially corroborated by other evidence), see also Browning v. State, 120 Nev. 347, 367, 91 P.3d 39, 53 (2004) (finding that the district court did not err in refusing to give the cautionary instruction on the witnesses' credibility where there was substantial evidence corroborating the testimony and a general jury instruction on the weight and credibility of a witnesses testimony and another on the credibility of a witness with felony conviction); Cf. James v. State, 105 Nev. 873, 875, 784 P.2d 965, 967 (1989) (holding district court erred in refusing to give cautionary instruction regarding witnesses credibility despite other corroborating evidence. However, the court find the error was harmless in light of the overwhelming evidence of guilt.)

Here, the jury was informed of the favorable treatment Hunt received in exchange for her testimony and that her plea bargain in the instant case was the result of her testimony. The jury was also well-aware of Hunt's involvement in the crimes. Moreover, Hunt's testimony was substantially corroborated by the other evidence presented at trial. Finally, the jury was given a general jury instruction on the weight and credibility of a witness. Thus, the district court did not error in refusing to give the cautionary instruction.

However, even if this Court finds that the district court erred in failing to give a limiting or cautionary instruction on Hunt's credibility, the error was harmless in light of the overwhelming evidence against Defendant. (See below for full discussion.)

### D. Claim 16: Instruction That Weighing Must Be Found Beyond A Reasonable Doubt.

Defendant contends that the jury was never instructed that it must find that the aggravating circumstance must be proven beyond a reasonable doubt. Notwithstanding that Defendant is precluded from raising this instant claim because defense counsel failed to object to the jury instruction at trial, Defendant's claim is also time barred pursuant to NRS 34.726. Defendant could easily have presented this claim earlier but failed to do so. Moreover, as Defendant has not demonstrated good cause or actual prejudice, the issue is precluded from review. Therefore, this issue should be dismissed as time barred.

Notwithstanding that Defendant's claim is procedurally barred, Defendant's contention is also belied by the record. Jury Instruction #7 instructs, in relevant part:

> The jury may impose a sentence of death only if (1) *the jurors unanimously find at least one aggravating circumstance has been established beyond a reasonable doubt* and (2) the jurors unanimously find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.
>
> Otherwise, the punishment imposed shall be imprisonment in the State Prison for life with or without the possibility of parole.

Petitioner's Ex. Vol. 17, #327 (Jury Instruction #7) (emphasis added). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Furthermore, the Nevada Supreme Court has never held that the reasonable doubt standard applies to the weighing process. As the instant claim is wholly belied by the record, Defendant's claim is without merit, and should be dismissed.

### E. Claim 17: Erroneous Jury Instruction Suggesting That Mitigators Had To Be Found Unanimously, and Anti-Sympathy Instruction.

Defendant contends that the total effect of the anti-sympathy instruction and the incorrect jury instruction which suggested that the jury must unanimously find mitigating circumstances outweighed the aggravating circumstances entitles him to an acquittal. However, as defense counsel never raised any objections at trial to either jury instructions,

defense counsel failed to preserve the issue for appeal and thus, precludes the right to assign error on appeal. Sterling v. State, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992). Thus, it is the State's position that Defendant's claim should be dismissed.

Moreover, as the issue of the antisympathy instruction and the erroneous mitigating circumstance instructions were addressed on the merits by the Nevada Supreme Court in Defendant's direct appeal, the Court's decision is now the law of the case, and the issue is barred from further consideration. Byford v. State, 116 Nev. 215, 232, 994 P.2d 700, 712 (2000) ("The law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same.") During his first direct appeal, Defendant argued that the antisympathy instruction was unconstitutional. The Nevada Supreme Court disagreed and held:

> A district court may instruct the jury not to consider sympathy during a capital penalty hearing, as long as the court also instructs the jury to consider mitigating facts. Here, the district court instructed the jury to consider mitigating factors in deciding the appropriate penalty. Therefore, [Defendant's] argument lacks merit.

Rippo, 113 Nev. at 1262, 946 P.2d at 1032 (internal citations omitted). Then in Defendant's second direct appeal, the Nevada Supreme Court raised the issue of the erroneous mitigating circumstance jury instruction in striking three of the six aggravating circumstances. The Court noted that the last sentence of Jury Instruction #7, see Petitioner's Ex. #327 (Jury Instruction #7), "included an incorrect application regarding the consideration of mitigating circumstances." Rippo, 122 Nev. at ___, 146 P.3d at 285. Nonetheless, the Court concluded:

> [D]espite the inaccurate wording at the end of the instruction, the instruction clearly and properly stated that each individual juror could find mitigating circumstances without the agreement of any other jurors and further provided that the jurors had to be unanimous in finding that the aggravating circumstances outweighed the mitigating circumstances. It is extremely unlikely that jurors were misled to believe that they could not give effect to a mitigating circumstance without the unanimous agreement of the other jurors. We conclude that the error was harmless beyond a reasonable doubt.

Id. Of particular import is the Court's footnote 18, in which the Court observed:

> *The latter statement contains a slight mistake that actually favored Rippo.* Aggravating circumstances need not outweigh mitigating circumstances to impose a death sentence; rather, NRS 200.030(4)(a) provides in part that a defendant is eligible for death if "any mitigating circumstance or circumstances which are found do not outweigh the aggravating circumstance or circumstances.

Id. (emphasis added). Therefore, not only is Defendant's claim precluded by his failure to preserve the issue, the claim is further barred from review under the doctrine of the law of the case.

**F. Claim 19: Reasonable Doubt Instruction.**

Defendant alleges that the reasonable doubt instruction is unconstitutional because it lessened the State's burden of proof. See Petitioner's Ex. #219 (Jury Instruction #28). However, it is the State's position that Defendant's claim cannot stand. First, Defendant did not object to the reasonable doubt instruction at trial, and as such, Defendant's failed to properly preserve the issue for appeal. Thus, Defendant's failure to object at trial precludes review of the issue on appeal. McCullough v. State, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983) (holding that the failure to object to alleged errors at trial generally precludes review of an issue on appeal.)

Second, Defendant raised this identical claim in his first post-conviction habeas petition as part of his ineffective assistance of counsel argument. See Petitioner's Writ, filed 08/08/02, p. 52. In his first petition, Defendant alleged trial counsel was ineffective for failing to object to the reasonable doubt instruction because that jury instruction "imposes an impermissibly high standard for the quantum of doubt required for acquittal." Id., at 52. Stated another way, Defendant argued that the reasonable doubt instruction lessened the State's burden of proof. Thus, the instant claim is successive pursuant to NRS 34.810(1)(b)(2) and should be dismissed absent good cause and actual prejudice.

Third, as Defendant has not demonstrated good cause or actual prejudice which would entitle him to reconsideration of his claim, Defendant's claim should be dismissed. Evans v. State, 117 Nev. 609, 621, 28 P.3d 498, 507 (2001) (a successive claim must be dismissed "unless the court finds both cause for failing to present the claims earlier or for raising them against and actual prejudice to the petitioner.") Defendant claims, without any

legal authority or citation to the record, that he is not required to show prejudice because the reasonable doubt instruction is unconstitutional and thus, *per se* prejudicial. "Contentions unsupported by specific argument or authority should be summarily rejected on appeal." Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002), (citing Mazzan v. Warden, 116 Nev. 48, 75, 993 P.2d 25, 42 (2000); see also Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (stating that the responsibility is on the appellant to present relevant authority and cogent argument, and that "issues not so presented need not be addressed by this court"). "[I]t is not enough to identify potential issues and expect this court to flesh them out." Freeman v. Town of Lusk, 717 P.2d 331, 332 (Wyo. 1986). Since Defendant's constitutional challenge to the reasonable doubt instruction is wholly unsupported by any citation to legal authority, the claim should be summarily dismissed.

However, should this Court, in its discretion, consider the merits of Defendant's claim, Defendant's claim is without merit as the Nevada Supreme Court has consistently upheld the identical jury instruction and ruled that the jury instruction on reasonable doubt used in the instant case does not minimize the State's burden of proof. See e.g., Leonard v. State, 114 Nev. 1196, 969 P.2d 288 (1999); Noonan v. State, 115 Nev. 184, 980 P.2d 637 (1999); Chambers v. State, 113 Nev. 974, 944 P.2d 805 (1997); Evans v. State, 112 Nev. 1172, 926 P.2d 265 (1996); Quillen v. State, 112 Nev. 1369, 929 P.2d 893 (1996); Bollinger v. State, 111 Nev. 1110, 1115, 901 P.2d 671 (1995); Lord v. State, 107 Nev. 28, 806 P.2d 548 (1991), (citing Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985)); Beets v. State, 107 Nev. 957, 963, 821 P.2d 1044 (1991).

In Leonard v. State, 114 Nev. 1196, 1209, 969 P.2d 288, 296 (1999), the Nevada Supreme Court upheld the constitutionality of the exact reasonable doubt instruction that Defendant complains of in the instant case. The Court held that the instruction was proper because it mirrored the language in NRS 175.211(1) and was mandated by NRS 175.211(2). Id. The Court concluded, "it is not a denial of due process where, as here, the jury was also instructed on the presumption of innocence and the state's burden of proof." Id., (citing

Bollinger, 111 Nev. at 1115, 901 P.2d at 674; see also Lord, 107 Nev. at 38-40, 806 P.2d at 554-556).

In the instant case, the jury instruction relating to reasonable doubt mirrors the exact language of NRS 175.211(1), which states:

> A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

Id.

Moreover, as the instant jury instruction was accompanied by an additional instruction regarding the State's burden of proof and the presumption of innocence, the jury instruction was proper. See Bollinger, 111 Nev. at 1114, 901 P.2d at 674 (holding that there was no reasonable likelihood that a jury applied the instruction defining reasonable doubt in an unconstitutional manner where the instruction was accompanied by other instructions regarding the State's burden of proof and the presumption of the defendant's innocence.) The pertinent instruction reads:

> The defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that a defendant is a person who committed the offense.

Petitioner's Ex. #219 (Jury Instruction #28). Nevada's reasonable doubt instruction complies with this mandate, and Defendant has not cited to any legal authority which holds otherwise. As such, there is no reasonable probability that the jury believed the instruction allowed the conviction of Defendant based on a lesser quantum of evidence than is required by the Constitution. Accordingly, Defendant's claim should be denied.

**G. Harmless Error.**

In settling jury instructions, "[t]he district court has broad discretion and this court reviews the district court's decision for an abuse of that discretion or judicial error." Crawford v. State, 121 Nev. 744, 121 P.3d 582 (2005). Judicial error with respect to jury

instructions is subject to harmless error analysis and a conviction will not be reversed if the error was harmless beyond a reasonable doubt. Id., 121 Nev. at 744, 121 P.3d at 586. An error is harmless when it is "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." Wegner v. State, 116 Nev. 1149, 1155, 14 P.3d 25, 30 (2000), overruled on other grounds by Rosas v. State, 147 P.3d 1101 (2006). The Court has held on numerous occasions that errors may be harmless when the "evidence of guilt is overwhelming." See, e.g., McIntosh v. State, 113 Nev. 224, 227, 932 P.2d 1072, 1074 (1997); Kelly v. State, 108 Nev. 545, 552, 837 P.2d 416, 420 (1992). Also, erroneous jury instructions are reviewable according to a harmless error analysis. Wegner, 116 Nev. at 1155, 14 P.3d at 30, (citing Neder v. United States, 527 U.S. 1, 13-15, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999)); Collman v. State, 116 Nev. 687, 720, 7 P.3d 426, 447 (2000).

> Generally, the defense has the right to have the jury instructed on its theory of the case as disclosed by the evidence, no matter how weak or incredible that evidence may be. Further, jury instructions should be clear and unambiguous. The district court may, however, refuse a jury instruction on the defendant's theory of the case that is substantially covered by other instructions. In addition, a district court must not instruct a jury on theories that misstate the applicable law.

Vallery v. State, 118 Nev. 357, 46 P.3d 66, 76-77 (2002).

In the present case, the Nevada Supreme Court held that the evidence presented at trial overwhelmingly proved Defendant's guilt. Rippo, 113 Nev. at 1254, 946 P.2d at 1026. Thus, any error caused by a defective jury instruction was harmless.

## VI. CLAIM 8: THE DISTRICT COURT DID NOT ERR IN FAILING TO GRANT DEFENDANT'S REQUEST FOR DISCOVERY RELATED TO DIANA HUNT'S MEDICAL HISTORY AND ALLEGED WIRETAP DOCUMENTS.

Defendant alleges that the trial court abused its discretion by denying Defendant's request for a copy of his prison records, failing to provide Defendant with Diana Hunt's medical, psychiatric and prison records, and failing to provide Defendant with copies of alleged FBI wiretaps between Defendant and other individuals including Thomas Sims.[7] Defendant further alleges that trial counsel was ineffective for failing to fully litigate these

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[7] The State integrates it argument in Section III, supra, to the instant claim.

issues, and that appellate counsel was ineffective for failing to raise these issues on appeal. However, as all of these issues were capable of being raised on direct appeal or in his prior post-conviction petition writ, these claims are procedurally barred pursuant to NRS 34.810. In addition, the claims are time barred under NRS 34.726. Furthermore, as Defendant has offered no reason for his failure to raise these claims earlier, Defendant has failed to establish good cause and prejudice sufficient to overcome either procedural bar. Accordingly, these claims are barred from appellate review.

## VII. CLAIM 10: DEFENDANT IS NOT ENTITLED TO APPELLATE REVIEW OF HIS CLAIMS THAT THE DISTRICT COURT AND THE STATE MADE IMPROPER COMMENTS DURING VOIR DIRE.

Defendant contends that the trial court committed various errors in the course of voir dire by making several improper comments and that such errors deprived him of his right to a fair trial. In addition, Defendant alleges that the State also made several improper comments during voir dire and that the cumulative effect of the statements by the district court and the State rendered his trial unfair. However, as Defendant never objected to the comments by either the district court or the State, Defendant failed to preserve the issue for appeal, and is therefore not entitled to appellate review of this issue. Sterling v. State, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992). While it is true that narrow exceptions exist to the objection rule, the Court will only address plain or constitutional errors *sua sponte*. McCullough v. State, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983), distinguished on other grounds by Randolph v. State, 117 Nev. 970, 36 P.3d 424 (2001). However, claims of judicial misconduct generally fall within the category of error which must normally be preserved for appellate. Ginnis v. Mapes Hotel Corp., 86 Nev. 408, 417, 470 P.2d 135, 141 (1970) (while expressly disapproving of the judicial misconduct, the Court refused to rule on its prejudicial effect because the error had not been preserved for appellate review.)

As defense counsel failed to preserve the issue for appellate review, the issue may only be reviewed under the plain error doctrine. McGuire v. State, 100 Nev. 153, 677 P.2d 1060 (1984) ("Plain error is error which either (1) had a prejudicial impact on the verdict when viewed in context of the trial as a whole, or (2) seriously affects the integrity or public

Mr. Rippo said he has been doing Zen Buddhism for four to five years. He talked about his stream of consciousness as being upsetting to him and he has learned to try to clear his mind.

**MEDICAL/PSYCHIATRIC HISTORY:**

Mr. Rippo said that he remembers his mother taking him to a psychiatrist in Long Island. Mr. Rippo believed that the psychiatrist thought that he had Attention-Deficit/Hyperactivity Disorder. He said that one doctor he saw had a female nurse (unclear as to whether or not the nurse was with the psychiatrist) who was inappropriate with his private parts, "pulling his penis." He said, "It was really weird."

Mr. Rippo related that he had to go back for surgery to get a circumcision fixed. He said that when he got an erection as a child, he would cry. He said he remembers being in the hospital and not being allowed to have ice cream, like the children who had had their tonsils removed. He said this occurred approximately at age two, or younger. This may have been a significant source of early sexual trauma for Mr. Rippo.

Mr. Rippo said that he had shared a lot of needles in his time and had his share of prison sex. He is positive for Hepatitis C.

Mr. Rippo stated that Mr. Anzini "used to constantly yell at me for making a clearing noise in my throat, and even to this day in my room I'm anxious about it," when coughing in his solitary cell.

Mr. Rippo denied headaches, dizziness, tinnitus, vertigo, problems with sense of taste or smell, blurred vision, or double vision. However, Mr. Rippo said that he has had a number of concussions and that he "whacked" his head a lot. Mr. Rippo said that he was knocked unconscious by his sensei because he was acting "assholeish." He said he had a concussion with double vision after being knocked out by a dojo. Mr. Rippo said that he has an old injury to his left shoulder. He said it only hurts if he goes through a full range of motion with his arm. Mr. Rippo said he has a groin injury from doing split moves in yoga practice.

In regards to seizures, Mr. Rippo said he is not sure as to whether or not he has had any type of seizure, such as a partial seizure, but denies blackouts.

In regards to sleep, Mr. Rippo said that he typically sleeps about five hours a day.

Mr. Rippo said that his appetite is good but he thinks he eats too much. Mr. Rippo said that he has had bouts of Irritable Bowel-like symptoms in the past, about every nine months or so. He said that he has occasional cramps.

In regards to cognitive abilities, Mr. Rippo overall presented as quite tangential in his monologue, and very intense at times. Mr. Rippo was aware that he does become tangential. He said that he thinks his short-term memory is "bad." In regards to

attention/concentration, Mr. Rippo said that once he picks up a book he cannot put it down. He said that Mr. Anzini had an obsession with books, which was somewhat passed on to him. Mr. Rippo said that he thinks his reading comprehension is somewhat poor. He said he has some difficulty with word-finding at times. Mr. Rippo said he believes he tends to be well-organized.

Mr. Rippo indicated that when doing Zen, "bad memories come up." He said he had many memories that came up of being beaten, such as the time he was knocked out by a military fighter in a bar. He said he was knocked down and dazed from this incident. He also said he has been rendered unconscious by choke holds.

Mr. Rippo talked about his sex drive and indicated that he has pride in the length and girth of his penis. Mr. Rippo denied nightmares, but said he has some strange dreams at times. For example, he said he dreamed an inmate shot him three times in the back, that he was dying, and that he went to another friend who could only help him by turning him into a vampire. Mr. Rippo indicated that he becomes irritable at times, and "little things set him off." He said he becomes very irritable if he cannot solve a problem and wants to smash the book. He said that he had a problem with poor temper control in the late 1980s when he was free on parole, and would get into a lot of bar fights. He said he has learned to control his temper in jail, using Zen and other tecniques.

Mr. Rippo indicated that he wrote a "weird book" in Hyde Park, Nevada in junior high school. He said there was strange content in this book, in which an actor killed a baby sister. In this book, he said he kidnapped a woman and squeezed her breasts.

Mr. Rippo and I did discuss "Little Man Syndrome," and it is clear that he has some insecurities about his height.

Mr. Rippo indicated that he saw a psychiatrist when he was 10-years-old, and also saw a counselor when on parole.

**SUBSTANCE HISTORY:**

Mr. Rippo said he never liked alcohol but would occasionally drink Jack Daniels with Coke. He said he never used cigarettes. He said he does not like PCP or heroin. Mr. Rippo said he used LSD "a lot" in prison, when incarcerated for the prior offense. He said that when released on parole, he developed a habit of using methamphetamine daily and/or selling it. He said he became "very focused" on methamphetamines and would, for example, work on a car for 17 hours without stopping. He said at first he used methamphetamine on the weekends, but by the end of 1991 was using it all the time and not eating. He said he did have episodes of feeling "itchy and antsy" on methamphetamine. Mr. Rippo said that towards the end of 1991 he ran out of connections for buying the drug and then needed to commit crimes to get more drugs. He said that at the time of the homicides for which he is currently incarcerated, he was high on methamphetamine on that day. He said he has used Xanax, when "coming off of speed."

## EDUCATIONAL/VOCATIONAL HISTORY:

Mr. Rippo stated that his last grade completed with ninth grade, but he actually made it to the eleventh grade. He said he went to tenth grade at vocational/technical school and then went to Spring Mountain School. It is therefore likely that he completed the tenth grade prior to being passed to the eleventh grade, at the Youth Camp. He received his G.E.D. at the Nevada State Correctional Center, to his report.

He said that for the first year he was out of prison at age 24 he was drug-free and working in construction. He said he was a hod tender working on Cheyenne High School in Las Vegas. He would put the rebar in and stack blocks on scaffolding while working for a cement/masonry company. He said that he had studied martial arts and taught martial arts. He said he learned martial arts when he first was in prison when he was 15. He said that in prison Steve Clark became his sensei. He said Mr. Clark was a 6'2" black man. He said that Steve Clark trained him in three different prisons.

## CRIMINAL HISTORY:

Mr. Rippo reported that he has been locked up three times in his life since the age of 15. He said he went to juvenile hall for burglaries in 1981. In 1980-1981 he went to Spring Mountain Youth Camp. His mother did not want him to come home, to his report. He said he was only there for a few months and then ran away again. He said that when he "would come home late...[they] gave him a hard time." He said he was on probation from Spring Mountain Youth Camp and in that two-month period attacked Laura Ann Martin on 1/16/82. Mr. Rippo said she was beaten with a clothes hanger around her neck.

Mr. Rippo said that he has never been intoxicated to the point of blackouts. He said, "I remember my actions even when drunk."

Mr. Rippo said that he was freed from jail at 24 years old on 10/19/89. He said that he did some construction jobs after his release from prison at that point.

Mr. Rippo stated that in the sexual assault crime he went to an apartment to go to sleep and found a woman sleeping in bed.

## BEHAVIORAL OBSERVATIONS, MENTAL STATUS AND MEASURES OF NEUROPSYCHOLOGICAL EFFORT:

Beck Inventories

| Test Type | Raw Score |
|---|---|
| Beck Depression Inventory-II | 7 |
| Beck Anxiety Inventory | 2 |
| Beck Hopelessness Scale | 8 |

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Test of Memory Malingering

| Trial | Score | Cutoff |
|---|---|---|
| **Trial 1** | 50 | |
| **Trial 2** | 50 | <45 |
| **Retention Trial** | 50 | <45 |

Mr. Rippo was fully cooperative with the evaluation, and was clearly concerned about giving his best effort. He did show some frustration with himself at times during the testing. During the interview, Mr. Rippo was at times very tangential, and intense. Speech was of normal rate, without notable dysarthria. Suicidal ideation was denied. Homicidal ideation was denied. Hallucinations and delusions were denied.

On the Beck Inventories, which are face valid, self-report measures of, depression, anxiety, and optimism/pessimism, Mr. Rippo was in the moderate range for depressive symptoms, within normal limits for symptoms of anxiety, and in the mild range for symptoms of pessimism. He endorsed some feelings of guilt and self-criticism. He denied agitation, sleeping problems, current irritability, or fatigue. He said he has some concentration difficulty and more difficulty in making decisions than in the past. He said has difficulty relaxing and some abdominal discomfort at times.

Mr. Rippo was fully-oriented to person, place, and time. He knew the current and past Presidents.

The Test of Memory Malingering was administered to assess Mr. Rippo's overall effort on the neuropsychological test battery. Mr. Rippo's score of 50/50 on all three trials of this test clearly indicates that he was giving full effort on this and on the rest of the neuropsychological test battery. The Test of Memory Malingering is consistent with my behavioral observations of good effort. Overall, Mr. Rippo's current psychological test findings are judged to yield a reliable and valid measure of his current neurobehavioral functioning.

## NEUROPSYCHOLOGICAL TEST FINDINGS:

( ) = standard deviation units from the mean in a (+) positive or (-) negative direction
SS = standard score (mean of 100, standard deviation of 15)
ss = scaled score (mean of 10, standard deviation of 3)
wnl = within normal limits
T = T-score (mean of 50, standard deviation of 10)
" = Seconds
PR = Percentile Rank
NDS= Neuropsychological Deficit Scale
HRB= Heaton 2004 Normative Data

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## INTELLECTUAL FUNCTIONS:

Wechsler Adult Intelligence Scale-III

| Index | IQ/Index | Percentile Rank |
|---|---|---|
| **Verbal Score** | 134 | 99 |
| **Performance Score** | 140 | 99.6 |
| **Full Scale Score** | 141 | 99.7 |
| **Verbal Comprehension** | 140 | 99.6 |
| **Perceptual Organization** | 130 | 98 |
| **Working Memory** | 121 | 92 |
| **Processing Speed** | 134 | 99 |

Wechsler Adult Intelligence Scale-III, Verbal Subtest Scores

| Verbal Subtests | Raw | ss | Percentile Rank | Strength or Weakness |
|---|---|---|---|---|
| **Vocabulary** | 64 | 17 | 99 | Strength |
| **Similarities** | 31 | 15 | 95 | |
| **Arithmetic** | 16 | 11 | 63 | Weakness |
| **Digit Span** | 27 | 17 | 99 | |
| **Information** | 28 | 18 | >99 | Strength |
| **Comprehension** | 25 | 12 | 75 | Weakness |
| **Letter/Number Sequencing** | 13 | 13 | 84 | |

Wechsler Adult Intelligence Scale-III, Performance Subtest Scores

| Performance Subtests | Raw | ss | Percentile Rank | Strength or Weakness |
|---|---|---|---|---|
| **Picture Completion** | 23 | 14 | 91 | |
| **Digit Symbol-Coding** | 112 | 17 | 99 | |
| **Block Design** | 54 | 14 | 91 | |
| **Matrix Reasoning** | 24 | 16 | 98 | |
| **Picture Arrangement** | 20 | 15 | 95 | |
| **Symbol Search** | 47 | 15 | 95 | |

Wechsler Adult Intelligence Scale-III, Discrepancy Comparisons

| Discrepancy Comparisons | Score 1 | Score 2 | 1st - 2nd | Sig. |
|---|---|---|---|---|
| Verbal IQ-Performance IQ | 134 | 140 | -6 | n.s. |
| Verbal Comprehension-Perceptual Organization | 140 | 130 | 10 | 0.05 |
| Verbal Comprehension-Working Memory | 140 | 121 | 19 | 0.05 |
| Perceptual Organization-Processing Speed | 130 | 134 | -4 | n.s. |
| Verbal Comprehension-Processing Speed | 140 | 134 | 6 | n.s. |
| Perceptual Organization-Working Memory | 130 | 121 | 9 | 0.15 |
| Working Memory-Processing Speed | 121 | 134 | -13 | 0.05 |

The Wechsler Adult Intelligence Scale – III (WAIS-III) is a reliable and valid measure of intellectual functioning, yielding seven index scores. On this instrument, Mr. Rippo had a Full Scale IQ of 141, in the Very Superior range at the 99.7th percentile rank. Mr. Rippo's Verbal and Performace IQ scores were also in the Very Superior range at the 99th and 99.6th percentile ranks, respectively. Mr. Rippo's Verbal Comprehension Index of 140 was a strength relative to his Perceptual-Organizational score of 130 at the 95% confidence level, although both scores were in the Very Superior range. Mr. Rippo's Processing Speed was also in the very superior range at the 99th percentile rank. Mr. Rippo had a weakness relative to his overall intellectual functioning in Working Memory, although this score is nonetheless in the superior range at the 92nd percentile rank. On the Verbal subtests, Mr. Rippo had relative weaknesses in mental arithmetic at the 63rd percentile rank and in Social comprehension/judgment at the 75th percentile rank. He was in the high average range for a number of letter/number sequencing. The remainder of his Verbal test scores were in the superior to very superior range, with Similarities at the 95th percentile rank, Vocabulary at the 99th percentile rank, and Information greater

than the 99th percentile rank. Mr. Rippo's Information score tracks with his self-report of working very hard on his knowledge base and mental abilities on death row for the last several years.

All of Mr. Rippo's scores on the Performance subtest were in the Superior to Very Superior ranges.

Mr. Rippo's current Full Scale IQ of 141 is clearly much greater than his Full Scale IQ documented by Dr. Kinsora in 1996 at 114. Also, Dr. Kinsora noted a Verbal IQ of 114 and a Performance IQ of 110, both in the high average range, and both markedly worse than his current Verbal IQ of 134 and his current Performance IQ of 140. Dr. Kinsora was noted to have used the WAIS-R, whereas I utilized the WAIS-III. In general, individuals do 2.9 points less well on the WAIS-III Full Scale IQ than on the WAIS-R Full Scale IQ, a decrement which is also seen with comparison of the Verbal IQ and the Performance IQ from the earlier and current editions of the WAIS. Thus, the WAIS-III Verbal IQ tends to be 1.2 points less than the WAIS-R Verbal IQ, and the WAIS-III Performance IQ tends to be 4.8 points less than the corresponding WAIS-R score.

Thus, Mr. Rippo's overall intellectual functioning has improved by almost two full standard deviation units, 27 points, which is a remarkable improvement. The current test findings strongly suggest that Mr. Rippo was functioning way below his full potential in 1996, and suggests that Mr. Rippo's brain has undergone significant recovery from the serial concussions reported prior to incarceration for the current crimes, and from the chronic methamphetamine abuse. It is my opinion that Mr. Rippo sustained acquired brain damage dysfunction that has been remediated, to some extent, during his incarceration due to his self-taught program of what is essentially cognitive rehabilitation, and a hiatus from drugs of abuse and further head injury. It is my opinion that Mr. Rippo has always been an individual of Very Superior intellectual functions, but that his potential was masked due to brain dysfunction from a combination of physical and emotional insults to his brain and mental functioning.

Furthermore, when evaluating these results, it is important to remember that for an individual like Mr. Rippo, average on a neuropsychological test is not necessarily normal for him.

**ATTENTION AND CONCENTRATION:**

| Wechsler Memory Scale-III | Index Score | Percentile Rank |
|---|---|---|
| Working Memory Index | 124 | 95 |

Visual Cancellation Test

| | Verbal | Non-Verbal |
|---|---|---|
| **Left Errors:** | 0 | 0 |
| **Right Errors:** | 0 | 0 |
| **Total Errors:** | 0 | 0 |
| **Total Time:** | 72" | 49" |
| **Starting Place:** | Left | Left |
| **Approach:** | Systematic | Systematic |

Speech Sounds Perception Test

| # Errors | T-Score | Percentile Rank | NDS |
|---|---|---|---|
| 5 | 49 | 47 | 0 |

Seashore Rhythm Test

| # Correct | T-Score | Percentile Rank | NDS |
|---|---|---|---|
| 30 | 65 | 93-94 | 0 |

Conners' Adult ADHD Rating Scales-Long Version Self-Report

| Scale | Raw Score | T-Score | Percentile Rank |
|---|---|---|---|
| **A. Inattention/Memory Problems** | 5 | 39 | 14 |
| **B. Hyperactivity/Restlessness** | 11 | 49 | 47 |
| **C. Impulsivity/Emotional Lability** | 12 | 53 | 61-63 |
| **D. Problems with Self-Concept** | 4 | 45 | 30 |
| **E. DSM-IV Inattentive Symptoms** | 4 | 38 | 12-13 |
| **F. DSM-IV Hyperactive-Impulsive Symptoms** | 8 | 50 | 50 |
| **G. DSM-IV ADHD Symptoms Total** | 12 | 45 | 30-32 |
| **H. ADHD Index** | 10 | 49 | 47 |

On a measure of the ability to scan the visual fields in the verbal and non-verbal modalities, Mr. Rippo's performance was adequate with no errors in either modality. His performance was adequately systematic.

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Working memory on the Wechsler Memory Scale – III was also in the superior range, as it was on the WAIS-III.

Mr. Rippo was given two measures of auditory attention and processing, one in the auditory-verbal modality, and one in the auditory-non-verbal modality. Mr. Rippo's performance on the Speech Sounds Perception Test, a measure of auditory-verbal attention/processing, was Average at the 47th percentile rank. However, his performance on the Speech Sounds Perception Test was a definite weakness in comparison to his auditory-non-verbal attention/processing on the Seashore Rhythm Test in the Superior range at the 93rd to 94th percentile ranks. This does track with Mr. Rippo's spatial span at the 95th percentile rank, which is a definite strength relative to, for example, letter-number sequencing at the 84th percentile rank and mental arithmetic at the 63rd percentile rank. Thus, overall, verbal attention is a definite weakness in comparison to visual attention for Mr. Rippo.

The Conners' Adult ADHD Rating Scale was administered. Mr. Rippo is not currently endorsing symptoms consistent with adult ADHD on this instrument

## MEMORY FUNCTIONS:

Wechsler Memory Scale-III

| Index/Subtest | Index Score | Percentile Rank |
|---|---|---|
| **Auditory Immediate** | 102 | 55 |
| **Visual Immediate** | 97 | 42 |
| **Immediate Memory** | 100 | 50 |
| **Auditory Delayed** | 111 | 77 |
| **Visual Delayed** | 103 | 58 |
| **Auditory Recognition Delayed** | 90 | 25 |
| **General Memory** | 104 | 61 |
| **Working Memory** | 124 | 95 |

Wechsler Memory Scale-III: Primary Index Differences

| Indexes | 1st Score | 2nd Score | 1st-2nd | Sig. |
|---|---|---|---|---|
| Auditory Immediate-Visual Immediate | 102 | 97 | 5 | n.s. |
| Auditory Immediate-Auditory Delayed | 102 | 111 | -9 | 0.15 |
| Visual Immediate-Visual Delayed | 97 | 103 | -6 | n.s. |
| Auditory Delayed-Auditory Recognition Delayed | 111 | 90 | 21 | 0.05 |
| Auditory Delayed-Visual Delayed | 111 | 103 | 8 | n.s. |
| Immediate Memory-General Memory | 100 | 104 | -4 | n.s. |
| Immediate Memory-Working Memory | 100 | 124 | -24 | 0.05 |
| General Memory-Working Memory | 104 | 124 | -20 | 0.05 |

Ability-Memory Differences

| Primary Indexes | WAIS-III FSIQ | WMS-III Index | Predicted | Difference | Sig. |
|---|---|---|---|---|---|
| Auditory Immediate | 141 | 102 | 124 | 22 | 0.01 |
| Visual Immediate | 141 | 97 | 115 | 18 | 0.05 |
| Immediate Memory | 141 | 100 | 123 | 23 | 0.01 |
| Auditory Delayed | 141 | 111 | 123 | 12 | 0.05 |
| Visual Delayed | 141 | 103 | 117 | 14 | n.s. |
| Auditory Recognition Delayed | 141 | 90 | 120 | 30 | 0.01 |
| General Memory | 141 | 104 | 125 | 21 | 0.01 |
| Working Memory | 141 | 124 | 128 | 4 | n.s. |

Rey-Osterrieth Complex Figure Test with Recall and Recognition

| Trial | Raw Score | T-Score | Percentile Rank |
|---|---|---|---|
| Immediate Recall | 27 | 61 | 86 |
| Delayed Recall | 27 | 62 | 88 |
| Recognition Trial | 17 | 27 | 1 |

Tactual Performance Test

| Variable | Raw Score | T-Score | Percentile Rank | NDS |
|---|---|---|---|---|
| **Memory** | 9 | 61 | 86-87 | 0 |
| **Localization** | 6 | 58 | 79-81 | 1 |

The Wechsler Memory Scale – III is a widely used, comprehensive measure of auditory and visual, non-verbal memory. Of note is that Mr. Rippo's General Memory Index score of 104, which is Average at the 61st percentile rank, represents an extreme relative weakness for Mr. Rippo in comparison to his Full Scale IQ of 141, a two and a half standard deviation unit difference. Immediate auditory and visual memory were both average at the 55th and 42nd percentile ranks, respectively. Delayed auditory memory was high average at the 77th percentile rank, whereas delayed visual memory was average at the 58th percentile rank. Delayed auditory recognition memory was at the lower end of the average range at the 25th percentile rank. Overall, Mr. Rippo is observed to have a definite and significant weakness in short-term memory in comparison to overall Full Scale intellectual functions.

