

Brian Joseph Dorsey

Scheduled for Execution April 9, 2024



**APPLICATION FOR EXECUTIVE CLEMENCY
TO THE HONORABLE MICHAEL J. PARSON,
GOVERNOR OF MISSOURI**

**LETTER TO GOVERNOR MIKE PARSON IN SUPPORT OF EXECUTIVE
CLEMENCY FOR OUR CLIENT, BRIAN DORSEY**

March 5, 2024

Dear Governor Parson,

We write today to humbly request that you exercise your executive power to grant clemency to our client, Brian Dorsey by commuting his death sentence to a sentence of life without the possibility of parole. If Brian Dorsey has not been rehabilitated, then the word ceases to have any meaning at all. Dozens of people from all walks of life believe that Brian is uniquely deserving of mercy, including:

- Over 70 correctional officers, who know better than anyone the man Brian is today;
- The former Warden of the prison where Brian is incarcerated, who describes Brian's behavioral record as "extraordinary" and "remarkable";
- Five of the jurors who sat for Brian's penalty phase in 2008 would not sentence him to death today, and are asking for clemency;
- A former judge of the Supreme Court of Missouri, who upheld Brian's conviction on appeal, but now admits that the Court "got it wrong" and believes Brian is "an outstanding candidate for clemency";
- At least three Republican representatives of the State of Missouri support a life sentence for Brian as someone "uniquely deserving of mercy"; and
- Family members of Brian and victim, Sarah Mosier Bonnie, who continue to live with the pain of what Brian did but forgive him, are grateful for his redemption, and request not to suffer through the loss of another relative.

Brian took immediate accountability in the aftermath of his tragic crime, turning himself in and pleading guilty even without the protection of a plea deal. He continues to accept responsibility today and carries a tremendous amount of remorse and shame. For the past 11 years, Brian has served as the staff barber at Potosi Correctional Center, cutting the hair and shaving the beards of the wardens, staff, and chaplains. He deeply appreciates the opportunity to do good and seek atonement through his work, improving the lives of others in small ways, even from behind bars. If you grant him the right to live, Brian can continue to practice this redemption. He will continue to pose no risk to his prison community.

The scores of correctional officers who have written to you in support of clemency confirm that Brian's execution will harm and not help their community. These prison personnel speak to Brian's rehabilitation, remorse, and redemption in a way that no one else can, both because they have interacted with him on a daily basis for the past 17 years, and because they have the lived experience to know what genuine remorse and rehabilitation look like. These state employees have nothing to gain, and potentially something to lose, by coming forward on Brian's behalf. They believe in law and order and do their jobs in honor of victims. But they do not believe in execution for Brian. Most or all of them say this is the first letter of this kind they have ever written or signed, and they expect it will be their last. They all assure you that Brian Dorsey is exceptional. As a former law enforcement

officer, we hope that you will assign the appropriate weight to the action they have taken on Brian's behalf and see their support for what it is: an honest and compelling assessment, unprecedented in the capital context, of the rehabilitation Brian has achieved in his time on death row.

Throughout your public service career, you have recognized on at least 760 occasions that a person is more than the worst thing they have ever done, that redemption is possible, and that second chances should be given where earned. You have granted clemency in cases where someone pled guilty, and where their crime was the result of intoxication. As you have stated, while criminals deserve to be punished, "it doesn't mean they're a criminal all of their life."¹ Brian was not a violent criminal before his crime, and he has never been violent in any way since. Instead, he has worked hard to live a sober life of service and penance.

While Brian's redemption is evident to nearly everyone around him, it is not the only reason you should show him mercy. Brian's trial lawyers were paid a flat fee to represent him through pretrial, trial, and sentencing. Our state's public defender system now has acknowledged that flat fee compensation in capital cases is unacceptable because it creates a financial conflict of interest with unreliable and, as in Brian's case, unjust results. Because of his trial lawyers' failures, Brian's jurors never knew the complete story of the man they sentenced to die. As explained in the attached materials, unconflicted lawyers would have negotiated a plea deal to protect Brian from the death penalty before advising him to enter an open plea or, at the very least, would have armed his jury with the facts of Brian's diminished capacity and cognitive inability to commit capital murder. Either way, Brian would have appropriately received a life sentence. Only a single vote from one juror was needed to ensure that sentence. Five jurors now support a life sentence because they recognize that they did not understand who Brian actually was, and they were never given a glimpse of who he could become despite the fact that such evidence was readily available to Brian's trial attorneys.

As former Supreme Court Justice Michael Wolff attests, Missouri's judicial system got it wrong in Brian's case, but that system is incapable of self-correction at this point. However, you as Governor have no such constraints. You serve as our community's moral failsafe here, and you still can exact accountability while achieving justice. Like Cain in the Bible, Brian will be marked and cast out for the rest of his life because of his sin. No one knows that better than Brian. But the seed of divinity in him can still be recognized as we heed the concurrent commandment to exercise mercy; that "mercy triumphs over judgment." James 2:13.

The case against clemency might, at first glance, seem clear: How can someone forgive or have sympathy for a person who committed such a terrible crime and caused such lasting pain? But as you well know, clemency is about more than sympathy or forgiveness. It is about lenity and mercy. It is a complex moral calculus, as well as a spiritual practice. We appreciate the gravity of your responsibility and the moral complexity of your decision.

We are grateful for your time and serious consideration of the attached packet of the detailed reasons and evidence supporting why Brian Dorsey deserves clemency. For guidance on how to easily navigate the attached materials, this petition for clemency is divided into sections. Each section discusses a different theme of Brian's case for life and includes detailed argument as well as supporting

¹ <https://spectrumlocalnews.com/mo/st-louis/news/2023/11/24/missouri-governor-granting-pardons-at-fast-pace>

documentation, which can be accessed via embedded bookmarks and hyperlinks for ease of reference. [REDACTED]

We hope when you look inside yourself, you will see what the correctional community has seen and use your extraordinary power to show mercy for Brian.

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Brian Dorsey and his legal team know that many people are and forever will be grieving the loss of Sarah Mosier and Benjamin Bonnie. We recognize that there are no words or efforts that can make this tragedy less painful. Our intention is not to cause more harm, but to do the opposite. It is with deep respect and great sensitivity to the victims and their loved ones that we are engaging in this process, and hope clemency can be considered in Brian Dorsey's case.

Introduction

Brian Dorsey is scheduled to be executed at 6:00 p.m. on April 9, 2024. Brian's execution is opposed by criminal justice stakeholders across the political spectrum – including an unprecedented number of correctional staff, conservative Republican Missouri legislators, a former Missouri Supreme Court Judge who affirmed his conviction, [REDACTED] jurors who previously sentenced him to death [REDACTED], and the Director of the Missouri Public Defender System – because of Brian's extraordinary rehabilitation and the ways in which our state entity contributed to this unjust death sentence. Brian's execution is also opposed by dozens of members of Brian's loving family, including family he shares with one of the victims, Sarah Mosier Bonnie; numerous friends, both lifelong and more recently acquainted; Missouri organizations who care about ensuring justice in our state; and individuals of faith and religious groups from across different Christian denominations.



Where sin abounds, grace did much more abound.

Romans 6:20



Governor Parson, you will hear a resounding chorus of calls for mercy, from diverse voices within this packet of materials, and you will learn why Brian is exceptional in his rehabilitation, recovery, and life of service. When you faithfully look within yourself, we are hopeful you will recognize that Brian is uniquely deserving of mercy.

I.

MDOC CORRECTIONAL STAFF, INCLUDING A FORMER POTOSI WARDEN, SUPPORT CLEMENCY FOR BRIAN DORSEY BECAUSE HE IS AN EXCEPTIONAL INMATE WITH ZERO DISCIPLINARY VIOLATIONS OVER 17 YEARS.

[Over 70 correctional officers](#)¹—and counting—have come forward to ask Governor Parson to grant Brian Dorsey clemency. *See* Part 1 ([Correctional Officer Letters](#)). They are making this unprecedented request because, in each of their opinions, it does not make any sense for the State of Missouri to execute Brian Dorsey. The Missouri Department of Corrections has set itself apart from correctional departments across the country in that it gives capital defendants the opportunity to participate in a restorative justice environment. They allow those who have been sentenced to death to be part of the general population of incarcerated individuals. In practice, this means that if capital defendants can prove themselves to be productive, peaceful, and policy-abiding, they are afforded privileges to obtain jobs, participate in programming, attend church services, reside in honor dorms and even learn trades.

This is rare and forward-thinking. It is in line with a statement that Governor Parson made last year when he spoke about ensuring that incarcerated people learn a trade and something to which they can commit while living out confinement. Governor Parson said of incarcerated Missourians, “Give them every advantage you can give them while they’re there.” And while those comments were made regarding the Reentry 2030 initiative which Governor Parson helped to make a reality, they are still applicable



¹ Blue hyperlinks are to the clemency video. Green hyperlinks are to supporting documents. Please also note that all section headings link to corresponding section of documentation.

to the many, many men and women who will not leave prison. In this way, MDOC has made it possible for Brian to become a valued member of his community and discover his own potential for responsibility, accountability, and transformation.

Brian Dorsey deeply regrets his crime and has spent every day of his incarceration on death row trying to do what he can to atone. These aren't merely the allegations of his legal team; rather, listen to the correctional staff who have overseen, worked with and supervised Brian every day of the past 17 years. This ranges from custody guards who work on Brian's wing, to recreational staff who have spent time in his company, to the former warden of Potosi Correctional Center, Troy Steele. *See, e.g., Part I Supporting Documentation (Warden Steele Report & Correctional Officer Letters).* They all say that Brian is exceptional; despite being faced with execution, Brian has become a model inmate rather than give up.

Brian singularly stands out to these correctional professionals for the following reasons:

*First, **Brian has never had a single disciplinary violation – an unheard of accomplishment in a maximum security prison*** where an inmate gets written up for things as minor as having too many salt and pepper packets in your cell, having an extra blanket, a shirt coming untucked, or accidentally sleeping through count in the morning. He has consistently maintained the **best possible Institutional Risk Score**, scoring a 1 (out of 5) for his Institutional Risk score, indicating compliance with institutional standards.

Second, he has lived in the **Honor Dorm** for years, which is notoriously difficult to get into and to stay in. There is a long waitlist and the staff is very strict about cell searches, looking for anything

Offender Dorsey . . . has obtained the highest levels of respect and confidence as exhibited by his housing and work assignments. . . . it is remarkable how he conducts himself.

I have no reason to believe that should his sentence be commuted his behavior would diminish in any way.

- Former Warden Troy Steele

alleged to be contraband, and any extra items in one's cell.² According to former Potosi Warden Troy Steele, Brian "is currently assigned to the highest possible honor status [and] [h]e not only has earned this by his conduct but is allowed to continue by demonstrating exceptional behavior daily.

Third, Brian is the **staff barber**; he cuts the hair of the correctional staff, including current and former wardens. According to former Warden Steele, the staff barber is one of "the most trusted positions," which must be earned through "exceptional abilities," "appropriate behavior," and garnering the "highest respect" and "trust" of staff over years. Steele also noted that, in this position, Brian is "entrusted with equipment that could be used as weapons to harm staff."

Fourth, Brian has been allowed to hold this job for over a decade, despite the prison reality that inmates typically are rotated through jobs regularly to avoid issues with staff familiarity.

As [REDACTED] wrote, "Over the course of my time in the DOC, I have met a lot of inmates. But I have never written a letter like this [W]hen you spend time around Brian like I have, you can just tell that he has changed. Some inmates never change, no matter how many years they are in. But that's not Brian. . . . The Brian I have known for years could not hurt anyone. The Brian I know does not deserve to be executed."

As [REDACTED] wrote, "I watched Mr. Dorsey during his court hearings, and observed him struggle with the pain he caused his parents and his family. If you ask me, if it were not for drugs, none of this would have happened. The Mr. Dorsey I know must have been out of his mind at the time of these murders."

As [REDACTED] wrote, "When you spend as much time around offenders as corrections officers do You can tell whether an offender is truly sorry for their crimes, and Brian's

² Missouri Department of Corrections prides itself on its honor housing programs, as they should, because they "incentivize pro-social behavior sand make our facilities safer." <https://doc.mo.gov/media-center/newsroom/2023-in-review>. Brian is a poster child for the pro-social benefits of the Honor Dorm, and a role model and inspiration for other prisoners on how and why to aspire for entry into the honor housing program.

remorse is genuine and always present. . . . I believe that Brian must have been extremely high on drugs and out of his mind to have committed murder or even to have caused harm to another person. He is not that person today.”

As [REDACTED] wrote, “Mr. Dorsey has accepted what he did and taken accountability for his crime. It is my impression that he has spent his time since then trying to do his best by being a role model to other inmates and providing a valuable service to staff.”

These state-employed correctional officers have nothing to gain, but potentially reputation or job security to lose, by coming forward to support clemency. This calculus renders their opinions particularly credible. Moreover, these officers know what they are talking about. They have an extensive basis of comparison of other inmates, and they know intimately well what genuine remorse and real rehabilitation look like. As these men and women attest, Brian is a kind and gentle man who provides a needed service to staff and the prison institution and sets a powerful example for the other inmates. According to them, executing Brian would be a loss, not a benefit, to the State.

II.