Incidental recall is memory for items in which the examinee is not cued beforehand of the need to remember. Mr. Rippo's immediate and delayed incidental, visual recall of the Rey Complex Figure Test were both in the high average range. In contrast, Mr. Rippo's delayed recognition recall of the Rey Complex Figure was moderately impaired at the 1st percentile rank. This finding is remarkable, and, given Mr. Rippo's overall excellent effort on the neuropsychological test tasks, suggests confusion in the face of multiple choice options, and possible stimulus overload. This finding is further supported by Mr. Rippo's relative weakness in auditory delayed recognition recall on the Wechsler Memory Scale – III at the 25th percentile rank.

Incidental tactile recall on the Tactual Performance Test was high average at the 86th to 87th percentile rank. Localization of the shapes of the Tactual Performance Test was also in the High Average range.

Mr. Rippo's relative difficulty with memory tasks correlates well with his self-report of short-term memory weakness.

## LANGUAGE FUNCTIONS:

Controlled Oral Word Association Test

| Total Score | T-Score | Percentile Rank |
|---|---|---|
| 58 | 68 | 96 |

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Animal Naming

| Total Score | T-Score | Percentile Rank |
|---|---|---|
| 29 | 66 | 95 |

BDAE Complex Ideational Material Subtest

| Raw Score | T-Score | Percentile Rank |
|---|---|---|
| 11/12 | 48 | 42-45 |

Aphasia Screening Test

| Pathognomonic Signs |
|---|
| None. |

Wide Range Achievement Test-4

| Subtest | Standard Score | Percentile Rank | Grade Equivalent |
|---|---|---|---|
| **Word Reading** | 130 | 98 | >12.9 |
| **Sentence Comprehension** | 113 | 81 | >12.9 |
| **Spelling** | 124 | 95 | >12.9 |
| **Math Computation** | 122 | 93 | >12.9 |
| **Reading Composite** | 123 | 94 | |

There was no evidence of aphasia on the Aphasia Screening Test.

Verbal fluency is defined as the ability to rapidly produce verbal items in certain categories. Mr. Rippo's phonemic fluency, as assessed by the Controlled Oral Word Association Test, was in the Above Average range at the 96$^{th}$ percentile rank. Mr. Rippo's fluency for a semantic category (naming all the animals he could think of in 60 seconds) was also Above Average at the 95$^{th}$ percentile rank. Mr. Rippo's semantic, auditory comprehension on the Complex Ideational Material subtest of the Boston Diagnostic Aphasia examination was in the Average at the 42$^{nd}$ to 45$^{th}$ percentile ranks.

The Wide Range Achievement Test – 4 (WRAT-4) was administered to assess Mr. Rippo's academic skills. Mr. Rippo's word reading was in the Superior range at the 98$^{th}$ percentile rank. However, his sentence comprehension was more than one standard deviation unit weaker, in the High Average range at the 81$^{st}$ percentile rank. This finding tracks with Mr. Rippo's self-report of difficulty with reading comprehension. Mr. Rippo's spelling on the WRAT-4 was in the Superior range at the 95$^{th}$ percentile rank. His mathematics computation on the WRAT-4 was also in the Superior range at the 93$^{rd}$ percentile rank.

## MOTOR & PERCEPTUAL-MOTOR FUNCTIONS:

Lateral Dominance Exam

| | Right | Left | Mixed |
|---|---|---|---|
| **Hands** | X | | |
| **Feet** | X | | |

Right-Left Orientation

| Raw Score | T-Score | Percentile Rank |
|---|---|---|
| 19 | 48 | 42-45 |

Grip Strength

| Hand | Kilograms | T-Score | Percentile Rank |
|---|---|---|---|
| **Right Dominant** | 46 | 41 | 18-19 |
| **Left Non-Dominant** | 43 | 41 | 18-19 |

Manual Finger Tapping Test

| Hand | Raw Score | T-Score | Percentile Rank | NDS |
|---|---|---|---|---|
| **Right Dominant** | 56.6 | 57 | 75-77 | 0 |
| **Left Non-Dominant** | 54.8 | 64 | 92 | 0 |

Grooved Pegboard

| Hand | Raw Score | T-Score | Percentile Rank |
|---|---|---|---|
| **Right Dominant** | 54" | 65 | 93-94 |
| **Left Non-Dominant** | 61" | 62 | 88-90 |

Rey-Osterrieth Complex Figure Test with Recognition and Recall – Copy Trial

| | Score | T-Score | Percentile Rank |
|---|---|---|---|
| **Copy** | 36 | | >16 |
| **Time** | 62" | | >16 |

Trail Making Test A

| Time | Errors | T-Score | Percentile Rank | NDS |
|---|---|---|---|---|
| 16 | 1 | 74 | 99 | 0 |

Tactual Performance Test

| Hand | Time (minutes) | # Blocks Placed | T-Score | Percentile Rank |
|---|---|---|---|---|
| **Dominant** | 4.5 | 10 | 52 | 58 |
| **Non-Dominant** | 2.1 | 10 | 70 | 98 |
| **Both** | 1.1 | 10 | 73 | 99 |
| **Total** | 7.7 | 30 | 61 | 86-87 |

Mr. Rippo was right-side dominant to hands and feet. Right-left orientation was average at the 42nd to 45th percentile ranks. Mr. Rippo's grip strength was remarkably low, in the below average range at the 18th to 19th percentile ranks, bilaterally, given that he works out repeatedly and is reportedly proficient in martial arts. Mr. Rippo's fine motor coordination, as assessed by speed of finger tapping on the Finger Tapping Test, was in the Above Average range, bilaterally. Mr. Rippo's manual dexterity on the Grooved Pegboard was also above average, bilaterally.

Mr. Rippo's copy of the Rey Complex Figure was intact. However, when drawing the design from memory in the Immediate and Delayed Recall conditions, his drawings were marked by 90 degree rotations of the paper, which is an unusual finding and is often consistent with some type of learning disability or processing problem.

Simple sequencing on the Trail Making Test A was above average at the 99th percentile rank, with one error.

The Tactual Performance Test is a measure of tactile-kinesthetic problem solving in which the individual is required to place blocks into an upright formed board while blindfolded, first with the dominant, then with the non-dominant, and then with both hands. Mr. Rippo's score for the dominant hand was in the Average range, but almost two standard deviation units worse than his non-dominant hand performance at the 98th percentile rank. His Total Score was overall Above Average.

## SENSORY-PERCEPTUAL FUNCTIONS:

| Sensory Imperception | | | | Sensory Suppressions | | |
|---|---|---|---|---|---|---|
| **Modality** | Right | Left | | **Modality** | Right | Left |
| **Tactile** | 0 | 0 | | **Tactile** | 0 | 0 |
| **Auditory** | 0 | 0 | | **Auditory** | 0 | 0 |
| **Visual** | 0 | 0 | | **Visual** | 0 | 0 |
| **Total** | 0 | 0 | | **Total** | 0 | 0 |

Finger Agnosia

| Hand | Errors |
|---|---|
| **Right** | 3/20 |
| **Left** | 0/20 |

Fingertip Number Writing

| Hand | Errors |
|---|---|
| **Right** | 0/20 |
| **Left** | 3/20 |

Tactile Form Recognition Test

| Hand | Errors | Time | T-Score | Percentile Rank |
|---|---|---|---|---|
| **Right** | 0 | 11" | 52 | 58 |
| **Left** | 0 | 10" | 49 | 47 |

Sensory-Perceptual Total Score

| Hand | Errors | T-Score | Percentile Rank |
|---|---|---|---|
| **Right** | 3 | 44 | 27 |
| **Left** | 3 | 42 | 25 |
| **Total** | 6 | 40 | 16 |

Mr. Rippo was administered the Reitan-Klove Sensory Perceptual Examination. Mr. Rippo showed some narrowing of his inferior visual field on a bi-temporal basis. His

visual fields were otherwise within normal limits. His extra-ocular movements were full with no evidence of nystagmus. Ocular convergence was intact to screening. Mr. Rippo had no suppressions to bilateral, simultaneous stimulation in the tactile, auditory, or visual modalities. There was mild finger agnosia on the right and none on the left. There was mild dysgraphesthesia on the left, none on the right. Mr. Rippo made no errors on the Tactile Form Recognition Test with both hands. Tactile processing speed on this measure was average, bilaterally. Mr. Rippo's Right, Left, and Total Sensory-Perceptual scores were in the below average range at the 27th, 25th, and 16th percentile ranks, respectively.

**EXECUTIVE FUNCTIONS, SEQUENCING AND MENTAL FLEXIBILITY:**

Trail Making Test B

| Time | Errors | T-Score | Percentile Rank | NDS |
|---|---|---|---|---|
| 35" | 0 | 73 | 99 | 0 |

The Booklet Category Test-II

| # Errors | T-Score | Percentile Rank | NDS |
|---|---|---|---|
| 34 | 53 | 61-63 | 1 |

Ruff Figural Fluency Test

| Subtest | Raw Score | Corrected Score | T-Score | Percentile Rank |
|---|---|---|---|---|
| Total Unique Designs | 121 | 133 (+12.00) | 71.9-75 | 98.9-100 |
| Perseverations | 8 | | 52 | 58 |
| Error Ratio* | 0.066 | 0.036 (-0.03) | 43.7-44.1 | 26.1-27.3* |

*Ruff Figural Fluency normal curve equivalent of average.

Stroop Color and Word Test

| Subtest | Raw Score | # Errors | T-Score | Percentile Rank |
|---|---|---|---|---|
| Word | 113 | 0 | 52-54 | 58-68 |
| Color | 90 | 0 | 56-58 | 73-81 |
| Color-Word | 51 | 0 | 56 | 73 |
| Interference | 0.9 | | 50-52 | 50-58 |

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Mr. Rippo's complex sequencing on the Trail Making Test B was in the Above Average range at the 99th percentile rank. The Halstead Category test, a measure of auditory, non-verbal concept formation and problem solving, was in the average range.

Mr. Rippo's design fluency on the Ruff Figure Fluency Test was in the Above Average range for Total Unique designs at the 98.9th percentile rank or greater. His number of Perseverations was in the average range at the 58th percentile rank. His Error Ratio was overall within normal limits. Mr. Rippo's speed of processing on the Stroop Color and Word Test was in the average to above average ranges for all three trials.

## GENERAL MEASURES OF NEUROPSYCHOLOGICAL FUNCTIONING:

Neuropsychological Deficit Scale (NDS)

| Indicator | Raw Score |
|---|---|
| **General Neuropsychological Deficit Scale score** | 17 |
| **Right Neuropsychological Deficit Scale score** | 4 |
| **Left Neuropsychological Deficit Scale score** | 7 |
| **Halstead Impairment Index** | 0.0 |

Mr. Rippo's general Neuropsychological Deficit scale score of 17 was within normal limits, as were his right and left Neuropsychological Deficit scale scores.

## PERSONALITY FUNCTIONS:

Multiscale Dissociation Inventory (MDI)

| Scale | Raw Score | T-Score | Percentile Rank |
|---|---|---|---|
| **Disengagement (DENG)** | 6 | 48 | 42-45 |
| **Depersonalization (DEPR)** | 5 | 45 | 30-32 |
| **Derealization (DERL)** | 5 | 46 | 37 |
| **Emotional Constriction/Numbing (ECON)** | 5 | 46 | 37 |
| **Memory Disturbance (MEMD)** | 6 | 45 | 30-32 |
| **Identity Dissociation (IDDIS)** | 5 | 47 | 39 |

The Personality Assessment Inventory (PAI) was administered. Mr. Rippo's validity scales on this measure showed no response bias tendencies to either exaggerate or minimize symptoms. None of the scales on the Full Scale profile were in the clinically elevated range. His Antisocial Features Scale T-score of 59 was fully within normal limits. His Drug Use T-score of 62 was mildly elevated. His Paranoia T-score of 56 was fully within normal limits. His Aggression T-score of 54 was fully within normal limits. He is not feeling particularly unsupported. On the Subscale profile, Mr. Rippo was

elevated on the Antisocial Behaviors scale, but not on any of the other Antisocial scales, including Egocentricity and Stimulus-Seeking. Mr. Rippo's score on the Physical Aggression scale was somewhat elevated, but still below the clinical cutoff at T=69. The PAI results suggest tendency towards social detachment and hypervigilance.

The Posttraumatic Stress Diagnostic scale was administered to Mr. Rippo. He did indicate that he has had a number of stressful events in his life, but was reticent as to any traumatic events in his family or origin. He did say that he witnessed the attempted suicide of a friend, which he found traumatic. He denied significant re-experiencing of symptoms or avoidance of symptoms, but endorsed some symptoms of hyper-arousal, including occasional irritability or fits of anger, difficulty concentrating and hypervigilance.

The Multiscale Dissociation Inventory was administered to Mr. Rippo. Mr. Rippo did not endorse Dissociative symptoms.

## FORMULATIONS AND CONCLUSIONS:

Overall, the results of neuropsychological testing indicate that Mr. Rippo has had a significant period of recovery and self-taught neuropsychological rehabilitation while on death row. He notes being an avid student of science, including of chemistry, physics, and biology, and routinely practices yoga. He has deliberately worked on his self-control, and learning to stay calm. He has learned to disregard and/or be less stressed by intrusive, obsessive-type thoughts. It is my opinion that Mr. Rippo's dramatic increase in IQ since 1996 is a direct indication that his brain has recovered, to some extent, from prior brain dysfunction due to the effects of serial concussion/head injuries and possibly methamphetamine abuse.

It is my clinical impression, based on the history and interview, that Mr. Rippo does have an Obsessive-Compulsive Disorder, with recurrent and persistent intrusive thoughts, which Mr. Rippo has learned to disregard and to control to some extent, through his practice of Zen/meditation. This includes a tendency to be perfectionistic and includes some history of sado-masochistic sexual fantasies.

It is my impression that Mr. Rippo has evidence of having sustained significant psychosocial trauma in the home of his mother and step-father, and possibly earlier in the home of his biological father and mother. Mr. Rippo does admit to some negative memories of his step-father, but these appear to be greatly minimized, in comparison, for example, to the declaration of his sister Stacie Campanelli, who described Mr. Anzini as "horrific and abusive." It is my opinion that Mr. Rippo's childhood experiences caused a chronic free floating anxiety which led to the development of his obsessive-compulsive and drug addictive tendencies, as a means of binding this anxiety.

The neuropsychological testing and clinical interview/history overall support the opinion that Mr. Rippo does in fact have a long standing history of mild neurocognitive dysfunction with deficiencies in memory and verbal attention, at least since his

adolescence. He also has a well-documented history of decreased impulse control and addictive tendencies. Based on the information available to me, it is my opinion that Mr. Rippo did in fact qualify as having Attention Deficit Hyperactivity Disorder, Combined Type, in childhood and early adulthood, as supported by residual symptomatology on the current testing, despite his intense program of mental workout in prison. Furthermore, it is this examiner's opinion that Mr. Rippo did have some evidence of mild learning disability involving reading comprehension.

Mr. Rippo's Attention Deficit Hyperactivity Disorder, along with his traumatic and unstable upbringing, made him a target for early drug abuse, and led him into methamphetamine as his drug of choice. Methamphetamine is a very common choice for individuals with Attention Deficit Hyperactivity Disorder, who use this drug as a form of self-medication for their cognitive difficulties.

Based on the information available to me, Mr. Rippo has the following diagnoses using DSM-IV-TR Criteria:

| Axes | | Codes | Descriptions |
|---|---|---|---|
| **Axis I** | Clinical Disorders | 314.01 | Attention Deficit Hyperactivity Disorder, Combined Type |
| | | 294.9 | Cognitive Disorder, NOS |
| | | 310.1 | R/O Personality Change due to brain damage/dysfunction, Combined Type |
| | | 315.00 | R/O Developmental Reading Disorder |
| | | 300.3 | Obsessive Compulsive Disorder, with poor insight |
| | | 302.9 | R/O Paraphilia, Not Otherwise Specified |
| | | 304.40 | History of Amphetamine Dependence |
| | | V61.21 | Childhood Neglect – Victim |
| | | V61.21 | R/O Sexual Abuse of Child – Victim |
| | | V61.21 | R/O Physical Abuse of Child – Victim |
| **Axis II** | Personality Disorders/MR | 301.9 | Personality Disorder, Not Otherwise Specified, with Obsessive-Compulsive, Antisocial, Paranoid, and Avoidant Features |
| **Axis III** | Medical Conditions | | History of serial concussions, self-report of left shoulder lipoma, Hepatitis C carrier |
| **Axis IV** | Psychosocial Problems | | Problems with primary support group in developmental years; Problems with interaction with the legal system; Problems related to the social environment when growing up in developmental years |
| **Axis V** | Global Assessment of Functioning | | GAF = 75-80 in structured prison environment |

Overall, neuropsychological and psychological assessment revealed that Mr. Rippo does have significant problems/relative difficulties with attention, impulse control, and short-term memory, which could have been identified by competent neuropsychological testing prior to his trial, but was not. In particular, the evidence from the history that a psychiatrist considered a diagnosis of Attention Deficit Hyperactivity Disorder, should have led to more in-depth testing of this diagnosis. Furthermore, his history should have led to more in depth exploration of obsessive compulsive disorder.

Mr. Rippo's cognitive deficiencies, Obsessive-Compulsive Disorder, as well as his impulse control difficulties, are likely related to subtle brain dysfunction. It is my suspicion, that Mr. Rippo may in fact have some orbital-frontal/limbic dysfunction of the brain, associated with Obsessive Compulsive Disorder and Attention Deficit Hyperactivity Disorder, which might be appreciable upon brain PET scanning. However, as noted above, Mr. Rippo's self-imposed program of cognitive rehabilitation, and his lack of drug abuse or concussions in the decade, has clearly led to brain healing and a 27-point increase in Full Scale IQ (even though typically WAIS-III scores go down compared to WAIS-R results). Nonetheless, Mr. Rippo continues to have significant relative difficulties in the areas of short term memory, reading comprehension, and verbally-mediated, attention.

In addition, it is my opinion that Mr. Rippo does likely have a repressed variant of Posttraumatic Stress Disorder, which is difficult to diagnose due to perhaps both conscious and unconscious repression of family-of-origin trauma.

Please do not hesitate to contact me with any questions. Thank you very much for the courtesy of this referral.

Sincerely yours,

Jonathan H. Mack, Psy.D.
N.J. Professional Psychology License #SIO2321
Director, Forensic Psychology and Neuropsychology Services, P.C.
Diplomate, American Academy of Experts in Traumatic Stress
Diplomate, American Academy of Pain Management
Diplomate and Senior Analyst, American Academy of Disability Analysts
Registrant, National Register of Health Service Providers in Psychology

JHM/kan

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MRIPPD 07095-EVD00006



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MRIFFO-07029-01230

ORIGINAL

APPL
PHILIP H. DUNLEAVY, ESQ.
STATE BAR #000598
2810 W. CHARLESTON, G-67
LAS VEGAS, NEVADA 89102
(702) 877-0910
ATTORNEY FOR DEFENDANT

FILED
DEC 3 8 33 AM '96
Shirley Lawrence
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,
vs.
MICHAEL DAMON RIPPO,
Defendant.

CASE NO.:C106784
DEPT. NO.: IV
DOCKET NO.:"C"

DATE OF HEARING: 12-16-96
TIME OF HEARING: 9 AM

**APPLICATION AND ORDER FOR FEE IN EXCESS OF STATUTORY AMOUNT FOR EXPERT**

COMES NOW, PHILIP H. DUNLEAVY, ESQ., the court-appointed attorney for the defendant, MICHAEL DAMON RIPPO, and requests this court to certify that the expert's fees and costs in excess of the statutory rate are reasonable and necessary and for approval to pay said fees.

This application is based upon the billing statement, points and authorities, and Affidavit attached hereto, and all pleadings and papers on file herein.

DATED this 2 day of Dec., 1996.

PHILIP H. DUNLEAVY, ESQ.
State Bar No. 00598
Attorney for Defendant

MC

CE42

CE31

**POINTS AND AUTHORITIES**

NRS 7.135 states:

> **Reimbursement for expenses; employment of investigative, expert or other services.** The attorney appointed by a magistrate or district court to represent a defendant is entitled, in addition to the fee provided by NRS 7.125 for his services, to be reimbursed for expenses, reasonably incurred by him in representing the defendant and may employ, subject to the prior approval of the magistrate or the district court in an ex parte application, such investigative, expert or other services as may be necessary for an adequate defense. Compensation to any person furnishing such investigative, expert or other service must not exceed $300, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is:
>
> 1. Certified by the trial judge of the court, or by the magistrate if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration;
>
> 2. Approved by the presiding judge of the judicial district in which the attorney was appointed, or if there is no presiding judge, by the district judge who holds seniority in years of service in office.

The court records show this was a highly complex capital murder case involving many unique issues requiring the services of the experts. Ultimately, the State disclosed information only after the first phase and before the penalty phase which precluded the defense from presenting some of the anticipated expert evidence.

As the court-appointed attorney representing the defendant in this case, I feel all the listed expenses were crucial for proper trial preparation.

For the above stated reasons, it is requested the court certify that the amount in excess of the statutory fee of

$300.00 was reasonable and necessary, and approve payment of the attached statement for services rendered.

DATED this 2 day of Dec, 1996.

PHILLIP H. DUNLEAVY, ESQ.
State Bar No. 00598
2810 W. Charleston
Suite G-67
Las Vegas, Nevada 89102
(702) 877-0910
Attorney for Defendant

**AFFIDAVIT**

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, PHILIP H. DUNLEAVY, ESQ., having been first duly sworn upon my oath, according to law, do swear and affirm:

1. That your Affiant is the court appointed attorney for the Defendant herein.

2. That your Affiant has submitted a bill in the amount of $3,060.00 for Thomas F. Kinsora Ph. D. Neuro Psychologist and$2,500.00 for Norton A. Roitman, MD Psychiatrist.

3. That the services of both these experts were ordered by the court to assist the defense.

4. That the services of these experts were necessary to the proper representation of the defendant.

5. That the defendant in this case received the death penalty.

6. Further your affiant sayeth naught.

PHILIP H. DUNLEAVY, ESQ.

SUBSCRIBED and SWORN to before me
this 2nd day of December, 1996.

NOTARY PUBLIC, In and for the
County of Clark, State of NV

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
CAROLYN JO SUMMERS
No: 92-0586-1
My Appointment Expires April 15, 2000

MRiffo-07029-01234

**NOTICE OF MOTION**

TO: THE DISTRICT ATTORNEY of CLARK COUNTY, NEVADA:

PLEASE TAKE NOTICE that the undersigned shall bring the above and foregoing APPLICATION AND ORDER FOR FEE IN EXCESS OF STATUTORY AMOUNT on for hearing in Department No. IV, of the above-entitled Court, on the 16 day of Dec, 1996, at the hour of 9A.m., of said day, or as soon thereafter as counsel may be heard.

DATED this 2 day of Dec., 1996.

PHILIP H. DUNLEAVY, ESQ.
2810 W. Charleston, G-67
Las Vegas, NV 89102
Attorney for Defendant

MRiFFo-07029-01235

**RECEIPT OF COPY**

RECEIPT OF COPY of the above and foregoing APPLICATION AND ORDER FOR FEES IN EXCESS OF THE STATUTORY AMOUNT is hereby acknowledged this ___ day of _____, 1996.

By: _____
CLARK COUNTY DISTRICT ATTORNEY
200 South Third Street
Las Vegas, NV 89155

Thomas F. Kinsora, Ph.D.
Specializing in Neuropsychology
1111 Shadow Lane Las Vegas, NV 89102
(702) 382-1960 FAX (702) 382-4993



October 10, 1996

# BILLING STATEMENT

| | | |
|---|---|---|
| Patients Name: | Rippo, Michael Damon | |
| Address: | Clark County Detention Center | |
| Date of Birth: | 2-26-65 | |
| Case Number: | C106784 | |
| Referring Attorney: | Philip H. Dunleavy, ESQ | |
| Date of Procedure/Service: | 1-26-96 | 3 hours |
| | 1-27-96 | 8 hours (4 hrs with pt. 4 hrs review) |
| | 2-01-96 | 3 hours |
| | 2-08-96 | 2 hours (interview mother/sister) |
| | 2-09-96 | 5 hours (scoring/report prep.) |
| | 3-11-96 | 1 hour (Conf. Dr. Roitman) |
| | 3-12-96 | 2 hours (review and report prep.) |
| Procedure Performed: | **CPT code** | **95883** Neuropsychological Assessment |
| Charges for Procedure: | $150 x 24 hrs. = | $ 3600.00 |
| State Fund Discount 15%: | | - 540.00 |
| **TOTAL AMOUNT DUE:** | | **$ 3060.00** |
| Taxpayer ID number: | **382-76-6793** | |
| Make check Payable to: | Thomas F. Kinsora, Ph.D. | |

Please send payment to:

THOMAS F. KINSORA, PH.D.
1111 Shadow Lane
Las Vegas, NV 89102

MRippo-07029-01237

Name: Michael Rippo

Date: 4/2/96

Invoice:

Mr. Phillip H. Dunleavy
2810 W. Charleston Blvd. Suite G 67
Las Vegas, Nevada
89102

**Office Visit**

1.0 90801 Diagnostic Interview (1-1.5)
90801 Diagnostic Interview (.5)
90843 Partial
90844 Full

90847 Family
90846 Family w/o pt
90862 Med
90849 Multiple Family

90853 Group
90887 Conference

**Phone**

99371 (.25)
0.5 99372 (.5)
99373 (1.0)

**Hospital, Attending**

Dx Code:

99221 Admission (.5)
99222 Admission (1.0)
99231 Subsequent care (.25)
99232 Subsequent care (0.5)
99233 Subsequent care (1.0)
99238 Discharge
90887 Team Conference

**Consultations**

99255 Psych (1.5)
99255 Med/surg (1.5)
99254 Simple (1.0)
99303 Nursing Facility

**Medical**

99203 Initial (.5)
99205 Initial (1.0)
99214 Follow up (0.5)
99215 Follow up (1.0)

**Special Services**

2.5 Forensic Evaluation
99075 Testimony/Court appearance
99075 Deposition
3.0 90889 Report
2.0 90825 Record review
99078 Educational
90882 Environmental Intervention
99000 Laboratory
99050 After hours
99054 Weekends/after hours
99353 Home Visit

**Service Location**

2340 Paseo del Prado, #D307
Las Vegas, Nevada 89102
702-251-8000
Hospital _____
Other
**Clark County Detention Center**

| | |
|---|---|
| Total Hours | 9 |
| Charge | $2,250 |
| Previous balance | _____ |
| Due | $2,250 |
| Payment made | _____ |
| **Total balance** | **$2,250** |

Norton A. Roitman, MD
#88-0240192

2340 Paseo del Prado, #D307
Las Vegas, Nevada 89102
702-251-8000

A. I can't believe, I can't believe, in fact I don't know, I don't eve, I don't understand. She told you that Mike told here

B. No, she didn't tell me that Mike told her.

A. Oh okay. What exactly did she tell you?

B. She told me that she, well, how did it come about, she said do you know a guy named dub a dub

A. Right

B. I said yes I do, why? And she said because I was told that uh Mike hired him, that he just got outta jail and Mike hired him to do something to me.

A. Oh man.

B. And so I don't know where it came from, I don't know who said it. But obviously it's something you don't need. I don't know if something like that

A. Shit no, I don't need. This happened at a grand jury indictment?

B. Yeah, that was. This was the day before she went to the grand jury. The day before.

A. I don't even know the broad. Man, I wouldn't hurt anybody anyway.

B. Exactly. But you don't, I mean, I mean you know, what's going on Kim. I mean let me just update you a little bit as to the scenario of Mr. Rippo.

A. Yeah.

B. Uh when he was in jail.

A. Yeah.

B. He had a cellmate. I don't know who this person is.

A. No, he didn't have a cellmate. He was by himself. I was in the cell with a friend, JD Grandstaff who he tried to hook up to come and get him.

B. Okay well. Someone who was in jail with him.

A. Right.

B. My impression was that it was his cellmate.

A. Yeah.

B. Is testifying against him.

A. He was in a cell by himself. By the time I got to jail he was double celled with a bike dude up until he went to uh a (inaudible) cell up in 14.

B. Okay. Well, someone from jail is testifying against him as to some statements he made in jail. Okay. Uh, the other thing is another guy named PC

A. Right.

B. Who I don't know who he is either.

A. Me neither.

B. But he has some involvement in this whole scenario. He uh was questioned by homicide detectives. He peed all over hisself and was talked into wearing a wire and going to visit Rippo. Wearing a wire.

A. Wearing a wire?

B. Yeah. So all that that's on on that wire is going went in front of the grand jury. Um

A. Jesus.

B. Yeah, Rippo didn't keep his little fucking mouth shut. You know and every fucking body he comes into contact with he's creating fucking more problems for himself. He's digging a digger ditch, he' digging a deeper ditch and he's involving more and more people in it.

A. Well, how can (inaudible) make that statement about um uh about me is ridiculous because he asked my cellie to come and get him when he went to his preliminary.

B. Okay, well whatever. Maybe your cellie is the one you know. I don't know who. I don't know but I know with something like that that serious is going on you just keep your fucking mouth shut.

A. Yeah, well you're right.

B. You know

A. I mean that's the way I always done it. Oh fuck. But uh, I better not call my lawyer because that could implicate you then right. So I gotta fucking just just just hope that they

take that as a (inaudible) and hope she didn't say nothing. If she ever con contacts you again tell her I don't even know her, I don't want to know and uh uh, not the slightest idea of who she is or what she's about.

B. That's pretty much what I did and I uh more or less assured her that if you were in anybody's corner it was mine rather than his.

A. Right.

B. And that she had nothing to fear.

A. Okay.

B. From you.

A. Cool.

B. You know I think I eased that problem you know.

A. Okay.

B. I don't know what was you know ever discussed if anything like that was ever discussed.

A. No, it never was.

B. But you just just understand, I mean

A. No. The only thing that he told me, when he called me, Tommy, the only thing he told me was the reason he didn't accept bail and the reason she didn't accept bail is because supposedly some friends of the people that got killed had a bounty out on her and Mike. Now that's the only thing he told me.

B. Well.

A. So

B. I don't know. But you figure it out from there cause you were there and you know.

A. (Laughing). That's outta line. Oh okay (inaudible) give me a call Wednesday.

B. No I don't see any reason you wouldn't be.

A. Yeah, I I'm just hoping they don't you see I got (inaudible) helping me out but then also from that time I pulled em over the table at uh at you know I got on his case cause he got on my case about the cancer. Uh, he was giving me a hard time. So I'm sorta like prepared everyday during the day

for them to just snatch me. So uh uh hopefully it won't be before long that uh uh in fact what I'll do is uh uh if nothing happens tomorrow I'll call your 876 number and I'll just leave a message uh uh that everything is okay with Kim.

B. Well, I'm sure it is because this all this conversation that I had was last Wednesday.

A. Right, but see see since I went to the arraignment in district is when the POs been telling me that got certain repercussions about me being on house arrest. Now whether they're going to want to wait until my extended hearing on June 25th I don't know. See, they could come and possibly take me off the house arrest at any time. Hopefully it's not before then.

B. Okay.

A. Okay. But I'm glad you straightened out that other.

B. I did what I could and I think I did good so.

A. Okay. So hey, I hey you never done me wrong so I'm not going to sweat that. But uh

B. Just keep it in (inaudible) form.

A. Laugh. Boy that's outta line. I I go in there that fucking morning to check out oh hell you know who, right, and all of a sudden a week later I'm implicated. (Laughing) Fuck.

B. Well, I thought it was a little ironic myself.

A. Okay. Well it (inaudible) to know that I only got a few friends. Uh uh (inaudible) that kinda shit on me. I (inaudible) me a fucking time at all man neither. (inaudible cause I never done anything like that in my whole life.

B. I hear you.

A. Okay bub.

B. Okay.

A. Okay, I'll uh uh well hey I'll just give you a call again

B. Okay.

A. Okay bye.

JUL [illegible] '82

Brenda Lazzar

CASE NOS. C57388, C57389

DEPARTMENT ELEVEN

ORIGINAL

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL RIPPO,

Defendant.

CASE NO. C57388

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL RIPPO,

Defendant.

CASE NO. C57389

REPORTER'S TRANSCRIPT OF PROCEEDINGS

CONTINUED INITIAL ARRAIGNMENT

BEFORE THE HONORABLE ADDELIAR D. GUY, DISTRICT COURT JUDGE

THURSDAY, MARCH 25, 1982 - 9:00 O'CLOCK A.M.

APPEARANCES:

FOR THE STATE: RANDALL WEED, ESQ. and
TOM FERRARO, ESQ.
Deputy District Attorneys
Las Vegas, Nevada

FOR THE DEFENDANT: JERROLD COURTNEY, ESQ.
Deputy Public Defender
Las Vegas, Nevada

REPORTED BY: PEGGY A. TIPTON
OFFICIAL COURT REPORTER
NEVADA C.S.R. NO. 38

PEGGY A. TIPTON
CERTIFIED SHORTHAND REPORTER
LAS VEGAS, NEVADA

Exhibit A

000009

LAS VEGAS, NEVADA - 9:00 A.M. - THURSDAY, MARCH 25, 1982

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P R O C E E D I N G S

BY THE COURT: This is Case No. C57388, the State of Nevada vs. Michael Rippo; and Case No. C57389, the State of Nevada vs. Michael Rippo.

Let the record reflect the presence of the defendant, with counsel, a Deputy District Attorney, and other officers of the Court.