BRIAN HAS THE SUPPORT OF DOZENS OF FAMILY MEMBERS AND FRIENDS WHO ATTEST TO HIS REMORSE, HIS EFFORTS TO RECOVER FROM THE ADDICTION AND TRAUMA OF HIS PAST, AND THE POSITIVE IMPACT HE HAS ON THEIR LIVES.

While Brian’s extraordinary record in prison may have surprised the correctional staff, it does not surprise his family and friends in the least. [Brian’s family](#) could have predicted his kindness,

I remember Brian gentle and kind – he was lost as a young man and drinking but he was not violent.

Friend

(Jefferson City, Missouri)

respectfulness, adherence to MDOC rules, and mindfulness of others. The Brian they have always known is a loving man who would give you the shirt off his back. Throughout his life, Brian was

never aggressive or even argumentative. Brian's cousin [REDACTED] explains that, "There's something in [Brian] that makes everyone around him better. When you're with Brian, you are better . . . You hear about those people who brighten up a room. It's true, Brian does that." As Brian's cousin [REDACTED] has said, "the only time Brian ever hurt me was when he hugged me too tight."

Despite Brian's loving and warm nature, his family knew that his jovial demeanor hid deep and profound pain. Brian's lifelong struggle with severe, chronic, and drug-resistant depression led him to addiction at an early age. Brian self-medicated with drugs and alcohol in a futile effort to relieve the pain of his mental illness and feel better about himself. *See* Part II ([A Brief Life Story of Brian Dorsey](#)) & Part III (Expert Reports of [Dr. Edward French](#) and [Dr. John Fabian](#)). Now, in sobriety, he is a person whose identity centers around trying to [make other people feel better](#) about themselves. *See* Part II ([Family Letters](#)).

Brian's shame around his addiction was and remains all-consuming. It has never been a comfort to him, let alone an excuse, that he was genetically predisposed to addiction and mental illness from both sides of his family. Nor is it any reassurance that those predispositions came to the fore due to the trauma of being raised by a violent, alcoholic father and a severely depressed mother, each of whom were incapable of the nurturing, attentive support that a child needs for basic development.³ *See* Part II ([A Brief Life Story of Brian Dorsey](#)). Nonetheless, Brian has forged through that shame; he has maintained his sobriety for his 17 years. Brian's singular focus on recovery and rehabilitation has made him the man these scores of correctional officers are speaking up to support.

³ Neglect constitutes child maltreatment and is damaging to child development in numerous ways. <https://developingchild.harvard.edu/science/deep-dives/neglect/>

According to 76 family members and friends who zealously support his application for executive clemency, Brian's crime is a complete aberration for the Brian they have always known and loved. For this to have happened, they know he could not have been in his right mind. They support clemency even though many of them are also related to Sarah Mosier Bonnie

Brian has always been very soft-hearted. To me, sometimes that soft-hearted individual, it's almost like an addiction playground for someone because they wear their heart on their sleeve. . . . Maybe that's why it was so hard for Brian to fight addiction.

- [REDACTED], Brian's Cousin

and, as such, were also victims of Brian's crime. As they attest in [REDACTED] their letters of support, they have suffered immensely, as their family has been torn apart, but they have forgiven Brian. They pray that their voices will be heard and heeded.

III.

BECAUSE BRIAN DORSEY'S TRIAL COUNSEL WAS WOEFULLY INEFFECTIVE, THE JURY THAT SENTENCED HIM TO DEATH NEVER LEARNED THAT HE WAS INCAPABLE OF DELIBERATION AND NOT GUILTY OF CAPITAL FIRST-DEGREE MURDER.

While Brian's extraordinary rehabilitation alone is deserving of executive clemency, his execution would be a profound injustice from a legal standpoint as well. Brian, who had a [long history of auditory and visual persecutory hallucinations during drug withdrawal](#), was in the thrall of drug psychosis when he committed this unimaginable act of violence against his cousin, a family member whom he loved and relied upon, and her husband. Brian has no memory of this crime; multiple experts have confirmed that his lack of memory is genuine and supported by the science of what was happening in his brain at the time. *See* Part III (Expert Reports of [Dr. Edward French](#) & [Dr. John Fabian](#)). But Brian's lack of memory does not mean he has a lack of accountability or remorse.

Brian takes full accountability for this crime. He turned himself in to police. He pleaded guilty with no guarantee of a life sentence.⁴ According to medical experts, the interaction of Brian’s crack withdrawal, extreme intoxication, major depressive disorder, sleep deprivation, and psychosocial stress culminated in a drug-induced psychosis and an alcohol-induced blackout during which rational thinking and executive functioning were impossible. As a result, **Brian was incapable of deliberating before committing this crime, and he was incapable of forming the intent required for a conviction of first-degree capital murder.**

In light of these facts, how did Brian Dorsey find himself on Missouri’s death row? Simply put, Brian’s trial attorneys, Chris Slusher and Scott McBride, labored under a [fundamental conflict of interest](#): to work for Brian’s benefit was to the detriment of their own livelihoods.

“While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators.”

United States v. Cronin, 466 U.S. 648, 656–57 (1984)

Slusher and McBride were appointed by the Missouri State Public Defender. Each were paid a flat fee of \$12,000, whether the case went to trial or not. To put that number in context, the [average capital case takes 3,557 hours](#) of work. Notably, one of the attorneys had just opened his law practice and needed clients, but he especially needed money. Had the attorneys done the kind of work required to effectively represent Brian, each would have made \$3.37 per hour. (For comparison purposes, counsel appointed to a federal capital case in Missouri [makes \\$202 per hour.](#))

⁴ Brian pleaded guilty upon advice of counsel, who had not conducted any investigation or completed any expert evaluation. Counsel, thus, were unaware that he had a defense to first-degree murder. He agreed to plead guilty because he was incredibly remorseful for the deaths of his cousin Sarah and her husband Ben, he was deeply ashamed of his addiction and what he had done because of it, and he was in the throes of a major depressive disorder. He did not understand the elements (including intent) to which he was pleaded, or the ramifications of his plea.

Flat fee arrangements are now widely held to be inappropriate in capital cases because they disincentivize zealous advocacy for one's client and create a conflict of interest between the attorneys (*i.e.*, their compensation and, in some cases, the financial viability of their firms) with the needs of the client. *See* Part II ([MSPD Mary Fox letter](#) & [Affidavit of Janet Thompson](#)) & Part III ([Judge Wolff Letter](#) & [Missouri Law Professors Letter](#)). For these reasons, professional norms, including [the ABA Guidelines](#), prohibit flat fees, and states like Kansas have barred flat fee arrangements in capital cases based on a violation of the Sixth Amendment. *See* Part II (Letters Against Flat Fees in Capital Cases). According to the head of the Missouri State Public Defender, MSPD no longer assigns capital cases to contract attorneys for flat fees because it is contrary to both the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases and [Rule 4-1.7\(a\)\(2\) of Missouri Rules of Professional Conduct](#). *See* Part II.

Perhaps unsurprisingly, Brian's attorneys did almost nothing in preparation for his capital trial.

If [Brian] had had the representation he should have had, I don't think he would have gotten to the penalty phase.... We were willing to pay a bargain basement price, well we got a bargain basement job.

- Janet Thompson, Brian's appellate lawyer and current Boone County Commissioner

Instead, they allowed him to plead guilty before doing any investigation or completing any expert evaluations of their client, and without the State taking the death penalty off the table. [These](#)

[actions were a shocking departure from professional norms and contrary to the ABA Guidelines, local practice, and advice solicited from their colleagues.](#) *See* Part II.

Once a psychological expert completed his evaluation of Brian in preparation for the penalty phase, he concluded what trial counsel should have learned *before* pleading their client to first-degree capital murder: namely, that Brian was not capable of forming the requisite intent for such a charge.⁵ According to medical experts, the interaction of crack withdrawal, extreme intoxication, major depressive disorder, sleep deprivation, and psychosocial stress culminated in a drug-induced psychosis and an alcohol-induced blackout. During an alcohol-induced blackout, no memories are recorded by the brain, and there is no rational thinking or executive functioning. The hallucinations Brian experienced are no different from those produced by schizophrenia, and once they begin, there is no way to stop them or wrest control back. Quite simply, Brian was incapable of deliberating before committing this crime, and he was incapable of forming the intent required for a conviction of first-degree capital murder. But, by the time trial counsel attempted to present this defense to the jury, Brian had already pleaded guilty, and the trial court prohibited Brian's attorneys from presenting what amounted to a guilt-phase defense to the penalty-phase jury.

To be "consciously" aware of one's actions, an individual must be aware of their thoughts, memories, and feelings. On the night of the offense, it is my opinion that Brian's brain had been hijacked by the effects of bingeing on cocaine and alcohol.

- Dr. Edward French

⁵ The sad truth is that counsel *knew* that Brian needed to be evaluated by a mental health expert before they could effectively advise him on taking a plea. This expert, Robert L. Smith, was scheduled to evaluate Brian, but a snowstorm prevented his visit. Instead of waiting for the expert to reschedule and conduct his assessment, counsel went to court the next day and pleaded Brian guilty. Brian had no idea that a plea would be presented that day until his attorneys briefly discussed it with him in the holding cell. Brian had mere minutes to make this life-altering decision, he did not have the opportunity to speak with his parents or anyone else, and, not knowing the legal system and deeply ashamed, he decided to rely on his attorney's advice.

Missouri law requires a person to be able to deliberate in order to be convicted of first-degree murder. Brian's psychosis made this impossible. This should have made Brian ineligible for the death penalty.

Even though Brian's attorneys saved significant money by avoiding the guilt-innocence trial and could therefore focus all of their time and resources on the penalty (sentencing) phase, they still did almost nothing to try and save Brian's life:

- As discussed above, they failed to identify that Brian was under the throes of drug psychosis at the time of the crime because they failed to interview their client about the night of the crime before advising him to plead guilty.
- They did not present Brian's lack of intent/deliberation as a mitigating factor for the jury to consider, so the jury could not weigh this in selecting the sentence even if they wanted to do so.
- They failed to hire a mitigation investigator or conduct any mitigation investigation; had they done so, they would have uncovered a number of avenues worth pursuing, such as Chronic Traumatic Encephalopathy (CTE) from playing football,⁶ childhood neglect and trauma, and a family history of substance abuse and mental illness. They also would have discovered that he had a perfect institutional record at the time of the penalty phase, evidence admissible as mitigation that a person will not be a risk.
- They only presented five family witnesses, despite the fact that there were at least 15 relatives available and eager to testify. *See* III (letters written to the sentencing judge by family, many of whom would have liked to testify but were not given the opportunity by counsel). And they failed to prepare those who did testify, such that they did not provide testimony relevant to the only mitigator the jury was authorized to consider.
- Though Brian had been a model inmate while in jail awaiting trial, his attorneys failed to share this crucial mitigating evidence to his jury, despite clearly established law from the United States Supreme Court holding that such evidence is an important factor for a sentencing jury to consider. Brian's trial attorneys have both admitted they had no strategic reason for this failure.

⁶ CTE is a degenerative brain disease, caused by repeated concussions and blows to the head, which can result in a number of behavioral changes, including impulse control problems, aggression, mood swings, depression, paranoia, and anxiety. Current counsel attempted to investigate whether Brian's years as a defensive lineman caused him to suffer from CTE. *See* <https://concussionfoundation.org/CTE-resources/what-is-CTE>. MDOC refused to transport Brian for the MRI required for a CTE diagnosis without a court order. [REDACTED]

IV.

EXECUTIVE CLEMENCY IS NEEDED BECAUSE THE JUDICIAL SYSTEM IS INCAPABLE OF COURSE-CORRECTING IN THIS CASE.

As described above, Brian's conviction and death sentence are the direct result of the flat fee contract paid to his counsel by the Missouri State Public Defender, a practice now rejected by MSPD. It may be difficult to comprehend that someone is still on Death Row if the process that put them there was so unjust. But under the strict laws governing habeas relief, obtaining relief from a post-conviction court is nearly impossible:

- Brian's death sentence was not overturned on appeal because the ineffectiveness of counsel is not reviewable on direct appeal in Missouri.
- Brian's death sentence was not overturned in state post-conviction because (1) he pleaded guilty, which makes it incredibly difficult and rare for a court to overturn the conviction (despite the reality that the plea was the result of the ineffectiveness of counsel); (2) he once again received ineffective assistance from his post-conviction counsel (who failed to present the evidence of Brian's exemplary prison adjustment, rehabilitation, and lack of future danger, and plead trial counsel's ineffectiveness in failing to do this at the penalty phase), and (3) there is a strong presumption that attorneys were effective at trial and, in every subsequent proceeding, the presumption gets even more difficult to overcome. *See Strickland v. Washington*, 466 U.S. 668 (1984) (a reviewing court "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance"). *See also McFarland v. Scott*, 512 U.S. 1256, 1259 (1994) (Justice Blackmun, in dissent, noted that "Ten years after the articulation of the standard, practical experience establishes that the *Strickland* test, in application, has failed to protect a defendant's right to be represented by something more than 'a person who happens to be a lawyer.'").
- Finally, after the adoption of the Anti-Terrorism and Effective Death Penalty Act in 1996, deference to the state court process is so great and the scope of review so limited, little of the evidence before you now was reviewable by the federal court.