This is the time set for continued initial arraignment. Do you have a copy of the Information?

BY MR. COURTNEY: No.

BY THE COURT: If you will step forward, sir, I will hand you a copy of the Information.

(Pause.)

BY THE COURT: Are you ready to proceed?

BY MR. COURTNEY: Yes, we are, Your Honor.

BY THE COURT: We will proceed with Case No. C57389. Is Michael Rippo your true name?

BY THE DEFENDANT: Yes, sir.

BY THE COURT: What is your age?

BY THE DEFENDANT: Seventeen.

BY THE COURT: Has this young man been certified?

BY THE DEFENDANT: Yes, sir.

BY THE COURT: Gentlemen.

BY MR. COURTNEY: Yes, Your Honor.

BY MR. WEED: Your Honor, there are negotiatons in this case, and that is the purpose of having him here in

District Court.

BY THE COURT: What are the negotiations? Are you going to file an Amended Information?

BY MR. WEED: No, Your Honor, we will be proceeding on the Informations before the Court.

BY THE COURT: What are the extent of the negotiations?

BY MR. WEED: They are lengthy, and will ask for the Court's indulgence. I need to read them.

BY THE COURT: All right.

BY MR. WEED: At this time, Your Honor, the defendant has already waived a hearing on certification on Petition No. 7 and Petition No. 10 --

BY THE COURT: Excuse me. Mr. Rippo, please stand.

(At this time the defendant, Michael Rippo, stands.)

BY MR. WEED: Petition No. 7 regarded the sexual assault, District Court Case No. C57388. Petititon No. 10 involves the burglary, District Court Case No. C57389. After the waiver of those certification hearings, the defendant is here in court, Petition No. 7 regarding the sexual assault was amended so that the sexual assault now before the Court has the deadly weapon language stricken from it.

The filings of these Informations are done without prejudice to the State to return to the original petition or petitions should these negotiations fall through at a later date. In District Court, the defendant will admit his guilt to sexual assault and the burglary as charged in the two Informations before this Court; Petitions 4, 5, 6, 8, 9, and 11 will be continued in Juvenile Court until the

defendant is sentenced on the Informations before this District Court, at which time, after the sentencing, those petitions will be dismissed.

The right to a speedy certification hearing is waived on those charges. The defendant has also waived his right to any preliminary hearing on these charges before this Court or any other equivalent probable cause hearing. The State has the right to and informs the defense that the State will argue for life without the possibility of parole regarding the sentence on the sexual assault information.

The State will stand silent regarding the burglary in the separate Information and will not argue for consecutive time. In addition, the State will file no more new charges arising out of the behavior that occurred prior to the date of the certification hearing. That, to my understanding, Your Honor, is the full extent of the negotiations.

BY THE COURT: Mr. Courtney, you have heard the negotiations as stated by the Deputy District Attorney. Are those your understandings also?

BY MR. COURTNEY: Yes, Your Honor, he is correct in all of those matters.

BY THE COURT: Mr. Rippo, you have heard the negotiations as stated by the Deputy District Attorney and by your counsel. Are those your understandings also?

BY THE DEFENDANT: Yes, sir.

BY THE COURT: How far did you go in school?

BY THE DEFENDANT: Eleventh grade.

BY THE COURT: Do you read, write, and understand the English language?

BY THE DEFENDANT: Yes, sir.

BY THE COURT: Do you understand the nature of the

charge contained against you in Case No. C57388 wherein you are charged with the crime of sexual assault, a felony?

BY THE DEFENDANT: Yes, sir.

BY THE COURT: Do you understand the nature of the charge contained against you in Case No. C57389 in which you are charged with the crime of burglary, a felony?

BY THE DEFENDANT: Yes, sir.

BY THE COURT: Do you understand that the Court is not a party to these negotiations between you and the State?

BY THE DEFENDANT: Yes, sir.

BY MR. WEED: Your Honor, was the reading of those Informations waived?

BY THE COURT: I will get to that in a minute. I want to cover some other things. The young man is only seventeen years of age, and I want to make sure I cover all of these things before I accept a plea on this.

BY MR. WEED: Okay.

BY THE COURT: Do you understand, Mr. Rippo, that the matter of sentencing, probation, consecutive or concurrent sentences are strictly up to the Court?

BY THE DEFENDANT: Yes.

BY THE COURT: What do you understand about a concurrent sentence or a consecutive sentence?

BY THE DEFENDANT: Consecutive sentences would run -- the total of the time would be added up. Concurrent, you would be serving them at the same time.

BY THE COURT: Have you discussed with your attorney how much time the Court could give you?

BY THE DEFENDANT: Yes, sir.

BY THE COURT: What did he tell you as to the sexual assault?

BY THE DEFENDANT: Life with or without parole; with parole begins at a minimum of ten years, and without parole, I go in front of the Parole Board after ten years or something --

BY THE COURT: If you are given life without the possibility of parole, it would mean that you would have to spend a minimum of twenty years before you will become eligible for parole, that is, less time off for good behavior; and if you are given life with the possibility of parole, it would mean that you would have to spend a minimum of ten years in the Nevada State Prison before you would become eligible for parole. Do you understand that?

BY THE DEFENDANT: Yes.

BY MR. COURTNEY: Your Honor, I don't understand that. I think he has to go before the Pardons Board to get the sentence commuted if he is given life without possibility of parole.

BY THE COURT: If he is given life without the possibility of parole, before he would be eligible for parole, he must spend a minimum of ten years less time off for good behavior. Once I sentence him, that is entirely up to them and the Governor. He doesn't come back to me asking if they can parole him.

BY MR. WEED: But you are saying the defendant has a right for a twenty-year review.

BY THE COURT: No, within twenty years he becomes eligible to have his case heard by the Pardons Board. It does not mean he is going to get it, it means he only becomes eligible for them to hear his case.

BY MR. COURTNEY: Thank you.

BY THE COURT: That is all it means. It doesn't mean he is going to get out, and contrary to what [redacted] read

in the newspapers, when one gets life without possibility of parole, that does not mean he is going to get out in twenty years. It only means he becomes eligible to have his case heard before the Parole Board; and then they will decide whether or not they want to let him out.

Do you understand that?

BY THE DEFENDANT: Yes.

BY MR. COURTNEY: Yes.

BY THE COURT: Now on the charge of burglary, do you understand the penalty on the burglary charge?

BY THE DEFENDANT: Yes, sir.

BY THE COURT: What is that, sir?

BY THE DEFENDANT: One to ten.

BY THE COURT: All right. Do you waive reading of the two Informations?

BY THE DEFENDANT: Yes, sir.

BY THE COURT: Mr. Courtney?

BY MR. COURTNEY: Yes, we do, Your Honor.

BY THE COURT: Together with a list of names attached to it?

BY MR. COURTNEY: Yes, we would waive that?

BY THE COURT: Michael Rippo, in Case No. C57388 in which you are charged with the crime of sexual assault, a felony, what is your plea to the Information; do you plead guilty or not guilty?

BY THE DEFENDANT: Guilty.

BY THE COURT: In Case No. C57389, Michael Rippo, wherein you are charged with the crime of burglary, a felony; what is your plea, sir?

BY THE DEFENDANT: Guilty.

BY THE COURT: Before the Court can accept your pleas of guilty to the two Informations, the Court must be

assured that your pleas are freely and voluntarily given; are they --

BY THE DEFENDANT: Yes.

BY THE COURT: -- to both charges?

BY THE DEFENDANT: Yes, sir.

BY THE COURT: Has anyone made any other promises to you regarding this case other than what has been stated in the negotiations in order to induce you to plead guilty?

BY THE DEFENDANT: No, sir.

BY THE COURT: What is your date of birth?

BY THE DEFENDANT: 2-26-65.

BY THE COURT: You were just seventeen last month?

BY THE DEFENDANT: Yes.

BY THE COURT: Has anyone made any threats against you or anyone closely associated with you in order to force you to plead guilty?

BY THE DEFENDANT: No, sir.

BY THE COURT: Concerning the case of the sexual assault, have you discussed with your attorney what the State must prove in order to find you guilty of the charge?

BY THE DEFENDANT: I don't remember.

BY THE COURT: Have you discussed with your attorney whether or not you have any possible defenses?

BY THE DEFENDANT: Excuse me.

BY THE COURT: Have you discussed with your attorney any possible defenses that you may have?

BY THE DEFENDANT: Yes, I believe so.

BY THE COURT: In the case of the burglary, have you discussed with your attorney what the State must prove in order to find you guilty of the charge of burglary?

BY THE DEFENDANT: I don't recall.

BY THE COURT: Has he discussed with you any possible defenses that you may have?

BY THE DEFENDANT I don't remember.

BY THE COURT: This matter will be continued until March 30th for further proceedings. This young man is only seventeen, just having turned seventeen. I would suggest that defense counsel talk with him so he fully understands what he is doing on this matter.

BY MR. COURTNEY: Thank you, Your Honor. Your Honor, I think we could just pass this a few minutes so I could talk to him.

BY THE COURT: No. I am going to continue this, sir. This is serious -- very serious.

BY MR. COURTNEY: I talked to him for hours.

BY THE COURT: I may give him consecutive sentences, and I may not. I think he should know what he is doing. If he were twenty-five or twenty-six, I wouldn't have any problem; but he just turned seventeen last month, in fact, it will be a month tomorrow.

BY MR. COURTNEY: When was this continued to?

BY THE COURT: One week.

BY THE COURT CLERK: March 30th, 9:00 a.m.

BY MR. COURTNEY: 9:00 a.m.?

BY THE COURT: Yes, sir.

BY MR. COURTNEY: Could we have an extra copy of the Information; is that possible?

BY THE COURT: Don't you have a copy, Mr. Courtney?

BY MR. COURTNEY: We have one copy.

BY THE COURT: When you go back to the Public Defender's Officer, why don't you make an extra copy?

BY MR. COURTNEY: All right; thank you very much, Your Honor.

BY THE COURT: You are welcome.

(At this time the proceedings in the foregoing case were recessed.)

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I, Peggy A. Tipton, Certified Shorthand Reporter for the Eighth Judicial District of the State of Nevada, in and for the County of Clark, do hereby certify that the foregoing is a true, complete, and accurate transcript of all proceedings held in the above matter on the 25th day of March, 1982.

DATED this 4th day of June, 1982.

Peggy A. Tipton

PEGGY A. TIPTON
OFFICIAL COURT REPORTER
NEVADA C.S.R. NO. 38

FILED
Jul 15 10 04 AM '82
LORETTA BOWMAN
-CLERK,
BY [signature]

CASE NOS. C57388, C57389

DEPARTMENT ELEVEN

ORIGINAL

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,
PLAINTIFF,
VS.
MICHAEL RIPPO,
DEFENDANT.

CASE NO. C57388

THE STATE OF NEVADA,
PLAINTIFF,
VS.
MICHAEL RIPPO,
DEFENDANT.

CASE NO. C57389

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FURTHER PROCEEDINGS AND/OR CONTINUED INITIAL ARRAIGNMENT

BEFORE THE HONORABLE ADDELIAR D. GUY, DISTRICT COURT JUDGE

TUESDAY, MARCH 30, 1982 - 9:00 O'CLOCK A.M.

APPEARANCES:

FOR THE STATE: RANDALL WEED, ESQ.
DEPUTY DISTRICT ATTORNEY
LAS VEGAS, NEVADA

FOR THE DEFENDANT: JERROLD COURTNEY, ESQ.
DEPUTY PUBLIC DEFENDER
LAS VEGAS, NEVADA

REPORTED BY: PEGGY A. TIPTON
OFFICIAL COURT REPORTER
NEVADA C.S.R. NO. 38

PEGGY A. TIPTON
CERTIFIED SHORTHAND REPORTER
LAS VEGAS, NEVADA

Exhibit B

000013

LAS VEGAS, NEVADA - 9:00 A.M. - TUESDAY, MARCH 30, 1982

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P R O C E E D I N G S

BY THE COURT; THIS IS CASE NO. C57388, THE STATE OF NEVADA VS. MICHAEL RIPPO; CASE NO. C57389, THE STATE OF NEVADA VS. MICHAEL RIPPO.

LET THE RECORD REFLECT THE PRESENCE OF THE DEFENDANT, IN CUSTODY, WITH COUNSEL, A DEPUTY DISTRICT ATTORNEY, AND OTHER OFFICERS OF THE COURT.

THIS MATTER WAS HERE BEFORE THE COURT LAST WEEK.

(PAUSE.)

BY THE COURT: IT WAS THE DEFENDANT'S DESIRE TO ENTER A PLEA OF GUILTY, AND IT CAME DOWN TO THE POINT OF EXAMINING THE DEFENDANT TO SEE IF HIS PLEA WAS FREELY AND VOLUNTARILY GIVEN, AND I ASKED THE DEFENDANT WHETHER OR NOT HE HAD DISCUSSED THE ELEMENTS OF THE CRIME WITH WHICH HE WAS CHARGED WITH HIS ATTORNEY. AT THAT TIME, HE INDICATED THAT HE HAD NOT.

I ALSO ASKED HIM WHETHER OR NOT HE HAD DISCUSSED ANY POSSIBLE DEFENSES THAT HE MAY HAVE WITH HIS ATTORNEY, AND AT THAT TIME, HE ANSWERED THAT HE HAD NOT.

MR. RIPPO, SINCE LAST WEEK, HAVE YOU HAD A CHANCE TO DISCUSS WITH YOUR ATTORNEY WHAT THE STATE HAS TO PROVE?

BY THE DEFENDANT: YES.

BY THE COURT: HAS YOUR ATTORNEY DISCUSSED WITH YOU ANY POSSIBLE DEFENSES THAT YOU MAY HAVE?

BY THE DEFENDANT: YES.

BY THE COURT: HAS YOUR ATTORNEY INFORMED YOU THAT THE STATE MUST PROVE YOU GUILTY BEYOND A REASONABLE DOUBT IF YOU WERE TO GO TO TRIAL?

BY THE DEFENDANT: YES,

BY THE COURT: CONCERNING THE CASE OF BURGLARY, CASE NO. C57389, HAS YOUR ATTORNEY TOLD YOU WHAT PENALTY THE COURT COULD IMPOSE?

BY THE DEFENDANT: YES.

BY THE COURT: WHAT DID YOUR ATTORNEY TELL YOU, MR. RIPPO?

BY THE DEFENDANT: ONE TO TEN.

BY THE COURT: AS TO THE SEXUAL ASAULT, CASE NO. C57388, HAS YOUR ATTORNEY TOLD YOU WHAT PENALTY THE COURT COULD IMPOSE?

BY THE DEFENDANT: YES.

BY THE COURT: WHAT DID HE TELL YOU?

BY THE DEFENDANT: LIFE WITH OR WITHOUT PAROLE, PAROLE BEGINNING AT TEN YEARS.

BY THE COURT: THAT IS WHERE WE HAD A PROBLEM LAST WEEK. IF THE COURT SHOULD GIVE YOU LIFE WITHOUT THE POSSIBILITY OF PAROLE, THAT WOULD MEAN THAT YOU WOULD BE -- YOU WOULD ONLY BECOME ELIGIBLE FOR PAROLE. IT DOES NOT MEAN THAT YOU WOULD GET PAROLE AT THE END OF TWENTY YEARS; AND IF THE COURT WERE TO GIVE YOU LIFE WITH THE POSSIBILITY OF PAROLE, IT WOULD ONLY MEAN THAT YOU WOULD BECOME ELIGIBLE FOR PAROLE. IT DOES NOT MEAN THAT YOU ARE GOING TO GET IT.

BY THE DEFENDANT: YES.

BY THE COURT: DO YOU UNDERSTAND THAT?

BY THE DEFENDANT: YES.

BY THE COURT: THAT IS, YOU WOULD BECOME ELIGIBLE FOR PAROLE AFTER TEN YEARS, AND THAT IS INCLUDING TIME OFF FOR GOOD BEHAVIOR.



PEGGY A. TIPTON
CERTIFIED SHORTHAND REPORTER
LAS VEGAS, NEVADA

DO YOU UNDERSTAND THESE TWO SENTENCES CAN BE GIVEN TO YOU CONSECUTIVELY?

BY THE DEFENDANT: YES.

BY THE COURT: WHAT DO YOU UNDERSTAND THE COURT TO MEAN WHEN IT SAYS "CONSECUTIVE"?

BY THE DEFENDANT: THEY WOULD BE ADDED UP.

BY THE COURT: RIGHT, SIR. IN OTHER WORDS, IF I GAVE YOU TEN YEARS ON THE BURGLARY AND LIFE WITHOUT THE POSSIBILITY OF PAROLE OR LIFE WITH THE POSSIBILITY OF PAROLE ON THE SEXUAL ASSAULT, THEN THEY WOULD START AFTER ONE HAS BEEN COMPLETED.

DO YOU UNDERSTAND THAT YOU HAVE A RIGHT TO TRIAL BY JURY?

BY THE DEFENDANT: YES.

BY THE COURT: DO YOU WISH TO WAIVE THAT RIGHT? WHEN I SAY "WAIVE," I MEAN GIVE IT UP.

BY THE DEFENDANT: YES.

BY THE COURT: DO YOU UNDERSTAND THAT YOU HAVE A RIGHT TO FACE ANY WITNESSES AGAINST YOU BY THE STATE, AND YOU ALSO HAVE A RIGHT TO CROSS-EXAMINE THEM?

BY THE DEFENDANT: YES.

BY THE COURT: DO YOU WISH TO WAIVE THAT RIGHT?

BY THE DEFENDANT: YES.

BY THE COURT: DO YOU UNDERSTAND THAT YOU HAVE A RIGHT TO SUBPOENA WITNESSES TO COME INTO COURT TO TESTIFY IN YOUR OWN BEHALF?

BY THE DEFENDANT: YES.

BY THE COURT: DO YOU WISH TO WAIVE THAT RIGHT?

BY THE DEFENDANT: YES.

BY THE COURT: DO YOU UNDERSTAND THAT AT A TRIAL, YOU MAY REFUSE TO TESTIFY; AND THE STATE MAY NOT COMMENT ABOUT IT?

BY THE DEFENDANT: YES.

BY THE COURT: IN OTHER WORDS, THEY CAN'T SAY ANYTHING ABOUT THAT; DO YOU UNDERSTAND THAT?

BY THE DEFENDANT: YES.

BY THE COURT: DO YOU WISH TO WAIVE THAT RIGHT?

BY THE DEFENDANT: YES.

BY THE COURT: DO YOU UNDERSTAND THAT YOU HAVE A RIGHT TO HAVE A LAWYER PRESENT AT ANY TIME YOU COME TO COURT?

BY THE DEFENDANT: YES.

BY THE COURT: HAS ANYONE MADE ANY THREATS AGAINST YOU OR ANYONE CLOSELY ASSOCIATED WITH YOU --

BY THE DEFENDANT: NO.

BY THE COURT: IN ORDER TO FORCE YOU TO PLEAD GUILTY?

BY THE DEFENDANT: NO.

BY THE COURT: ASIDE FROM THE NEGOTIATIONS AS STATED BY YOUR COUNSEL LAST WEEK AND BY THE DEPUTY DISTRICT ATTORNEY, HAS ANYONE MADE ANY OTHER PROMISES TO YOU REGARDING THIS CASE IN ORDER TO INDUCE YOU TO PLEAD GUILTY?

BY THE DEFENDANT: NO.

BY THE COURT: DO YOU UNDERSTAND THE MATTER OF SENTENCING IS STRICTLY UP TO THE COURT, AND NO ONE IS IN A POSITION TO PREDICT OR FORECAST WHAT THE COURT WILL DO?

BY THE DEFENDANT: YES.

BY THE COURT: KNOWING ALL OF THESE RIGHTS ARE AVAILABLE TO YOU, DO YOU STILL ASK THIS COURT TO ACCEPT YOUR PLEA OF GUILTY?

BY THE DEFENDANT: YES.

BY THE COURT: ARE YOU PLEADING GUILTY BECAUSE IN TRUTH AND IN FACT YOU ARE GUILTY AND FOR NO OTHER REASON?

BY THE DEFENDANT: YES.

BY THE COURT: IN CASE NO. C57389, WHICH IS THE

BURGLARY, WHAT DID YOU DO BETWEEN JANUARY 12, 1982, AND JANUARY 13, 1982, THAT CAUSES YOU TO ENTER INTO A PLEA OF GUILTY?

BY THE DEFENDANT: I BURGLARIZED A HOUSE AT 5322 CHATTANOOGA AVENUE.

BY THE COURT: DID YOU ENTER THE HOUSE WITH THE INTENT TO COMMIT LARCENY OR ANY OTHER KIND OF CRIME?

BY THE DEFENDANT: YES.

BY THE COURT: DID YOU HAVE PERMISSION TO ENTER THE HOUSE?

BY THE DEFENDANT: NO.

BY THE COURT: ALL RIGHT. AS TO CASE NO. C57389, THE COURT ACCEPTS THE DEFENDANT'S PLEA OF GUILTY.

AS TO CASE NO. C57388, THE SEXUAL ASSAULT, WHA. DID YOU DO ON OR ABOUT THE 16TH DAY OF JANUARY, 1982, THAT CAUSES YOU TO ENTER A PLEA OF GUILTY?

BY THE DEFENDANT: SEXUALLY ASSAULTED SUBJECT LAURA ANN MARTIN.

BY THE COURT: DID YOU STRIKE HER ABOUT THE HEAD AND BODY?

BY THE DEFENDANT: YES.

BY THE COURT: AND DID THIS RESULT IN SUBSTANTIAL BODILY HARM?

BY THE DEFENDANT: YES.

BY THE COURT: DID YOU ACTUALLY INSERT YOUR PENIS INSIDE OF HER VAGINA?

BY THE DEFENDANT: NO.

BY MR. COURTNEY: YOUR HONOR, THERE IS A QUESTION THERE. HIS MEMORY IS VAGUE AS TO WHAT HAPPENED.

SHE SAYS -- SHE SAYS THAT THERE WAS A SLIGHT PENETRATION -- VERY SLIGHT -- AND LEGALLY THAT WOULD FALL UNDER THE DEFINITION OF SEXUAL ASSAULT; AND WE ARE NOT

GOING TO -- SINCE HE DOESN'T -- HE DOESN'T REMEMBER, AND SHE DOES REMEMBER, WE ARE NOT GOING TO FIGHT THAT ISSUE, BUT HE CANNOT SAY POSITIVELY OF HIS OWN THAT HE DID PENETRATE. IF HE DID, IT WAS ONLY A VERY SLIGHT PENETRATION.

BY THE COURT: IT IS MY UNDERSTANDING, MR. RIPPO, YOU ARE WILLING TO TAKE THE WORD OF THE VICTIM, LAURA ANN MARTIN, THAT YOU DID SLIGHTLY PENETRATE HER; IS THAT RIGHT?

BY THE DEFENDANT: YES.

BY THE COURT: AS TO CASE NO. C57388 CHARGING SEXUAL ASSAULT, THE COURT WILL ACCEPT THE DEFENDANT'S PLEA OF GUILTY.

THIS MATTER IS CONTINUED UNTIL --

BY THE COURT CLERK: APRIL 27, 9:00 A.M.

BY THE COURT: THIS MATTER IS CONTINUED UNTIL THE 27TH DAY OF APRIL, 1982, AT THE HOUR OF 9:00 A.M. FOR ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE.

BY MR. COURTNEY: THANK YOU, YOUR HONOR.

--000--

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

Peggy A Tipton

PEGGY A. TIPTON
OFFICIAL COURT REPORTER
NEVADA C.S.R. NO. 38

INST



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

MICHAEL DAMON RIPPO

Defendant.

Case No. C106784
Dept. No. IV
Docket C

INSTRUCTIONS TO THE JURY

(INSTRUCTION NO. 1)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this penalty hearing. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

1015

INSTRUCTION NO. 3

The trial jury shall fix the punishment for every person convicted of murder of the first degree.

INSTRUCTION NO. 4

The jury shall fix the punishment at:

(1) Life imprisonment without the possibility of parole,

(2) Life imprisonment with the possibility of parole, or

(3) Death.

INSTRUCTION NO. 5

Life imprisonment with the possibility of parole is a sentence of life imprisonment which provides that a defendant would be eligible for parole after a period of ten years. This does not mean that he would be paroled after ten years, but only that he would be eligible after that period of time.

Life imprisonment without the possibility of parole means exactly what it says, that a defendant shall not be eligible for parole.

If you sentence a defendant to death, you must assume that the sentence will be carried out.

Although under certain circumstances and conditions the State Board of Pardons Commissioners has the power to modify sentences, you are instructed that you may not speculate as to whether the sentence you impose may be changed at a later date.

INSTRUCTION NO. 6

In the penalty hearing, evidence may be presented concerning aggravating and mitigating circumstances relative to the offense, and any other evidence that bears on the defendant's character.

Hearsay is admissible in a penalty hearing.

INSTRUCTION NO. 7

The State has alleged that aggravating circumstances are present in this case.

The defendants have alleged that certain mitigating circumstances are present in this case.

It shall be your duty to determine:

(a) Whether an aggravating circumstance or circumstances are found to exist; and

(b) Whether a mitigating circumstance or circumstances are found to exist; and

(c) Based upon these findings, whether a defendant should be sentenced to life imprisonment or death.

The jury may impose a sentence of death only if (1) the jurors unanimously find at least one aggravating circumstance has been established beyond a reasonable doubt and (2) the jurors unanimously find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

Otherwise, the punishment imposed shall be imprisonment in the State Prison for life with or without the possibility of parole.

A mitigating circumstance itself need not be agreed to unanimously; that is, any one juror can find a mitigating circumstance without the agreement of any other juror or jurors. The entire jury must agree unanimously, however, as to whether the aggravating circumstances outweigh the mitigating circumstances or whether the mitigating circumstances outweigh the aggravating circumstances.

INSTRUCTION NO. 8

The law does not require the jury to impose the death penalty under any circumstances, even when the aggravating circumstances outweigh the mitigating circumstances. Nor is the defendant required to establish any mitigating circumstances in order to be sentenced to less than death.

INSTRUCTION NO. 9

You are instructed that the following factors are circumstances by which Murder of the First Degree may be aggravated:

1. The murder was committed by a person under sentence of imprisonment, to-wit: Defendant was on parole for a Nevada conviction for the crime of Sexual Assault in 1982.

2. The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another. Defendant was convicted of Sexual Assault, a felony, in the State of Nevada, in 1982.

3. The murder was committed while the person was engaged in the commission of or an attempt to commit any Burglary and the person charged:

(a) Killed the person murdered; or

(b) Knew that life would be taken or lethal force used; or

(c) Acted with reckless indifference for human life.

4. The murder was committed while the person was engaged in the commission of or an attempt to commit any Kidnapping and the person charged:

(a) Killed the person murdered; or

(b) Knew that life would be taken or lethal force used; or

(c) Acted with reckless indifference for human life.

5. The murder was committed while the person was engaged in the commission of or an attempt to commit any Robbery and the person charged:

(a) Killed the person murdered; or

(b) Knew that life would be taken or lethal force used; or

(c) Acted with reckless indifference for human life.

6. The murder involved torture.

MRJEC-07029-01081

INSTRUCTION NO. 10

A person who is on parole at the time he commits murder is under a sentence of imprisonment.

The offense of Sexual Assault is a Felony.

INSTRUCTION NO. 11

Any person who by day or night, enters any building or apartment with intent to commit Larceny and/or Robbery and/or Kidnapping, is guilty of Burglary.

Larceny is the stealing of property and/or money.

INSTRUCTION NO. 12

Every person who wilfully seizes, confines, restrains, conceals, kidnaps or carries away any person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person:

1) for the purpose of committing robbery from the person; or

2) for the purpose of killing the person or inflicting substantial bodily harm upon her;

is guilty of Kidnapping.

Forcible movement of a victim is simply one of the ways kidnapping may be accomplished. The crime of kidnapping is complete whenever it is shown that a defendant willfully and without lawful authority seizes another human being with the intent to detain her against her will for the purpose of committing robbery.

When forcible movement of a victim does occur there is no requirement of a minimum distance of asportation. It is the fact not the distance of forcible movement that constitutes kidnapping.

INSTRUCTION NO. 13

Robbery is the unlawful taking of personal property from the person of another, or in her presence, against her will, by means of force or violence or fear of injury, immediate or future, to her person or property, or the person or property of a member of her family, or of anyone in her company at the time of the robbery. A taking is by means of force or fear if force or fear is used to:

(a) Obtain or retain possession of the property;

(b) Prevent or overcome resistance to the taking; or

(c) Facilitate escape.

The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property. A taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

INSTRUCTION NO. 14

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

INSTRUCTION NO. 15

The essential elements of murder by means of torture are (1) the act or acts which caused the death must involve a high degree of probability of death, and (2) the defendant must commit such act or acts with the intent to cause cruel pain and suffering for the purpose of revenge, persuasion or for any other sadistic purpose.

The crime of murder by torture does not necessarily require any proof that the defendant intended to kill the deceased nor does it necessarily require any proof that the deceased suffered pain.

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * * * * * * *

MICHAEL RIPPO,

Appellant,

-vs-

E.K. McDANIEL, et al.,

Respondent.

No. 53626



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airfare, and they came out to Long Island in May or June, 1983 or 1984, just after school let out. Catherine said that Stacie was 13 years old at the time, and Carole Ann may have been 14 or 15 years old. [Tab 99, 102.]

Catherine enrolled the girls in William Floyd High School in Mystic Beach, Suffolk County that next September. Carole signed a permission slip for the girls to be registered, but she never signed a form to provide Catherine with official guardianship over the girls. As a result, the parent-teacher meetings that Catherine attended were very short and uninformative. The teachers would tell Catherine what classes the girls failed or passed, and nothing more. The teachers never discussed the girls' behavioral issues and Catherine was not even allowed to speak with their guidance counselors. Carole Ann failed just about all of her classes because she frequently cut classes and hardly ever showed up to school. When Catherine asked the teachers what they intended to do about Carole Ann's poor attendance, she was told not to worry about it, they couldn't discuss that with her and that they would handle Carole Ann's problem themselves. Stacie, on the other hand, attended all of her classes regularly and passed everything. [Tab 99, 102.]

Stacie immediately accepted Domiano and her new environment, and within a week of being there indicated that she wanted to stay in Long Island with her father forever. Catherine told Stacie that it was all right for her to stay as long as Domiano was all right with it, and he was. Carol Ann was more distant and stand-offish, didn't make many friends and never wanted to stay permanently. Carole Ann spoke of wanting to be reunited with a boyfriend whom she left back in Las Vegas. Carole Ann also accused Catherine of keeping Domiano away from them, which Catherine did not understand because she never persuaded or stopped Domiano from spending any time with them. Catherine figured that Carole Ann wanted to see more of Domiano when he was out driving trucks across country. [Tab 99, 102.]

When the girls came out to live with Domiano and Catherine, Domiano was a cross-country truck driver and Catherine was a housewife and, therefore, Catherine was the primarily care-giver for both Carol Ann and Stacie. While Domiano was out on the road for days at a time, Catherine made certain that the girls went to school, had meals to eat, attended parent-teacher conferences, and stayed in line. [Tab 99, 102.]

Catherine's first impression of both Carole Ann and Stacie was that they were both very street smart and sexually advanced for their ages. Catherine also believes that they were both sexually active before their return to Long Island. When Stacie first moved in, she went out and purchased several pairs of very fancy and seductive panties and undergarments. When Catherine asked Stacie why she needed that type of underwear and who she thought was going to see

them, Stacie responded by rolling her eyes and looking at Catherine like she was "stupid." Stacie then started telling Catherine that she (Stacie) never knew when she going to get from first base to second base or have a home run. Catherine was flabbergasted at Stacie's comment and took it to mean that Stacie was sexually active. Catherine was embarrassed by Stacie's inappropriate response and did not talk about it any further. [Tab 99, 102.]

Stacie was very talkative, outgoing, and she easily made friends in school and around the neighborhood; whereas Carole Ann was withdrawn, introverted, hardly spoke and generally had a difficult time making friends. Although Catherine never saw Carole Ann associate with any boys during her time in Long Island, on a few occasions Catherine heard Carole Ann mention that she had a boyfriend in Las Vegas and that she intended to leave home and move in with him, and make a life together. Catherine found Carole Ann's descriptions and future plans to be well beyond the normal conversation of a 14 or 15 year old. Although both girls seemed to be very forward and flirtatious in their expressions, Catherine found Stacie to be a lot more sexually expressive than Carole Ann. [Tab 99, 102.]

Stacie became particularly fond of a boy who lived around the corner from Catherine and Domiano's home, and he also rode the same school bus to school with Stacie and Carole Ann. Catherine described this boy and his family as being very poor and she referred to them as "white trash." The boy and his family lived in a trailer home that was filthy inside and out, and his mother was an alcoholic. Catherine is convinced that the boy's mother had such poor morals that she probably would have allowed Stacie to have sex with her son in the trailer. Whenever Stacie was not home or at school, she was with this boy in his family's trailer. Carole Ann also hung out with Stacie and this boy on many occasions. Stacie and Carole Ann enjoyed being there because the boy's mother was very irresponsible and allowed the kids to do whatever they wanted to do. The mother even told Catherine that the girls could come and live with her if Catherine and Domiano thought it was okay, but this idea was resoundingly rejected by Catherine despite the pleas of both Stacie and Carole Ann. Catherine told the girls to stay away from the boy and his family, but they did not listen to Catherine. Stacie and Carole Ann left home without permission on several occasions, and when Catherine went out to look for then she usually found them with the boy at his trailer or some where around the neighborhood. Stacie and Carole Ann sometimes protested when Catherine found them and told her that they did not want to go back home and to let them stay with the boy's family. However, Catherine never allowed them to do so. [Tab 99, 102.]

Catherine's son was taking karate classes during that time, and Stacie volunteered to meet Catherine's son and walk him home from the karate classes.

On the first day that Stacie was to pick Catherine's son up, Catherine saw her son walk in the house by himself. When Catherine asked where Stacie was, her son told Catherine that Stacie left him. Catherine then got into her car and drove around the neighborhood searching for Stacie. When Catherine found Stacie, she was standing behind the karate school building with the trailer boy. The two of them were kissing and groping one another. In fact, the boy had his hands underneath Stacie's shirt and was feeling her breasts. Catherine drove up to them and told Stacie to immediately get into the car. Stacie complied with Catherine's demand but tried to explain that they were not doing anything. [Tab 99, 102.]

Catherine remembered that Stacie's flirtations were not just limited to boys in school or around the neighborhood, but it was even extended to her own family members (male cousins). Catherine recalled one occasion when Stacie was at a block party with several extended Campanelli family members in attendance, and she seemed to take a liking to her first cousin Richie Ahern, Jr. (son of Domiano's sister Isabel Ahern). After flirting with Richie for a while, Stacie whispered something into his ear and Richie responded by shouting, "Eww. . . . that's disgusting," "we can't do that . . . don't you know that we're cousins?" Richie walked away from Stacie in a state of disgust, and did not bother with her for the rest of the party. [Tab 99, 102.]

Although Carole Ann wasn't as sexually provocative as Stacie, she wrestled with other problems. Catherine had the impression that Carole Ann was abusing drugs and alcohol while she stayed with them. Domiano's brother-in-law, Richie Ahern, Sr., drove Catherine to the airport to retrieve the girls when they first flew in from Las Vegas (Domiano was out on the road at the time). When the girls got into Richie, Sr.'s car, he reached into a cooler that he had on the back seat and handed Carole Ann a can of beer. Carole Ann immediately took the can, opened it and began drinking the beer as if it were a normal routine for her. When Catherine told Richie that she did not think Carole Ann ought to be drinking beer at her age, Richie said, "come on . . . you don't want to develop the reputation of being the wicked step-mom." Carole Ann finished her beer, and Catherine let it go and didn't say anything else because of the awkwardness of the situation. Stacie was not offered any beer, nor did she try to drink it. [Tab 99, 102.]

Catherine also had the impression that Carole Ann was getting high because of her appearance on many occasions when coming home after hanging out in the streets with her friends. Carole Ann often came home with blood-shot eyes, slurred speech, staggering walk and her comments were incoherent. Catherine was not sure what drugs Carole Ann may have been using, but she doesn't recall smelling marijuana or alcohol on Carole Ann's breath during these incidents. Stacie never had this appearance, nor did she ever do or say anything that made Catherine suspect she used drugs. [Tab 99, 102.]

Catherine had the impression that the girls may have been exposed to physical abuse and/or acts of domestic violence. Shortly after the girls arrived in New York, Catherine was present while Carole Ann was taking off a sweater one evening. When Carole Ann disrobed, Catherine saw black and blue marks on both of Carole Ann's arms. Catherine described the bruises as looking like large/long finger marks that came from someone grabbing her by the arms. Catherine asked Carole Ann where the bruises came from, but Carole Ann just said, "Oh, it's nothing," and said nothing else. Catherine made no further inquiries because she did not think Carole Ann wanted to discuss it. Catherine recalled that the bruises took a couple months to clear up. Catherine did not recall seeing any bruises on Stacie's person. [Tab 99, 102.]

Although Catherine never knew Stacie or Carole Ann ever to have gotten into a fight, she recalls them both witnessing a violent altercation where the trailer boy pulled out a knife stabbed another youth. The incident occurred near the boy's trailer home, the police were called and girls were interviewed by detectives. Catherine doesn't believe the wounded youth was seriously harmed, and neither Neither Stacie nor Carole Ann were arrested nor considered suspects in the matter. Catherine and Domiano had no dealing/contact with the authorities in regard to the incident, and they knew only what the girls told them. [Tab 99, 102.]

Catherine had various opportunities to hear the girls' thoughts on their lives in Las Vegas. They both did not like living under their mother's roof because of how strict their parents were. The "parents" that the girls spoke of were Carole and Robert Duncan. Catherine does not recall whether the girls ever spoke about Ollie. Carole Ann had the most animosity for Robert between the two sisters, and Catherine cannot recall Carole Ann's specific reasons. [Tab 99, 102.]

Besides mentioning their parents' strictness, the girls never bad-mouthed Carole and they never discussed ever being physically or sexually abused. Stacie mentioned that she really hated the schools in Las Vegas because of all of the racial fights and tension that existed in them. [Tab 99, 102.]

03/01/1983 Michael took the GED and scored a 54.4 (passing).

65 percentile in correctness and effectiveness of expression
72 percentile in interpretation of reading materials in social studies
74 percentile in interpretation of reading materials in natural sciences
52 percentile in interpretation of literary materials
73 percentile in general mathematical ability
[Tab 39.] [Tab 41.]

00/00/1983 While in prison Michael reports that he began using drugs between the ages of 18 and 19. He was not heavily involved, and was not extremely interested in drugs at the time. [Tab 7.]

04/13/1983 Michael transferred to Southern Desert Correctional Center for several disciplinaries and that he was becoming a behavior problem. [Tab 41.]

When Domiano found out Michael was incarcerated at Jean, Nevada, he started visiting him every three to six weeks while making trucking runs to California. These visits lasted about a year until Domiano's son, Damon, was born. Then Domiano began making exclusively east coast runs so he wasn't too far from home. He has not seen Michael in person since. [Tabs 71 and 105.]

During Domiano's visits and communications with Michael, he learned the difficulties Michael had living with his mother and Anzini. Michael told him pretty much the same things his sisters said. Michael also said Anzini had absolutely no respect for women and often said they were all bitches. Michael further said Anzini had a lot of resentment for his ex-wife because of the difficulties they had after the divorce and while he was with Carole. [Tabs 71 and 105.]

Michael never talked about conditions of his incarceration with Dominao or any problems he may have had. Domiano never saw cuts or bruises on Michael and Michael apparently got along with both guards and inmates. [Tabs 71 and 105.]

Michael complained that his mother almost never visited him and even missed the special event the prison hosted for the inmates and their families. She promised to come but never showed up. [Tabs 71 and 105.]

Domiano related an incident where, in the visiting room, Michael had a strong physical reaction (sick to his stomach) to a girl who was visiting another inmate. He said Michael reportedly did not know the girl and Domiano wondered if Michael had developed a fear of women. [Tabs 71 and 105.]

05/11/1983 Michael was recommended for a transfer back to Southern Nevada Correctional Center. He was no problem, but was warned that further [bad] behavior would result in immediate consideration for a northern institution. [Tab 41.]

00/00/1983 About a year after Ollie Anzini died, Carole had financial problems. Carole's daughter, Carole Ann moved in with Dolores. Carole Ann was fighting with her mother all the time. [Tab 66.]

When Stacie was about fourteen, Carole got angry with her when she said she wanted to go live with her father, Domiano. Carole told Stacie that neither she nor her sister had been wanted as a child, only Michael, and that Stacie was

the product of a drunken rape by Domiano. "Mom has quite a tongue on her," said Stacie. In the end, however, Stacie lived with Domiano about a year. [Tabs 79 and 109.]

12/02/1983 Michael's personality profile indicates he is sensitive, imaginative, resourceful, trainable and on an A-F scale scores "B" as likely to benefit society. [Tab 40.]

12/00/1983 As time went on, Stacie and Carole Ann were having a more difficult time with following the rules of the house and Catherine's authority. Domiano was not able to help out much because he was frequently on the road. The girls also began saying that they missed their mother. Ultimately, the tension caused both Stacie and Carole to request that they be sent back home to Las Vegas. Catherine and Domiano told the girls that they could do as they pleased and bought them one-way tickets back to Las Vegas. The girls spent about a total of six months with Catherine and Domiano, and they left shortly before Christmas of the same year in which they came. [Tab 99, 102.]

When they girls went home, Stacie continued to call Domiano and Catherine periodically but Carole Ann did not. Catherine recalled that Stacie[9] became pregnant within the first couple months of returning home. Stacie told Catherine that the baby belonged to someone other than her current boyfriend but she was not going to tell the boyfriend so that he could help her raise it. Catherine is not certain, but believes there's a possibility that the trailer boy from Long Island could have fathered Stacie's child. After Stacie had her first child, Stacie became pregnant again but aborted it. Catherine did not hear much about what became of Carole Ann. [Tab 99, 102.]

Catherine described Domiano as being an excellent father to the girls whenever he was home off of the road, and he was an excellent father to their son Damon as well. Catherine said that Domiano was patient, loving, kind and always tried to do the right thing when it came to his children. Domiano was always very responsible and always made sure there was enough money to meet the needs of everyone in the house. Domiano was stern when it came to setting parameters and disciplining the kids, but he was never oppressive. Domiano never abused the children verbally, emotionally, physically nor any other kind of way. Overall, Catherine saw Domiano as a very positive force in the lives of his all children, and she believes the kids he had with Carole would have benefitted tremendously had Domiano been in their lives during their entire childhood. [Tab 99, 102.]

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[9]Must have been Carole Ann, as Carole Ann's daughter is some years older than Stacie's eldest child.

Although Domiano was a great dad, Catherine admitted that he was not always the best husband. Catherine and Domiano some times could not see eye to eye, and there were arguments. The arguments never became violent until 1992, twenty years into their relationship, when he slapped Catherine during a dispute for the first and only time ever. Catherine left Domiano and divorced him shortly afterwards. Catherine said once was too much for her to bear. Nevertheless, Catherine did not recall ever having a huge argument with Domiano in front of his children. [Tab 99, 102.]

02/25/1984 An incident report was filed against Michael. [Tab 41.]

02/26/1984 Michael is nineteen years old.

00/00/1984 Domiano and Michael continued to correspond for about six months to a year after Domiano stopped visiting him in person. This contact came to an end when Dominao refused to buy Michael an expensive computer he wanted. He agreed to get Michael a cheaper model, for which Michael would not settle and told Domiano not to bother contacting him any more. Domiano thought Michael was being unreasonable and ungrateful (he used to regularly put money on Michael's books), so stopped contacting Michael. [Tabs 71 and 105.]

Domiano blames Carole for the strained relationship he has with his children. She took them away and did not let him know where they were for more than a decade. She poisoned their minds against him by speaking badly of him. Stacie is the only child who has remained in contact with Domiano. [Tabs 71 and 105.]

Stacie says she survived her childhood only because she went into her own world and shut out the rest. She "disconnected." She would play with her Barbies and shut it all out. She developed an insatiable thirst for knowledge and read everything, non-fiction, self-help. She still does. [Tabs 79 and 109.]

02/29/1984 Michael appeared before the Disciplinary Committee (possession of contraband). He received five days punitive segregation, suspended 60 days clear conduct and restitution in the amount of $2.00. He had been disciplinary free since (one year). [Tab 41.]

04/00/1984 Carole married Robert Duncan. She is a homemaker and he is a heavy-equipement operator. [Tab 114.]

06/00/1984 In the Summer of 1984, Carole Anne (age 14) and Stacie (age 12) arrived in New York and were enrolled in school. Domiano was a truck driver at this time and

spent most of his time on the road. His second wife cared for his daughters and went to school meetings. [Tabs 71 and 105.] [Tab 114.]

Antoinette recalls that Carole Ann and Stacie returned to Long Island during their teenage years to visit Domiano. She thinks Carole Ann stayed the summer but that Stacie was enrolled in school and stayed half the school year. [Tab 74.]

When Carole Ann and Stacie came to live with Domiano, Isabel recalled that Carole Ann came with a bad attitude and reminded Isabel of Carole. Carole Ann was rude to her father, spoke badly about his character (Isabel believes Carole poisoned the minds of her children against Domiano). Carole Ann made it very clear she came to New York hoping to get money from Domiano. Isabel thinks Stacie came with a similar motive, but wasn't as forward as Carole Ann. [Tab 91.]

Stacie told Domiano she wanted to live with him, and he agreed to it. She was enrolled in school. Carole Ann, however, returned to Las Vegas at the end of the summer. Isabel does not know specifics but there was trouble in Domiano's home which led to both girls going home. Isabel speculates Domiano's second wife was having trouble dealing with the girls' behavioral issues. [Tab 91.]

It was about the time of Carole Ann and Stacie's visits that Carole told Domiano about Michael's behavioral problems and incarceration. Domiano immediately started to visit Michael when he was on trucking runs through Nevada. Isabel notes that Domiano has always "been there" for his children when they needed him. [Tab 91.]

10/24/1984 Michael received a certificate of completion for Street Readiness. [Tab 41.]

10/25/1984 Classification progress report indicates he has medium custody and has worked in the laundry for 19 months. [Tab 41.]

Stacie ran away from home at age 15. She ran away so often she was "put away" for a year in the juvenile system. [Tabs 79 and 109.]

11/13/1984 Michael completed vocational dry cleaning course and received a certificate. [Tab 41.]

00/00/1984 Catherine and Domiano Campanelli have a son together, Damon. Domiano liked the name Damon because it is the English version of the name "Domiano," and he did not want to give his son exactly the same name. Domiano also had a favorite cousin whose name was Damon, but he passed away many years earlier. [Note, too, that Michael's middle name is Damon.] [Tab 99, 102.]

Catherine described Damon as being a "very well adjusted yong man."

Damon was a happy child and he enjoyed a very close relationship with his father (in fact, he still lives with Damiano in Mystic Beach). Catherine said Damon was always very smart because he never had to study to pass exams in school, he was a straight-A student and currently he's "breezing through" college with high grades and no problems. Damon is also about six feet tall and Catherine credits her side of family for his height. [Tab 99, 102.]

Damon only had one small brush with the law during his entire life. Damon was the passenger in a car that his friend owned and was driving and the police found marijuana under the friend's seat (driver's seat). Ultimately, the case was adjourned in contemplation of dismissal and the case was to be expunged a year later if he did not get into any other trouble. The year passed, Damon went trouble free and the case was expunged. Overall, Damon was a good kid with a bright future and Catherine was very proud of him. Catherine believed that Michael may have turned out better if he had been in a more positive environment like that of his younger brother. [Tab 99, 102.]

02/26/1985 Michael is twenty years old.

03/00/1985 At first, all went well with Stacie and Carole Ann in the Domiano household, but they soon experienced behavioral issues in and out of school. They were caught drinking alcohol and smoking pot; they were cutting classes and getting into fights. A knife was involved during one of the fights but Domiano doesn't think anyone was hurt. As a result of these problems, Domiano sent them back to Las Vegas to their mother. The girls spent only six to eight months with Domiano's family. [Tabs 71 and 105.]

While living with Domiano, the girls sometimes spoke about life with Carole and Anzini in Las Vegas. They said Anzini yelled at them and Michael and that Anzini constantly got into arguments with Carole in the kids' presence. They also said Anzini was a heavy gambler and drank excessively while he was alive. They did not hold a high opinion of Anzini and believed Anzini did not like them. [Tabs 71 and 105.]

Carole Ann told Domiano the situation at home was so bad that she ran away a few times. She said Carole and Anzini put her in a Catholic School for runaways after one episode. She also said Carole Ann and Anzini threatened to put her away in jail for misbehaving and running away. Carole would ask Carole Ann if she knew what happened to little girls in jail, and would then twist Carole Ann's arm behind her back and say, "this is what happens to little girls in jail." Both girls told Domiano that Anzini's sons were given preferential treatment over them; that Anzini was physically abusive to everyone in the house, even Carole. They said it was like their own mother wanted nothing to do with them when

Anzini's boys were in the house and that she waited on his sons hand and foot. [Tabs 71 and 105.]

Ruth Rippo recalled that Carole Ann and Stacie returned to New York to stay with Dominao for a summer but does not recall that they were enrolled in school there. The purpose of the trip was to give the girls a chance to know Domiano. Domiano never followed through in maintaining a relationship with his daughters. [Tab 73.]

Carole married Robert Duncan. Stacie recalled he is an alcoholic. He was nice when sober but abusive when drunk. She described him as a belligerent drunk. To this day, Stacie is able to stand up to him on her own behalf and on behalf of her mother. [Tabs 79 and 109.]

03/00/1985 March 1985 Parole Progress Report. Adjusting to institutional confinement well, although encountered problems in the past. The Classification Coordinator makes no recommendation re parole; the institution recommends denial. [Tab 41.]

10/00/1985 Stacie reported experimenting with Crystal twice. She did not use again. [Tabs 79 and 109.]

Stacie was released from the juvenile detention system. [Tabs 79 and 109.]

10/28/1985 Stacie entered the juvenile system on a runaway charge. She was counseled and the case closed that same day. [Tab 114.]

12/06/1985 Carole complained that Stacie had been unmanageable over the past six months, she was away from home four times overnight or longer; that Stacie was habitually truant from school and was excluded on October 24, 1985; Stacie habitually shoplifted and has admitted to shoplifting more than 20 times; that she habitually used alcohol and drugs, which Stacie admitted; that she used speed and was smoking marijuana but claimed she quit at the end of summer; Stacie had threatened to have Robert Duncan murdered. [Tab 114.]

Stacie's statement said she was very happy until her mother married Duncan. She started running away and threatened to kill her stepfather. She said he always had to have the last word; that her parents never sat down and talked to her but yelled. She says Duncan is an alcoholic, that he hit them and Carole had to pull him off. Duncan gave Carole Ann a black eye a couple of months previously by slapping her. She was not allowed to eat unless she asked permission and once had to ask to be allowed to use the bathroom. She asked to be placed in a foster home. She ended, "I hate his guts and the next time I see him I am gonna spit in his face!!" [Tab 114.]

12/10/1985 Stacie was in custody of Youth Manor. A Petition was filed stating she is in need of supervision and care or rehabilitation as she was habitually disobedient and beyond control of her parents, Robert and Carole Duncan. She had been in the Clark County Juvenile Detention Home having been declared unmanageable since June 6, 1985. [Tab 114.]

12/13/1985 Stacie was adjudicated a Child in Need of Supervision. [Tab 114.]

01/08/1986 A Dispositional Hearing relating to Stacie's run-away November 28, 1985. She was placed in Youth Manor on December 6, 1985 and released to her parents on December 20, 1985. Stacie reported that her problem was related to hatred for her stepfather [Robert Duncan] and lack of communication in the family. [Tab 114.]

In the report, it was noted that Carole Ann, age 14, is functioning "in a successful manner" at home. [Tab 114.]

Carole reported that Stacie "wants to behave just as she pleases." Home rules are disregarded often. [Tab 114.]

Carole and Robert are born-again Christians. Stacie's behavior often conflicted with their religious beliefs, but she attended church with them. Stacie, her mother stated, did not have drug and alcohol problems. [Tab 114.] Stacie was excluded from school for excessive absences. She would not be allowed to return until January 24, 1986. She was reported to be capable of being an honor roll student, but she "does not see a need for school." She was seen by the evaluator as "immature and selfish." Stacie was in an outpatient counseling program at Youth Manor. Recommended Stacie be placed in Formal Supervision for six months. [Tab 114.]

01/09/1986 At the hearing, Stacie was unable to state why she was having trouble attending school on a regular basis. She was going to go live with her father in New York; if she did that, she wouldn't need to go to school, so she just didn't go. [Tab 114.]

01/13/1986 Stacie was adjudicated a Child in Need of Supervision and placed on Formal Supervision until July 8, 1986. She and her parents were required to complete the counseling program at Youth Manor. [Tab 114.]

01/25/1986 A Petition was filed against Stacie for being out at 2:30 a.m. without adult supervision. She was placed in the Clark County Juvenile Detention Home on February 19, 1986. [Tab 114.]

02/06/1986 Stacie had another Petition filed against her for shoplifting at Sears. [Tab 114.]

02/26/1986 Michael is twenty-one years old.

03/04/1986 The Screening and Placement Committee report indicated that on one occasion, her fight with Duncan became physical "resulting in Stacie's being somewhat battered." The two alternative placements failed when Stacie was cited for curfew violations and larceny. Stacie found the placements herself. [Tab 114.]

The committee noted that both Stacie and her sister experienced problems with Duncan but that they know how to "push his buttons," and he then felt compelled to exert his authority. Stacie said she had a problem with the religious atmosphere of her home. She reported she had been allowed to do much as she pleased and recognized she is a bit of a con-artist. Placement at Regina Hall recommended. [Tab 114.]

03/10/1986 Stacie was adjudicated a delinquent. [Tab 114.]

03/10/1986 Michael was found in possession of dangerous contraband: a six-inch adjustable wrench, a brass fitted pipe, a pair of nunchucks, a compass, and a nine-inch buck knife. He received 180 days disciplinary segregation. While in disciplinary segregation, Michael broke his cell window and dismantled his bed frame. [Tab 42.]

03/20/1986 Three petitions were pending: Two for curfew violation and one for petty larceny. Stacie was reported to have attained "trustee" status at the detention facility. Stacie reports the curfew violation was because she was out with her friends and did not want to go home. She had no reason for stealing the cologne at Sears, it was just an idea that popped into her head. [Tab 114.]

Carole indicated she had some problems with Carole Ann but has worked them out. Stacie's behavior indicated "she is somewhat hedonistic, does not obey family rules and curfew, and does not go to school regularly." Stacie also had an extremely difficult time not smoking in the house.[Tab 114.]

Stacie received three Delinquent charges since being placed on Formal Supervision. Both alternative placement situations failed since she was placed on Formal Supervision. The Probation Subsidy Evaluation Committee recommended placement at Regina Hall; Stacie had been accepted. [Tab 114.]

At the hearing, the office reported Stacie cannot return home; Stacie cried. She was asked why and said, "Because I want to go home, but I can't."

05/00/1986 Michael exposed his genitals to an officer. [Tab 42.]

06/00/1986 Michael is transferred to NNCC based on poor institutional behavior. While at

SNCC he was subject to several misconduct reports. [Tab 42.]

He was found in possession of a buck knife, a pair of steel nunchakus, and a brass pipe (for smoking). He was sent to NNCC in 1986. [Tab 70.]

Michael enrolled in college at NNCC and book Business 101 (small business management), Real Estate, Sci-Fi Literature, and Shakespeare. A non-teaching staff member (possibly Mr. York) in the education department arranged for Michael to receive his own computer from his mother, an Amiga. It was kept at the school in his class. He previously had a Commodore 64 at SNCC. [Tab 70.]

07/21/1986 Michael remained in general population until he requested protective custody status this date. He claimed to owe a general population inmate $4,700 and feared for his life. He was transferred to Nevada State Prison and placed in general population. [Tab 42.]

NSP was a maximum custody prison. The general attitude wasn't very friendly, even though he knew many people. He wasn't too popular. He didn't toe the party line of the white race. He made matters worse by moving in with Steve Clark, who is black. He was called a "race traitor." But Steve Clark's presence discouraged acts against Michael. [Tab 70.]

08/22/1986 Michael was interviewed by the Director and granted a final chance to return to NNCC. [Tab 42.]

08/25/1986 Michael returned to NNCC General Population. He told the reporting investigator he requested protective custody status to be with his homosexual friend.

10/00/1986 Stacie turned 17 and got married for the first time. Her husbands all will be abusive. [Tabs 79 and 109.]

Stacie recalled her mother controlled her with guilt and shame. Once after her first marriage, she was saving to buy a television. She recalls it took a long time but when it came time to buy it, her mother "guilted" her into not buying it because of Michael's needful situation. [Tabs 79 and 109.]

11/07/1986 Stacie completed her probation term at Regina Hall. [Tab 114.]

01/29/1987 Mental History in Prison summary: original psychological testing indicated a profile consistent with borderline personality deficit. He had learned to control these tendencies. Current status: confirm earlier test results. He had matured considerably since incarceration. He receives a "C" grade (A-F scale) relative to readiness for parole. [Tab 43.]

02/26/1987 Michael is twenty-two years old.

03/00/1987 Institutional Progress Report. He is again before the parole board after a two-year denial in 1985. Rippo tells the reporting officer he requested protective custody to be with his homosexual friend. Now in general population at NNCC and has remained disciplinary free. [Tab 42.]

Since 1985 parole board hearing, Michael had been enrolled in full-time academics. Michael studied math and Spanish. He planned to become an engineer on release. He planned to parole to Boston, Massachusetts and reside with friends. He had no concrete job plans, but planned to work at an auto body shop in Boston. Alternatively, he will parole to Las Vegas, reside with his mother and obtain employment with Triple A Aluminum or a catering service. [Tab 42.]

In discussing his offense, he stated he is not a rapist. He stated he had never had sex with a woman before and forced himself on her. He stated he had no morals at the time and is sorry the incident occurred. Denies alcohol and drug use or addiction. [Tab 42.]

Counselor recommends if parole granted Michael obtain outpatient mental health counseling, drug testing, search, and maintain steady employment and residency. Institution recommends denial.[Tab 42.]

03/05/1987 Michael receives a one-year denial of parole. [Tab 45.]

12/28/1987 Carole Ann Rippo (DOB 12/28/42) got work card for MGM Grand Hotel as a food server. [Tab 11.]

02/26/1988 Michael is twenty-three years old.

05/26/1988 Michael was transferred to NSP for possible involvement in the Over-Forty Club/Store robbery at NNCC, implication in drug dealing and being an enforcer within the general population. An investigation revealed over $80 in rolled quarters found in his living area two days after the robbery. Rippo admitted running his own illegal store. [Tab 45.]

07/15/1988 Michael received a letter from Director Sumner stating nothing further had been found linking him to the Over-Forty Store robbery. He was approved for transfer back to NNCC. [Tab 45.]

08/12/1988 Psychological Evaluation for Parole. Previous evaluation indicated no mental illness. Current interview and test indicate no mental illness. Receives a "C-" on readiness for parole. [Tab 44.]

00/00/1988 Spencer visited Michael in prison in the late 1980s but doesn't recall much of the conversation. [Tab 78.]

Melody last saw Michael during a prison visit in the late 1980s, after Ollie passed away. Michael was very articulate, easy to talk to. He was very optimistic and spoke positively of the future. [Tabs 79 and 108.]

08/23/1988 Stacie Ann Campanelli reported that on 8/19/1988 she was assaulted with a deadly weapon. [Tab 67.]

09/00/1988 Parole Progress Report. Received one year denial in March 1987. His disciplinary record at NNCC included disobedience of an order, abusive language, failure to appear for court, and delaying, hindering or interfering with a correctional employee. [Tab 45.]

At NNCC Michael was enrolled in full-time academics from March 1987 to September 1987. He was hired by prison industries in mid-September and continued to attend full-time school as well for 1-1/2 months. He was assigned the yard labor crew periodically for six months while in school until transfer to NSP. Since July 1988 he has worked as a painter. He has stated an intent to enroll in college this fall. [Tab 45.]

He plans to parole to Las Vegas and stay with his mother. He would like to attend college and worked toward an electrical engineering degree and also work at Triple A Aluminum where his mother works. [Tab 45.]

Michael reports feeling shameful about the offense but claims he did not have sex with the victim, just put his finger in her vagina. He maintains he has never had sex with a woman before. Also denies drug and alcohol addictions. Previously Michael claimed PCP was contributory to the present offense. He does not mention his victim was bound and beaten. [Tab 45.]

Much improved institutional adjustment – ten months disciplinary free conduct and his programming is above average. He is considered an excellent student with a high capacity for learning. NSP then goes on to recommend denial of parole. [Tab 45.]

09/22/1988 Carole Ann Anzini is the victim of battery. [Tab 11.]

01/04/1989 Carole Ann Campanelli is the victim of battery. [Tab 67.]

01/31/1989 Carole Ann Anzini is the victim of threatening offense against another. [Tab 11.]

02/01/1989 Stacie Ann Campanelli reports threats to her life. [Tab 67.]

02/08/1989 Dolores moved to Las Vegas after her youngest child reached age 18. She lived with Carole until April 1989 when she moved into a home on Rancho and North Campbell. Dolores worked at the Bank of America building downtown. Dolores and Carole had an on-again-off-again relationship. (Something wrong with this date.) [Tab 66.]

02/26/1989 Michael is twenty-four years old.

03/30/1989 Michael was charged with disobedience to a direct order – refusing to return to his cell. He was found guilty and assessed two weeks' canteen restriction. [Tab 48.]

04/02/1989 Stacie Ann Campanelli reports threats to her life. [Tab 67.]

04/10/1989 Stacie Ann Campanelli was a victim of false imprisonment. [Tab 67.]

08/23/1989 Psychological testing and interview: Michael described his present offense as an impulsive act which came to mind while committing a burglary. Mental Status Exam normal. No past or current history of mental disorder. Michael denied history of alcohol or drug abuse except that he claims the current offense was affected by his first-time use of PCP-laced marijuana. [Tab 46.]

Michael's response to the 8/2/1989 MMPI was very defensive, in an attempt to minimize his faults and present himself favorably. Despite intellectual and social skills, Michael overestimates his own moral worth and capacity for independent functioning. He feels oppressed when others do not give him the special consideration he believes he deserves. He received a "C" on the A-F scale for readiness to return to society. [Tab 46.]

09/00/1989 Parole Progress Report. Michael incurred a general violation infraction for fighting which were later re-filed as Assault and Battery. He received a sanction of 365 days in disciplinary segregation. He served about five months of that time and was reclassified to general population. He is presently taking computer and math courses. [Tab 48.]

Michael planned to live with his mother if paroled. He had a position with Triple A Aluminum Company. He planned to attend college to obtain an electrical engineering degree and a degree in computer science. [Tab 48.]

Michael reported remorse for his crime and trauma he caused the victim. He stated he was thrown out of his prior residence earlier that day and needed a place to stay. He broke in only for the purpose of sleeping. He found the victim. He cannot offer any reason for committing the crime except his youth. [Tab 48.]

Institutional adjustment has improved steadily over the years. Currently a

non-problematic inmate. [Tab 48.]

09/15/1989 Michael was paroled. He reports he worked as a hod-tender for a construction company. He denied any involvement in gangs or being a "troublemaker" while in prison. He also reported he worked as a forklift driver for a paving company and in various other construction positions. [Tab 7.]

While on parole, Michael had relationships with three women: Christine Gibbons, Roxanne Holloway, and Diana Hunt (his co-defendant in the murder charges). Also during this time, he became friends with Alice Starr. [Tab 7.]

Michael reported he left Gibbons because he could not tolerate her "sloppy, drunken crap, so I left her many times." He also admits to being promiscuous while on the streets and that he had little respect for women. [Tab 7.]

Dolores drove with Carole to pick Michael up in Carson City on his release. She said Michael acted just like a kid, gregarious and with a "bounce in his step" as he walked. Dolores did not know anything about Michael's sexual assault conviction at the time. She did not have much contact with Michael after this. [Tab 66.] [Tab 70.]

Michael's mother "stayed with" him the whole time. His relationships with his sisters suffered because they "grew up" while he was away.

Michael moved in with his mother and her husband, Robert Duncan. His mother got him his first job – working where she did, a company that installed screens on windows and doors. He made $10 an hour. [Tab 70.]

When Michael was paroled, Domiano heard about it from Stacie, but never heard from Michael. Dominao didn't feel like bothering Michael if that was what Michael wanted. [Tabs 71 and 105.]

Alice Starr met Michael shortly after his release from prison in 1989. They met through common friend, Debbie Kingery, Kevin McDermott and Thomas Sims. Kingery was good friends with McDermott or Sims. [Tab 81.]

In the early days of their friendship, Alice found Michael to be very funny. He often spoke of wanting to be rich. At the time, Michael was a meth dealer and a drug addict. While he never did drugs in her presence, she cannot recall a time when she ever saw him sober until his arrest in1992. He always had a distant look in his eye and always did monotonous things like fixing his car, playing video games, gambling in casinos. She thought it strange how he became fixated on trivial things for hours at a time. He also went for days without sleep – she would sometimes find him doing what he was doing the night before and wearing the same clothes. [Tab 81.]

Being a meth dealer apparently worked well for Michael because he always had a lot of money on his person – enough to gamble and lose for hours.

He bought a car not long after leaving prison, had a nicely decorated apartment filled with expensive furniture, electronic equipment, and other things. Alice was impressed with his eye for decor. [Tab 81.]

According to Starr, Diana Hunt was the only woman she ever saw Michael with but she felt they had an odd relationship. They were together but Michael didn't seem really committed. They lived in the same apartment and shared the same bed, but never communicated with each other much. Diana might socialize with her friends while Michael played video games for hours. They never held hands. There were no visible expressions of romance or togetherness between them. [Tab 81.]

Michael was a short guy, but muscular. Starr thought he tried to maintain an image of a tough guy and acted as though no one and nothing could hurt him. He gave the impression of being able to defend himself. Starr wondered if he were compensating for being small. As far as Starr knows, Michael was straight heterosexual and had no problems with his sexual identity. [Tab 81.]

Michael never discussed either Campanelli or Anzini with Starr. Nor did he discuss his childhood or his prison experiences. He was pretty much "here and now." [Tab 81.]

Starr thought that although in his mid-twenties when they met, Michael acted like a teenager. He was always laughing, joking around, playing tricks on people. He frequently disguised his voice to sound like a child when answering the phone – he was very successful in duping people. Starr also found his behavior to be immature and child-like. He liked to play video games. Starr was shocked to find him for a substantial time playing Barbie Dolls with her daughter one day. She didn't fear for her daughters' safety. [Tab 81.]

Carole Ann once told Starr that she and her siblings hated their biological father (Campanelli) because he used to abuse their mother. Carole Ann told Starr that Stacie was conceived during an act of rape upon their mother by Campanelli. [Tab 81.]

Michael's closest friends in this period (1989-1992) were guys who were previously locked up with him. Besides McDermott and Sims, there was also Phil Carlo who lived in San Bernardino. [Tab 81.]

Starr heard Carole and Michael speak of a prison chaplain who befriended Michael during his first incarceration. [Tab 81.]

Rippo told Kevin McDermott that he (Rippo) was a virgin when he came to prison, and that his first sexual contact occurred in prison and came in the form of homosexual relations. Although Kevin was not completely certain, he believes that one of Rippo's first sexual experiences was with a black inmate named Reggie Bell (who was found guilty and sentenced for robbing and shooting attorney Kevin Kelly after a night of sexual intercourse). According to Kevin,

Reggie Bell was very feminine looking and highly coveted by many men at Jean, especially many members of a black gang. When it was discovered that Rippo and Reggie were involved, it almost started a race riot but no violence ever occurred following this revelation. [Tab 96.]

According to Kevin, Christine Gibbons was the first woman that Rippo ever had sex with. Rippo met Christine after leaving prison in 1989 when he was in his mid-twenties. Christine and Rippo had a rocky relationship, but Christine always had the upper hand because Rippo was "pussy whipped" and she could easily use sex to control him. [Tab 96.]

10/20/1989 Carole Ann was a victim of battery. [Tab 67.]

00/00/1989 Christine Gibbons met Michael Rippo while she worked at the Four Seasons restaurant. She was attracted to his nice looks, good sense of humor and intelligence. She started dating him after seeing him at the Four Seasons a few times, and a relationship developed. [Tab 97.]

After a few weeks of dating, Christine and Michael moved in together. She describes their relationship as "wonderful" and stated Michael was "an excellent boyfriend." He was very attentive, very romantic, patient, comical, loved to laugh and extremely generous. He often took her to dinner and gave her flowers and balloons for no special reason. He was a decent pool player and played in a league at the Four Seasons. [Tab 97.]