Knowing what we know now, however, numerous significant criminal justice stakeholders now request that Brian’s life be spared. [Retired Missouri Supreme Court Judge Michael Wolff](#), who sat on the Court when it affirmed Brian’s conviction on direct appeal and in post-conviction, now says this is one of those “rare cases” where the Court “got it wrong.” Judge Wolff explains he now supports executive clemency for Brian because he recognizes Brian’s case is “a rare failing of the legal system itself.” In Judge Wolff’s opinion, given what we now know about the financial conflict of interest that flat fee contracts inevitably create, and the reality of “how compromised and ineffective his trial lawyers were,” “[e]xecuting Mr. Dorsey . . . will dishonor our system of capital punishment.”

This is the “rare case” where “we got it wrong.”
- Former Missouri Supreme Court Judge Michael Wolff

Five jurors from Brian’s case agree. They have come forward to ask you, Governor Parson, to commute Brian’s sentence to life without the possibility of parole: [REDACTED]

Governor Parson, my faith is what led me to write you and I will continue to pray for the right outcome here. By the grace of God, I hope you will find your way to give him a life sentence instead of death.
[REDACTED]

[REDACTED]

They now believe the legal system got it wrong. They wish they had known then what they know now and today, they hope you will join them in choosing life for Brian, and not death. And a

group of [conservative Missouri legislators](#) from your party also agree. Because they “believe” “the voices of so many officers supporting clemency” should be heard, and they are “concerned” about the “flat fee contract paid to Mr. Dorsey’s attorneys,” they “strongly urge you to show Mr. Dorsey mercy and grant him a commutation.”

The judicial system got it wrong, but it is incapable of correction at this point. This is why executive clemency is so important. It is the first and only opportunity to look at Brian’s case without the bias in favor of his conflicted trial attorneys. In recognition of the structural reality that post-

judgment proceedings provide very limited opportunity for review, clemency is the historic remedy for preventing miscarriages where the judicial system has failed.

Governor Parson, you do not have the constraints of the judicial system. That is precisely why the clemency process exists – as a backstop and a moral failsafe, in recognition that there will inevitably be injustices that go uncorrected by the judicial system for one reason or another.

V.

EXECUTING BRIAN DORSEY SERVES NO PURPOSE AND ONLY CREATES FURTHER HARM

Executing Brian Dorsey serves no purpose. Even worse, it will make Missouri's toughest maximum-security prison a more dangerous place to be. Executing Brian will send a message to other inmates in our state that, no matter how far you have come, no matter how great the efforts toward positive change and rehabilitation you may take, the protections of the Eighth Amendment mean nothing, and the result can still be death. All incarcerated Missourians would understand that good or terrible behavior in prison yields the same results.

Executing Brian would devastate the loving members of his family who have unconditionally supported him. The trauma, however, spreads further than that. Research has shown that those correctional officers who have known Brian will also be affected. Those who have overseen Brian in prison – many of whom have taken the extraordinary step to speak on his behalf – and who have come to respect him and like him personally, will also be traumatized if he is executed. Taking part in the death of another has unintended but real consequences for those who are required to

I have known many offenders over the past couple decades and I have known offenders who should be executed. Mr. Dorsey is not one of them. It would be a loss to the state if he were executed.

participate. The professionals who work at Potosi Correctional Center have seen many inmates taken

away to be executed, they largely understand that is the nature of their job. As [REDACTED] said, “I have known many offenders who should be executed.” But these 70-plus staff members all recognize that Brian is not one of those people. Because of the beliefs of the staff that he should not be executed, they would suffer trauma in this unique situation.

As the correctional officers have said, Brian is unique in many ways. And, as they’ve said, he is uniquely deserving of mercy.

Governor Parson, I humbly ask you to prevent a good man from being executed and to grant Brian Dorsey clemency.

[REDACTED]

I do not make this request lightly and would not make it on behalf of any other offender. Governor Parson, I humbly ask you to prevent the execution of Brian Dorsey by granting him clemency.

[REDACTED]

Mr. Dorsey does not deserve to be executed. I urge you, Governor Parson, to exercise your authority . . . to commute Mr. Dorsey’s sentence to life in prison without the possibility of parole.

[REDACTED]

[REDACTED]

CONCLUSION

Governor Parson, as the scores and scores of correctional officers who serve our state and your agency on a daily basis have said, Brian is unique and exemplary in many ways. Because of that, they have asked, for the first time and in unprecedented numbers, for you to recognize that he is uniquely deserving of mercy. Our system of capital punishment has built in a backstop in recognition that injustices do occasionally occur. You are that backstop, as well as the steward for the law enforcement community. It is a tremendous responsibility, and the greatest exercise of spiritual practice and moral clarity for which any person can be asked. We humbly request that you listen to the voices of your state employees, and former Missouri Supreme Court Judge Michael Wolff, as well as the fellow Christians, Brian's family and friends, and others, and exercise your merciful power to commute Brian's death sentence to a sentence of life without the possibility of parole.

The Honorable Michael L. Parson, Governor
State of Missouri
Post Office Box 720
Jefferson City, MO 65102

Dear Governor Parson:

We are all active and former correctional officers and staff at Potosi Correctional Center. We are part of the law enforcement community who believe in law and order. Generally, we believe in the use of capital punishment. But we are in agreement that the death penalty is not the appropriate punishment for Brian Dorsey, and urge you to use your clemency power to commute his death sentence.

Each of us got to know Brian Dorsey at Potosi Correctional Center, in various contexts. Some of us worked in the special transportation unit which was headquartered in the Custody Complex directly across the hallway from the Potosi barbershop where Brian worked as a barber. Some of us worked at the No. 5 housing unit which is an "honor dorm" where Brian lives. Some of us got to know Brian in other capacities at Potosi Correctional Center. But every one of us believe that Brian is a good guy, someone who has stayed out of trouble, never gotten himself into any situations, and been respectful of us and of his fellow inmates.

He is a barber at Potosi Correctional and cut hair for many of us; he is a terrific barber. Being a barber is considered a high level job for an inmate, and he could not have gotten a job as a barber if he had any disciplinary problems. He has been a barber for a decade. He even cut the hair of Wardens Steele and Roper.

He was housed in No. 5 unit, an "honor dorm." To be housed there, inmates have to be well behaved. Brian never presented any problems, either inside the institution or outside during recreational time. If all the inmates were like Brian, there would never be a problem in the institution.

There isn't a nicer guy than Brian. He is one of the most pleasant people we know. He doesn't deserve to be executed. We know that he was convicted of murder, but that is not the Brian Dorsey that we know. We urge you, Governor, to exercise your authority under the Missouri Constitution to commute Brian's sentence to life in prison without the possibility of parole.

[SIGNATURES REDACTED FOR PRIVACY PURPOSES]

To Whom It May Concern

From Troy L. Steele, Retired Warden, Missouri Department of Corrections

RESUME

Approximately 31 years of Criminal Justice experience with 26 years being employed by the Missouri Department of Corrections. The final 12 years holding the position of Warden. I have a Bachelor's Degree from Southern Illinois University.

OBJECTIVE

Based on my experience and knowledge to provide an institutional adjustment assessment for Offender Brian Dorsey, Capital Punishment Offender, Missouri Department of Corrections, Inmate #1128725.

OFFENDER INFORMATION

Identification: Dorsey, Brian #1128725

Sentence: 11-10-2008, Boone County Missouri, Death by Lethal Injection

Offense: Callaway County Missouri, 2 counts of Homicide in the First Degree

Subject has been incarcerated in the Missouri Department of Corrections 14+ years.

EVALUATION RESOURCES

Offender Dorsey's Classification File, Medical File, and Mental Health File

INSTITUTIONAL ADJUSTMENT

- **Callaway County Incarceration Report**
 - Offender Dorsey was arrested on his current conviction and housed in the Callaway County Correctional Center. He also had a previous reported conviction for leaving the scene of a motor vehicle accident. His behavior was reported as appropriate with no incidents of misconduct.
- **Missouri Department of Corrections Institutional Assignment and Conduct (no conduct violations in 17 years)**
 - Offender Dorsey was incarcerated for a short period of time at the maximum security facility, the Jefferson City Correctional Center, in 2007. His conduct was reported as appropriate receiving no reports for misconduct. He was later housed at the maximum security facility, the South Central Correctional Center, in 2008. His conduct was reported as appropriate receiving no reports for misconduct. Finally, he was transferred to the maximum security facility, the Potosi Correctional Center, where he has been housed since 2008. During this time his behavior is reported as exceptional, having received no reports for any type of misconduct.
 - His institutional behavior is reviewed regularly by correctional staff. This is documented in his classification file under Institutional Risk. Risk is given a numerical scoring of 1 to 5. One indicating exceptional behavior

and five indicating a complete disregard for institutional rules or having committed an extremely serious offense. Throughout Offender Dorsey's incarceration he has been consistently scored as a level 1 demonstrating his commitment to following institutional standards.

- **Honor Status**

- The Potosi Correctional Center has a level housing system where offenders through appropriate conduct can earn privileged housing assignments. Offenders who come into the prison receive only the very basic privileges which are allowed by Department Policy. They are held to a stringent standard where their continued appropriate adjustment will allow them advancement in privileges and housing assignments. This process takes many months to demonstrate and earn the high honor status. Offender Dorsey is currently assigned to the highest possible honor status. He not only has earned this by his conduct but is allowed to continue by demonstrating exceptional behavior daily.

- **Job Assignment**

- The Missouri Department of Corrections mandates offenders that are physically able will have a working job assignment. These assignments generally involve cleaning, maintenance and food service activities. However, there are job assignments which are reserved for offenders who have exhibited exceptional abilities and appropriate behavior. These positions are only given to those offenders who have earned the trust of corrections officials. Among these one of the most trusted positions is that of the staff barber. This position cuts and styles hair of both custody and non-custody staff. Offender Dorsey has held the position of staff barber for approximately 12 years. In this position he is entrusted with equipment that could be used as weapons to harm staff. Additionally staff trust him in that they put themselves in a position of vulnerability. Only those offenders who have gained the highest respect of prison officials would be given the opportunity of his position.

- **Programs**

- The Missouri Department of Corrections participates in restorative justice programming. Participation in these programs is voluntary and the offenders receive no compensation. They participate in a variety of activities which are designed to give back to the community or victims of crimes. Offender Dorsey's file indicates that he has received several certificates for his participation in these programs.

- **Predatory Assessment**

- Offenders in the Missouri Department of Corrections are assessed to ensure that housing unit room assignments provide for the safest combination possible. Housing Unit Classification staff assess offenders based on their past criminal behavior, their physical attributes, their current behavior and assign a rating which allows them to be housed with other offenders who are compatible. There are three general ratings: Alpha for most aggressive, Kappa for neutral, and Sigma for most passive. Ideally the rating of Kappa is desired. Alphas have a disposition that makes it easy for them to bully or victimize other offenders.

Where Sigmas tend to be easily manipulated or victimized. Offender Dorsey has been rated a Kappa as not displaying aggressiveness nor excessive timidity. This assessment is reviewed regularly. In reading the assessment tool, the following are of consequence in evaluating Offender Dorsey. It is documented that he does not victimize other offenders, he accepts responsibility for his actions, he does not stir up trouble with other offenders, and he cooperates with staff. These along with other assessment components demonstrate that he has the ability to interact appropriately with other offenders and staff, and requires little supervision in this area.

- **Medical and Mental Health Assessments**

- Offender Dorsey is interviewed annually by Medical and Mental Health Staff. As part of this meeting physicians will conduct a visual observation of the offender's disposition and appearance and this is noted in the reports. Offender Dorsey has consistently been reported as having an appropriate attitude and good hygiene habits.

- **Periodic Urinalysis Testing**

- The Missouri Department of Corrections conducts random urinalysis testing on their offender populations. They are assessed for several categories of intoxicants. In reviewing Offender Dorsey's file it is noted that he has been tested in these random groups. He has never had any indication of positive results or drug use.

- **Recreational Activities**

- In review of the file material, it was indicated that Offender Dorsey had participated in recreational sports activities, specifically softball. Here again, it is documented the level of staff trust which is given as he is permitted the use of a baseball bat in close proximity to staff.

SUMMARY

I first want to relay that I have first hand knowledge of Offender Dorsey and the Potosi Correctional Center (PCC), as I was Warden for approximately four and a half years. It is noteworthy in this report to document the history and atmosphere of this facility. PCC was designed specifically to house the capital punishment offenders for the State of Missouri. These offenders are not housed in a specific unit but are allowed to integrate with other offenders throughout the institution. Additionally due to the high level of security of PCC, when offenders throughout the State exhibit extreme acts of inappropriate behavior or violence they are often transferred to PCC. This is important to note in that the offenders that Offender Dorsey must interact with daily are some of the most problematic offenders that the State incarcerates. Due to this clientele the staff have a heightened degree of observation and requirements for compliance.

Offender Dorsey has been able to conduct himself in this environment in exceptional fashion having exhibited no behavioral issues while under the scrutiny of the correctional staff and the harassment of other offenders. He has obtained the highest levels of respect and confidence as exhibited by his housing and work assignments. Professional staff evaluate his attitude and

appearance and indicate he appears to be positive and appropriate notwithstanding his present predicament. Adding the stress of his possible upcoming execution, it is remarkable in how he conducts himself as relayed by those who supervise him throughout the institution. **I have no reason to believe that should his sentence be commuted that his behavior would diminish in any way.**

A handwritten signature in cursive script, reading "Troy L. Steele".