Michael was never aggressive or confrontational with Christine. She recalled that Michael would turn and walk away when he thought there might be an argument. He never argued, yelled or cursed at her. He never abused her physically or emotionally. Christine said it was the best relationship she ever had. [Tab 97.]

In intimacy, Michael was gentle, loving and unselfish. He was not into rough sex, spanking, bondage, asphyxiation or any other fetish. He was always tender with Christine and never tried to force her to do anything that was strange or out of the ordinary. He never said or did anything to lead her to believe he was a misogynist. [Tab 97.]

Christine recalled waking up on a couple of occasions to see Michael staring at her while she slept. He was amazed that he was actually in a happy relationship and could not believe that Christine wanted to be with him. He never told Christine that she was his first girlfriend (sexually), but she figured that was the case because of his age when he was incarcerated. She also believed he had been sexually involved with men while in prison. [Tab 97.]

Michael discussed his family background with Christine on a few occasions. The only thing that stood out was that Michael did not like his step-

father, Anzini, and that Michael felt his step-father always wanted him "out of the picture." Michael even broke down and cried once while he recounted painful memories of his strained relationship with his step-father. [Tab 97.]

Christine recalled that Michael struck his head very hard once, but could not remember the circumstances or if he sought medical attention. She also recalls that he hurt his head once at the Four Seasons during a bar fight. [Tab 97.]

12/04/1989 Michael was in touch with his parole officer. "Seems to be adjusting to freedom but has questionable attitude at this time." [Tab 49.]

Michael met with Tom Sims within a few days of going to P&P. Sims at that time was a pimp and arranged for him "what pimps arrange." [Tab 70.]

12/28/1989 Michael was not home. "Lives in the middle of nowhere," four miles west of U.S. 95 and Rancho. [Tab 49.]

00/00/0000 Ruth Rippo saw Michael one time in the late 1980s or early 1990s after he was paroled from the sexual assault conviction. He was with his girlfriend at that time and they were all eating dinner at Carole's house. Michael was working in construction and had just purchased a truck. There was no discussion about Michael's case or prison experience and Ruth was not aware Michael had a drug problem. As far as she could tell, Michael seemed to be the same boy she always knew and loved. He still had a knack for making people laugh. [Tab 73.]

00/00/1990 Michael dated Christine Gibbons (who looks like Alice Starr) when he was released from prison for about a year. They lived together. Gibbons left Michael because he was fooling around with Diedre D'Amore. [Tab 52.]

Through Sims, he started hanging out at a bar called the Four Seasons – at Sahara and Lamb – he met Christine Gibbons there. She was his off/on girlfriend for the rest of the time he was on parole. He had many other girlfriends. "I was unfaithful and very promiscuous." [Tab 70.]

Michael did not have any drug-testing provisions as part of his parole because he had no documented drug offenses. He wasn't averse to using any illicit substances but generally chose not to. He did try to start selling cocaine, but that never went anywhere. [Tab 70.]

01/10/1990 Reported to parole officer. [Tab 49.]

01/16/1990 Parole Audit shows Michael delinquent in fees. Never had history. [Tab 49.]

02/15/1990 Parole Audit – needs history. [Tab 49.]

02/26/1990 Michael is twenty-five years old.

00/00/1990 In 1990, Michael began selling and using methamphetamine. [Tab 7.]

03/08/1990 Parole Audit: needs history; fees delinquent.

03/15/1990 Parole visit – not home. Spoke with stepfather.

03/27/1990 Michael reported to parole officer. Doing well. Told to catch up fees. Still seeking better employment. Referred to positive lifestyles. [Tab 49.]

04/04/1990 Parole report: fled scene of accident on 4/2/1990 at 1:30 a.m. Was referred to Metro where cited for careless driving and leaving scene of accident. [Tab 49.]

Michael stated he led a "normal life" for the first six months of his parole. He worked, got a paycheck, paid bills, etc. Dale Dodds, whom he met in prison, got him a job at a truss-making company. It paid less than what he made working at the same company his mother did, but it was his own job. On the way to work one day, "I ran into a guy who owned his own construction company and became a laborer for him at about $8 an hour." [Tab 70.]

05/16/1990 Carole Ann seen at UMC for yeast infection. [Tab 119.]

05/23/1990 Parole: Worked at DeHart Construction for $8.00 an hour. Explained death of friend, Ed Sassman, who was on parole and O.D.'d in May. Nothing pending. Promises to bring new P.O. $140 for fees. [Tab 49.]

Carole Ann Campanelli (sister), obtained work card for telephone sales with Pioneer Enterprises. [Tab 67.]

06/07/1990 Parole: Counseled on fees. Just started job two weeks ago. Will start paying later this month. [Tab 49.]

00/00/1990 Ann Anzini Beeson dies of cancer and takes the family secrets to her grave. [Tabs 79 and 108.]

07/05/1990 Parole: Paid $80 in fees; DeHart Construction 7/4/1990 $338.08 — no change, problems. [Tab 49.]

08/06/1990 Parole Audit: History needed; counseling – try New Beginnings. [Tab 49.]

08/08/1990 Parole: Fees not paid; will pay by next visit. Referred to Strawberry Fields for

assessment and counseling. Living with parents. [Tab 49.]

08/10/1990 Stacie is seen at UMC Quick Care for flu-like syndrome. [Tab 117.]

09/13/1990 Parole Audit: HV (home visit) ASAP - verify program attendance, bring current on fees. [Tab 49.]

09/18/1990 Parole: Admonished for reporting on wrong day. Stated he had to go to Muni Court to take care of ticket for unregistered vehicle. [Tab 49.]

10/19/1990 Parole: Blue Card filled out and fee reporting. No chrono. Brought in cash again, so did not pay fee. Paid $980 for no seat belt w/no further disposition. Instructed to contact Strawberry Fields and have app by next office visit. Told to report on Wednesdays only. [Tab 49.]

11/01/1990 Parole Audit. HV needed; verify program attendance. [Tab 49.]

11/17/1990 Carole Ann seen at UMC for possible yeast infection. Diagnosis: pediculosis pubis ("crabs") [Tab 119.]

11/18/1990 Parole: HVA/CFC – mother said he went shopping with girlfriend. [Tab 49.]

11/21/1990 Parole: Fees not paid. Told he owes for nine months, $443.53. Says he's attending Strawberry Fields Counseling. [Tab 49.]

12/07/1990 Parole Audit. Needs HV. [Tab 49.]

01/02/1991 Parole Audit: Needs HV and transfer to Wright. [Tab 49.]

Parole: Fees not paid. May change residence this month. Told to report every month, no matter what. Has two more sessions of counseling. Wants to join the military. Into martial arts since 1982. [Tab 49.]

01/04/1991 Parole: Fees paid through 2/1990 – owes 10 months. [Tab 49.]

01/31/1991 Parole: Paid $20. Has new residence (Henderson), new phone. [Tab 49.]

About this time, Duncan wanted Michael to move out. Michael and Christine rented a townhouse in Green Valley (Sunset and Valley Verde area). Just prior to this, he had tracked down Kevin McDermott and started using meth again. McDermott helped Michael get a job as a hod-tender with Tri-K Contractors that paid about $14 an hour. It was a masonry company. He worked

on Cheyenne High School, the post office in Boulder City, and the North Las Vegas Air Terminal. The company went to do a project in Wendover, and Michael got a job with Las Vegas Paving. This was a union job and paid $15 an hour. [Tab 70.]

02/08/1991 Parole audit: HV needed. If he resides in Henderson transfer to them. [Tab 49.]

02/14/1991 Parole: Will be moving back to Las Vegas this month. Will notify PO as soon as he finds apartment.

Christine Gibbons and Michael broke up. He says she was an alcoholic and "somewhat unstable." His meth use at that time was minimal and he considered her drug use to be a problem; he "looked down [his] nose at her." At the same time, his friendship with McDermott was strong and Christine didn't like it because he was with McDermott more than with her. [Tab 70.]

02/22/1991 Parole: He will move to new residence during last week of February. He is the process of moving out of Henderson apartment. [Tab 49.]

02/26/1991 Michael is twenty-six years old.

03/01/1991 Parole: Paid $20; thought today was 02/29/1991. Has new residence (same Henderson address as earlier). Attending Strawberry Fields. [Tab 49.]

03/11/1991 Parole Audit: HV needed; watch counseling, fees. [Tab 49.]

03/22/1991 Parole: Address located in Henderson. Phone is not in service. [Tab 49.]

04/08/1991 Parole Audit: HV needed, fees, watch counseling. [Tab 49.]

04/10/1991 Parole: Paid $20. [Tab 49.]

04/16/1991 Parole: Has new address – living with sister. No violations noted. [Tab 49.]

Michael moved in with his sister Carole Ann and her daughter Amanda (a toddler) after his breakup with Christine. He recalls the address was on West Charleston. [Tab 70.]

While living with Carole Ann, he began selling increasingly larger amounts of meth so that when he was laid off from Las Vegas Paving, it didn't matter. He arranged with Tom Sims to have false pay stubs so P&P thought he had a job at Sims' business, Tommy's Maintenance. Then McDermott put

Michael in touch with Phil Carlo, a friend from prison, who was living in California and Michael began trafficking in earnest. [Tab 70.]

Steve Clark was released during the time he lived with Carole Ann. He came over a few times and tried to enlist Michael in doing robberies [burglaries?]. Michael was not interested. Also while living with his sister, McDermott introduced Michael to Roxanne Holloway. She became an on-again-off-again girlfriend for a while. Through Roxanne Holloway, Michael met Lauri Jacobson and Denise Lizzi. McDermott also introduced him to Alice Starr. Holloway and Starr were first "clients" in his meth business. [Tab 70.]

Michael and Starr became good friends. He thinks she was his first female friend. At the time Starr had two daughters, Shannon and Jessica. He became quite fond of the girls. [Tab 70.]

04/19/1991 Parole: Transfer to Schmitz. [Tab 49.]

04/30/1991 Parole Audit: fees. [Tab 49.]

05/07/1991 Parole: T/c Strawberry Fields; Michael not attending since 11/1990. $240 behind in fees. [Tab 49.]

05/21/1991 Parole: T/c to Michael; will come in. [Tab 49.]

05/22/1991 Parole: Will pay $120 on 6/4/1991; will make appt. with Strawberry Fields. [Tab 49.]

06/04/1991 Parole: Started new job at L.V. Paving. [Tab 49.]

06/05/1991 Parole Audit: P&P liability at stake; if no counseling attendance in June, then back to board on walk-in-basis. [Tab 49.]

06/05/1991 Parole: Paid $120 fees. Saw counselor at Strawberry Fields; states only one more time. Began work three weeks ago at LV Paving. Does not have pay stubs. [Tab 49.]

06/06/1991 Parole: T/c Strawberry Fields; impulse control counseling - has one more appt, then an eval, will be done. [Tab 49.]

07/08/1991 Parole: t/c Strawberry Fields – has final appt on 7/10/1991. [Tab 49.]

00/00/1991 By the summer of 1991, Michael was selling large amounts of methamphetamines

and making thousands of dollars a week. He states he lost respect for money and was undisciplined in what he was spending and how he lived. He reports having in excess of $100,000 in a suitcase at home at one time. Michael found the drug trade intriguing and became more involved than he originally planned. He reports he does not like what methamphetamine does to people, particularly when used in excess. Most of the people he was around used meth on a regular basis. [Tab 7.]

Michael reports he enjoyed going to clubs, dancing, playing video poker. He admitted to excessive gambling at times but does not believe he was a gambling addict. His hobbies included electronics, fast cars, ham radios, and computers. [Tab 7.]

Michael's sister Stacie reported he was doing well until 1991 when he became involved in the methamphetamine trade. She reports he visited his mother often and was kind and generous. After 1991, however, Michael became withdrawn and hung out with a bad group of people. [Tab 7.]

07/15/1991 Parole: HV – not there; unk. WMA says Rippo in California. [Tab 49.]

He moved into an apartment at Indian Hills on West Sahara.

Michael had a substantial sum of money built up and thought everything would be fine. But he began gambling – video poker – "and just wasted the money irresponsibly." Then things went bad with Steve Clark. Clark was angry because Michael would not rob a Los Angeles drug dealer with him and also that Michael had not given him free meth in large quantities. Because "Clark is a very dangerous man," Michael moved to a nice house on West Gowan just past U.S. 95. [Tab 70.]

Just before moving to Gowan, Lauri Jacobson, who was the roommate of Hal something, a friend of Holloway's (with whom Holloway cheated on Michael), brought Denise Lizzi to his Indian Hills apartment to buy meth. Jacobson moved a small amount of meth for him from time to time but usually just bought "recreational amounts." This is the first time he met Lizzi. He next saw her at Jacobson's apartment during another drug transaction. Lizzi was acting more paranoid than anyone he'd ever met before. She was armed with a .32 handgun. Lizzi also came to his Gowan address at least once. [Tab 70.]

The decision to leave the Indian Hills apartment was prompted by information from Phil Mirabelli. He met Mirabelli at NNCC where they were both students of Steve Clark's. Mirabelli told Michael that Clark was planning to rob him. Michael had no choice but to move. [Tab 70.]

Once at Gowan, his trafficking days were winding down. A couple of bad investments depleted his savings and suddenly bills weren't being paid and utilities were being turned off and he was struggling to make his $900 a month rent payment. He had been receiving $200 unemployment checks for a while,

even though P&P thought all was well and he was working for Tommy's Maintenance. [Tab 70.]

Thomas Cristos knew many of the people involved. Christos was working as the manager of Glitter Gulch (strip club on Fremont). He lived with two women who worked there, his girlfriend Teresa Perillo and Carrie Burns, a long-time friend. Burns was also related by blood to Diana Hunt. Christos also knew Michael, Michael Beaudoin and Lauri Jacobsen through Diana Hunt. [Tab 95.]

Jacobsen and Hunt had been roommates and were both involved with Beaudoin, who provided them with drugs and money. Hunt was jealous of Jacobsen because Beaudoin favored Jacobsen; even after her involvement with Michael, Hunt still was jealous of Jacobsen. Hunt believed that Jacobsen and Michael were attracted to one another and feared that Jacobsen might, once again, take a man away from her. Christos is aware of arguments between Michael and Hunt that centered around Hunt's fears. [Tab 95.]

Christos also worked as a small-time bail bondsman and bounty hunter. Once, after Beaudoin was arrested (just before the killings), Christos was contacted by Hunt. Diana wanted Thomas to help her bail Beaudoin out of jail, but Thomas did not (or could not) help her. Apparently, Diana wanted Thomas to give her and Beaudoin credit for the cash because they did not have any, and they'd pay him back later. After Thomas refused to get involved with the matter, he became aware that Beaudoin told Diana Hunt to get a stash of drugs (meth), that Lauri Jacobsen was holding for him, and go out and sell it to raise his bail money. When Diana went to Lauri by herself to get the drugs, Lauri told Diana that she did not know what Diana was talking about and she denied having any of Beaudoin's drugs. A huge argument ensured. Diana then went to get Rippo to return to Lauri's apartment with her. [Tab 95.]

Kevin McDermott's biggest regret in his friendship with Rippo was the day he introduced Rippo to Diana Hunt. Kevin knew Diana Hunt through common friends and she had recently been released from prison at the time. Rippo was stricken, fascinated and in complete awe of Diana's sexual prowess. From what Rippo discussed, as well as what Kevin knew from others, Diana Hunt was a complete "sexual freak" and there were no boundaries to what she would do sexually. In Kevin's opinion, Diana Hunt blew Rippo's mind and used her sexual dominance to control him. Diana also manipulated Rippo by constantly demeaning his manhood by telling him that he was not "man enough" to do whatever it was that she wanted him to do. Rippo and Diana also used a lot of meth together and were always high. [Tab 96.]

Kevin knew Lauri Jacobsen and Michael Beaudoin. Kevin said that Lauri and Diana Hunt were former roommates, and he knew that they both used to have sex with Mike Beaudoin for drugs and money. Kevin also knew that Diana Hunt

hated Lauri. Kevin said that he is certain that Diana Hunt was the cause of whatever led to Lauri and her roommate's killing. Kevin recalled seeing Diana and Rippo on the evening the murders took place and they were both high. [Tab 96.]

07/16/1991 Parole: T/c from Strawberry Fields: no show on 7/11/1991; not cooperative; thinks he knows it all, wants to terminate D. Told to call and let me know how today's appointment goes. [Tab 49.]

07/16/1991 Parole: D states he has been terminated from counseling; will pay $100 fees by end of the month. States he was at Lake Mead, not California. To bring in Ev. [Tab 49.]

07/19/1991 Parole: Home visit. Michael sleeping, 10:00 a.m. Lives w/sister. No violations noted. Messy, cluttered apartment. [Tab 49.]

08/02/1991 Parole Audit: Audit fees; verify completion of counseling; cross off old date. [Tab 49.]

08/09/1991 Parole: Paid $100 fees but did not check off mtts, let PO do that. Was told to EV and try to report on PO's duty day. [Tab 49.]

08/12/1991 Parole Fee check. Paid through 4/1991.

09/06/1991 Parole Audit: Continue ___ on fees. [Tab 49.]

09/10/1991 Parole: $40 fees. Told to bring in EV told to catch up on fees. [Tab 49.]

10/02/1991 Parole Audit: Verfiy completion of counseling. [Tab 49.]

10/14/1991 Parole: HV - Not home. [Tab 49.]

10/18/1991 Parole: HV - D really does not live there. [Tab 49.]

10/22/1991 Parole: EV 390- 9/27/1991: $100 fees; Will be moving at end of moth to W. Sahara. [Tab 49.]

Between Indian Hills and the Gowan residence, his personal drug use became excessive. It began to increase when things started going down hill. "It seems the less meth I had, the more I wanted to do." [Tab 70.]

10/25/1991 Parole: HV - getting ready to move this weekend. Will notify metro. [Tab 49.]

11/07/1991 Parole Audit: Verify completion of counseling. [Tab 49.]

11/12/1991 Parole: Fees current; told to bring EV every month; wants to assume a loan for a house. [Tab 49.]

12/10/1991 Parole: Changed address; won't be paid until 12/15. Will bring in EV next visit. [Tab 49.]

*Michael offers an example of Hunt's cunning or manipulative ability.* Beaudoin had been arrested and his '67 Camaro was impounded. Without Beaudoin's permission, she was able to get his car out of impound. She brought it to Michael's Gowan residence. Friends of Beaudoin's took the car from her and Hunt got Price, Lloyd, and Michael to go to North Las Vegas in an attempt to get it back. They did not succeed. They were driven there by Mike Colby in his limo. Hunt had introduced Michael to Colby. Hunt bought a Mac 11 for Michael from someone. She knew he had also purchased a shotgun at Big 5 Sporting Goods at her urging. [Tab 70.]

01/14/1992 Parole: $40 fees; having problems with girlfriend, will move in 30 days. Has no other problems. Got carried away gambling. [Tab 49.]

01/16/1992 Parole: Still working on truck; no viols. [Tab 49.]

Michael ran into old acquaintances about this time, Riccie Price and Chris Lloyd. Michael first met Chris and Riccie in juvenile hall in 1980. Then he met Diana Hunt. [Tab 70.]

Around January 1992, Michael, in order to get back on his feet, made amends with an old "connect" with whom he'd fallen out prior. Diana Hunt was hanging around there and ended up staying at Michael's place. Rippo, Hunt, Price and Lloyd went out a couple of times.

01/00/92 About a year and a half after moving in with Michael, Christine broke up with him due to his drug use and infidelity. He never used drugs in front of her, but she suspected he was using meth when she saw that he was not sleeping. He would stay up all night working on his truck or just hanging around the garage; sometimes he would have a "strange look in his eyes." Christine recalled that Michael would become very quiet when he was high. Eventually his drug use reached the point where it seemed he was high all the time. When confronted, he confirmed her suspicion that he was using. She told him his drug use was putting him on the road back to prison and that his re-incarceration would be too much for

her to bear. Michael was also spending a lot of time with Thomas Sims, and Christine did not like this because she felt Sims was a shady character up to no good. [Tab 97.]

Christine believed Michael was cheating on her because he started hanging out all night with little or not explanation of where he had been. Christine recalled Michael moved in with Diana Hunt almost immediately after Christine broke up with him. [Tab 97.]

At this time, Christine was working nights and Michael was working days and they weren't seeing each other much at home. Christine didn't want to be in the relationship any longer because she didn't trust Michael and she couldn't watch him. Christine gave Michael an ultimatum: chose between the drugs and her. He was addicted and could not guarantee that he would never use drugs again. They broke up about a month before the murders. [Tab 97.]

02/00/1992 Carole was diagnosed with acute anxiety disorder by Dr. Milne. Carole is prescribed Zoloft. Carole states that her brain does not adequately produce Serotonin. She says that the skin around her mouth broke out in hives. [Carole's medical records are forethcoming].

02/00/1992 While on his way home, he learned that the police raided his home and confiscated weapons. He drove past his home and stayed out of sight, as by having weapons he had violated his parole. [Tab 7.]

In early February 1992, Beaudoin went to jail again and Hunt enlisted Michael's help in loading Beaudoin's belongings into a U-Haul. It was after midnight when they finished. Price and Lloyd were at his home and had been paging him constantly. He ignored the pages. They were calling to tell him that Mirabelli had tried to rob him and the neighbors must have called the police. He owed Mirabelli money from a check he'd bounced at Mirabelli's father's bar. The police found ex-felons in his home but nothing illegal was going on. They contacted P&P. Price and Lloyd tried to call him between the police being there and P&P's arrival. [Tab 70.]

As he neared the Gowan residence from the south, he saw police cruisers lined up on a street around the corner. His house was two doors down from the corner and as he crossed Gowan, he saw police and P&P officers running across his lawn. He simply drove on. [Tab 70.]

Price and Lloyd were arrested. He thinks there was a marijuana joint in the ashtray and Price had a drug stipulation on his probation. He thinks the guns were what got Lloyd arrested. That night or the next, Michael gave Hunt the money to bail Lloyd out. Hunt and he moved in with Dierdre D'Amore, a friend

he'd met through Christine Gibbons. [Tab 70.]

02/06/1992 Parole: Transfer summary: has completed counseling and supplemental fees and current. Has been cooperative. Scope ordered. No wants. [Tab 49.]

Over the course of the next couple weeks, Hunt kept insisting that Lizzi had stolen Beaudoin's meth and that she should take it from her. He's also certain Hunt mentioned this in front of Price and Loyd. [Tab 70.]

Hunt had also stolen much of what Michael owned. She kept going back to rob his abandoned house and took what she wanted. He discovered this later when Dierdre told him about some items Hunt was trying to sell or had asked Dierdre for the use of her truck to move. Michael's sister's washer and dryer were part of this. [Tab 70.]

Money was tight and it didn't look like they were going to improve soon. Dierdre was complaining about Hunt. She suspected Hunt had stolen money out of her purse. Hunt did, but Michael realized this only after he put everything together. Dierdre asked him to kick Hunt out but Michael didn't. [Tab 70.]

Between the raid on his house and February 18, he couldn't put anything together. On February 18, 1992, Lizzi and Jacobson were murdered. [Tab 70.]

02/18/1992 Two women found bound and strangled in apartment. The victims are noted to have been heavily involved in the drug trade of methamphetamines. [Tab 7.]

Michael later tells Kinsora (in Background Information Questionnaire) that Diana killed the two women with an accomplice then, after she was apprehended, identified Michael as her accomplice and was given a deal for doing so. [Tab 104]

02/26/1992 Michael is twenty-seven years old.

Michael assaulted Hunt for her thefts from his Gowan residence, and for the whole mess that he was then in because of, as he saw it then, her manipulations. [Tab 70.]

03/00/1992 Michael was arrested for the murders of Denise Lizzi and Laurie Jacobson. [Tab 7.]

After his arrest, Michael has a long-term, close relationship with Alice Starr and her children. [Tab 7.]

After Michael's arrest, Dolores accompanied Carole to the jail for visits. Dolores was supportive of Carole and was present for all pre-trial proceedings and the trial as well. [Tab 66.]

Thomas Christos held Diana most responsible for the killing of Lauri Jacobsen and her roommate. Thomas believes that Diana hated and was always

jealous of Lauri, and that she instigated the whole situation and manipulated Rippo. As far as Thomas observed, Diana Hunt always had a way of manipulating and controlling Rippo. [Tab 95.]

Thomas suspected that Diana purposely drove the victim's car to his house to get his and Carrie's finger prints on it. He also noticed that strange items were missing from his home after Diana's visit, like combs and hair brushes. Thomas said that Diana was a very conniving person and one could never be too careful around her. [Tab 95.]

Thomas had no idea that Diana was going to kill Lauri Jacobsen, but he knew that Diana was involved in her murder as soon as he saw the news coverage of the incident. Thomas knew of the jealousy and drug conflict that Diana had with Lauri, but he did not know it would lead to murder. Thomas was very upset that Diana served only a few years in prison before getting released. [Tab 95.]

03/00/92 After Michael was arrested for the murders, detectives learned of Rippo's previous involvement with Christine. They picked her up and interrogated her at the police station. The police were most interested in knowing the nature of her relationship with Michael, how long they were together, the names of Michael's friends and associates. The police told her Michael and another person "killed a woman" and nothing else. She did not know his friends and associates. In an effort to get her to talk, one detective asked if she knew Michael was gay. She told him he must be bisexual because he had sex with her. She added she'd figured he had sex with men during his long stay in prison. [Tab 97.]

Christine stayed in touch with Michael following his arrest and in the years leading up to trial. He told her Hunt caused the whole incident by striking one of the victims over the head and beating her. He was extremely remorseful and completely broke down and cried as he was telling the story to Christine. [Tab 97.]

03/31/1992 Parole: Office called - warrant has not issued yet. Served with VR; waived PR hearing but wants to go to April board. [Tab 49.]

04/03/1992 Parole: Subject in custody. [Tab 49.]

07/00/1992 Received at SDCC as parole violator. Revoked on pending murder charges. [Tab 50.]

00/00/1992 The bulk of Starr's substantive discussions with Michael took place after his arrest in 1992 when he was clean and sober. When he was on the streets, he was too caught-up in using and selling drugs and zoning out to be engaged in an in-

depth conversation with anyone. He was more three-dimensional and lucid after his incarceration. Even with this lucidity, he did not discuss his past with Starr. He spoke only about how much he loved his mom and how his sister Carole Ann was one of his best friends in life. He didn't speak much of Stacie. He also spoke of his regret for everything his family went through because of his convicition. [Tab 81.]

All of Starr's daughters, except the youngest, knew Michael and sometimes spoke with him by telephone. He encouraged them to study diligently and spoke of the importance of graduating. He regretted not finishing school and told them not to be like him. Starr felt comfortable with Michael around her kids; she felt he would never let them be harmed. [Tab 81.]

Starr recalls Carole was a loving and caring mother and would do anything she could to help Michael. Starr and Carole got close after Michael was incarcerated. The spent a lot of time visiting each other, talking on the phone and visiting Michael together. Carole gave Alice a Bible, but it was taken the night the authorities searched her house. [Tab 81.]

Starr recalls Carole Ann was something of a street person and that she'd had a rough life. She did not know if Carole Ann used drugs, but it would not surprise her. She was also aware that Carole Ann became pregnant and a mother at an early age. Michael and Carole Ann were very close. Starr and Carole Ann got closer after Michael's incarceration. Starr was no longer living in Las Vegas when Carole Ann was arrested and died. [Tab 81.]

Michael and Stacie were not very close; Starr attributed this to their difference in lifestyles. Stacie was married, not a street person, and more responsible than Michael or Carole Ann. [Tab 81.]

Starr believes Diana Hunt is responsible for leading Michael astray. Starr heard rumors on the street after the murders that Diana had problems with one of the victims. [Tab 81.]

In February 1992, Michael Beaudoin had an open probation revocation case pending for a 1991 drug trafficking conviction. He was one of the first people interviewed by police and it was apparent to him that the police were interested in using him as a prosecution witness. [Tab 111.]

After he began cooperating with the prosecution, he was arrested on possession of marijuana and meth. He was certain he would be sent to the penitentiary so called Mel Harmon and asked him for help, especially since he was helping Harmon by testifying against Michael Rippo. As a result of that call, the marijuana charge was dropped and the meth possession was reduced from a felony to a gross misdemeanor. [Tab 111.]

02/26/1993 Michael is twenty-eight years old.

03/00/1993 Michael transferred to ESP. [Tab 50.]

After he returned to prison, Michael and Alice Starr developed feelings for each other. Shannon and Jessica "were like step-daughters." [Tab 70.]

04/09/1993 Michael is seen by Franklin D. Master, M.D. for a baseline psychiatric evaluation relative to sexual assault conviction. Notes Michael was paroled from October 24, 1989 through March 15, 1992 but the parole was revoked for employment, laws and conduct violations. The report notes numerous disciplinary actions in the penal system. Michael told Master he passed the psychiatric panel in 1985 and never has to go before one again. He is noted as "short caucasian [sic] male" and that Michael is "tense and guarded rather than hostile." Michael refuses to discuss any case without an attorney present. Master, therefore, states there is insufficient information to be able to certify Michael at this time as not being a danger or menace on parole. [Tab 25.]

04/20/1993 NDOP Mental Health Progress Notes: Interview for psych panel. Had for sessions, offense related, in about 1991 at Strawberry Fields Counseling. Seems cautious but self-assured. What he takes seriously is "my life," challenging the validity of his sexual assault charge. He did the assault and robbery; the sexual assault charge is related to "plea bargaining process." Was out of prison 2-1/2 years as an adult. Had "house, cars, credit," "out there." Is the offense-related short circuit still there? Confident about his self-analysis. Self-conscious (*short man syndrome*) and hostile. Violent. _____ in depth exploration of circumstances leading to the offense. [Tab 63.]

05/00/1993 Institutional Progress Report: Has received three notices of charges. He programmed briefly as law clerk at ESP and is presently attending FTA at SDCC. He has new charges for murder. If charges were dropped, he wanted to live with mother. He has employment with Tommy's Maintenance. He is in administrative segregation at SDCC. He has been to the psych panel. Parole is not recommended. [Tab 50.]

07/26/1993 Referral describes Michael seeing psych panel "voluntarily," after passing psych panel eight years ago. Notes "excellent parole record." [Tab 51.]

02/26/1994 Michael is twenty-nine years old.

03/09/1994 Interviewed Steve Smeltz of Parole and Probation. He supervised Michael on

probation for several months. Michael told him: "I'd rather have been convicted of attempted murder than sex assault because it has a better ring to it." [Tab 53.]

Smeltz noted that Michael had a real hatred for women. He hated his sister and called her a slut. He generally talked badly about women. Smeltz thought Michael was a psychopath. [Tab 53.]

On a home visit at his sister's, she opened the door to the bedroom and Smeltz saw Michael in bed with another guy. [Tab 53.]

03/28/1994 Stacie was seen at UMC following motor vehicle accident ("MVA"). She is diagnosed with muscle strain. [117.]

04/04/1994 Stacie was seen at UMC on follow-up for MVA-caused muscle strain. [117.]

04/11/1994 Carole Ann seen at UMC for insect bite. [Tab 119.]

04/12/1994 Stacie was seen at UMC for follow-up for MVA-caused soft tissue injury. [117.]

04/22/1994 Stacie was seen at UMC for follow-up on MVA soft tissue injury. [117.]

08/19/1994 Carole Ann was seen at UMC for a right breast mass out-patient surgical biopsy. Biopsy showed fibroma. Planning breast augmentation. States she uses alcohol socially. She is unemployed. [119.]

08/24/1994 Carole Ann seen at UMC emergency for a witnessed seizure. She denied using alcohol recently but uses crystal meth on a frequent basis; gives evasive answers to last use. Diagnosis: Amphetamine-induced seizure disorder. She was told to stop using amphetamines. She denies this is a problem she has. [Tab 119.]

02/26/1995 Michael is thirty years old.

05/24/1995 Carole Ann has witnessed seizure at local store. Had same a couple of months ago. Diagnosis: Acute Amphetamine Intoxication. Carole Ann denies drug use. Drug test returned positive for amphetamines. She was told on discharge to avoid amphetamine use. She was given IV push Haldol for gross paranoid behavior. [Tab 119.]

00/00/0000 Carole Ann gives birth to Amanda. Stacie is present. Stacie reported later that Carole Ann was "into parties, drugs, and Amanda got whatever was left over." Stacie and Carole became Amanda's primary care givers until 1998, when Stacie took over as a full-time mom. Stacie says all she ever wanted to be was a mom.

She will go on to have four children of her own. [Tabs 79 and 109.]

Stacie reports that Carole Ann's drug of choice was Crystal. [Tabs 79 and 109.]

09/14/1995 Carole Ann was seen at UMC for pharyngitis. [Tab 119.]

01/26/1996 Kinsora Interview. [Tab 7.]

Michael reported his school slightly differently than the records do, and states he did not demonstrate unusual talents in school. He also reports being hyperactive and having completed only as far as ninth grade successfully. He does not recall any teachers or school personnel who knew him well. [Tab 104]

Michael does report his juvenile and prior criminal history fairly accurately, but claims he did not sexually assault Laura Martin. [Tab 104]

Michael reports nothing relating to serious medical or mental health problems, but reports being evaluated by mental health professionals as a juvenile and during prison intake procedures. He also reports appearing before a psych panel in 1985, 1992 and claims the hearings were a farce. [Tab 104]

He listed four employers: Dehart Construction, Tri-K Contractors, Las Vegas Paving, and Tommy's Maintenance. He denied having a job for which he was over-qualified. He listed auto mechanics, ham radios, and martial arts as his avocations. [Tab 104]

Michael stated he did not attend church as a child and has not as an adult; he does, however, read the Bible daily. [Tab 104]

Michael did not consider his use of speed to be an abuse. He enjoyed using it intravenously and occasionally smoked marijuana. He never had treatment for drug or alcohol abuse. He stated he began using drugs in prison at age 18 or 19. He stated that he did not commit the major offenses charged, so the question of committing offenses under influence of alcohol or drugs is not relevant. [Tab 104]

He reported having hallucinations while on LSD. He had vivid deja vu. Denied any tics or nervous movements. He stated he is being persecuted by the legal system presently. Denied delusions. [Tab 104]

Michael stated he had to "grow up fast" when sent to prison at age 16. He said when he got out after eight years, he was mentally 16 but chronologically 24 and that it was a shock, but he got over it within a year. He reported selling speed and gambling. He recognized he made mistakes but does not regret dealing drugs. He had no significant relationships on his release, but Christine Gibbons was his girlfriend for nearly two years; but he left her several times over her "sloppy drunken crap." He used women for sex. Except Alice Starr; he associated with her frequently but had not had sex with her. He reported she is the only friend he

ever had. [Tab 104]

He stated he loves his family very much. Both his sisters are younger and both have children. He regretted that he may never have the wonder of having his own children. Michael also regretted the impact [his current situation] is having on his family. "I'm basically inured to the madness of incarceration." He does not think his family deserved such heartache. [Tab 104]

01/27/1996 Kinsora Interview. [Tab 7.]