Troy L. Steele

MARK D. CUNNINGHAM, PH.D., ABPP

*Board Certified in Clinical Psychology - Board Certified in Forensic Psychology
American Board of Professional Psychology*



*Licensed psychologist: Alabama #1564, Alaska #116954, Arizona #3662, Arkansas #98-17P, Colorado #2305, Delaware #B1-0001047 [inactive],
Florida #PY8347, Idaho #PSY-379, Illinois #071-006010, Indiana #20041376A, Iowa #1316, Louisiana #794, Nevada #PY0625,
New York #017111-1[inactive], Oregon #1333, Pennsylvania #PS016942, Tennessee #2255, Texas #22351, Washington #PY60207411*

Declaration of Mark D. Cunningham, Ph.D., ABPP

*Re: Brian J. Dorsey, Petitioner v. Troy Steele,
Civil Action No. 15-8000 (W. D. Missouri)*

Violence Risk Assessment for Prison

I, MARK D. CUNNINGHAM, PH.D., ABPP, DECLARE AS FOLLOWS:

1. I am a clinical and forensic psychologist licensed and qualified to practice psychology in the states of Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Nevada, New York, Oregon, Pennsylvania, Tennessee, Texas, and Washington. I attach my curriculum vitae. I am over age 21. I have personal knowledge of the facts contained in this affidavit and am competent to testify about them.

2. Marshall Dayan, Esq., federal habeas corpus counsel for Brian Dorsey, has requested that I provide a report regarding my expert evaluation of testimony that could have been presented at Mr. Dorsey's sentencing phase in August 2008 illuminating the likelihood that he would make a positive adjustment (i.e., without serious violence) while serving a life sentence in the Missouri Department of Corrections (i.e., *Skipper* evidence in mitigation). Federal habeas corpus counsel has also requested I outline below qualifications and experience that I have in providing such expert consultation and testimony at capital sentencing.

Summary of findings

3. At the time of the sentencing phase in August 2008 and continuing to date, there was/is a very high probability that Mr. Dorsey would adjust to a life sentence in Missouri DOC without serious violence. This finding is based on his pattern of behavior during pretrial jail and prison confinement, as well as other empirically validated correlates of prison violence risk including correctional appraisal, age, education, history of employment, ongoing contact with community members, and absence of prison gang membership. Only a single risk-increasing factor was identified. The effect of this factor, however, is more than counter-balanced by the risk-reducing factors. Group data

demonstrate that several factors are *counterintuitive* in being associated with low and not disproportionate rates of prison violence, including being convicted of murder, being convicted of capital murder, and/or serving a life-without-parole sentence. Two actuarial models place Mr. Dorsey in the lowest categories of risk for prison violence.

Special Qualifications

4. *Board certification:* I am one of approximately 350 psychologists in North America who are board certified in *forensic psychology* by the American Board of Forensic Psychology, a specialty board of the American Board of Professional Psychology (ABPP). This credential is intended to signify the highest levels of expertise and practice in forensic psychology. I am one of approximately 1200 psychologists who are board certified in *clinical psychology* by the American Board of Clinical Psychology (ABPP).

5. *Capital sentencing testimony:* I have been recognized as a clinical and forensic psychology expert in testifying regarding capital sentencing determinations including adverse developmental factors (i.e., “mitigation”) and violence risk assessment (i.e., “future dangerousness”) in both state and federal courts. Since 1995, I have testified as a clinical and forensic psychology expert regarding sentencing issues at trial in approximately 175 state capital cases and approximately 55 federal capital cases, as well as in numerous postconviction and federal habeas proceedings. As of January 2008, I had testified as a clinical and forensic psychology expert regarding sentencing determination issues in approximately 84 state capital cases and approximately 47 federal capital cases. I have been recognized as an expert in clinical and/or forensic psychology in state and/or federal district courts in Missouri, Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, New York, North Carolina, Nevada, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, Washington, and West Virginia. Where qualification was made available by the court, I have never failed to qualify as an expert in clinical and/or forensic psychology.

6. *Scholarship regarding capital sentencing considerations:* As my curriculum vitae will demonstrate, I am extensively involved in research and the authoring of scholarly publications relevant to evaluations at capital sentencing. These scholarly publications include peer-reviewed papers addressing standards of practice and complex considerations specific to evaluations of mitigating factors in capital cases, as well as evidentiary standards and associated scientific support for various violence risk assessment methodologies at capital sentencing. As of January 2008, I had authored or coauthored (published or in press) four edited book chapters for scholarly texts, 20 peer-reviewed scientific papers, a law review article, and five other publications (exemplar case reports, commentary). I am the invited author of *Evaluation at Capital Sentencing* (2010), a volume in the Oxford University Press series of texts on “Best Practices” in

forensic mental health evaluations. I am first author of the chapter on forensic psychology evaluations in death penalty cases in the well-regarded 12-volume *Handbook of Psychology* (2003, 2013), as well as author of chapters on capital sentencing evaluations in other edited texts. I was the guest editor for a special issue regarding capital sentencing considerations for the *Journal of Psychiatry and Law*. I am lead investigator or co-investigator of large-scale research projects examining inmate rates and correlates of serious violence in prison. I have conducted peer-reviewed research regarding rates and correlates of violence in the Missouri Department of Corrections, including among offenders sentenced to capital punishment or life-without-parole. The associated scholarly publications regarding Missouri DOC include:

Cunningham, M. D., Reidy, T. J., & Sorensen, J. R. (2005). Is death row obsolete? A decade of mainstreaming death-sentenced inmates in Missouri. *Behavioral Sciences & the Law*, 23, 307-320. doi:10.1002/bsl.608

Cunningham, M. D., Sorensen, J. R., & Reidy, T. J. (2005). An actuarial model for assessment of prison violence risk among maximum security inmates. *Assessment*, 12 (1), 40-49. doi:10.1177/1073191104272815

Lyon, A. D., & Cunningham, M. D. (2006). Reason not the need: Does the lack of compelling state interest in maintaining a separate death row make it unlawful? *American Journal of Criminal Law*, 33 (1), 1-30.

Cunningham, M. D., Reidy, T. J., & Sorensen, J. R. (2016). Wasted resources and gratuitous suffering: The failure of a security rationale for death row. *Psychology, Public Policy, and Law*, 22 (2), 185-199. doi: 10.1037/law0000072

Cunningham, M. D., Reidy, T. J., & Sorensen, J. R. (2018). The failure of a security rationale for death row. In H. Toch, J. R. Acker, & V. M. Bonventre (Eds.) *Living on death row: The psychology of waiting to die*. (pp. 129-160). Washington: American Psychological Association.

7. *Recognition for research, scholarship, and professional practice:* My scholarly activities have been noted by my peers. In January 2019, I was recognized with the *American Correctional Association Peter P. Lejins Research Award*. This annual award is the highest honor bestowed by ACA upon a corrections researcher. I am the 2012 co-recipient of the *National Register of Health Service Psychologists A. M. Wellner, Ph.D. Lifetime Achievement Award*. This annual award is the highest honor bestowed, from among 12,000 Registrant psychologists, by the National Register to commemorate numerous and significant contributions to psychology during a distinguished career. I am the recipient of the highly prestigious *2006 American Psychological Association Award for Distinguished Contribution to Research in Public Policy*. The American Psychological Association, a professional organization of 120,000 members, confers this award on one psychologist annually who has made distinguished empirical and/or

theoretical contributions to research in public policy, either through a single extraordinary achievement or a lifetime of work. I was awarded the *2005 Texas Psychological Association Award for Outstanding Contribution to Science*. This is an annual award in recognition of significant scientific contribution in the discovery and development of new information, empirical or otherwise, to the body of psychological knowledge. I am a *Fellow* of the American Psychological Association, a peer-reviewed distinction reflecting outstanding contribution to the profession of psychology at a national level. I was the recipient of the *2004 National Association of Sentencing Advocates John Augustus Award*. My scholarship was cited as authority in *Moore v. Texas*, 581 U.S. ____ (2017) in the Supreme Court of the United States.

8. *Continuing education instruction:* The American Academy of Forensic Psychology is an association of board-certified forensic psychologists (ABFP). Under the auspices and at the request of the Academy, I have provided full-day workshops on “The role of the forensic psychologist in death penalty litigation” in Milwaukee, Wisconsin; Austin, Texas; Monterey, California; San Diego, California; Cincinnati, Ohio; LaJolla, California; and San Francisco, California. These workshops emphasized research literature, statistics, and conceptualizations relevant to assessments of capital defendants. I have also provided a full-day workshop for psychologists regarding capital sentencing evaluations under the auspices of the Texas Psychological Association. I have providing continuing education training in high stakes sentencing evaluations through AAFP (January 2019) and Concept Training (August 2018). I have been an invited speaker regarding capital sentencing determinations at approximately 100 national and/or regional capital attorney training conferences. As of January 2008, I had given invited addresses and seminars at 31 national and 41 regional capital training conferences for attorneys.

Evaluation Procedures

9. In providing this consultation, I have interviewed reviewed records as detailed below. I have also reviewed scholarly perspectives and correctional data available in August 2008. I have not interviewed Mr. Dorsey. This is considered to have negligible impact on my findings, given the availability of voluminous records, as well as expert mental health evaluation reports and underlying notes, and an investigator affidavit detailing the observations of Mr. Dorsey by corrections staff.

Records reviewed:

BINDER 1

1. Affidavit of [REDACTED] – Investigator 12/23/18
2. Dale G. Watson, Ph. D. Notes on evaluation of Defendant 04/13/18
3. Robert L. Smith, Ph. D. Testimony Transcript 08/28/08
4. Robert L. Smith, Ph. D. Psychological Summary/Report 05/01/08
5. Robert L. Smith, Ph. D. Notes 08/25/07 – 03/31/08

BINDER 2

1. Missouri Department of Corrections Records 2007 – 2016
2. Missouri Department of Corrections Records 2017- 2018
3. Callaway County Jail Records 2006 – 2008

BINDER 3

1. Missouri Department of Corrections – Medical Records Bates 296 – 767

BINDER 4

1. Missouri Department of Corrections – Medical Records Bates 768 - 1201

Conceptual Considerations regarding Violence Risk Assessment for Prison

10. ***Mitigating factor:*** The potential for Mr. Dorsey to make a positive adjustment (i.e., without serious violence) to the Missouri Department of Corrections (DOC) under a life sentence is relevant to an available mitigating factor (i.e., positive prisoner evidence, see *Skipper v. South Carolina*, 1986).

11. ***Avoiding predictive error:*** Additionally, evidence that Mr. Dorsey is likely to have a positive adjustment to a life sentence in Missouri DOC would tend to rebut any implicit, if erroneous, future risk implications of personal characteristics, offense features, or other factors that may be stated or implied by the State (see Sandys, Pruss, & Walsh, 2009).

12. ***Capital juror concern with future violence:*** Research studies involving both actual capital jurors and mock capital jurors demonstrate these jurors are concerned with the potential for future violence by a capital offender regardless of whether this is overtly alleged at trial (Blume, Garvey, & Johnson, 2001; Sandys et al., 2009). Though they represent illusory correlations that are without predictive value in the assessment of the risk of prison violence (see Cunningham, 2006; Cunningham & Reidy, 1999, 2002; Cunningham, Sorensen, & Reidy, 2009; Edens et al., 2005), capital juries are prone to make inferences regarding future violence risk based on the perceived remorse, the perceived viciousness of the offense, and perceived personality pathology (Sandys et al., 2009).

13. ***Grossly exaggerated estimates of risk:*** To illustrate the risk distortion effect that may occur from direct or indirect characterizations by the State or erroneous inferences intuitively employed by a capital jury, Pilgrim and Sorensen (1999) described the estimates of former capital jurors regarding the likelihood of future violence by defendants had they sentenced them to life imprisonment rather than death. These jurors estimated that there was an 85% likelihood of a violent crime and a 50% likelihood the defendant would commit a new homicide if sentenced to life imprisonment. Such juror expectations are wildly inflated (i.e., 50 to 250-fold).

14. **Methodology for risk assessment for prison:** Analysis of a defendant’s past behavior pattern (in a similar setting) and the application of group statistical data are the two approaches that are most reliable in assessing likelihood of a positive adaptation to prison (i.e., without serious violence).