*02/01/1996* Kinsora Interview. [Tab 7.]
Michael denied ever having had problems with depression. He felt extremely guilty for his mother having to take a second mortgage on her home to pay for his defense. The stressor of the loan forced his mother to go to work and has caused problems between her and her third husband. Sleep habits intact.

Michael denied paranoia but feels persecuted because prosecutors want to convict him of capital murder which he alleges was committed by someone else. [Tab 7.]

Kinsora reports that the neuropsycholgoical battery of tests did not indicate he was exaggerating his problems. His MMPI responses suggested some symptom minimization. His performance for the most part was well above average. There is no evidence of neuropsychological impairment. His WAIS Verbal IQ was 114. His WAIS-R performance IQ was 110. [Tab 7.]

Kinsora reports Michael's case "is difficult due to the fact that the performance on his neuropsychological assessment, personality assessment and through the structured interview would not have predicted the problems that Mr. Rippo has had with regard to criminal activity." Kinsora suggests "address short-man syndrome; issues with women; and past social history." [Tab 7.]

02/08/1996 Kinsora interviewed Carol Duncan and Stacie Rotterdam. [Tab 7.]

02/13/1996 Roitman Report: For an extended period of Mr. Rippo's life, he lacked empathy necessary to restrain him from criminal activity. He saw no need for psychiatric examination regarding his emotional or behavioral function. He stated he was referred to a "psych panel" because of Dr. Master's opinion that there was insufficient information to certify him as not being a danger or menace on parole. He admitted committing sexual assault in 1982 at age 14 [sic]. [Tab 10.]

Michael reported pervasive sense of irrational guilt, as if things that happened might have been his fault, even if it were impossible. His mother thought the hyper-development of guilt had to do with Michael's reading the Bible and becoming a born-again Christian. [Tab 10.]

Michael reported using multiple drugs experimentally, but for LSD and amphetamines he reports having a strong predilection. He reported amphetamines produce a high degree of concentration and euphoria. He reported sometimes hallucinating while on amphetamines or LSD, but retained his reality base without paranoia. He reported his use habits in the year before the crime as extreme and intense, rarely going a day without it. For a couple of weeks before the murders, his level of intoxication was reduced. He denied withdrawal symptoms. [Tab 10.]

Michael is remarkable for his strong moral convictions. He discussed his roles in his past actions spontaneously. Michael knew if he could blame others for his circumstances, he might present a stronger case in mitigation but did not do so. He denied abuse, persecution, deprivation, ADD or that substances he abused played a role in his behaviors. Some of his thinking was rigidly moral, but always in line with acceptable social mores. [Tab 10.]

The mental status examination was consistent with Kinsora's findings – there is no evidence of a sociopathic character or antisocial personality. His diagnosis is antisocial adult behavior with possible mild reactive depression secondary to incarceration and the risk he faces.

02/26/1996 Michael is thirty-one years old.

03/12/1996 Dr. Kinsora reviewed Laura Martin's voluntary statement of 1/18/1982 because "Mr. Rippo was reported to engage in behavior that is somewhat bizarre and reflective of significant emotional disturbance and mild loss of reality testing." He lists the bizarre behaviors:

– Michael put Martin's mittens on – whether to hide fingerprints or because he planned to steal them is unclear

– Michael was curious if Martin's boyfriend was "big," indicating Michael is bothered by his stature

– He unplugged the clock at 7:40 a.m. after being told Martin's boyfriend would arrive at 8:00 or 9:00 a.m. May reflect magical thinking

– He put a tube top on her when she asked for a top, possibly indicating momentary compassion

– He seemed bent on cutting her clothes with a knife, yet needed scissors to cut the cord from her feet

– He cut her hair

– He concluded that because she had scissors, she cut hair for a living.

– He seemed unwilling to go through with raping Martin unless she consented. Indicates difficulty with total domination; his need for Laura to desire him for his power over her. He likely became angry when she did not consent.

– He placed a knife to her breasts and indicated he'd cut the nipples of a woman "who was already dead." This disturbing statement is likely designed to elicit fear and to convey anger.

– He explored her vaginal opening with a pen, suggesting adolescent curiosity and lack of sexual experience. The fact the penetration was not aggressive indicates this is a child-like exploration not sadistic sexual aggression

– He seemed to be convincing himself to kill her. He asked her to turn away so he would not see her as a human being. She may have saved her own life by looking at him

It appears Michael was torn between a sociopathic impulse and a desire to remain mentally healthy. It indicates he was and likely still is salvageable. "The adult penal system was the most foolish place to send Mr. Rippo. His need for psychological help was well indicated." That Rippo did not rape and kill her indicates he is not a true psychopath, but a severely disturbed young man. [Tab 8.]

00/13/1996 Notes of psychiatric interview. Michael "sees no need for a psychiatric examin regard to emotional or behavioral functioning." He stated he has been referred by the "Psych Panel" as stipulated by NRS for counseling for unclear reasons. Notes requirement of this kind of review for sexual assault conviction. Regarding instant offense, he has "guilty knowledge" of these murders but denies committing them. [Tab 55.]

01/10/1996 Psychological Panel Results Notification: Panel cannot certify at this time that Michael does not represent a menace to the health, safety or morals of others. [Tab 56.]

01/30/1996 Michael's double-murder trial began..

William Burkett, prosecution witness, was never told by Michael that Michael wanted to have Diana Hunt killed. As far as Burkett knew, Diana Hunt was not going to testify against Michael. Burkett's girlfriend at the time, Amy Annette Rizzot aka Rene Hill, had previously been incarcerated at Carson City, Nevada, but was released in 1988 and Burkett knew no other girls who were locked up there at any time in the early 1990s while Burkett was at Ely State Prison with Michael. [Tab 110.]

03/11/1996 Norton A. Roitman pens addendum to his psychological evaluation after reviewing additional documents and speaking with Dr. Kinsora. He states that Michael's earlier assault had "qualities which could qualify as sadism and/or perversion." The degree of remorse Michael expressed and the minimization (in retrospect) during the interview are of concern. The nature and degree of the

crime and its secondary qualities of mutilation speak to a significant deficiency of conscience. Due to this recent information, he has less confidence in his previous opinion. [Tab 57.]

"It is more likely than thought before that Mr. Rippo is a man without sufficient conscience and empathy to be free of a sociopathic personality core." [Tab 57.]

03/12/1996 Penalty phase of Michael's double-murder trial begins.

Just prior to the beginning of the penalty phase, Wolfson and Dunleavy talked with family members. Wolfson decided the shy, retiring Stacie would be the family spokesman. He provided her only general topics which he would touch on with her. She became totally confused when he asked her at trial how long she'd known Michael. Her mother was present during this decision and the minimal preparation for Stacie's testimony. [Tabs 79 and 109.]

Stacie recalls that one of the psychologists or psychiatrists noted that Michael had "a genius level IQ." Stacie felt she was limited in what she could say about Michael after being told this. Also, she was still the keeper of the family secrets and she didn't want to cause trouble in the family. She was careful in what she said but she tried to hint at what Ollie had done to antagonize Michael. [Tabs 79 and 109.]

05/17/1996 Michael was sentenced in the double-murder case.

00/00/0000 Carole went into seclusion after the trial. She spent several months alone in her house, would not answer phone calls. Dolores cooked meals for Carole during this time. [Tab 66.]

Ronald believes Carole became a "born again" Christian sometime before Carole Ann's death. He does not know her motivation. [Tab 77.]

09/04/1996 Dolores and Carole visited Michael at ESP. [Tab 65.]

10/01/1996 Stacie is seen for acute bronchitis at UMC Quick Care. [Tab 117.]

03/11/1997 Carole Ann Campanelli is arrested on multiple drug-offense counts (furnishing, possession, trafficking) (see 9/5/1996). [Tab 67.]

08/20/1997 Carole Ann Campanelli, Michael's sister, died of a brain aneurysm while in prison on the drug smuggling/conspiracy charges. The Chaplain arranged a very brief telephone call between Michael and his mother. It is their last aural contact. [Tab

65.]

Carole has always been selfish with her children. After Carole Ann died, Carole and Duncan took custody of Carole Anne's daughter, Emily. Carole soon relinquished custody of Emily to Stacie citing difficulties she and Duncan were having at the time. Domiano thought it unfair of Carole to push her responsibility of raising Emily off on Stacie, as Stacie was struggling to care for her own family at the time. Worse, Carole and Duncan kept Emily's Social Security money during the entire time Stacie raised Emily. [Tabs 71 and 105.]

00/00/1998 Robert and Stacie decided to stay in touch with one another after seeing each other at Robert's uncle Keith's wedding in Colorado in 1998. When Robert took his daughter out to Las Vegas to visit Stacie and her family, he found Stacie yelling and cursing at her children in the same manner that Ollie yelling and cursed at him and Jay. Stacie also displayed the same facial expressions of rage that Ollie had. When Carole Ann's daughter did the slightest thing, Stacie would scream and curse at her and then tell her husband, Ron, to take the girl in the bedroom and beat her. Ron always did so without any hesitation or question. [Tabs 93, 100, 112, 113.]

Seeing the way Stacie treated Carole Ann's daughter, as well as her own kids, was so unsettling for Robert that he left her home the same night that he got there and checked into a hotel. Robert felt like he had been transported to his childhood and was witnessing Ollie all over again. Robert also left because he tried his best to be the opposite kind of father for his daughter and he did not want to expose her to that kind of a hostile environment. [Tabs 93, 100, 112, 113.]

When Carole and Stacie attended the wedding of Ollie's youngest brother Keith in 1998, Sari and her sons were there as well. Sari does not recall how the topic came up, but Stacie began talking about how much she hated Ollie and began recounting some of the bad things he did to her (Sari did not recall any details). Stacie became choked up, tearful and visibly shaking as she discussed her feelings. When Carole heard the things that Stacie was saying she interrupted Stacie and began defending Ollie. Stacy became mad at her mother and told her that Ollie was dead and she didn't need to cover up for him anymore. Nevertheless, Carole continued speaking on Ollie's behalf. Sari and her sons felt very badly for Stacie at that time. [Tabs 93, 100, 112, 113.]

06/08/2000 Stacie is seen at UMC for pharyngitis. [117.]

04/24/2001 CANS detail is reported – emergency counseling is provided for marital problems for Stacie. [Tab 116.]

01/31/2003 Stacie is seen at UMC after MVA. [117.]

00/00/2004 Domiano says that Stacie was going to move in with him temporarily to escape her abusive husband in Virginia. Her then-husband, Gliszynski was raping and sodomizing her and she needed to get away. When Carole learned of the plan, she went to Virginia to stay with Stacie and protect her. She then insisted Stacie return west with her. When she learned of Stacie's plans to move in with Domiano, she threatened never to speak with Stacie again if she did that. Stacie opted to go with her mother. Domiano thought this very mean-spirited to do to Stacie when Stacie had endured such trauma. He accepted Stacie's decision and said his door remained open if she needed to stay with him a while. [Tabs 71 and 105.]

12/12/2005 An unsubstantiated allegation of beating Brianna Roterdam was lodged against Stacie. [Tab 116.]

00/00/2007 After being contacted by Michael's habeas attorneys, Carole took everything of Michael's and burned it in the fireplace. She has been specifically requested to keep these materials.

Sari is still close with her sons and they all live in the same home in Chatsworth, California. Generally Sari's sons are good boys. One works a blue-collar city job and the other is frequently between jobs. [Tabs 79 and 108.]

08/14/2007 Stacie is seen at UMC with flu symptoms. [117.]

08/28/2007 Stacie is seen at UMC for possible tonsillitis. [117.]

10/12/2007 Stephenson was very surprised when he read the details of the 1982 sexual assault case, and the double murder in 1992. He said he had an eerie feeling as he read the allegations because they brought to mind the twisted sexual fantasies that Michael wrote about as a teen. John figures that Michael's imagination may have gone way beyond fantasy and he possibly could have been mentally disturbed. [Tab 75.]

10/14/2007 Michael reports he has fond memories of his mother's cooking, especially her Italian dishes and spaghetti sauce. He also says the family was always together to celebrate holidays: Fourth of July, Thanksgiving, Christmas and their birthdays. [Tab 68.]

Michael says his relationship with his mother today is "normal under the circumstances." He wouldn't say there is tension because she subscribes to

"Christian mythology," and he believes in reality. But there's merely a difference of opinion. He chides her occasionally about her fantastical beliefs but respects her right to believe what she wants. "And given that I've inadvertently been a source of much grief in her life, I'm glad she can actually derive comfort from her beliefs." She takes good care of him and is the only person in his life who does. He is grateful for her support. [Tab 68.]

10/16/2007 Antoinette believes there may have been a few sources of the problems Michael and his siblings encountered growing up.

- Carole did not need to have children – she treated her children the way little girls treat their dolls
- Carole moved the children away from all family support
- Carole's constant relocations probably destabilized the children as well
- Carole was never involved in a stable relationship with a man who was normal, high-functioning and a good role model for the kids. She had no spousal support in her life
- Carole never provided her children with boundaries; she was deficient in disciplining them when necessary
- Carole did not seem to be a responsible mother at times [Tab 74.]

10/17/2007 Carole still is in awe of Ollie Anzini in many ways. Carole reports that Ollie was the "love of her life." She reports she would not be able to speak without Ollie. She was shy and grew up sheltered. She was raised in a Catholic home and fell away from the church in the 1960s. Ollie was an agnostic. She describes him as "worldly," and "intelligent." She says he "challenged" her and made her develop opinions on issues. Before they met, Ollie had been in a relationship with a girl who lived on Park Avenue and the two of them had traveled the world together. [Tab 69.]

Stacie and Carole harbor a deep resentment against Michael. They blame him for the death of Carole Ann. Carole said that she wanted to tell Michael she hates him for what he's done. Carole is no longer allowed contact visits with Michael because of the incident involving Carole Ann. [Tab 69.]

03/00/2008 Domiano resides in Mastic Beach, New York and is 70 years old. He is the natural father of Michael Damon Rippo. Carole Rippo was his first wife. He and Carole had two other children together: Stacie and Carole Ann. [Tab 106.]

05/15/2008 Herbert Duzant reports on Domiano Campanelli's failing health. [Tab 115.]

CLARK COUNTY JUVENILE COURT SERVICES

PARENTAL AGREEMENT

In the matter of:

MICHAEL DAMON RIPPO, Age 16 years

Date of Birth: February 24, 1965
Charge: Runaway/CHINS & Burglary (2 Counts)
Date: April 29, 1981

CASE NO. J29042

We, James & Carole Angini,
the parents of Michael Damon Rippo,
understand that our son has been declared a Ward of the Court and placed on Formal Probation by the Judge of the Juvenile Court in Clark County, Nevada, on April 29, 1981.

We acknowledge the Terms of Probation as stipulated in the Probation Agreement and set forth by the Court in our son's behalf and attempt to assure his conformance to those terms; and agree to notify the assigned Probation Officer of any violation by our child.

We have read the Probation Officer's Report to the Court.

We, in the effort, to assist our child to fulfill the Terms of Probation and recognizing that if we fail to fulfill our responsibilities regarding this, we may be liable to further action by the Juvenile Court.

Parent

Parent

DATE: 4/29/81

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Behav. Sci. Law, 16, 71–95 (1998)

# Integrating Base Rate Data in Violence Risk Assessments at Capital Sentencing

Mark D. Cunningham, Ph.D., and
Thomas J. Reidy, Ph.D.

**Prediction of violence in capital sentencing has been controversial. In the absence of a scientific basis for risk assessment, mental health professionals offering opinions in the capital sentencing context are prone to errors. Actuarial or group statistical data, known as base rates, have proven far superior to other methods for reducing predictive errors in many contexts, including risk assessment. Actuarial follow-up data on violent recidivism of capital murderers in prison and post release have been compiled and analyzed to demonstrate available base rates for use by mental health experts conducting risk assessments pertaining to capital sentencing. This paper also reviews various methods for individualizing the application of base rates to specific cases.** © 1998 John Wiley & Sons, Ltd.

> If one only starts from an assumption ... that social policy is better built upon a foundation of information than of ignorance, of studies of large numbers of people than of a few individuals, of systematic than of haphazard observation, then the value of statistical analysis should be apparent (Sagarin, 1982).

The future dangerousness of a capital defendant is identified as a statutory aggravating factor that may be considered in twenty-one states when imposing a death sentence (McPherson, 1996). Federal capital proceedings often allege future dangerousness as a non-statutory aggravator. Mental health experts routinely testify regarding future dangerousness in capital proceedings, but much of this testimony seems to be uninformed by available empirical data (Cunningham & Reidy, in press; Grisso & Appelbaum, 1992).

The involvement of mental health professionals in making these predictions of future dangerousness in capital sentencing has been among the most controversial issues in the arena of risk assessment (Davis, 1978; Dix, 1981; Ewing, 1983; Appelbaum, 1984; Worrell, 1987; Kermani & Drob, 1988; Leong, Weinstock, Silva, & Eth, 1993). Errors at capital sentencing could result in either over- or under-estimations of future acts of violence. Consistent with well established

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clinical proclivities to over-predict violence (Monahan, 1981; McNeil & Binder, 1991), the most notorious mental health expert testimony at capital sentencing has grossly overstated the magnitude of risk and the accuracy level of the prediction (*Barefoot v. Estelle*, 1983; *Estelle v. Smith*, 1981). Shah (1978) noted that when predictive evidence has poor reliability, the greater the move away from base rates and greater the probability of error. Hart, Webster, & Menzies (1993) characterized the failure to acknowledge the possibility of error and the failure to make risk assessments in probabilistic terms as poor practice and potentially unethical.

The majority opinion in *Barefoot v. Estelle* (1983) implied that the potentially dishonest and inaccurate psychiatric opinions at capital sentencing could be exposed by adversarial cross-examination (Leong *et al.*, 1993). Multiple factors, however, create difficulty in effectively neutralizing erroneous mental health expert testimony regarding future dangerousness at capital sentencing (Dix, 1981). There is a real danger that a jury may be inappropriately and significantly influenced by poorly grounded predictions of future violence offered with great confidence, even when the prediction is based on intuition rather than solid scientific evidence (Worrell, 1987). As the *Barefoot v. Estelle* (1983) dissenting justices wrote: "In a capital case, the specious testimony of a psychiatrist, colored in the eyes of an impressionable jury by the inevitable untouchability of a medical specialist's words, equates with death itself" (p. 916).

The mental health expert in a capital sentencing assumes an ethical obligation to formulate clinical judgments that are primarily founded on a scientific basis (Ewing, 1983; Poythress, 1992). This goal can be accomplished by objectivity, informed expertise, and honest acknowledgment of the limitations of the expert opinion (American Academy of Psychiatry and the Law, 1992; American Psychological Association, 1992; American Academy of Forensic Psychology, 1991).

A scientific basis for a risk assessment estimate is well informed by incorporating an acknowledgment of the indispensable contribution of statistical or actuarial data. Dawes, Faust, & Meehl (1989) identified group statistics as quite relevant and applicable to individuals:

> A common anti-actuarial argument, or misconception, is that group statistics do not apply to single individuals or events. The argument abuses basic principles of probability. Although individuals and events may exhibit unique features, they typically share common features with other persons or events that permit tallied observations or generalizations to achieve predictive power (p. 1642).

Actuarial or group statistic methods have been repeatedly described as not just an adjunct to, but rather superior to clinical methods in predicting the behavior of individuals (Dawes *et al.*, 1989; Meehl, 1954; Monahan, 1981, 1996; Showalter & Bonnie, 1984; Tonry, 1987). As Poythress (1992) summarized, "In virtually every area of behavior that researchers have pitted clinical prediction against statistical prediction, clinical prediction has been shown to be inferior. This is true in the case of violence prediction studies also ..." (p. 142). Thus, integration of actuarial data may reduce error associated with either under- or over-estimation of violent recidivism (Litwak *et al.*, 1993).

The advantage of an actuarial approach over clinical judgment may stem in part from inherent limitations in human cognitive processing. Dawes *et al.* (1989) described the clinical judgment method as involving the combining or processing

 

of information in the decision maker's head, with the underlying interpretive strategies resting on prior experience and knowledge. Associated faulty interpretive strategies leading to clinical judgment error include difficulty distinguishing between valid and invalid variables, inability to optimally weight the variables, minimal or absent information on the accuracy of diagnoses or predictions, self fulfilling prophesies, skewed exposure samples, and inflated confidence in accuracy of judgment.

The purpose of this paper is to review the scientific basis for violence risk assessment of capital offenders. The integration of statistical and actuarial methods using base rate data will be demonstrated. Mechanisms are discussed for integrating base rate information into capital risk assessments that reflect ethical and scientific soundness with correspondingly greater probabilistic accuracy.

## THE ROLE OF BASE RATES IN MODELS OF RISK ASSESSMENT

The fundamental group statistic in risk assessment is the base rate, which is the statistical prevalence of a particular behavior in a given group over a set period of time (usually one year). Monahan (1981) emphasized the importance of anchoring any estimate of the probability of violence in the individual case to the statistical base rate, describing: "knowledge of the appropriate base rate is the most important single piece of information necessary to make an accurate prediction" (p. 60).

Mental health experts at capital sentencing may err by inappropriately emphasizing predictive ramifications of the instant offense or limited case information while neglecting base rates. As Smith (1993) stated, "the most common significant error made by clinicians in the prediction of violent behavior relates to ignorance of information surrounding the statistical base rate of violence in the population in question" (p. 539). Base rate data is incorporated in multiple risk assessment models described in the research, with empirically validated factors being employed to cautiously individualize this base rate. The summary of various risk assessment models which follows is not intended to be exhaustive, but will serve to illustrate specific variations around a generally consistent theme of individualizing group base rates.

Monahan (1981) described approaching the risk assessment task with a combination of: (1) actuarial methods and (2) dispositional/interactional/contextual approaches. Monahan recommended beginning with a base rate. This base rate or actuarial estimate would then be conservatively individualized by examining individually specific dispositional, interactional, and contextual information.

Morris and Miller (1985) described risk assessments of future violence as being of three types: (1) anamnestic (using how the individual behaved in the past to estimate behavior in similar circumstances); (2) actuarial (using how people like the defendant have behaved to estimate how the defendant will behave); and (3) clinical (using life experience, training, knowledge of mental illness, observations, and diagnosis to estimate future behavior).

Anamnestic reliability is dependent on a sufficiently established pattern and continuing close similarity of context. Actuarial techniques require relevantly applicable group outcome data. Clinical assessments rely on traditional methods

 

of interview, testing, inference, and diagnosis. Morris and Miller asserted that actuarial and anamnestic approaches are more reliable than clinical approaches, which they described may add little to the accuracy of actuarial or anamnestic assessments.

Hall (1987) proposed varying formulas for risk assessment depending on whether long-range, short-term, or imminent forecasting of violence was being attempted: (1) long-range violence is best estimated by the base rate of violence in the group to which the individual belongs; (2) short-term (next several months) violence potential is a function of the interaction of historical variables (nature of violent exposure, experience, and behavior), current operating variables (long-term disposition and short-term triggers), opportunity variables, and inhibitory variables; and (3) imminent (next several days) violence is a function of perpetrator variables, contextual stimuli, victim characteristics, and inhibitory factors.

Serin and Amos (1995) proposed a decision tree for the assessment of dangerousness that consisted of four sequential steps: (1) derive a group base rate estimate from relevant group demographic and dispositional factors; (2) consider clinical information regarding past use of violence, disinhibitors, and persistence of antisocial behavior in conservatively revising the group base rate estimate to an individual base rate estimate; (3) evaluate what risk management variables and what contextual factors might be modified to reduce the likelihood of violence; and (4) establish a final revised estimate of violence potential.

## ESSENTIAL SPECIFICATIONS OF CAPITAL SENTENCING RISK ASSESSMENTS

Regardless of the risk assessment model employed in a capital sentencing, the relevance and precision of a risk assessment of future violence is increased by considering the following fundamental questions posed by Monahan (1981): (1) what violence? (2) what severity? (3) what context? (4) at what time?

### What Violence?

Future violence of greatest concern in capital sentencing would likely involve serious institutional violence or violent felony parole recidivism.

### What Severity?

Violence severity at capital sentencing is arguably assumed to be of a magnitude that a preventive measure of death seems reasonable. Specification of the magnitude or severity of the forecasted violence is an essential aspect of risk assessment. This is because mild violence is much more common (i.e., has a higher base rate) than severe violence. Thus, predictive accuracy increases as definitions of what constitutes "violence" expand. In many instances, the clinician fails to modify the risk estimate or the reliability of his prediction according to the severity of violence involved. Monahan (1981) described this failure to specify the level of violence as

 

one of the more common errors committed by clinicians in undertaking a violence risk assessment. It is important then for the clinician to differentiate exactly what is being forecasted at capital sentencing and how that likelihood might vary by the severity and associated infrequent base rate of that violence.

## What Context?

In capital sentencing, assessments of future criminal violence risk can be viewed as involving two general contexts: (1) within the prison system over the period of a capital life incarceration (many jurisdictions sentence to life without possibility of parole); and (2) in free society if eventually paroled.

Context is a critically important variable in assessing the likelihood of violence as base rates may vary depending on the setting or context. This is a common sense notion. As Smith (1993) stipulated: "It is clear that in order to adequately predict individual aggressive behavior, one must know something about the environment in which the individual is functioning" (p. 541). Similarly, Hall (1987) conceptualized the likelihood of violence as involving the interaction of the individual with environmental factors at a certain time, place and setting: "Individual persons are never dangerous in toto" (p. 10).

In a capital sentencing assessment of violence potential in prison, it would seem relevant to consider that prison is a highly structured and intensively supervised setting quite distinct from free society, warranting utilization of base rates that are specific to that context. For example, Brown, Gilliard, Snell, Stephan, and Wilson (1996) described U.S. Bureau of Justice Statistics showing that 47.4% (429,400) of state prison inmates are incarcerated for violent offenses and 10.7% (96,900) are incarcerated for murder.

Based on the violent offense histories of these inmates and the high rate of Antisocial Personality Disorder (ASPD) in a prison population estimated at 75% (Hare & McPherson, 1984; Widiger & Corbitt, 1995), a high rate of prison homicide could be predicted. In fact, despite a heavy concentration of individuals with criminal violence histories, the base rate of murder in prison is below that of the community at large. For example, in Texas prisons the homicide base rate was seven per 100,000 in 1994 compared to 15 per 100,000 in the general population of Texas, and 49 per 100,000 in Dallas (Brown *et al.*, 1996). In the New Orleans Calliope public housing area, the annual male victim murder rate extrapolated from 1985–1992 NOPD police data was 513 per 100,000 (Cunningham, 1997). Obviously, the context of the prison custodial supervision has a marked effect on the frequency of lethal violence even among individuals who might be expected to have a greater violence propensity.

Quay (1984) reported that rates of federal prison inmate-on-staff assault and inmate-on-inmate assault were halved by providing separate housing for inmates according to three psychological classification groups and initiating specific unit management procedures. Even the most problematic inmates who had been identified as "Aggressive-Manipulative" were "surprisingly easy to handle" (p. 23) when grouped together and specifically programmed. Housing and programming context have significantly affected rates of inmate violence even among inmates who had been identified as more aggressive.

 

Consistent with the above, Menzies, Webster, McMain, Staley, and Scaglione (1994) reported violence base rates in prison and in a psychiatric hospital that were one-fourth and one-half, respectively, the cohort's community base rate of violence. Thus, serious predictive errors may occur by inferring violence potential to individual dispositional characteristics or behavioral history alone without reference to context (Monahan, 1981; Hall, 1987).

## At What Time?

Relevant capital defendant periods of potential violence risk would include: (1) the course of a capital life prison term; (2) post release on parole (age at conviction + years of capital sentence before parole eligibility).

# THE PROBLEM OF ILLUSORY CORRELATION

In the absence of base rates and empirically derived dispositional, interactional and contextual data, the clinician is subject to making errors of illusory correlation (Monahan, 1981). An illusory correlation occurs when an observer reports that a correlation exists between classes of events which are not correlated, or correlated to a lesser degree, or are correlated in the opposite direction to that reported. Smith (1993) cautioned that clinicians erroneously describe relationships in material presented to them which "make sense" in terms of their prior biases rather than in terms of what they have actually seen. Smith has noted that, "systematic errors of observation have consistently been linked with the clinician's prior expectations about which characteristics imply dangerousness" (p. 540).

Illustrative of the illusory correlation problem is a study of experienced psychologists and case managers within the Federal Bureau of Prisons who employed 17 demographic and biographical variables as cues to forecast violence during the first six months of incarceration of male inmates at a medium security federal correctional institution (Cooper & Werner, 1990). Both groups of correctional professionals exhibited disappointingly low levels of predictive accuracy (mean corrected hit rate of −0.16 for psychologists, and 0.07 for case managers). Specifically, both psychologists and case managers consistently emphasized current offense, severity of current offense, and history of violence, none of which were significantly correlated with actual inmate violence during the first six months of incarceration. The professionals de-emphasized cues that were empirically related to prison violence (younger age, more arrests and convictions, non-urban residence).

Similarly, extensive experience in making predictions of future dangerousness at capital sentencing in the absence of group base rates or subsequent systematic long-term follow-up and comparative analysis of the personally predicted individual is unlikely to result in improved accuracy with experience. An analogy of a blind person throwing a baseball would seem descriptive. Without feedback regarding the trajectory and impact point of the thrown baseball, no improvement in accuracy is possible.

 

Consistent with Cooper and Werner's findings of the low predictive value of offense severity, Alexander and Austin (1992) reviewed the literature and concluded in a U.S. Justice Department publication: "the severity of the instant offense has rarely been found to be a very useful predictor of (prison) disciplinary adjustment ... (or) danger to the public" (p. 25).

## BASE RATES OF PRISON VIOLENCE OF CAPITAL MURDERERS

The first context of interest in capital sentencing involves consideration of the defendant's anticipated behavior during a pending capital life prison term. Thus, the post conviction incidence (base rate) of serious prison violence of capital offenders is fundamental to the estimated risk these offenders represent while incarcerated. In the only study providing both capital offender and broad comparative base rates of prison violence, Marquart, Ekland-Olson, and Sorensen (1989) examined the institutional disciplinary records spanning from 1974 to 1988 of 92 Texas capital murderers convicted after 1973 who were released from death row by commutation to life sentence, retrial and sentence to prison, or case dismissal. The prison experience of these commuted death penalty inmates was compared to a group of Texas life sentence capital murderers, as well as the prison behavior of inmates "system wide" in the Texas Department of Corrections, and inmates at a Texas high security prison facility. The prior criminal histories and homicide characteristics of the capital murderers reflected a broad range of past arrests and homicide contexts.

Of greatest comparative significance is the review of total infractions on a yearly average per 100 inmates. This represents an annual base rate or estimated experience per 100 inmates per year as displayed in Figure 1. It will be noted that the "release from death row" base rate of 1.61 (i.e., 1.61 violent rule infractions per 100 inmates per year) is less than that of the "life sentence" inmates of 2.60 and is 1/7 of the "systemwide" base rate of 11.66 and 1/12 that of the high security prison. These base rates provide both a specific and comparative framework for the risk of serious violent rule violations. An argument could be made that much prison violence goes unreported and thus the statistics are unreliable. This argument has several fallacies: The issue of unreported offenses would apply to all categories of offenders; the offense least likely to go unreported (striking of an officer) occurred at a low rate for both capital murder groups and displayed a similar proportion across groups as did the total infractions.

Additionally, Marquart and colleagues noted that approximately 90% of both the former death row inmates and the life sentence control cohorts who were still incarcerated held trustee status. A minority of death row inmates exhibited persistent serious disciplinary problems. Marquart *et al.* indicated that eight of the former death row prisoners and six of the life sentence control group were identified as prison gang members and confined indefinitely in administrative segregation. The prison context of these problematic inmates was modified by increased restriction, supervision, and isolation so that any opportunity they might have to be assaultively aggressive was almost entirely negated, likely resulting in a negligible subsequent violence base rate. Thus the prison system does appear to

 

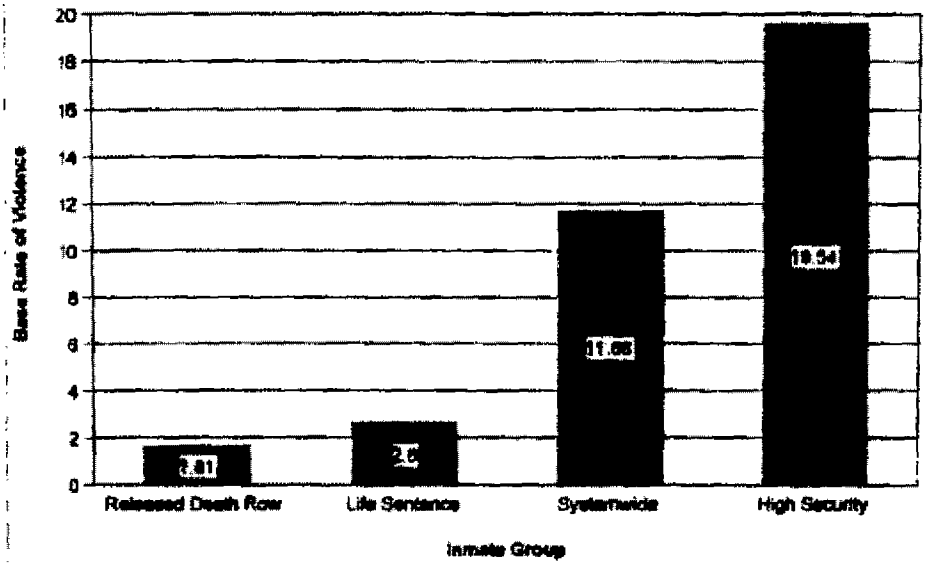


Figure 1. Reported serious violent prison rule violations: Average number of violations per 100 inmates per year (homicide, assault with weapon, sexual abuse by threat, striking officer)

have appropriate mechanisms for the virtual complete restriction of inmates who require this degree of control.

Quite similar base rate data emerge from other retrospective tracking studies of commuted capital offenders. Marquart and Sorensen (1989) reported on the institutional behavior of 533 former death row inmates nationwide whose sentences were commuted as a result of the *Furman v. Georgia* (1972) decision, and whose disciplinary behavior was tracked across the following 15 years. The associated base rates are illustrated in Figure 2. More than half of the total serious rule violations were committed by a small group of chronic offenders (7.4%). Marquart and Sorensen concluded, "These data demonstrate, at least among these violators, that most serious infractions were one time events or situations. In short, most of the Furman inmates were not violent menaces to the institutional order" (p. 20).

Marquart and Sorensen (1988) studied the institutional behavior of 47 capital offender former death row inmates in Texas whose sentences were commuted following the Furman decision in 1972. Across a 13 year period of confinement in the general prison population, these 47 former death row inmates committed three weapons related offenses. Additionally there were two incidents of striking a guard. Of the Furman group, 93% committed no assaultive weapons offenses while incarcerated in the Texas Department of Corrections. Marquart and Sorensen (1989) cited Wagner (1988) who conducted an extensive analysis of the prison behavior of 100 commuted capital offenders from 1924 to 1971 in Texas. He found that 80 commutees (80%) did not commit any serious prison rule violations such as murder, aggravated assault, sex by force, striking a guard, or escape. Three of the commuted capital offenders (4%) killed four fellow inmates. Earlier, Bedau (1964) found no allegations of unmanageable behavior during incarceration among 55 New Jersey capital offenders who had been released from death row between 1907 and 1960 and were serving life imprisonment terms.

 

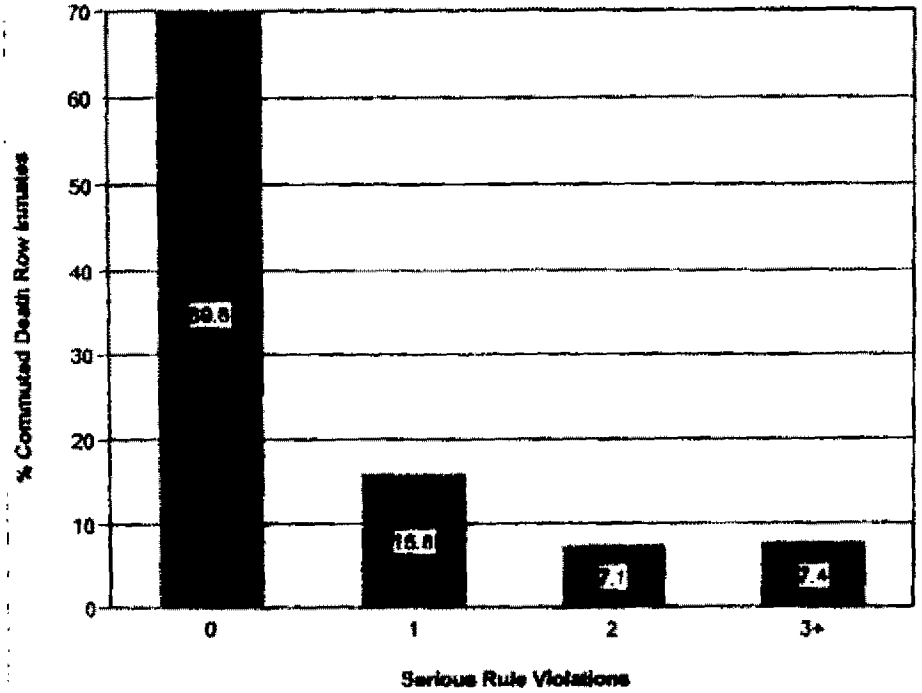


Figure 2. Serious prison rule violations committed by death row inmates over 15 years (homicide, aggravated assault, sexual attack, escape, riot, work strike)

Limited base rate data regarding prison violence of non-capital murderers are available. Corollary, but unspecified, base rate perspective of the prison behavior of murderers in general was provided by Flanagan (1980) who identified murderers as being "settled" prisoners who are infrequently involved in violent behavior within the institution. Wolfson (1982) examined 1973 U.S. Department of Justice national prisoner statistics and identified that one in 577 imprisoned murderers (0.02%) murdered again in prison that year, none of whom were commuted death penalty offenders. Wolfson acknowledged that convicted murderers were increasingly over-represented in prison murders: murderers represented 10% of the prison population but were responsible for 25% of the prison murders. Wolfson pointed out, however, that 99.8% of the imprisoned murderers did not repeat their offense in that year.

It is important to note that the sentence a capital defendant receives does not appear to significantly affect subsequent base rates of violence while incarcerated. Sorensen and Wrinkle (1996) analyzed the records of two groups of first degree murderers, including 93 death sentence inmates and 323 life-without-parole inmates, both housed in Missouri general prison population. These two groups were contrasted with 232 life-with-parole second degree murderers. The three groups were not significantly different in their rates of assaultive rule infractions which had a combined prevalence rate of 20% (of which 29% were minor assaults). There were eight murder/manslaughter's committed by the combined groups across the 1977–1992 period of disciplinary record review, yielding a prevalence rate of 1.2% (8/648). The lack of significant difference in the prevalence of assaultive

behavior among the three sentencing groups provides support for the generalization of base rate data regarding prison violence to capital murder inmates regardless of type of sentence. This finding mirrors the similar violent rule infraction incidence of the two capital inmate groups in the Marquart and colleagues (1988) Texas comparative study.

## BASE RATES OF VIOLENT RECIDIVISM OF MURDERERS AND CAPITAL MURDERERS ON PAROLE

The second environmental context of interest regarding future acts of criminal violence involves the post-release community setting, if the defendant is eventually paroled following a capital life prison sentence. Base rate statistics from multiple longitudinal studies indicate a low base rate of post-release violent recidivism among capital, as well as other, murderers as shown in Table 1.

Bedau (1964) reported on 31 New Jersey capital offenders commuted and subsequently released on parole between 1907 and 1960, and identified that only one was returned to prison (3%). Of 15 commuted capital offenders released from prison between 1903 and 1964 in Oregon, three (20%) returned to prison for technical violations and new offenses. None of the capital offenders in New Jersey or Oregon committed an additional criminal homicide while in prison or on parole.

Stanton (1969) studied the post-release behavior of 63 first degree murderers paroled between 1930 and 1961 in New York. Sixty-one of these murderers had had their sentences commuted from death to life imprisonment. Stanton found that as of 1962, only three (4.8%) of these murderers had been returned to prison—two for technical parole violations and one for burglary.

Vito & Wilson (1988) described a study initially presented in a 1986 meeting of the Southern Association of Criminal Justice Educators which tracked 17 former death row inmates whose capital sentences were commuted in the Furman decision. Twenty-nine percent of this sample was returned to prison; four of the defendants were reincarcerated for committing new crimes, although none of the paroled offender's had committed another homicide.

Wagner (1988) studied the post-release behavior of 84 commuted capital offenders paroled over the course of 64 years (1924–1988) in Texas. Of this sample, 8.3% were returned to prison for committing new felonies. None committed a post-release murder. Most were described as successfully completing their parole without incident.

Marquart & Sorensen (1989) followed 188 Furman commuted capital murder inmates who were subsequently released to society. They reported that 38 (20.2%) recidivated, with 20 (10.6%) committing a new felony offense. Only one of the 188 (0.053%) was returned to prison for committing a subsequent homicide.

Base rate data regarding the post-release outcome of non-capital murderers is also available. Stanton (1969) additionally studied 514 inmates convicted of second degree murder and released from New York state correctional facilities between 1945 and 1961. Of these, 22.4% became delinquent. This was broken down by recidivism offense severity as follows: 17 of the 115 (3.3% of the total sample) were convicted of felonies, 33 others were convicted of misdemeanors or lesser offenses,

 

Table 1. Base Rates of Parole Recidivism of Capitol Murderers, Murderers, and General Population Inmates

| Study | Sample | Follow-up Interval | N | Recidivism Rate | New Murder Rate |
|---|---|---|---|---|---|
| **Capitol Murderers** | | | | | |
| Marquart & Sorensen (1989) | National Sample | 1972–87 | 188 | .20-prison/.10-new felony | .005 |
| Bedau (1964) | NJ | 1907–60 | 31 | .03 new felony | 0 |
| Bedau (1965) | OR | 1903–64 | 15 | .20 return to prison | 0 |
| Vito & Wilson (1988) | KY | 1972–85 | 17 | .29 return to prison, 6 jailed | 0 |
| Wagner (1988) | TX | 1924–88 | 84 | .08 new felony | 0 |
| Stanton (1969) | NY | 1930–61 | 63 | .05 return to prison | 0 |
| **Non-Capitol Murderers** | | | | | |
| Donnelly & Bala (1984) | NY | 1977, 5 yr post-release | 66 | .27 return to prison | — |
| Bedau (1982) | 12 States | 1900–76, 4–53 yr post-release | 2646 | .03 new felonies | .006 |
| Bedau (1982) | Nationwide | 1965–69, 74–75, 1st yr of release | 11,404 | .015 major violations | .003 |
| Bedau (1982) | Nationwide | males, 1st yr of release | 6094 | .01 new felony | .002 |
| | | females, 1st yr of release | 756 | .004 new felony | .001 |
| Stanton (1969) | NY | 1945–61 | 514 | .22-prison/.03-new felony | .004 |
| Beck & Shipley (1989) | 11 States | 1983, 3 yr post-release | 506 | .21 return to prison | .07 rearrested |
| Eisenberg (1991) | TX | 1986, 5 yr post-release | 56 | .45-return to prison | — |
| Perkins (1994) | 29 States | parole discharge 1992 | 5371 | .33 return to prison | — |
| Cancstrini (1996) | NY | 1985–91, 3 yr post-release | 5054 | .24 return to prison | .024 |
| **General Prison Population** | | | | | |
| Beck & Shipley (1989) | 11 States | 1983, 3 yr post-release | 16,355 | 41.4 return to prison | .03 rearrested |
| Perkins (1994) | 29 States | parole discharge 1992 | 209,995 | .4o return to prison | — |
| Eisenberg (1991) | TX | 1986, 5 yr post-release | 1539 | .48 return to prison | — |
| Canestrini (1996) | NY | 1985–91, 3 yr post-release | 121,555 | .44 return to prison | .004 |

and 65 were returned for technical parole violations. Stanton reported that of the 17 convicted of felonies, two (0.4% of the total sample) were convicted of another first degree murder.

Bedau (1982) studied recidivism rates of released convicted murderers in 12 states over periods ranging from four years to 53 years. In this sample, he identified 0.6% as having committed a new homicide and 3.3% convicted for another felony. In a second compilation, Bedau studied nationwide recidivism rates during the first year of release for convicted murderers paroled from 1965 to 1975; he identified 0.3% as committing a new homicide and 1.5% committing some other felony. In a third study, Bedau examined male convicted murderers released from 1971 to 1974 and found 1.1% reincarcerated for new offenses and 5.5% reincarcerated for technical violations. Bedau concludes: "Both with regard to the commission of felonies generally and the crime of homicide, no other class of offender has such a low rate of recidivism" (p. 180).

Donnelly and Bala (1984) studied the five year follow-up of 66 murderers released on parole from New York State prisons in 1977. They reported that 27.3% were returned to prison for a new offense or technical violation, while 72.7% had successful parole performance.

Beck and Shipley (1989) analyzed recidivism data on a sample of 16,000 inmates released from prison in 11 states in 1983 and followed across the subsequent three years. Murderers had a reincarceration rate of 20.8%. Six percent were rearrested for another murder/manslaughter (conviction data was not reported). In generalizing these findings to current capital sentencing, it should be cautioned that 94% of the total sample studied were younger than age 45 at prison release and that age at release was the strongest factor (inversely correlated) in predicting recidivism.

Eisenberg (1991) described a five year follow-up of a random sample of 1533 inmates paroled from the Texas Department of Corrections in 1986. The overall return to prison rate was 48%. Of this sample, 25 of 56 paroled murderers were returned to prison (45%). Data on new homicides were not recorded.

Perkins (1994) analyzed 209,995 parolees from 29 states who were discharged from parole in 1992, with 46.2% reincarcerated. Within this sample, 5371 parole discharged murderers had a 33.3% rate of return to prison. New homicide data were not reported.

Canestrini (1996) reported on the three year recidivism rate of 5054 inmates released between 1985–1991 from the New York Department of Correctional Services after original commitments for murder, attempted murder, manslaughter, and all other homicides. Of this sample, 24.5% returned to prison within three years, 15.2% for parole violations, and 9.4% for new felonies. This recidivism rate was much lower than the return rate of 44.3% for the 121,555 offenders whose prerelease offense was other than homicide. Among the homicide releasees, 2.4% returned to prison for a new homicide.

## AGING EFFECTS ON BASE RATES

Aging is well established as a significant factor in reduced base rate likelihood of criminal violence in both community and prison contexts. Hirschi and Gottfredson (1983) presented arrest record data from an English cohort in 1842–1844

 

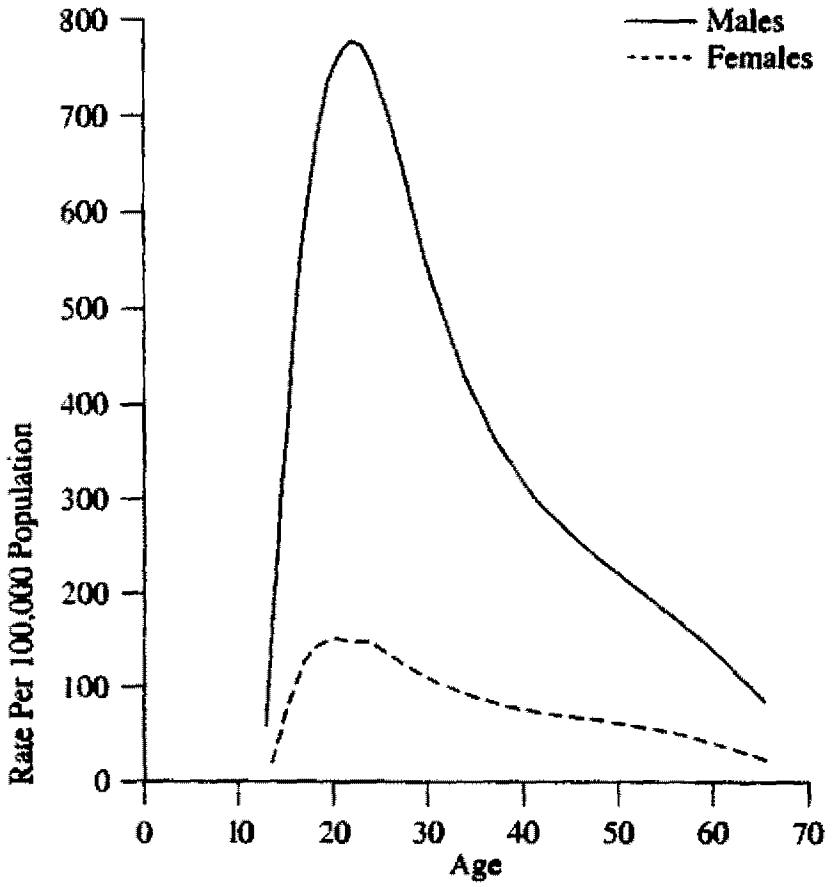


Figure 3a. Age distribution of criminal offenders in the general population of England and Wales, 1842–1844. (From: Hirschi & Gottredson, 1989; copyright 1989 by The University of Chicago Press; used by permission of the publisher)

(Figure 3a), and a 1977 U.S. Department of Justice annual crime report (Figure 3b) which demonstrated almost identical and dramatically disproportionate over-representation of younger offenders. Miller, Dinitz, and Conrad (1982) reported similar decreasing incidences of arrest for aging cohorts after age 30 when tracking incidence of murder, rape, or robbery.

Swanson, Holzer, Granju, and Jono (1990) described NIMH Epidemiologic Catchment Area data which found a marked progressive reduction in rates of community violence among successively older community members. This community data on preceding year prevalence of violent behavior by age is quite relevant to base rate estimates in risk assessments as demonstrated by findings for males shown in Figure 4. These data on community violence and age parallel the historic age-arrest relationship described by Hirschi and Gottfredson (1989).

The decrease in rates of criminal activity and violence with age is matched by age related declines in Antisocial Personality Disorder (ASPD) incidence. Large scale representative community samples have found lower prevalence rates of ASPD

 

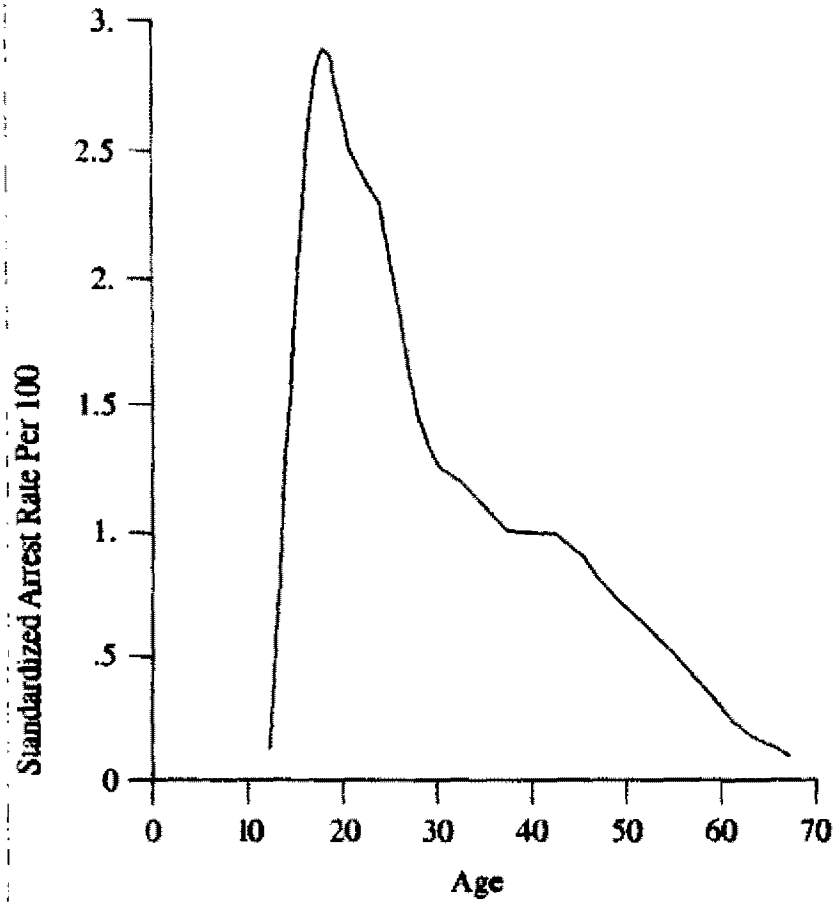


Figure 3b. Age distribution of criminal offenders in the general population of the United States 1977. (From: Hirschi & Gottredson, 1989; copyright 1989 by The University of Chicago Press; used by permission of the publisher)

among community residents over age 45 as compared to those younger than 45 (Myers *et al.*, 1984; Regier *et al.*, 1988). In a study of 889 male prison inmates ranging in age from 16 to 69, Harpur and Hare (1994) reported that over 60% of the 18–25 cohort was diagnosed ASPD, yet less than 20% of the post age 46 group was diagnosed ASPD. Hare Psychopathy Checklist (PCL) scores reflected a marked decline with age for Factor 2 (Socially Deviant Behavior).

Prison disciplinary problems also decrease as inmates get older, regardless of how the inmates are treated (Alexander & Austin, 1992). Hirschi and Gottfredson (1989) cited 1975 New York prison infraction base rates which were 10-fold greater for inmates in their 20s than inmates over age 60 (Figure 5). The age related effects demonstrated by this figure are remarkably similar to the distributions of community criminal activity depicted in Figures 3a and 3b. In a study of death sentenced and life-without-parole inmates, Sorensen and Wrinkle (1996) reported that rates of infractions were higher for younger inmates, tended to rise during the initial period of confinement, and then decreased over time. Flanagan (1980)

 

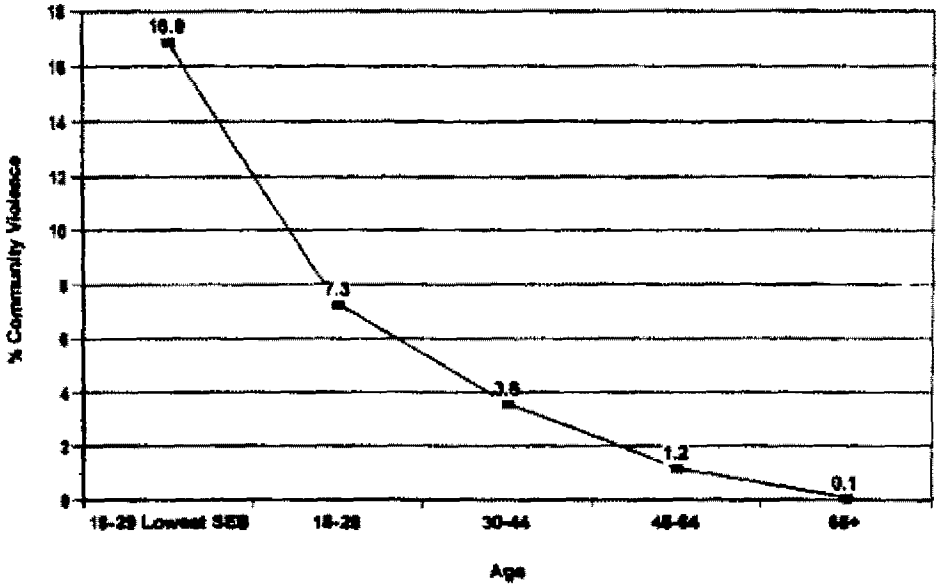


Figure 4. Community prevalence of violent behavior by age

identified lower prevalence rates for prison misconduct among older cohorts of inmates. Additionally, Flanagan reported that inmates facing long-term sentences had lower rates of prison misconduct than age matched inmates with short-term sentences, though the type of misconduct of the long-term inmates tended to be more serious. Thus, progressive aging across a prison sentence may be reflected in a decreasing violence base rate over time.

The findings of Wormith (1984) provided a descriptive rationale for the lower incidence of disciplinary problems of inmates as they age across an extended sentence. Wormith described negative correlations between time served and MMPI scale elevations. California Psychological Inventory profiles of long-term incarcerated inmates were noted to reflect better social and psychological adjustment. Additionally, he noted that inmates who had served long sentences expressed more prosocial attitudes toward the criminal justice system. These apparent improvements in psychological status, whether the product of aging, incarceration, or an interaction of the two, may account for the decreasing trend of disciplinary problems across an extended prison confinement.

Aging effects are also evident in recidivism rates. Hoffman and Beck (1984), in a two year follow-up of 6,287 released federal prison inmates, found a decline in recidivism rates with increased age at release even with statistical control for the effect of prior criminal record. Releasees, who were age 41 or older and considered to be a poor risk by criminal history, had a 60% favorable outcome, while those who were considered a very good risk enjoyed a 96% favorable outcome. Thus, even cohorts of career criminals exhibited "burnout"—a decline in offense frequency after a certain age. Similarly, Beck and Shipley (1989) described parole recidivism as being strongly inversely related to the age of the inmate at release across each of the five-year age cohorts. Inmates who were younger than age 17

 

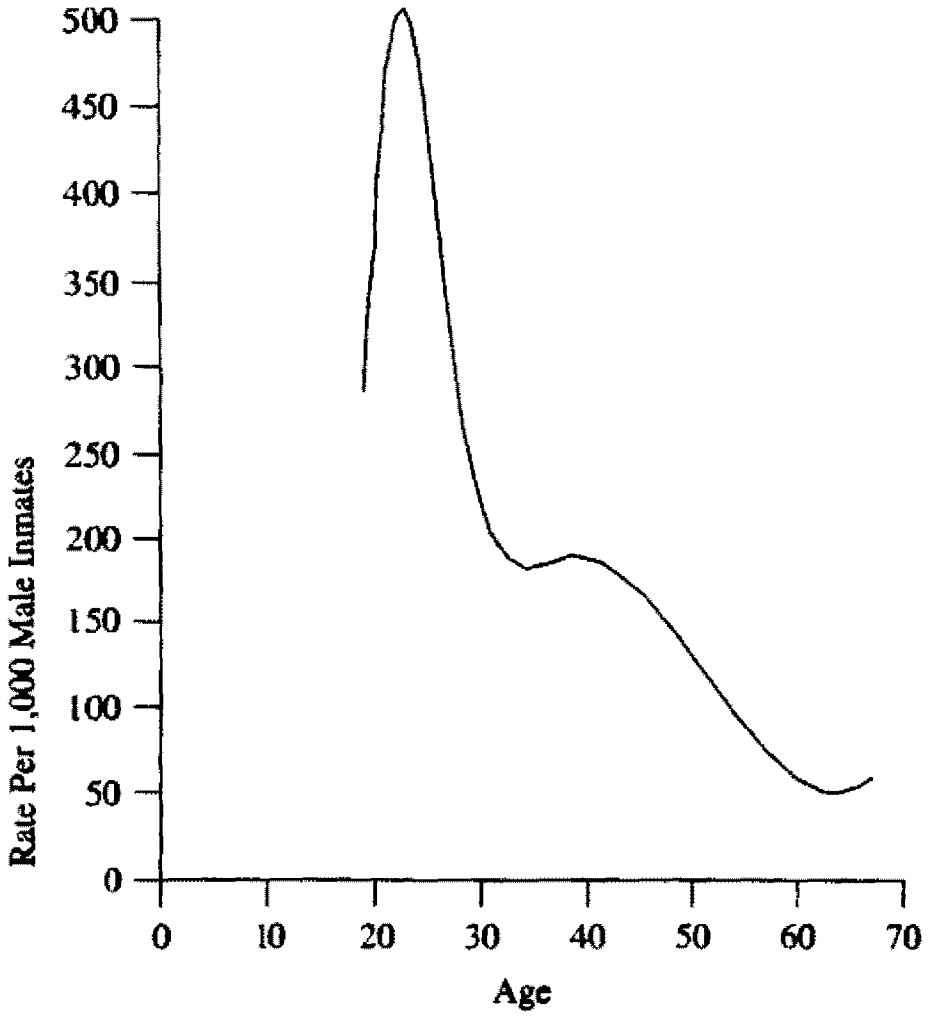


Figure 5. Incidence of prison infractions in NY, 1975, by age. (From: Hirschi & Gottfredson, 1989; copyright 1989 by The University of Chicago Press; used by permission of the publisher)

at release had a 75.6% rearrest rate and a 50.6% reincarceration rate, while inmates over 45 at release had a 40.3% rearrest rate and a 25.7% reincarceration rate.

Age related declines in the base rate of community criminality and violence may explain the lower post-release violent recidivism rates of paroled capital offenders as compared to other violent offenders. Quite simply, the capital parolees have typically served sentences of such length that they are in older age brackets when released. For example, when it is considered that current Texas capital inmates must serve a 40 year minimum sentence, the inmate would be at least in his late 50s before parole eligibility. It is hypothesized that the base rate of violent offending for these aging capital parolees would be lower than that of the studies cited whose age at release was often younger.

 

## INDIVIDUALIZING RISK ASSESSMENTS

With the base rate as an anchor, Monahan (1981, 1996) recommended examining the context of the subject's past aggression and dispositional characteristics associated with this aggression to individualize the risk assessment. It is at this juncture that a defendant's history, behavior pattern, and disposition become relevant in individualizing the risk assessment. Individualizing base rates, however, should be undertaken conservatively (Monahan, 1981; Harris, Rice, & Cormier, 1993; Serin & Amos, 1995), and only when reliable indicators are present that the individual varies significantly from the comparison group.

### Pre-Confinement Factors

Marquart and Sorensen (1989), in studying the *Furman* commutees, found that neither offense characteristics nor the offenders race, age, or prior criminal history significantly differed between those who committed violent acts in prison and those who did not. These researchers were not able to identify a pre-confinement variable that served as a predictor of who would commit these violent institutional acts.

### Broad Risk Factors

Although not specifically theorizing on a criminal population, Steadman *et al.* (1994) identified four domains of risk factors, including dispositional, historical, contextual, and clinical. The significance, weighting, and interaction of these factors remain an area of active research investigation.

### Violence Characteristics

Litwak (1994), while not focusing on capital sentencing specifically, emphasized that an adequate general clinical assessment of dangerousness would, in addition to base rate considerations, include a detailed history of the behavior, context and meaning of the subject's past violence. Weighting of the associated variables apparently remains intuitive and systematically applied predictive accuracy research was not reported. The practical relevance of Litwak's considerations can be seen in the observations of O'Leary and Glaser, as cited by Flanagan (1980), who discussed the meaning and implications of a given inmate's involvement in prison violence. O'Leary and Glaser are quoted as contending:

> ... some prisoners highly committed to a law abiding life may be especially upset by imprisonment, and they may be pressured by the more criminalistic inmates in a manner which impairs ability to conform to prison staff expectations. Thus a record of fighting in prison may show either aggressiveness, emotional instability, social ineptness, or defensive efforts of a prisoner to avoid subordination to more aggressive inmates (pp. 159–160).

 

## Neuropsychological Findings

A history of severe head injuries, clinically significant neuropsychological findings, abnormal EEG or MRI, and other neurological findings have been variously demonstrated as being disproportionately over-represented among convicted murderers (Langevin, Ben Aron, Wortzman, Dickey, & Handy, 1987; Blake, Pincus, & Buckner, 1995), violent forensic psychiatric inpatients (Martell, 1992), and death row inmates (Lewis, Pincus, Feldman, Jackson, & Bard, 1986). This might suggest brain damage as an individualized variable which results in a broad increased likelihood of severe violence.

The relationship of neuropsychological factors to violence incidence, however, seems to be mediated by context. For example, while Lewis *et al.* identified a disproportionate incidence of severe head injury histories among death row inmates, Marquart *et al.* (1989) found that capital offenders were disproportionately less likely to be involved in serious violent disciplinary offenses in prison. Lower commuted capital inmate post-release recidivism rates speak to aging as an additional factor in the complexity of application. Obviously, it is much too simplistic to add neuropsychological findings as a risk factor without consideration of context and aging.

## Self-Report Instruments

Minnesota Multiphasic Personality Inventory (MMPI) profiles appear to have very limited practical utility in differentiating those inmates likely to cause more than their share of serious discipline problems. Carbonell, Megargee, & Moorhead (1984) described statistically significant findings in using the MMPI to forecast prison adjustment, but cautioned that the accompanying correlation coefficients were too low to support using the instrument in individual decision making.

Quay (1984) obtained MMPI profiles on 1824 inmates in U.S. federal prison who had been assigned to one of five inmate classification groups based on characteristic behaviors determined by record review and institutional observation. Statistically significant differences on Scale 4 (Pd) scores were observed for the five groups, with the "Heavy" group of more aggressive and predatory inmates scoring highest. This finding is of limited practical discriminating or predictive benefit, because all of the inmate groups obtained elevated Scale 4 scores to varying degrees, with distributions that overlapped each other. For example, if an inmate obtained an elevated T-score of 76 on Scale 4, the clinician would have no clear indication of the group to which the inmate's institutional behavior would correspond, as this score is within one standard deviation of the mean of all five groups. Elevated MMPI Scale 4 scores seem to be characteristic of a male prison inmate population and thus provide little assistance in differentiating which inmates are more likely to be violent in prison.

A literature review by Kennedy (1986) of psychometric approaches to prison inmate classification found the Megargee system of utilizing the MMPI to differentiate 10 types of inmates ineffective as a predictor of inmate violence or aggression during incarceration, particularly with high-risk maximum security inmates (who would seem to be the population of interest at capital sentencing).

 

Van Voorhis (1994) also described the Megargee MMPI-based system as "disappointing" in the prediction of disciplinary-related prison outcomes.

Zager (1988) also reported that the MMPI was not able to predict violent inmate behavior. Zager further described the MMPI as less effective in assessing the prison adjustment of African-American inmates than Caucasian inmates. Indicative of the complexity in applying traditional MMPI interpretations to a prison population, Zager identified MMPI Code type 4-9 (which clinical lore has commonly associated with antisocial personality) as not among the most deviant prison adjustment Megargee profile types. Echoing Megargee (1984), Zager described the prison behavior of the 4-9 MMPI profile type as "manipulative", but also characterized them as "achievement oriented" and "often adjust well to incarceration" (p. 42).

Shaffer, Watson, & Adams (1994) studied 150 prison inmates: a discriminant function containing variables of MMPI Scale F, MMPI Scale 1, juvenile arrest history; and marital status successfully predicted only 33% of the violent inmates, even when violence was broadly defined as battery or verbal threats that resulted in isolation.

MMPI profile patterns have been observed to change over time so that an inmate's corresponding Megargee classification may shift (Clements, 1996; Craig, 1996), further limiting predictive usefulness of the MMPI in evaluating long term violence potential. MMPI findings thus should not be considered to represent immutable personality characteristics.

## Risk Assessment Instruments

Borum (1996) provided a status report on research regarding several risk assessment instruments which attempt to combine actuarial and clinical information and which might be applicable to forensic populations. He described the Dangerous Behavior Rating Scheme (Webster & Menzies, 1993) as being a conceptual advance in assessment technology, but having disappointingly weak predictive validity. Borum reported more favorable early reports regarding the Violence Prediction Scheme (Webster, Harris, Rice, Cormier, & Quincey, 1994) and the HCR-20 (Webster, Eaves, Douglas, & Wintrup, 1995). These remain, however, research instruments that, while promising, have not been sufficiently validated for clinical or forensic use.

## Inmate Classification Techniques

Van Voorhis (1994), in an extensive comparative study, evaluated five systems of inmate psychological classification: Megargee's MMPI-based typology; Quay's Adult Internal Management System (AIMS); Interpersonal Maturity (I-level); Jesness Inventory (I-level) System; and Conceptual Level. A sample of 179 low-maximum security federal inmates were tracked across six months of incarceration to determine whether psychological characteristics could be identified that would predict prison adjustment and problematic behaviors. Multiple outcome measures were examined through official records, staff ratings, and self-report. Discipline-related prison outcome findings were quite complex. Specifically,

 

"situational" inmates who had the least psychopathology, the least criminal history, and who had been predicted to have the least trouble adjusting to prison, had a surprisingly high incidence of non-aggressive disciplinary difficulties. Van Voorhis interpreted this result as stemming from the "situational" inmate's prison inexperience and lack of knowledge about how to "do time". Another unexpected finding was that "neurotic" type inmates, identified by several classification systems, obtained consistently high scores on measures of aggression. It was hypothesized that the aggression of the neurotic group was more idiosyncratic than predictable by life events, environmental conditions, or risk assessment measures. Consistent with predictions, asocial, aggressive and committed criminal inmates had higher rates of self-reported aggression. Aggression was not well defined in this study and criterion measure scores by classification system were not detailed for the various inmate groups, nor were cutoff, sensitivity or specificity data provided. Given the absence of this critical data and the moderate sample size, predictive utility at capital sentencing is correspondingly limited.