15. **Behavior pattern analysis:** Behavior pattern analysis in violence risk assessment at capital sentencing can be a very reliable method for estimating risk, assuming that there is sufficient behavior to form a pattern and the context of prediction is sufficiently similar (Cunningham, 2008, 2010; Cunningham & Goldstein, 2003; Cunningham & Reidy, 1998b, 1999; Morris & Miller, 1985). This latter similarity of context is particularly important to attend to if the risk assessment is to be accurate. As studies sponsored by the U.S. Justice Department concluded: a community pattern of violence has not been found to be reliably predictive of violence in prison (Alexander & Austin, 1992; National Institute of Corrections, 1992). This same discontinuity between community violence and prison violence has been confirmed in samples of former death row inmates (e.g., Cunningham, Sorensen, Vigen, & Woods, 2011; Edens et al., 2005; Marquart, Ekland-Olson, & Sorensen, 1989; Marquart & Sorensen, 1989; Reidy, Cunningham, & Sorensen, 2001; Sorensen & Cunningham, 2009), life-sentenced capital offenders (e.g., Cunningham, 2008; Cunningham, Reidy, & Sorensen, 2008; Cunningham & Sorensen, 2007; Marquart et al., 1989) incarcerated murderers (e.g., Sorensen & Pilgrim, 2000; Cunningham & Sorensen, 2006; Sorensen & Cunningham, 2010), and prison inmates system-wide (Reidy, Sorensen, & Cunningham, 2012). Confirming the predictive significance of past violence when in the same context, however, Sorensen and Pilgrim found that a history of past prison violence among incarcerated murderers markedly increased the likelihood of prison violence. Thus, it is critical to look to past behavior from a similar context (i.e., jail/prison conduct to jail/prison conduct).

16. In summary, behavior pattern analysis that is specific to context is critically important because prison represents a fundamentally different context from the community – and prison violence does not predictably follow from pre-confinement violence or the capital offense of conviction.

17. **Group statistical data:** Statistical methodology has been identified as fundamental to reliable violence risk assessments at capital sentencing (e.g., Cunningham, 2006, 2008, 2010; Cunningham & Goldstein, 2003; Cunningham & Reidy, 1998b, 1999, 2002; Cunningham, Sorensen, & Reidy, 2009; Reidy, Cunningham, & Sorensen, 2001; Sorensen & Pilgrim, 2000). For the past 23 years, this methodology has been routinely presented at death penalty trials throughout the United States. Arguably, this application of statistical methodology and data at capital sentencing moves these gravest of determinations toward the “greater degree of reliability” (p. 989) in death penalty litigation called for in *Lockett v. Ohio*.

18. The use of this statistical approach enjoys general scientific acceptance, both as a broad methodology and as the most reliable basis of violence risk assessment (Monahan,

1981; Morris & Miller, 1985; Hall, 1987; Smith, 1993; Serin & Amos, 1995; Cunningham, 2006, 2008, 2010; Cunningham & Reidy, 1998b, 1999; Reidy, Cunningham, & Sorensen, 2001). Statistical methods have been widely cited as superior to clinical methods in predicting the behavior of individuals (Dawes et al., 1989; Meehl, 1954; Monahan, 1981, 1996; Showalter & Bonnie, 1984; Tonry, 1987). Poythress (1992) summarized the status of this research quite succinctly:

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)

19. Statistical methodology in violence risk assessment fundamentally relies on the base rate – or frequency of violence in a given sample or population. Monahan (1981) in his influential monograph asserted:

Knowledge of the appropriate base rate [frequency of behavior observed in a relevant group] is the most important single piece of information necessary to make an accurate prediction. (p. 60)

20. The fundamental reliance of empirically-supported violence risk assessment models on base rates is not restricted to capital sentencing. The application of statistical methodology in violence risk assessment also includes non-capital sentencing determinations, prison classification, parole eligibility, and civil commitment and release. Scientifically-informed individualization in the medical and mental health sciences in diagnosis, therapeutics, or prognosis (i.e., risk) is, by necessity, based on statistical methodology. Statistical methodology is fundamental to the commercial insurance (i.e., “risk” assessment) industry as well.

Findings regarding violence risk assessment for prison

Testimony that could have been offered:

21. The defense did not call an expert in violence risk assessment for prison at Mr. Dorsey’s sentencing phase who could have provided critically important perspectives on reliable methodology for this assessment (as outlined above), anchoring base rates, and empirically demonstrated correlates.

22. From 1995 to August 2008, in testimony at capital sentencing and in giving CLE workshops around the United States, I was routinely utilizing the methodology, studies, data, and case-specific adaptations of the methodology and data presented below. Had I or another qualified expert in violence risk assessment for prison been retained and called by the defense, the particularized violence risk assessment findings detailed in the paragraphs below could have been elicited in testimony. Based on these data and findings, there was a high probability at the time of the sentencing trial in August 2008

that Mr. Dorsey would make a positive adaptation (i.e., no serious violence) while confined for life in the Missouri Department of Corrections.

23. A number of factors are present that would be associated with a reduced risk of prison violence for Mr. Dorsey relative to broader categories of inmates or capital offenders.

- a. *Behavior pattern in custody:* Mr. Dorsey had a history of adjustment to incarceration that provided a basis for projecting his future adjustment. From 12/26/06 to 07/10/07, Mr. Dorsey was confined in the Callaway County Jail. He was then admitted to the Missouri Department of Corrections and confined at the South Central Correctional Center in Licking, Missouri. Except for returns to Callaway County Jail or Boone County Jail for court proceedings, Mr. Dorsey remained at SCCC until his transfer to the Potosi Correctional Center in November 2008 following his sentencing. This 16-month tenure in SCCC is particularly relevant in projecting his future prison behavior in Missouri DOC. Mr. Dorsey had no disciplinary infractions in the Callaway County Jail, Boone County Jail, or SCCC during his two years of pre-trial confinement. This adjustment to jail and prison confinement, with infrequent infractions and no violence, strongly points to a continuing nonviolent adjustment to prison in Missouri DOC.
- b. *Correctional appraisal:* Review of pretrial corrections records reflects that Mr. Dorsey was in general population on an honor unit at SCCC. Such classification demonstrates that correctional staff did not regard Mr. Dorsey as a disproportionate risk of violence relative to other inmates at his custody status, even with full knowledge of his pending charges. If an inmate is considered a disproportionate risk of violence, heightened security measures are available. These procedures include single-celling, solo recreation, hand/feet restraints with movement, and multiple staff escorts with movement.

Upon Mr. Dorsey's departure from SCCC in November 2008, a mental health consultation described:

...he knows he will be leaving this camp, and is feeling some sense of loss as he has become accustomed to the rules and people at this camp. [bates SK01148]

...He is a model offender who is living in the honor unit here and has not been problematic. [bates SKo1149]

The affidavit of [REDACTED], dated 12/23/18, detailed the reports of numerous corrections officers regarding Mr. Dorsey's positive adjustment to the Callaway County Jail pretrial. Corrections staff describing Mr. Dorsey's positive adjustment

pre-trial, as detailed by [REDACTED] affidavit, include:

Deputy [REDACTED], Callaway County Sheriff's Office
Captain [REDACTED], Boone County Sheriff's Office
Captain [REDACTED], Callaway County Sheriff's Office
Sheriff [REDACTED], Callaway County Sheriff's Office

- c. *Age:* In August 2008, Mr. Dorsey was 36 years old (dob 03/21/72). Age is one of the most powerful predictors for prison misconduct, including among capital offenders sentenced to LWOP terms (Cunningham, Reidy, & Sorensen, 2008), with aging inmates having progressively lower rates of misconduct (Bench & Allen, 2003; Hirschi & Gottfredson, 1989; Haun, 2007; Kuanliang, Sorensen, & Cunningham, 2008; Stephen, 1989) and assaultive misconduct (Cunningham, Reidy, & Sorensen, 2008; Cunningham & Sorensen, 2006, 2007; Cunningham, Sorensen, & Reidy, 2005; Cunningham, Sorensen, Vigen, & Woods, 2011; Haun, 2007; Kuanliang et al., 2008; Sorensen, Cunningham, Vigen, & Woods, 2011; Sorensen & Pilgrim, 2000). Thus, holding other factors constant, Mr. Dorsey, at age 36, had a much lower risk of violence in prison (and greater likelihood of positive adaptation) as compared to inmates in their 20s or early 30s. As he aged in prison, his likelihood of positive adaptation to prison would progressively increase.
- d. *Education:* Mr. Dorsey earned a GED and subsequently attended barber school. Inmates who have a high school diploma or its equivalent (i.e., GED) demonstrate lower rates of assaultive misconduct in federal prison (Harer & Langan, 2001). Similarly, in a large-scale study of correlates of prison violence among inmates in Potosi Correctional Center (Missouri DOC), inmates holding a high school diploma or its equivalent (e.g., GED) were half as likely to be involved in assaultive misconduct, controlling for other factors (Cunningham, Sorensen, & Reidy, 2005).
- e. *History of community employment:* Except as increasingly compromised by mood disorder and substance dependence, Mr. Dorsey held full-time employment in the community. This included working in roofing and construction, odd jobs. He worked as a barber for approximately five years. For several years, he was employed by Dollar General – rising from a laborer to a trainer. Quay (1984) found that inmates with histories of community employment tended to become “industrious” inmates in prison, occupying themselves in constructive ways and being less likely to be involved in prison misconduct and violence.
- f. *Continuing contact with community members:* Mr. Dorsey had ongoing contact with his parents and other community members pre-trial via visitation and telephone contact. Callaway County Jail records reflect visitations by his parents and a friend (e.g., bates SK00231, 00238, 00258, 00286). SCCC records reflect

that his parents visited him every other weekend and that he also maintained contact with them by letter and telephone (see bates SK01150, 01152). Jail records also reflect his mother depositing funds to his jail commissary account. Interactions with community members provide a pro-social influence and associated incentive to maintain good conduct so as to facilitate visitation and telephone access, and thus contribute to better inmate adjustment.

- g. *No prison gang affiliation*: Mr. Dorsey has no history of youth or prison gang affiliation. Similarly, he has no history of criminality as a lifestyle or ongoing economic enterprise. Prison gang members account for a disproportionate share of prison misconduct and violence (e.g., see Cunningham & Sorensen, 2007b; DeLisi et al., 2004; Drury & DeLisi, 2008; Winterdyk & Ruddell, 2010).

24. Only one factor was identified that increased Mr. Dorsey's risk of serious prison violence as compared to other capital offenders: a robbery in the capital offense. Neither a sexual assault in the context of the capital offense nor the killing of multiple victims has been found to be reliably associated with an increased incidence of prison violence (Cunningham & Sorensen, 2007; Cunningham et al., 2011).

25. Group data demonstrate the seriousness of the offense of conviction is not a good indicator of prison misconduct or violence. This is the conclusion of multiple studies, including a recent large-scale comparison of the disciplinary misconduct and institutional assaults of murderers with other prison inmates (for a review, see Sorensen & Cunningham, 2010).

26. There are other individualizing factors that can be specified in forecasting Mr. Dorsey's likelihood of serious violence in Missouri DOC.

- a. *Convicted murderer*: Large-scale studies demonstrate that convicted 1st degree murderers have low rates of serious assault in prison, and that these rates are consistent with those of inmates convicted of other offenses (Reidy, Sorensen, & Cunningham, 2012; Sorensen & Cunningham, 2010 – in preparation in 2008).
- b. *Convicted capital murderer*: Multiple group statistical studies indicate that the majority of individuals convicted of capital murder are not cited for serious violent misconduct in prison. These studies include retrospective examinations of the records of former death-sentenced inmates in Texas (Cunningham, Sorensen, Vigen, & Woods, 2011; Marquart, Ekland-Olsen, & Sorensen, 1989) and Arizona (Sorensen & Cunningham, 2009 – in preparation in 2008), federal capital offenders serving life sentences in the Bureau of Prisons (Cunningham, Reidy, & Sorensen, 2008), mainstreamed death-sentenced inmates in Missouri (Cunningham, Reidy, & Sorensen, 2005), and aggravated murderers sentenced to death or serving life sentences in Oregon (Reidy, Sorensen, & Cunningham, 2013). Similarly, group statistical data point to capital offenders representing

better institutional assault risks than inmates serving shorter sentences.

- c. *Long-term inmate or LWOP*: Eleven-year comparative study of life-without-parole (LWOP) inmates and parole-eligible inmates in a high security prison (Potosi Correctional Center) demonstrated that LWOP inmates were half as likely to be involved in assaultive misconduct (Cunningham, Sorensen, & Reidy, 2005). Similarly, in another large-scale study, inmates serving lengthy (20+ year) sentences were similar to LWOP inmates in having very low rates of serious prison violence (Cunningham & Sorensen, 2006).

27. A number of actuarial models are available to provide perspectives regarding both likelihood of assaultive misconduct and comparative risk. In applying these studies, it is important to note that lifetime risk is *not* a multiple of the time period specified in the study. Inmates who exhibit violence in prison tend to do so early in their sentences.

- a. Utilizing data on 13,341 inmates entering state prison (Cunningham & Sorensen, 2006), inmates sharing predictive characteristics with Mr. Dorsey were in the *best* 2% (lowest risk). In the risk group corresponding to Mr. Dorsey's characteristics, only 4.9% engaged in assaultive misconduct in their first year of confinement. Correspondingly, 95.1% did not perpetrate assaultive misconduct.
- b. Utilizing a study of capital offenders in state corrections custody (Cunningham & Sorensen, 2007), inmates sharing risk correlates with Mr. Dorsey were in the *lowest risk* of three risk groups. In this lowest risk group, 0% engaged in assaults during prison tenures that averaged 2.37 years.

28. The above analyses support a conclusion that at the time of trial, there was a very high likelihood that Mr. Dorsey would make a positive adjustment (i.e., would not perpetrate serious violence) if confined for life in Missouri DOC. As the severity of the projected violence increases (i.e., weapons use, victim injury), the likelihood that Mr. Dorsey would perpetrate this level of violence becomes increasingly remote.

29. As risk of violence is always a function of context, the above estimates of the risk of serious violence could be markedly reduced by ultra-secure confinement. Should Missouri DOC determine at some point that Mr. Dorsey is disproportionately likely to perpetrate serious institutional violence, there are mechanisms to confine him in super-maximum custody under heightened security procedures that involve single-celling, application of restraints with any movement, solitary or small group recreation, and other security measures. Under such conditions any opportunity to engage in serious violence is substantially negated.

30. I was practicing as a licensed clinical and forensic psychologist in 2008 and was available, with adequate scheduling notice, to provide an evaluation of Mr. Dorsey's violence risk if confined for life in prison. Had I or someone with my experience been

given similar access to Mr. Dorsey and been provided the above detailed records, correctional data, and peer-reviewed research, the same findings and conclusions as detailed above would have been reached and could have been offered in testimony detailing same at his sentencing phase in August 2008. Peer-reviewed studies published since that time further confirm the validity of the associated science.

31. Though not available at the time of trial, correctional records confirm the risk assessment that could have been made in 2008. Potosi Correctional Center records reflect that Mr. Dorsey has never received a disciplinary infraction during the past 11 years of custody post-verdict. He has been recurrently described as having a positive and infraction-free prison adjustment, relating well to inmates and staff. He has worked for a number of years as a barber for staff and is housed on an honor unit. Descriptions from corrections staff of Mr. Dorsey's positive adjustment to PCC were detailed in Mr. [REDACTED] affidavit.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT FOR PENALTY OF PERJURY

Dated this 9th day of August, 2019 at Seattle, Washington.



Mark D. Cunningham, Ph.D., ABPP

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Dear Governor Parson,

We are family members and friends of Brian Dorsey. We are also proud citizens of the state of Missouri where a majority of us were born and raised. Collectively, we ask that you exercise your executive power as our state's leader, and grant clemency to Brian. We are not asking for his freedom, we are only asking that he be allowed to live and continue providing a service to our state's Department of Corrections as a staff barber and model inmate. Governor Parson, we understand that Brian has taken responsibility for a devastating crime. Yet we know that his heart is repentant and we believe in a God who is infinite in His mercy. Please consider imparting your own mercy. Let there be finality of life, and not death.

**[SIGNED BY MANY FAMILY MEMBERS--
SIGNATURES REDACTED FOR PRIVACY PURPOSES]**

Dear Governor Parson,

My name is Amy Henley, formerly Jones, and I currently live in St. Louis with my husband where I work in the financial services industry. I am a native Jeffersonian, moving there when I started first grade at West Elementary. I get back frequently to visit my folks, Shelby and Gina Jones, as well as many friends.

It was in middle school in Jefferson City that I first had contact with Brian Dorsey who, as you know, is now serving out the last days of his death sentence in Potosi, MO and is scheduled to die on April 9, 2024. I am writing this letter out of an abundance of concern for him.

Brian and I were both active in a Jeff City Chapter of Fellowship of Christian Athletes. Admittedly, in the 7th and 8th grades, my memories of Brian are rather vague. As 2 awkward middle schoolers our universes were still rather separate and relegated to boys on the left, girls on the right. But in high school our paths crossed, if not more frequently, then definitely in a friendlier way. That is how I would characterize my relationship with Brian in high school - as friendly acquaintances.

We had both remained student athletes and our peer groups were largely centered around other kids in our sports. I ran cross country and track and Brian played football, which in the early 90s, in Jefferson City, MO, meant a few things. To say it was a rigorous program would be a gross understatement. I know because my older brother played as well. To be able to cut the mustard for The Jays meant that you were physically tough, mentally disciplined, committed to your teammates, willing to be coached and not afraid of hard work. I saw Brian as all of the above. You'll notice I didn't mention academics. That's because, for whatever reason allows random memories, I knew that Brian struggled in school and didn't have good grades.

But what I remember most about Brian Dorsey then are his smiley eyes and impish grin. A grin that says, "I scored some free chocolate chip cookies from the lunch ladies and I'm about to surprise you with one." And he was always grinning. I also only ever experienced Brian as a somewhat shy and completely appropriate classmate which, for a 14 or 15 year old high school guy interacting with a high school girl, isn't a foregone conclusion! I always felt comfortable around Brian. Sadly, as so often happens, I lost touch with Brian after high school. Later on, I relocated back to Jefferson City in 2003 after having lived abroad for 10 years, and I learned through a friend that Dors' (as we referred to him back in the day) was a barber and cutting hair downtown. It made me happy to hear that.

Still living in Jeff City a couple of years later, I remember being shaken up to learn of Brian's crime, subsequent trial, conviction, and sentencing. Having known Brian personally as the person I described above, I remember having real trouble imagining that he could commit any crime, to say nothing of one so brutal. I followed his case as far as it was being reported on in the news and then didn't think about it anymore after he was sentenced. Then through a series of circumstances that can only be described as orchestrated by the Lord himself, Brian and I reconnected after all of these years nearly a year ago. Since then, we've had regular

correspondence through electronic letter writing that the prison system allows. It works exactly like email except that you have to purchase stamps. I have to say that it has been one of the most unique experiences I've ever had being Brian's pen pal. I believe this has afforded me the opportunity to see a side of Brian that quite possibly nobody else has seen. Ever. And Governor Parson, what I have seen - the person I have come to know - is in no way someone with whom justice will be served on April 9th if you choose to move forward with executing him. The Brian Dorsey I have come to know more than just a high school acquaintance this last year is a man who has absolutely turned himself inside out trying to own his crimes and failures. There has never been even a whiff of self-pity or self-justification. There isn't an ounce of entitlement that comes from Brian. I have only experienced Brian as a man carrying deep sorrow and even deeper regret, who has consistently tried to harness both and use them as the impetus to become a better person. His entire incarceration up to this point unequivocally corroborates this.

I earnestly ask you, Governor, to take the time to prayerfully consider the exhaustive body of work, months in the making, to examine the petitions and testimonies from people of all walks of life, who agree as I do, **that commuting Brian's sentence from death to life imprisonment without parole, is *justice better served*.**

Last week I was shown a recent photo taken of Brian at Potosi. I saw my former classmate, having aged like we all do, with less hair and white beard. What hasn't changed are those smiley eyes and the impish grin I mentioned earlier in my letter. Only now instead of being the eyes and grin of a guy I knew in high school, they are the eyes and grin of my friend.

Most sincerely,

Amy Henley

The Honorable Michael L. Parson, Governor
State of Missouri
Post Office Box 720
Jefferson City, MO 65102

Dear Governor Parson,

My name is Ron Cole. I am a former football coach with the Jefferson City Jays in Jefferson City, Missouri. I coached Brian Dorsey and am writing to you on his behalf.

When Brian was in high school, he was a model kid. He was the type of athlete and teammate you wanted to have on your team as a coach. He did not give us any trouble. He was a good young man and I could not have imagined that he would have ended up going down a road that led him to prison. The person who committed this crime was not the Brian I knew; it was a young man who had become addicted to drugs years before he took those lives.

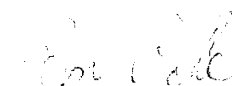
I was close with Brian. He was respectful and listened to my guidance. At Jefferson City High School, we knew our kids from seventh grade up. That is when I started watching Brian and he was with us through his senior season. Some time later, I went to Brian to get my hair cut when he became a barber.

In 2008, I testified for Brian during his penalty phase. No one prepared me to testify. I just showed up and took the stand. Brian's attorneys did not prepare me to be cross-examined. The prosecutor asked me about the education Jefferson City High School provided regarding drug and alcohol abuse. He insinuated that our football program should have kept Brian from using drugs. Well, that's not how it works. Young people are not spared from becoming addicted to drugs because their high schools or football programs provide education in those areas. I thought that was unbecoming of the prosecutor to say the least.

I have learned that over 70 corrections officers have signed onto a letter of support for clemency for Brian. This does not surprise me because of how I remember Brian and the player and person he was before drugs took hold of him. As I mentioned above, he was a model kid and now he is a model inmate. This is because he is no longer on drugs.

Governor Parson, please consider granting clemency to Brian Dorsey. Commute his sentence of death to a sentence of life in prison without the possibility of parole.

Sincerely,



Ron Cole

11/18/2012 - 11/18/2012

The Honorable Michael L. Parson, Governor
State of Missouri
Post Office Box 720
Jefferson City, MO 65102

CR

Dear Governor Parson,

My name is Carol Reichard. My son, Jay Reichard, is a lobbyist and enjoys the privilege of knowing and working with you. I am writing on behalf of Brian Dorsey.

Brian was a former classmate and teammate of Jay's in junior high. I got to know Brian through my work with the Fellowship of Christian Student Athletes. I had not thought about Brian for years when his name and photo came across the nightly news months ago. I was aware that he was in prison and serving a death sentence.

I felt compelled to reach out to Brian because of my faith. I am a Christian. I attend Concord Baptist Church. My faith is everything to me. My motivation for contacting Brian was really my concern for his soul, as a Christian.

After I saw Brian's photo on the news, I approached my [REDACTED] friend, [REDACTED]. I wanted to know how to get in touch with Brian. More than anything, I wanted to know if Brian knew Jesus and is a believer. [REDACTED] put me in touch with the right people, and since then, Brian and I have been corresponding through emails. I have also learned that Brian has been a model inmate since his incarceration began. I learned that he has never gotten in trouble and that he has worked as a barber to the correctional staff for a decade. I understand that at least some correctional staff do not believe he should be executed.

I have considered Brian's crime and the circumstances that likely led him to commit it. I was the Executive Director for a nonprofit organization, Counsel for Youth Against Drugs. In my position, I organized programs to educate youth on the effects of drugs and alcohol. I experienced the brutal impact of addiction within my own family and know firsthand the trauma that comes from substance abuse. Though I lost touch with Brian over the years, it is my understanding based on what I know about his story that drugs are in large part to blame for the lives that were lost in this case.

I now feel a strong conviction to do what I can to help Brian. My faith has informed my decision to ask you to consider commuting Brian's death sentence to a life sentence without the possibility of parole.

Thank you for taking the time to read this letter. Please consider granting Brian clemency and allowing him to continue working and growing at Potosi Correctional Center.

Sincerely,

Carol Reichard

Carol Reichard



Dear Governor Parson,

My name is Deacon Andrew Daus. I am writing to you regarding the execution of Brian Dorsey. I have never written a letter regarding inmates who were to be executed before, but I felt it necessary to share with you some of my own experiences with Mr. Dorsey.

I am a Volunteer in Corrections at Potosi Correctional Center. I have been volunteering there for the past 16 years. I have had personal contact with most of the death row inmates in that period of time. I minister to the inmates who are in solitary confinement as well as the infirmary in addition to a Catholic Service each week. I had never met Mr. Dorsey until I was told that as a volunteer I could receive a haircut from the staff barber.

Every 3 weeks or so, Brian Dorsey would cut my hair. We would chat about a lot of things, but I was unaware he was on death row. As a volunteer, I never ask what crime an inmate commits or their sentence. It simply never came up.

I have access to all the inmates in solitary confinement. I usually pray with as many men who ask for prayers. I generally am treated with respect from all the men. Shortly after Mr. Dorsey's execution date was set, I came upon him in 1A. I chatted with him briefly, but I knew that would be the last time. Since, VICs are not allowed to visit men once they have their date set. I was dismayed, but I understand the situation.

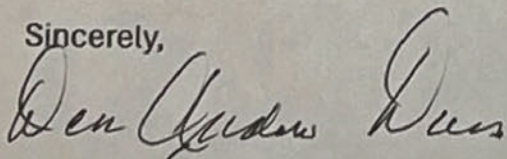
I was saddened by the visit. He didn't complain or seem distraught, but I could feel the hopelessness of the man. He had been extremely cordial to me when he cut my hair, and I felt I was losing a friend. The courtesy, friendly demeanor and skill of the man was all I knew.

I pray that God will be merciful to him. He committed a heinous crime but is still a child of God. Like many I have known I will pray for him. I wish you could have met him. He is a gentle man and certainly not a danger to society. But the court decided his fate so many years ago – time and God's grace does change a man. I believe he was successfully rehabilitated and productive in the prison community he was a part of.

You have many such cases, but a commutation would allow this man to continue to serve his prison community and God in his own way.


Thank you for all you do.

Sincerely,



Deacon Andrew Daus,

VIC #111935



March 04, 2024

To: Governor Parson
Office of the Governor
P.O. Box 720
Jefferson City, MO 65102

Subject: Letter of Support for Brian Dorsey, Application for Executive Clemency or Stay of Execution. Doc. ID 01128725

Dear Governor Parson,

My name is Edward Anderson. I am writing to you regarding the Application for Executive Clemency or Stay of Execution for Brian Dorsey, Doc ID 01128725. I believe that the Death Sentence should be reserved for the worst of the worst. It is reserved for those individuals of a depraved mind who show no remorse or empathy towards their victims or society. I do not believe that Brian Dorsey is one of those individuals. Therefore, I strongly support him being given a Stay of Execution and his sentence being commuted to life.