## Antisocial Personality Disorder (ASPD)

The reliability and validity of the ASPD diagnosis has been questioned because of shifting diagnostic criteria (Davis, 1978; Rogers & Dion, 1991; Widiger & Corbitt, 1995), criterion innumeracy (Rogers & Dion, 1991), and Substance-Related Disorder symptom overlap (Spitzer, Endicott, & Robins, 1978; Gerstley, Alterman, McLellan, & Woody, 1990). These concerns regarding diagnostic integrity suggest caution in applying the diagnosis in arenas of great portent such as sentencing (Cunningham & Reidy, in press). Additionally, contextual exclusionary criteria and lifetime pervasiveness requirements (American Psychiatric Association, 1994) call for careful consideration in the application of an ASPD diagnosis.

An ASPD diagnosis may not be relevant to forecasts of institutional violence. Again, statistical data on prevalence is informative: estimates of an ASPD diagnosis in an incarcerated male population range from 49–80% (Widiger & Corbitt, 1995). The diagnosis of ASPD alone describes little about prison behavior and recidivism outcome, except that the individual is similar to most prison inmates, and thus ASPD is not in and of itself an indication of a particularly dangerous or incorrigible inmate.

## Psychopathy

Psychopathy, as defined and measured by the Psychopathy Checklist—Revised (PCL-R; Hare, 1991) is a diagnostic construct that has been explored as a more reliable construct of both maladaptive personality features and socially deviant behaviors that may be relevant to determinations of recidivism and violence risk assessment both in and out of an institutional setting. Cunningham and Reidy (1997) critically examined research regarding the application of the PCL-R psychopathy construct in a sentencing context, identifying minority application, prison context, and age related cautions.

Briefly, most of the standardization of the PCL-R has been with a White male population and application to minorities remains under-investigated (Salekin,

 

Rogers, & Sewell, 1996). Also problematic is the limited research regarding prison behavior of psychopaths; existing research is insufficiently precise. As a result, estimations of the institutional assaultive potential of psychopaths remains speculative and application of the PCL-R in capital sentencing regarding likelihood of prison violence is correspondingly limited (Cunningham & Reidy, in press).

Research regarding psychopathy as a risk marker for post-release violence and its measurement with the PCL-R is reviewed by Hart *et al.* (1994), with multiple studies (Hart, Kroop, & Hare, 1988; Forth, Hart, & Hare, 1990; Harris *et al.*, 1991) demonstrating markedly higher rates of recidivism and violent recidivism among high PCL scorers as compared to low scorers. This trend has also been demonstrated by a five year follow-up study (Serin & Amos, 1995). While the above studies reflect a markedly higher rate of post-release violent recidivism for PCL-R psychopaths, use of the PCL-R in capital sentencing to estimate post-release violent recidivism must be approached cautiously. The violent recidivism studies cited above tended to follow a younger cadre of parolees. There is scant research on the effects of age on violence in this disorder, a particularly relevant limitation given the advanced age of a potential capital parolee at the conclusion of a 40 year capital incarceration.

## PRACTICAL APPLICATIONS

Practical incorporation of base rate data in risk assessments at capital sentencing may be facilitated by the mental health expert responding to the following self-check questions in formulating an opinion:

1. Has the risk assessment been expressed in terms of a reasonably specific probability continuum?
2. Has the type of violence been specified with some severity consideration of the pending preventive measure of death, and estimations correspondingly stratified?
3. Have base rates specific to the capital offender in a prison incarceration context been utilized?
4. Have base rates specific to capital offenders in a post-release context been utilized?
5. Has individualization of base rates considered aging effects during incarceration and post-release?
6. If the risk estimate is a substantial departure from the base rate, are the underlying observations and data sufficiently reliable and empirically validated to justify this departure?
7. Has individualization of base rates considered interpersonal-situational-contextual components as well as personal disposition factors?
8. Has the risk estimate incorporated considerations of how more restrictive confinement, inmate grouping, medication, treatment, or other risk management techniques might reduce the probability of violence?
9. Has the clinical judgment task been scrutinized for errors?
10. Has the risk evaluator frankly acknowledged issues of clinical judgment fallibility?

## SUMMARY

The risk assessment testimony of a mental health expert at capital sentencing invariably carries an implication of base rates. The assumption, implicitly or explicitly conveyed by the role as an expert, is that the risk factors identified and weighted are soundly based on empirical evidence and that the resultant probability opinion is consistent with the actual violence outcomes of similar individuals. Whether grounded by intuition, clinical lore, "experience", or statistical data, the expert is offering a base rate to the court. What other expertise does the expert bring to bear on this violence probability issue? Actuarial follow-up data on the violent recidivism outcome of capital murderers in prison and post-release has been compiled and synthesized in this paper with the hope that capital sentencing risk assessment testimony will be more empirically based and thus will more closely reflect the probabilities demonstrated by this group of offenders. As the cited studies indicate, the individuation of base rates should be based on empirical data of how a given factor operates in a specific context at a specific time period. Current research suggests that this individuation is far from simplistic, and thus substantial departures from base rates may be speculative. Koehler (1996) asserted that people routinely utilize base rates in making probability judgments. Base rate data regarding capital offenders thus may be actively incorporated and utilized by the trier of fact.

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April 17, 1996

Steven B. Wolfson, atty at law
302 E. Carson Ave., Ste. 400
Las Vegas, NV 89101

Dear Steve,

Please withdraw from my case immediately. I no longer require your services and do not want to be represented by you at sentencing or even one more day past the date of this letter.

Please comply with the mandates of SCR 250 with all due haste and turn over all of my documents to me or Phil Dubuisson, Esq. I require these documents because I will be either appealing this case as an in the very least as a pro se assistant to appellate counsel.

It is my earnest belief that you did not represent me to any where near the best of your abilities and thus, to my detriment, you were ineffective. You did not interview one witness in this case that could have corroborated the evidence. I gave you the names of many people to contact yet you did not deign to do so. I have other reasons for my belief in your ineffectiveness and in my heart you know my beliefs are misplaced or false. If you have any conscience whatsoever you will remove your name from the pool of attorneys SCR 250 necessitates as qualified to defend death penalty cases for you simply lack the moral attributes an attorney qualified to fight for a human being's life must have.

Sincerely,
Richard D. Rippo

# Forensic Psychology & Neuropsychology Services, P.C.

*Jonathan H. Mack, Psy. D., Director*

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**CONFIDENTIAL PRELIMINARY REPORT**
**ATTORNEY WORK PRODUCT**

January 14, 2008

David Anthony, Esq.
Law Offices of the Public Defender
411 E. Bonneville Avenue, Suite 250
Las Vegas, NV 89101

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| **RE:** | Michael Damon Rippo |
| **REPORT:** | Neuropsychological and Psychological Evaluation |
| **DATE(S) OF EVALUATION:** | 12/10/2007; 12/11/2007 |
| **DATE OF BIRTH:** | 02/26/1965 |
| **AGE:** | 42 |
| **YEARS OF EDUCATION:** | 10, GED |
| **EXAMINERS:** | Jonathan H. Mack, Psy.D.<br>Records and Scoring Summarization Provided by Nicole Yell, J.D., Ph.D., Postdoctoral Resident |

Dear Mr. Anthony:

The following represents my report of Neuropsychological Evaluation of Michael Damon Rippo. As you know, Mr. Rippo is a 42-year-old, Caucasian male who has been incarcerated due to conviction on a past double homicide charge. This report is based on clinical interview of Mr. Rippo by the undersigned, a battery of neuropsychological and psychological tests, and review of discovery and records enumerated below. Scoring assistance and assistance in records summarization was obtained from Nicole Yell, Ph.D., Postdoctoral Resident in Neuropsychology/Psychology, and Kerri Norton, M.A.

**TESTS ADMINISTERED:**

Beck Anxiety Inventory
Beck Depression Inventory-II
Beck Hopelessness Scale
Boston Diagnostic Aphasia Screening Examination, Complex Ideational Material Subtest
Controlled Oral Word Association Test/Animal Naming
Conners' Adult ADHD Rating Scales – Long Version Self Report
Grooved Pegboard

Halstead-Reitan Neuropsychological Test Battery
- Aphasia Screening Test
- The Booklet Category Test-II
- Grip Strength Test
- Lateral Dominance Examination with Right/Left Orientation
- Manual Finger Tapping Test
- Reitan-Klove Sensory Perceptual Examination with Visual Field Screening
- Seashore Rhythm Test
- Speech Sounds Perception Test
- Tactual Performance Test
- Trail Making Tests, A and B

Multiscale Dissociation Index
Personality Assessment Inventory
Posttraumatic Stress Diagnostic Scale
Rey-Osterrieth Complex Figure Test with Recognition and Recall
Ruff Figural Fluency Test
Stroop Color and Word Test
Test of Memory Malingering
Test of Variables of Attention
Visual Cancellation Tests, Verbal and Nonverbal
Wechsler Adult Intelligence Scale-III
Wechsler Memory Scale-III
Wide Range Achievement Test – 4

## RECORDS REVIEWED:

| DATE | SUMMARY | DOCUMENT |
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| 04/11/80 | Las Vegas Metropolitan Police Department mug shot of James Oliver Anzini was reviewed. | Las Vegas Metropolitan Police Department |
| 02/11/82 | Confidential Psychological Evaluation of Michael Rippo by Joanna F. Triggs, Ed.D., Eric S. Smith, Ph.D., and Timothy L. Boglan, M.A. was reviewed. Michael was referred for evaluation as a result of charges of Grand Larceny – Auto, Burglary, Sexual Assault with a Deadly Weapon, Battery with Bodily Harm, and Attempted Robbery/Use of a Deadly Weapon in the Commission of a Crime. It was noted that Michael had been through the court process on two prior occasions; he was charged with Runaway/CHINS on 3/7/81 and with Burglary on 4/1/81. He had been committed to Spring Mountain Youth Camp and paroled on 8/26/81.<br><br>According to the report, Michael had allegedly broken into a 24 year old woman's home, where he tied her up, assaulted her, attempted to rape her, threatened to kill her, and eventually left in the woman's car. Michael reportedly claimed that he had smoked marijuana laced with P.C.P. prior to the incident, and he claimed to have woken up in the car with no recollection of the events.<br><br>During the examiners' interview with Michael, he stated that he had been living on his own due to severe conflicts with his stepfather. To support himself, he reportedly took part in several burglaries. | Confidential Psychological Evaluation of Michael Rippo by Joanna F. Triggs, Ed.D., Eric S. Smith, Ph.D., and Timothy L. Boglan, M.A. |

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| | step-father were fair in their discipline, and that they provided a high level of nurturance and love. However, he did also report that they were somewhat overprotective. Reports from Mr. Rippo's sister Stacie indicated that their step-father was verbally abusive with all of his children, and that their step-father has a "significant gambling addiction."<br><br>Mr. Rippo reported that he had been taken to a psychiatrist as a child due to his hyperactivity, although no medications were prescribed. His mother reportedly said that the psychiatrist felt he was acting out because of the divorce. These problems lessened by the time he was in the fourth or fifth grade.<br><br>Mr. Rippo reported incidents of criminal activity when he was a teenager. When he was 15, he broke into a computer store and stole "tens of thousands of dollars" worth of computer equipment, just "for the thrill of it." He also "committed many burglaries between his 15th and 16th year." Starting at age 16, Mr. Rippo spent eight years in the Nevada Prison System for breaking into a woman's home and sexually assaulting her. He admitted to the evaluator that he "deserved the punishment he got, as his actions were highly 'out of line.'" He stated that he was basically well-behaved in prison, other than multiple fights "as was necessary to maintain respect."<br><br>Mr. Rippo's drug usage began in prison, and when he was released he began using and selling methamphetamines, making "thousands of dollars per week." Although he reported that he did not like what methamphetamines did to people, he found the drug trade "intriguing," and found himself "much more involved than he had originally planned." Prior to his involvement with methamphetamine trade, Mr Rippo's sister Stacie felt that he was "very kind and generous. He was also very good with the kids. However, after 1991 he became more withdrawn, and started hanging out with a bad group of people." | |
| | In regards to Mr. Rippo's education, he received a G.E.D while in the Nevada Prison System. He was placed in a speech class when in elementary school, although he never required special education. He stated that he "did not apply himself, and thus did not receive anything other than average grades." Mr. Rippo denied any disciplinary problems while in school.<br><br>Mr. Rippo was out of prison for two and a half years when he was incarcerated for the current charges. During his time not in prison, Mr. Rippo was reportedly in three relationships with different women. However, he admitted that he had "little respect for women." At the time of the evaluation, he reported that he had only one true friend, Alice Starr. He reportedly said that "she is strong enough in personality to keep him away from trouble if he were to be released."<br><br>Dr. Kinsora reported that Mr. Rippo was not on any prescription medications at the time of the evaluation, and that his medical history was not positive for any major psychological insult. Additionally, Mr. Rippo did not report any significant neuromedical conditions, early childhood illnesses, or head injuries. He did not report a history | |

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| | of mental illness in the family, other than an uncle who was institutionalized for an unknown reason.<br><br>No negative behavioral observations were made by Dr. Kinsora in regards to the evaluation. He reported that Mr. Rippo "appeared to be a good historian who neither overstated his accomplishments nor overcriticized himself for his failures or weaknesses...Mechanical aspects of speech were remarkable for occasional fast, cluttered speech, with intact intelligibility. His vocabulary skills are remarkable." No delusions, suicidal ideation, or other psychopathology were noted, and impulsivity did not appear to be a problem.<br><br>Mr. Rippo was administered a battery of neuropsychological assessments. Overall, "Mr. Rippo performed well above average on many of the measures and there is clearly no evidence of neuropsychological impairment." The results of Mr. Rippo's testing were not consistent with the results of a person who would be exaggerating the extent of his or her cognitive problem. However, Dr. Kinsora noted that "His response pattern on the MMPI-2 did suggest some symptom minimization, likely as a result of Mr. Rippo attempting to appear as well functioning as possible."<br><br>Mr. Rippo's intellectual functioning was reported to be in the high average range, with a WAIS-R Full Scale IQ of 114, Verbal IQ of 114, and Performance IQ of 110. Dr. Kinsora did not note any negative findings in the categories of Attention, Concentration, and Mental Speed; Language Skills; Spatial-Constructional Abilities; Memory; Frontal Systems/Self-Regulation; or Motor Skills. In the category of Social/Emotional Functioning, Dr. Kinsora noted that Mr. Rippo's MMPI-2 profile was "consistent with an individual who currently [is] feeling rather untrusting and fearful of what others might say or think about him." Additionally, his MMPI-2 Psychosocial Deviancy scale was slightly elevated. It was stated that Mr. Rippo probably "tends to disregard social acceptance when expressing his beliefs."<br><br>Dr. Kinsora did not believe that Mr. Rippo would have any problems aiding his attorneys in his defense. Although Dr. Kinsora did not note any psychological problems found in testing, he stated that "When he [Mr. Rippo] was paroled he likely did not possess the skills necessary to act like an adult and to a certain extent was 'stuck' at the age of 16 emotionally." | |
| 02/20/96 | Harmony Healthcare Psychiatric Evaluation by Norman A. Roitman, M.D. was reviewed. This report documented a psychiatric evaluation of Mr. Rippo to assess Mr. Rippo's psychological state at the time of the alleged crime, his past and current psychiatric history and status, his competence to stand trial, and a judgment of his character to determine if he was antisocial. This evaluation followed allegations of the two homicides of 2/18/92.<br><br>Mr. Rippo reportedly said he had "guilty knowledge" of the murders but he denied being any part of them. He denied even being in the studio apartment where the murders took place. Mr. Rippo reportedly said that at the time of the murders, he picked up a friend, Diedre, | Harmony Healthcare Psychiatric Evaluation by Norman A. Roitman, M.D. |

from work and then hung out at Tom Simm's house for a while.

Mr. Rippo was only positive for a pervasive sense of irrational guilt. He denied the following: sleep disturbance, appetite disturbance, early morning awakening, nightmares, night panic, hopelessness, helplessness, suicidality, avoidance, tearfulness, psychophysiological signs of anxiety or panic, obsessive and invasive thoughts and compulsive behaviors, hallucinations, headaches, or any pattern of mania.

Mr. Rippo admitted to using several types of drugs experimentally, but he had a strong predilection towards LSD and methamphetamines. Mr. Rippo reportedly said that he was able to achieve a high degree of concentration and euphoria while on amphetamines. While on the drug, he reportedly had a very intense attention span and "could work on things such as motor-vehicle engines for 36 hours at a time." He reportedly admitted to hallucinations while on amphetamines or LSD, but he said he always maintained his perspective and never experienced paranoia.

Although Mr. Rippo denied using substances in the last two years, he reported that he began using amphetamines at age 17. His peak usage was from age 26 to approximately 28 ½, when he would use intravenous injections of ½ gram per morning, or swallow up to two grams of the drug, daily. During this time, Mr. Rippo reported that he became emaciated due to appetite suppression, but he did not have any trouble cognitively. Additionally, he stated that he could "calculate reliably by 'eye' measurements of amphetamines what would be confirmed by scale." Mr. Rippo reportedly stated that his usage decreased during the two weeks prior to the murders, as his source of drugs was killed. However, he denied withdrawal symptoms.

Mr. Rippo reportedly denied any medical problems, although the review of his medical records revealed that he is a hepatitis-C carrier and he had a mild back injury that required the use of Motrin and muscle relaxants.

During his teenage years, Mr. Rippo's mother reportedly stated that he was always sociable and teachers spoke highly of him. She denied any meanness to children or animals, fire setting, bed wetting, or disabilities.

According to Mr. Rippo's mother, Mr. Rippo's teenage years from 17 on were highly influenced by the prison population in which he lived. He apparently lacked a strong parental figure at that time, as his father died when he was around age 17. His mother reportedly thought that he needed "more positive fathering in his upbringing." There appeared to be no evidence of maltreatment, abuse, or other inadequate parenting.

It was reported that it was difficult for Mr. Rippo to establish solid relationships as a child. However, he would try to be social, "riding his bike sometimes long distances to visit old friends."

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| | According to the evaluation, only recently had he felt remorse or guilt for the crimes he had committed in his life. When he was committing the crimes, Mr. Rippo reported that nothing was ever conducted with planning or forethought. He supposedly always felt confident and never thought about the possibility of being caught. It was stated that his recent sense of remorse was possibly due to his new preoccupation with religion. Specifically, Mr. Rippo had become a born-again Christian.<br><br>The review of his psychiatric history revealed that Mr. Rippo was taken to see a psychiatrist for behavioral problems at around age 10. It was decided that his problems were not a result of Attention-Deficit Disorder, but were an adjustment reaction with a disturbance of behavior. Medication was not deemed necessary at the time.<br><br>The current mental-status examination revealed that Mr. Rippo had "strong moral convictions." He did not accept any opportunities to excuse himself for his past actions, but rather took responsibility for them. He was reportedly aware that "this report might be used for mitigating circumstances and was sophisticated enough to know that if he were to present himself as a sympathetic character or find blame with others or circumstances, he more likely might achieve that goal." Despite this, he apparently took full responsibility for his past behaviors.<br><br>Mr. Rippo was reportedly "rigidly moral" in his thinking, always in line with acceptable, social mores. He appeared to the examiner to be very knowledgeable about the Bible. Mr. Rippo seemed "prone to stick to his beliefs." No signs of psychosis were present.<br><br>Overall, the examiner, Dr. Roitman, found no evidence of a sociopathic character or antisocial personality, consistent with the findings of Dr. Kinsora and MMPI results. Dr. Roitman's diagnosis was "antisocial adult behavior, verified by history, with a possible mild reactive depression secondary to incarceration and the risk he faces." | |
| 03/11/96 | Letter from Norton A. Roitman, M.D. was reviewed. Based on consultation with Dr. Kinsora and the obtainment of additional documentation, Dr. Roitman qualified some of the conclusions he presented in his previous evaluation. Dr. Roitman stated that "the seriousness and nature of Mr. Rippo's psychological status in adolescence must be revisited. This assault had qualities which could qualify as sadism and/or perversion. The degree of remorse he expressed and the minimization (in retrospect) of the assault during the interview with him are of concern. The nature and the degree of his crime, as well as its secondary qualities of mutilation speak to a significant deficiency of conscience.<br><br>Additionally, Dr. Roitman stated that it was "more likely than before that Mr. Rippo is a man without sufficient conscience and empathy to be free of a sociopathic personality core." | Letter from Norton A. Roitman, M.D. |
| 03/12/96 | Thomas F. Kinsora, Ph.D. Addendum to Neuropsychological Assessment Report was reviewed. This addendum to the original report was submitted by Dr. Kinsora as a result of the following documents given to Dr. Kinsora subsequent to the construction of his | Thomas F. Kinsora, Ph.D. Addendum to Neuropsychological Assessment Report |

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| | original report: 1) Voluntary statement dated 1/18/82 by Laura Martin, 2) Voluntary statement dated 1/18/82 by Mark Martin, 3) Letter to Judge Huffaker by Jim and Carol Anzini, 4) Confidential psychological evaluation on Michael D. Rippo dated 2/11/82, and 5) Report and disposition of Michael D. Rippo dated 4/29/81.<br><br>Based on the statement of Laura Martin, Dr. Kinsora found several points "concerning." It appeared that "Mr. Rippo was reported to engage in behavior that is somewhat bizarre and reflective of significant emotional disturbance and mild loss of reality testing." Noted odd behavior based on the statement included that Mr. Rippo "Was curious about whether her boyfriend was 'big'. This is somewhat in support of the notion that he is bothered by his stature." Dr. Kinsora concluded from Ms. Martin's statement that Mr. Rippo's "need for psychological help was well indicated. He clearly differs from the true psychopath who would have raped Laura and killed her with no pause for compassion or consideration of the victims wishes or escape alternatives. He...will continue victimizing others unless treated for many years with intensive individual psychotherapy."<br><br>Dr. Kinsora's final conclusions were that Mr. Rippo "does not possess the entire constellation of attributes to be called a psychopath or sociopath, only a very small piece of the constellation...after many years away from society, he could conceivably be a productive, non-threatening member of society or at the very least, a productive member of the prison community." | |
| 12/5/07 | Social History of Michael Damon Rippo was reviewed. This document included a history of the Rippo family, and a timeline of events regarding Mr. Rippo and his family.<br><br>According to the document, when Mr. Rippo was a child, his mother was reportedly very stubborn; "There was no compromise with Carole – 'it was her way or the highway.'" However, Mr. Rippo's grandmother also said that Mr. Rippo was very close to his mother, and she was a "pushover" when it came to disciplining her children. His father Domiano was described as "an alcoholic, womanizer, and a gambler." It was reported that both parents were involved in infidelities. Although Carole and Domiano mutually separated in 1970, Carole originally lied and asserted that "Domiano had abandoned her....Carole told him that she created the story because she was desperate for extra cash all the time."<br><br>Michael was described by his mother as "hyperactive" as a child. In kindergarten, "A grid for rating behavioral aspects indicates that Michael has significant *negative* interaction in the following: works and plays well with others, shows consideration for others; adjusts to group situations; works independently; and exhibits self-control." Also around that time, there was an incident in which Carole forgot to pick Mr. Rippo up from school. According to this reports, "Domiano is certain this event traumatized Michael."<br><br>After the divorce, Carole began seeing a man named James Oliver Anzini ("Ollie"). Carole's sister Antoinette said she got "bad vibes" from him and his physical appearance gave her "the creeps." Melody recalled that Mr. Anzini was "not nice to his children or Carole's." | Social History of Michael Damon Rippo |

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| | Although Melody did not witness any physical abuse, she did say that he "would cut someone down and make the person feel like nothing." Mr. Rippo's sister, Stacie, said that Mr. Anzini was "horrific" and "abusive." She reported that "Ollie used to do things to the children to psychologically 'screw with them.' She talked about going on car rides when Mr. Anzini would act as if he were going to drive the car off a cliff, and then stop right before going off the road." Stacie also reported that Mr. Anzini would like to play a game called 'Mr. bad" where he would "scare the hell out of the kids." Stacie reported these events have "scarred her." Additionally, Stacie reported that Mr. Anzini would say, "Who do you think you are?" and that the children had to reply, "Nobody." He would also taunt Michael about his height, to Stacie's report.<br><br>Carole's sister Dolores described an incident that occurred in 1972. "Carole took off with Anzini and the children shortly after the divorce, without giving Domiano any warning...He did not hear from her again for 12 years and had no means of finding his family...Domiano said she succeeded, as having the kids taken away completely broke his heart." Additionally, Carole's mother said that "Carole would go for months without telling her family where she was or giving them any way to contact her."<br><br>When Michael was 12 years old, he recalled an incident in which his babysitter, a girl named Ballerina, smoked marijuana right in front of him. He did not smoke the drug at that time. At age 15, Mr. Rippo started dating his first girlfriend, Lynda Marie Donovan, who reportedly "taught him how to kiss."<br><br>Mr. Rippo's criminal history reportedly began in his teenage years. When he was 15, he reported that he broke into a computer store and stole thousands of dollars of computer equipment purely for the thrill. At around the same time, Mr. Rippo also burglarized an architectural supply store on the way to school one day. Mr. Rippo soon began burglarizing various homes and businesses almost nightly. In April of 1981, when Mr. Rippo was 16, he was arrested after police officers found merchandise and firearms that he had stolen and kept at a friend's house. Although his friend received six months probation for the incident, Mr. Rippo was charged with Burglary, Runaway, and Possession of Stolen Property and was sent to Spring Mountain Youth Camp. A Court order dated 5/10/81 declared Mr. Rippo a ward of the Court and said that he was an "emotionally disturbed child." Mr. Rippo got into some minor trouble at the youth camp, but he was eventually paroled on 8/26/81. After his time at the youth camp, Mr. Rippo returned to burglary.<br><br>On 1/16/82, Mr. Rippo reportedly broke into a woman's home, tied her up, and sexually assaulted her. Mr. Rippo was arrested two days later on charges of sexual assault, carrying a concealed weapon, grand larceny auto, burglary, and possession of stolen property. Mr. Rippo claimed that he had no recollection of these events, which reportedly may have possibly been related to PCP usage. Mr. Rippo pled guilty to the charges against him on the advice of his attorney. Mr. Rippo was originally sent to juvenile hall for these crimes, but was certified to adult status on 3/16/82. On 5/28/82, Mr. Rippo was sentenced to | |

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| | life imprisonment with the possibility of parole.<br><br>In 1986, it was reported that Mr. Rippo was transferred to NNCC based on "poor institutional behavior." At this facility, Mr. Rippo enrolled in college classes. A psychological evaluation on 1/29/87 said that Mr. Rippo had "matured considerably since incarceration." A Parole Progress Report from 1988 stated that Mr. Rippo is "*considered an excellent student with a high capacity for learning.*"<br><br>Mr. Rippo was paroled on 9/15/89. After his release, he worked in various construction positions and moved in with his mother and her husband, Robert Duncan. He also got involved with the usage and distribution of methamphetamine. His drug use became "excessive" at the end of 1991. It was reported that Alice Starr, one of Mr. Rippo's friends, could not recall a time when she ever saw him sober until his arrest in 1992. However, Michael did not have any drug-testing provisions as part of his parole since he had no documented drug offenses.<br><br>It was reported that Mr. Rippo had three girlfriends during his parole - Christine Gibbons, Roxanne Holloway, and Diana Hunt, the latter of whom was Mr. Rippo's co-defendant in his murder charges. He also met Denise Lizzi and Laurie Jacobson through the methamphetamine drug trade.<br><br>On 2/18/92, Denise Lizzi and Lauri Jacobson were found bound and strangled in an apartment. In March of 1992, Mr. Rippo was arrested for these murders.<br><br>After his arrest, Mr. Rippo remained close friends with Alice Starr. It was reported that Ms. Starr would have more "substantive discussion" with Mr. Rippo at this point, because he was clean and sober. Mr. Rippo spoke with Ms. Starr's children by telephone and encouraged them to study hard and finish school, as he wished he had done.<br><br>The murder trial began on 1/30/96, and Mr. Rippo was sentenced on 5/17/96. In 1997, while in prison, Mr. Rippo's sister, Carole Ann, dies of a brain aneurysm while in prison herself. Although Mr. Rippo described his current relationship with his mother as "normal under the circumstances" in October 2007, she is not longer allowed contact visits with Mr. Rippo because of an incident involving Carol Ann. | |
| 12/xx/07 | Declaration of Stacie Campanelli was reviewed. Ms. Campanelli is the sister of Mr. Rippo and testified at the penalty phase of Mr. Rippo's current trial. She submitted this declaration to further elaborate on her family situation while growing up.<br><br>Ms. Campanelli has a very negative view of her step-father, Ollie Anzini. She stated that when she and Mr. Rippo were younger, they had to move around a lot because Mr. Anzini "was a gambler, and we *often did not have money to pay the rent.*" *She felt that the constant* moving was hard on Mr. Rippo. Ms. Campanelli stated that Mr. Anzini was "horrific and abusive" and used to say that "all women were worthless bitches." | Declaration of Stacie Campanelli |

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| | Ms. Campanelli recalled incidents from when she was seven or eight years old. "Ollie, who slept nude, took Carol Ann and me to nap with him...When I was ten, Ollie put me in the shower to teach me 'how to wash my body,' despite the fact that I already knew perfectly well how to bathe and had been doing it for years." Furthermore, she said that "I would not put it beyond Ollie or the disreputable friends he brought into the house to have done something inappropriate to Michael."<br><br>Ms. Campanelli recalled incidents of abuse from Mr. Anzini to her mother. She also said that the children were abused and they would try to put on "twenty pairs of underpants" to soften the effect.<br><br>Mr. Anzini was reportedly mean to Mr. Rippo in specific ways. When playing games, Ms. Campanelli said that he would "harass Michael if he happened to be losing to me or Carol Ann. He would call Michael a sissy and make Michael cry." When Mr. Rippo was upset over the end of his first relationship, Mr. Anzini "belittled Michael and pushed him."<br><br>Ms. Campanelli also made statements about her mother, Carole. Ms. Campanelli said that her mother told her that "Michael was the only child in the family who was wanted, that she never wanted me, in particular, and that I was the product of a drunken rape by Domiano."<br><br>Ms. Campanelli stated, "I believe that Michael ran away from home because of the way he was treated by Ollie. Ollie was very hard on Michael and spoke badly about women in front of him....I think it is possible that the crimes Michael has been convicted of are a reflection of the way he learned to view women. Ollie believed himself superior – he felt he was god; Ollie conveyed this attitude to Michael. I think Michael's belief systems were instilled by our parents." | |

## INTERVIEW OF MICHAEL DAMON RIPPO:

## SOCIAL HISTORY:

Mr. Rippo reported that he was born in Queens to parents Domiano Campanelli and Carole Anne Duncan. Mr. Rippo talked about his sister Stacie, whom he said has a family of four and also takes care of her niece, Amanda, who is Carol Anne's daughter. Their sister Carol Anne is deceased.

Mr. Rippo appeared to be in significant denial regarding particular trauma that likely occurred in his childhood. He was able to talk about his step-father Mr. Anzini regarding his memory of him acting as "Mr. Bad." He said that when he was five to six years old Mr. Anzini would act extremely scary and terrifying. Mr. Rippo had a memory of Mr. Anzini dumping live crabs on the floor to scare him and his siblings when he was young and living in Valley Stream, Long Island. He said from Valley Stream they moved to Syosset, New York with maternal grandmother Ruth Rippo and Frank Rippo. He said he went to elementary school there. Mr. Rippo said that overall he went to 11 different schools. He said in Syosset he was left to his own devices. He said he would go to the

dumpsters there and find toys that were thrown away. He said he had no supervision. He said at that time, around ages seven to nine, he would steal tips. He said he then moved to New York City. He said one address he could recall was the Seville Hotel on Madison Avenue and 29th Street. He said the family was "broke." He said they first lived in a one-bedroom hotel room. He said his mother worked as a secretary at that time. He said after the Seville Hotel they went to Boulder City, Nevada. He said that the family moved to Boulder City because Mr. Anzini was a gambler. He said before they left they did some family things in New York. For example, Mr. Anzini reportedly took him to the top of the Empire State Building for his birthday. Mr. Rippo said that once in Boulder City he "roamed all over." He said he was in fourth grade and that Mr. Anzini was indifferent to him at that time. Mr. Rippo said that for a period of time he lived at LaPage trailer park in Las Vegas, having moved there from Boulder City. He said he had a girlfriend in Boulder City. He said he had some "sexual education" in the trailer park in Las Vegas. Mr. Rippo said that his mother felt that one of his first girlfriends was "loose," and forbade him from seeing her. He said this made a lasting, negative impression on him. His said his next girlfriend was named Ballerina, who was a babysitter. He said that she was 14-15 years old when he was 11-12 years old.

Mr. Rippo said he did have homosexual experiences in prison, but that he always played the "man role." He said the first time that this occurred was when he was waived up to adult prison.

Mr. Rippo recalled a sexual experience with a 14 year old named Rosie Robles, and another one with a girlfriend prior to coming to prison at age 16. He said he was put off by forward women. He said he rebuffed her advances. Mr. Rippo said he tended to be socially withdrawn with women. He said he was never comfortable going to clubs or "night scenes."

Mr. Rippo said that he did develop a friend named Susan who was a manicurist. Mr. Rippo said that every woman he has ever been emotionally connected to was a drug addict, dependent on him for drugs. He said that he remembers one experience in a bar where he had sex with a number of women. He said he enjoys satisfying women through oral sex. Mr. Rippo recalls that between the ages of 24 to 27 he had sex with "upwards of 20 women." He said he would have sex with "titty dancers" and had numerous "ménage a trios" experiences. Overall, Mr. Rippo described himself as bisexual.

Mr. Rippo said that he was 5'2" when he came to prison. He said that there was one inmate named Kim at Northern Nevada Correctional Center in Carson City, where he remembers playing the male role with Kim playing the female role.

Mr. Rippo described himself as a daydreamer. Mr. Rippo talked about enjoying women, bondage, and pornographic magazines. He said the likes to see pornography of "women on women" with one being what he termed a "dominatrix," in which one woman causes another woman to do certain sexual acts. He said he also enjoys seeing women smoke or sucking on dildos.