I have known Brian for over 20 years. I met him at the Potosi Correctional Center while I was serving a life sentence for murder. By the grace of God, I have since been released. I have been back in society coming up on 5 years. I am so blessed to be given this second chance. During my time in prison with Brian we became friends. We first met on the softball field playing softball. Both of us were descent players and eventually got on a team together. During our run we won several championships. Brian and I were both model offenders. Therefore, we both ended up in the honor dorm together. Every night after the evening meal we would play pinochle together. I am quite the competitor and did not like losing, Brian often had to extend great patience towards me. In addition to Brian's good institutional record, he also worked for several years as the staff barber. Brian has a big heart! He is one of the most generous people I know. We often got together and made meals. If someone did not have the money, Brian was always willing to pitch in a little extra to help them out. My life was blessed and enriched by knowing Brian Dorsey.

During my incarceration I have witnessed many men put to death. Some very deserving others who could have made some great contributions to society. I believe that some would very much like to see Brian executed, but they do not know him like I do. He would be missed by many including myself. All the good he could potentially accomplish would be wasted to satisfy a few. Governor Parson, I hope and pray that you will do the right thing and give my friend, Brian Dorsey, Doc ID 01128725, a Stay of Execution and commute his sentence to life. Thank you for your attention concerning this matter and God bless you!

Sincerely,
Edward E Anderson

AFFIDAVIT

STATE OF MISSOURI)
) ss:
COUNTY OF BOONE)

I, Janet M Thompson, being duly sworn, do hereby state upon penalty of perjury that:

1. I am an attorney in good standing, licensed to practice law in the State of Missouri since 1984. My Missouri Bar No. is 32260.

2. I am currently the District II Commissioner for Boone County, Missouri. My office address is Boone County Government Center, [REDACTED] Missouri. I was elected to that position in November 2012 and sworn into office on January 1, 2013.

3. Prior to my election to Commissioner, I was employed as an appellate attorney with the Office of the State Public Defender, Woodrail Centre, 1000 West Nifong, Building 7, Suite 100, in Columbia, Missouri. In that capacity, I specialized in direct appeals in capital cases, and had been doing so full-time since 1989.

4. I represented Brian J. Dorsey on his direct appeal from his convictions and death sentence in Boone County Case No. 07BA-CR01875.

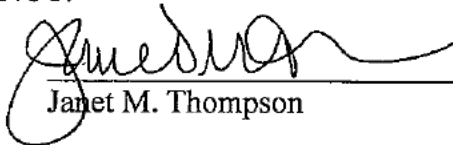
5. In the early fall of 2007, prior to my direct involvement in Brian's case, I received a telephone call from Chris Slusher, who was Brian's trial attorney. Mr. Slusher told me that he was considering pleading Brian guilty to two counts of first degree murder without any negotiated agreement with the State to waive the death penalty, and he wanted to know my opinion. I do not recall that Mr. Slusher articulated any strategy or rationale for this proposed course of action. I recollect that Mr. Slusher only told me that "they" – Mr. Slusher and Scott McBride – were representing Brian, and that this was what they were thinking about doing. I told

Mr. Slusher that I thought it was a very bad idea to plead guilty without a waiver of the death penalty, and that he should read the *Worthington* case as an example of why it was a bad idea.

6. I met Brian Dorsey for the first time on December 18, 2008, after being assigned as his direct appeal attorney following the imposition of a death sentence. I became very concerned after learning from Brian that Mr. Slusher had sprung the plea idea on him as they were going into the courthouse for the hearing at which Brian subsequently entered a guilty plea, and that Brian had little time to consider things but instead relied on Mr. Slusher's judgment as to the best course of action. I was also concerned that, according to Brian, Mr. Slusher had told him that Mr. Slusher had consulted with other attorneys who concurred that pleading Brian open was a valid course of action.

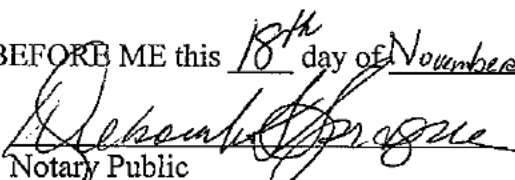
7. On December 19, 2008, I reported these concerns, as well as my earlier telephone conversation with Mr. Slusher, in an email to my supervisor, Greg Mermelstein, who was the Director of the Appellate/Post-Conviction Division of the Office of the State Public Defender. I also expressed these concerns to several office colleagues, including transfer attorney Barbara Hoppe, and told them there was no reason to waive guilt with no guarantee of waiving the death penalty. I further opined that the System should not hire Mr. Slusher nor Mr. McBride for death penalty cases again.

FURTHER AFFIANT SAYETH NOT.



Janet M. Thompson

SUBSCRIBED AND SWORN TO BEFORE ME this 18th day of November 2015.



Notary Public

My commission expires: 8-10-16

DEBORAH A. SPRAGUE
Notary Public - Notary Seal
State of Missouri
County of Boone
My Commission Expires August 10, 2016
Commission #12379046

AFFIDAVIT

STATE OF FLORIDA)
) ss:
COUNTY OF OKALOOSA)

I, James L. Miller, being duly sworn, do hereby state upon penalty of perjury that:

1. I am a resident of the [REDACTED] and am currently self-employed as a Licensed Real Estate Agent.

2. In 2007, I was a resident of the State of Missouri. At that time, I was self-employed as a private investigator in criminal cases, doing business as Jim Miller Investigations, [REDACTED]. Prior to this I was a police officer in Pasadena, Texas and Springfield, Missouri for 10 years. I worked robbery homicide and narcotics as well as street gangs in Texas. After leaving police work, I was a criminal investigator for over 20 years, during which I investigated over 200 homicide cases for the defense, the majority of which were death penalty cases. These cases were not only in Missouri, but also in Florida, Arkansas and Texas. I also worked death penalty cases at the federal level and in military courts.

3. Approximately late August or early September 2007, I was contacted by attorney Scott McBride, who asked me if I would be willing to be retained as an investigator in the death penalty case of his client, Brian Dorsey, and I said that I would be. McBride was co-counsel for Mr. Dorsey with an attorney named Chris Slusher. While I was personally acquainted with Scott McBride, I was not acquainted with Chris Slusher and had never met him.

4. It was my understanding from the initial conversation with Scott that approval of and funding for my investigative services in Brian Dorsey's case would first need to be

obtained from the Missouri State Public Defender Office (MSPD), and that such request for approval would be made forthwith.

5. After not hearing anything further from either Chris Slusher or Scott McBride, in late September or early October 2007 I began checking in regularly with Chris and Scott about the status of the request to the MSPD for approval of my services. I told Chris that October was a good month for me to get going on the investigation in the Dorsey case. I continued to check in with Chris and Scott throughout October 2007. Chris kept telling me that he had not yet heard anything from MSPD and that usually it did not take so long to get approval.

6. Chris Slusher contacted me by telephone around the end of October or early November 2007. In that phone conversation, Chris told me “we’re going in a different direction” and that Brian Dorsey was going to plead guilty. Though it was not discussed, I assumed at the time this meant that Brian’s life would be spared in exchange for a guilty plea. By the end of the call I was under the impression that Chris did not want to hear anything back from me. I did not try to further contact Chris or Scott, and neither Chris nor Scott contacted me about the case after that. Chris and Scott never provided me with any details of the case.


7. Ever since my telephone conversation with Chris Slusher, having been told by Chris that Brian Dorsey was going to plead guilty, I have assumed that Brian Dorsey received a life sentence in exchange for a guilty plea. I was not aware that Brian was sentenced to death following a guilty plea until being contacted by Brian Dorsey’s current counsel in September 2015.

8. In September 2015, I reviewed copies of email correspondence with Chris Slusher and Scott McBride relative to the request for my services in Brian Dorsey's case during the relevant time frame as set forth above. In one of those emails, dated October 11, 2007, Chris Slusher states that he has not yet received approval on the request for my services, and also states that I had referred to Barbara Hoppe (of MSPD) as "Barbi." I thought this was very strange, as I have never once referred to Ms. Hoppe as "Barbi."

9. In November 2015, I reviewed a copy of an unsigned letter addressed to me from Chris Slusher, dated November 16, 2007, which I never received. In the letter, Slusher sets forth some case background, avenues of investigation for both the guilt and penalty phases of trial, and purports to enclose various case materials for my review, including police reports and a witness list.

10. Prior to my recent review of the November 16, 2007 letter, I had never seen nor read the letter, and I would definitely have remembered this letter if I had received it.

FURTHER AFFIANT SAYETH NOT.


James L. Miller

SUBSCRIBED AND SWORN TO BEFORE ME this 13th day of November 2015.


Notary Public

My commission expires: _____



VALERIA Y. JOHNSON
Notary Public, State of Florida
Comm. Exp. March 11, 2019
Comm. No. FF 208550

DECLARATION OF VALERIE LEFTWICH, ESQ.

STATE OF MISSOURI
COUNTY OF BOONE

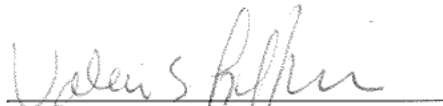
I, Valerie Leftwich, Esq., hereby depose and say as follows:

1. My name is Valerie Leftwich, and I am a practicing attorney in Columbia, Missouri.
2. I was licensed to practice law in the State of Missouri in 1986.
3. I currently practice with the Missouri State Public Defender System, having returned to the office from private practice. I was with the office in December, 2010, when the office was appointed to represent Brian Dorsey in state post-conviction proceedings. I was assigned the case, along with my co-counsel, Pete Carter.
4. After receiving and reviewing the trial and appellate file, and conducting an investigation, Pete and I prepared an Amended 29.15 Motion to Vacate Judgment and Sentence. There were twelve (12) claims in the Amended 29.15 Motion, including eleven (11) claims or subclaims involving ineffective assistance of trial counsel. However, it did not include a claim of ineffective assistance of penalty phase counsel to investigate, develop, and present evidence of Mr. Dorsey's successful adjustment to incarceration and the likelihood of his continued positive adjustment to incarceration. *See Skipper v. South Carolina*, 476 U.S. 1 (1986).
5. On February 13, 2023, I met with Marshall Dayan, Assistant Federal Public Defender for the Western District of Pennsylvania, at a hotel in St. Louis, Missouri. Mr. Dayan introduced himself as Mr. Dorsey's attorney. He presented me with evidence that Mr. Dorsey had been a model prisoner during his two years' incarceration at Callaway County Jail, Boone County Jail, and South Central Correctional Center prior to the capital sentencing proceeding. Mr. Dayan showed me an affidavit of [REDACTED], who averred that he was an investigator for the Federal Public Defender's Office with Mr. Dayan, and who interviewed Deputy Sheriff [REDACTED] from Callaway County Jail, Captain [REDACTED] from the Boone County Sheriff's Office, Captain [REDACTED] from the Callaway County Sheriff's Office, and Sheriff [REDACTED] from the Callaway County Sheriff's Office. All of these law enforcement officers appear to have told Mr. Olsen that Mr. Dorsey never presented any kind of behavioral or disciplinary problem while in their custody.
6. Additionally, Mr. Dayan showed me a declaration from Dr. Mark Cunningham, Ph.D., a clinical and forensic psychologist, who opined that at the time of the capital sentencing proceeding, there was a very high probability that Mr. Dorsey would adjust to a life sentence in the Missouri Department of Corrections without serious violence based on his pattern of behavior during pretrial jail and prison confinement, as well as other empirically validated correlates of prison violence risk including correctional appraisal,

age, education, history of employment, ongoing contact with community members, and absence of prison gang membership.

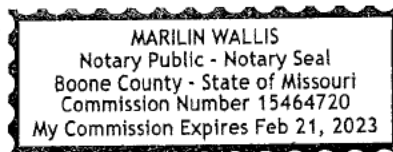
7. Finally, Mr. Dayan showed me seven pages of correctional records from the Missouri Department of Corrections dated between 2007 and 2008 all indicating that Mr. Dorsey had adapted well to incarceration and presented no behavioral or disciplinary problems in that setting.
8. I made no strategic decision not to allege ineffective assistance of penalty phase counsel for failing to investigate, develop, and present evidence of Mr. Dorsey's positive adjustment to incarceration as mitigating evidence to persuade the jury that life, not death, was the appropriate punishment in his case. Conducting such an investigation, presenting such evidence, and making such a claim would not have conflicted with the other claims Mr. Carter and I raised; indeed, such a claim would have complemented the other claims we pursued on Mr. Dorsey's behalf. I don't recall considering raising such a claim and do not know why I did not do so; I wish we had.
9. I give this affidavit freely to counsel for Mr. Dorsey for whatever use they desire.

This 21st day of February, 2023.


Valerie Leftwich

Sworn to and subscribed before me, this 21st day of February, 2023.


Notary Public



March 13, 2024

The Honorable Michael L. Parson, Governor
State of Missouri
Post Office Box 720
Jefferson City, MO 65102

Dear Governor Parson:

We are writing as representatives of a group of leading national mental health organizations to request clemency for Brian J. Dorsey, who is scheduled for execution on April 9, 2024. We base our request on concerns that Mr. Dorsey's severely impaired mental status at the time of his crime was never raised or considered by the trial court in the plea agreement that resulted in his death sentence.

Brian Dorsey had no history of violence prior to the crime which tragically took the lives of two members of his family in 2006. As a youth and young adult, Mr. Dorsey had a documented history of severe, chronic depression that resulted in several hospitalizations and attempts to take his own life. His symptoms were not alleviated or reduced by anti-depressant medications prescribed to him. He began self-medicating with alcohol and crack cocaine.

Mr. Dorsey was represented by two private attorneys assigned by the Missouri State Public Defenders Office. At the time, Missouri paid assigned attorneys a flat fee whether or not cases went to trial. His attorneys convinced Mr. Dorsey to accept a plea in which he pled guilty to first degree murder, a capital offense. His lawyers apparently conducted no background investigation, nor did they complete an expert evaluation of their client's psychiatric condition or capacity to form the intent requisite of first-degree murder.

A subsequent evaluation revealed that Mr. Dorsey was very likely experiencing substance-induced psychosis at the time of the crime. Psychosis due to the use or withdrawal from drugs and/or alcohol is quite common and is included as a diagnosis in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-V). Substance induced psychosis is characterized by symptoms such as delusions, hallucinations, paranoia, and irrational thinking (loss of touch with reality).¹ The psychological expert who finally reviewed Mr. Dorsey's case concluded that his mental health status was likely so impaired at the time of the crime that he would not have been capable of engaging in pre-meditation or forming the intent necessary for a conviction of first-degree murder. However, by then, it was too late for Mr. Dorsey to change his plea.

¹ A. Fiorentini, F. Cantu, et. al., "Substance Induced Psychosis: An Updated Literature Review," *Frontiers in Psychiatry*, 2021: 12: 694683, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8732862/pdf/fpsy-12-694683.pdf>.

Since his conviction, Mr. Dorsey has been a model prisoner on death row. He has not committed a single violation in over 17 years, quite remarkable in the frequently toxic environment of death row. He is held in high esteem by correctional staff who have supervised him on a daily basis, illustrated by the fact that a number of these individuals, including the former warden of Potosi Correctional Center, have submitted letters in support of clemency. It is clear that Mr. Dorsey is not a violent, habitual criminal but rather a decent and respectful, generally law-abiding person who committed a horrific crime while in the throes of a psychotic episode caused by his drug abuse.

Mr. Dorsey's death sentence should be commuted to life without parole for the following reasons.

1. **The impact of Mr. Dorsey's severe psychiatric symptoms at the time of the crime was never entered into the record by his attorneys in mitigation against the charges of first-degree murder.** Medical experts who reviewed his case believe that the combination of withdrawal from crack cocaine, extreme alcohol intoxication, major depression and sleep deprivation resulted in a drug-induced psychosis and alcohol-induced blackout. People suffering from psychosis typically experience delusions, hallucinations, extreme paranoia and irrational thinking. Had this evidence been presented, it would have raised serious questions whether Mr. Dorsey was capable of engaging in the deliberation or forming the intent required of a conviction of first-degree murder.
2. **Mr. Dorsey's representation by his defense attorneys was egregiously inadequate.** The flat fee arrangements under which these attorneys were paid were significantly less than required in capital cases and created incentives for these attorneys to settle the case prematurely without engaging in the investigation and advocacy required for complex cases of this nature. In recognition of these concerns, American Bar Association guidelines and the laws of states such as Kansas and Arizona bar flat fee arrangements in capital cases and the Missouri State Public Defender no longer assigns capital cases to contract attorneys for flat fees.

Serious questions also exist whether Brian Dorsey fully understood the consequences of pleading guilty to first degree murder, including that this plea carried with it the possibility of the death penalty. It is well established in law that a guilty plea by a defendant in a capital case must be entered knowingly, voluntarily, and understandingly. The determination that a defendant fully understands the consequences of his or her plea is particularly important with defendants whose rational thinking or cognition may be impaired at the time of the plea.

3. **Mr. Dorsey had no history of violence prior to his crime and has been a model inmate during the entire period of his long incarceration on death row.** As stated above, his record while incarcerated has been exemplary, with no disciplinary violations. Remarkably, the esteem in which Mr. Dorsey is held is exemplified by the letters of support for clemency

from current and former correctional staff, including the warden of Potosi. It is clear that Mr. Dorsey poses no risk to staff or other inmates in a correctional setting.

The crime which resulted in the death of two of Brian Dorsey's family members was tragic and Mr. Dorsey lives daily with the remorse he feels for these crimes, committed at a time in which he was not in a rational state of mind. However, executing Mr. Dorsey will serve no useful purpose, a fact that has been recognized by numerous family members, including relatives of the victims. We therefore respectfully request that you commute his death sentence to life without parole.

Sincerely,

Inseparable

Mental Health America

National Alliance on Mental Illness (NAMI)

Treatment Advocacy Center

EDWARD D. FRENCH, PH.D.

[REDACTED]

[REDACTED]

December 11, 2023

Arin Melissa Brenner
Assistant Federal Public Defender
Office of the Federal Public Defender
for the Western District of Pennsylvania
1001 Liberty Ave., Ste 1500
Pittsburgh, PA 15222

RE: *Brian Dorsey v. Vandergriff*, Civil No. 15-08000 (Western District of Missouri)

Dear Ms. Brenner:

You have asked for my professional opinion on the behavioral effects of long-standing cocaine and alcohol substance abuse and how it may have impacted Mr. Dorsey's brain function, his ability to constrain his behavior throughout his life, and in particular the absence of cognitive control during the commission of the crimes for which he was tried and convicted.

I am qualified to give such an opinion based on my professional training and experience. To summarize, I received my doctorate in pharmacology from UCLA in 1976, followed by three years of postdoctoral research at the Salk Institute in San Diego, California, and an additional year of research at the Max Planck Institute for Psychiatry in Munich, Germany. After the completion of those studies I joined the faculty of the Department of Psychiatry at the Maryland Psychiatric Research Center in Baltimore, Maryland in 1980 as a Research Assistant Professor and then a Research Associate Professor. In 1988, I joined the Department of Pharmacology at the University of Arizona College of Medicine, rising to the rank of Professor with Tenure. I am currently a Professor Emeritus in the University of Arizona College of Medicine's Department of Pharmacology. During my entire academic career, I have researched and taught in the area of neuro/psychopharmacology, the study of drug action, and the effects of drugs on the brain and behavior. Between 2017 and 2020, I testified at trial in 13 cases involving forensic pharmacology issues (see addendum).

DOCUMENTS REVIEWED

I base my opinion in part on information provided in the documents provided by your office which include:

Transcripts

1 – Trial Transcripts	BD0001 – BD0153
2 – Post-conviction Transcripts	BD0154 – BD0928

Mental Health Records

3 – Two Rivers Psychiatric Hospital	BD0929 – BD1020
4 – St. Mary’s Health Center	BD1021 – BD1457
5 – Capital Region Family Practice	BD1458 – BD1571
6 – Pathways Community Behavioral Healthcare	BD1572 – BD1589
7 – Valley Hope Association	BD1590 – BD1591
8 – Anthem Blue Cross and Blue Shield	BD1592 – BD1597
9 – Mexico Recovery Center	BD1598 – BD1607
10 – Dr. Robert Smith’s Report	BD1608 – BD1624
11 – Dr. Robert Smith’s Notes	BD1625 – BD1661
12 – Dr. Daniel Report	BD1662 – BD1665

Declarations and Affidavits

13 – Declaration of Mark Cunningham	BD1666 – BD1682
14 – [REDACTED] Affidavit of December 23, 2018	BD1683 – BD1688
15 – Declaration of [REDACTED]	BD1689 – BD1695
16 – Declaration of [REDACTED]	BD1696 – BD1699
17 – Declaration of [REDACTED]	BD1700 – BD1710
18 – Declaration of John Peter Adkins	BD1711 – BD1714
19 – Declaration of [REDACTED]	BD1715 – BD1721
20 – Declaration of [REDACTED]	BD1722 – BD1726
21 – Declaration of [REDACTED]	BD1727 – BD1739
22 – Declaration of [REDACTED]	BD1740 – BD1745
23 – Declaration of [REDACTED]	BD1746 – BD1753
24 – Declaration of [REDACTED]	BD1754 – BD1763
25 – Declaration of Christopher Slusher, Esq.	BD1764 – BD1766
26 – Declaration of Valerie Leftwich, Esq	BD1767 – BD1768
27 – Declaration of Scott McBride, Esq.	BD1769 – BD1770
28 – Declaration of [REDACTED]	Pages not numbered
29 – Declaration of [REDACTED]	BD3553—BD3555

Correctional Records

28 – Callaway County Jail [OMITTED]	BD1771 – BD1952
29 – State of Missouri Department of Corrections [OMITTED]	BD1953 – BD3547

Misc.

30 – Police statement of Darin Carel	BD3548 – BD3550
31 – Police statement of Patricia Cannella	BD3551 – BD3552

In addition, I have consulted a variety of basic and clinical literature sources addressing the pharmacological, psychological, behavioral, and neurotoxicological effects of the drugs Brian Dorsey used, specifically, cocaine and alcohol (see Addendum).

SOCIAL/FAMILY HISTORY

The declarations from family members and friends are unanimous in their opinion that Brian Dorsey was a caring person, loyal and respectful of his family and friends. He was described as a person who would do anything for anyone (Declaration of [REDACTED]), and a loving person (Declaration of [REDACTED]). According to John Adkins, his football coach, “he was a good kid, a hard worker, and [a] respectful young man.” However, in his early adolescence, he began using alcohol on a regular basis, which progressed to binge drinking by the age of 16. This behavior, best described as alcohol use disorder, continued for twenty years into his thirties (Declaration of [REDACTED]). Brian Dorsey’s substance abuse occurred throughout his adolescence, which is a time of critical development of the central nervous system, in particular those regions of the brain known to be crucial for regulating behavior.

He also started using crack cocaine regularly while in high school, which continued for 17 years. [REDACTED] wrote that “addiction took over his life.” His binge use of cocaine led to episodes of extreme paranoia and at times bizarre behavior, talking nonsensically in riddles (Declaration of [REDACTED]). “Brian was not Brian when he was using [cocaine]” (Declaration of [REDACTED]). Dorsey stated to [REDACTED] that he could not control his craving for crack cocaine. Another individual described him as a different person when he was using cocaine, which they believed was an attempt to self-medicate his long-undiagnosed depression. Records reflect that attempts by healthcare providers to treat Brian’s major depressive disorder with medications were largely unsuccessful, and that Brian attempted suicide twice.

Brian’s father, Larry Dorsey, was an alcoholic and physically and verbally abusive to Brian’s mother (Declaration of [REDACTED]). Brian and his father did not have a good relationship (Declaration of [REDACTED]). Adverse childhood experiences,¹ such as the familial dysfunction and the emotional and physical abuse Brian experienced are factors that commonly lead to mood and anxiety disorders and an increased attempt at self-medication by use of drugs and alcohol (See report by Dr. Robert Smith). These attempts can result in toxicity when a person requires more and more of a substance as tolerance to the drugs and alcohol builds. This escalation is commonly seen as binge use. As stated by [REDACTED] (Declaration #15), when Brian was on a binge he would lock himself inside his apartment and become depressed and suicidal.

¹ “Adverse childhood experiences (ACEs) can have a tremendous impact on future violence, victimization, and perpetration, and lifelong health and opportunity. CDC works to understand ACEs and prevent them.” See <https://www.cdc.gov/violenceprevention/aces/index.html>, accessed November 17, 2023.

COCAINE

Pharmacology of cocaine

Cocaine increases several neurotransmitters in the central nervous system (CNS) that affect mood, sleep, and alertness. Therefore, it has been found to play a role in eliciting anger, aggressiveness, hallucinations, delusions,² and psychotic behavior.

Cocaine is used/abused to achieve an experience of intense pleasure. But as dependence upon cocaine develops, the individual can also experience nervousness, restlessness, agitation, suspiciousness, paranoia, confused thinking, hallucinations, delusions, violence, suicidal ideation, suicide, and homicide. Cocaine use can also result in neurological, cardiovascular, pulmonary, and reproductive organ damage.

Cocaine not only can produce a wide spectrum of psychiatric symptoms, but it can also worsen co-existing mental disorders (e.g., psychosis, mania/depression). In this regard, Brian Dorsey's history of major depressive disorder is noteworthy. Cocaine-related psychiatric disorders have been well-documented in clinical literature and are described in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V)*.

Cocaine use results in a cycle of effects including a highly pleasurable euphoria (*i.e.*, rush), followed by a high that when subsiding will elicit further need to use the drug, which when repeated will produce less of the rush. With repeated use, the user develops a tolerance to the drug's pleasurable effects. To achieve the same level of "high," the user needs to increase the amount of drug they ingest. However, tolerance does not develop equally to all of the drug's effects. Therefore, as the user increases the amount of drug consumed, psychological and behavioral changes occur that they do not seek (e.g., dysphoria, severe paranoia, anger, confused thinking, impaired judgment, hallucinations, delusions, poor coping abilities, impulsivity leading to aggressive and violent behavior, and homicide). Such altered thought processes may be accompanied by high levels of suspiciousness even in a clear state of consciousness. The user is quick to argue and quick to fight. A perceived slight can result in an untoward response against those who are often unaware or even uninvolved. Judgment can be severely impaired without the user realizing it. At times anger may be excessive. Twenty-eight percent of cocaine users reported a violent loss of impulse control.

Binge use of cocaine is a term that describes the repeated use of the drug over the course of several days to weeks. Individuals who use the drug in this manner are referred to as

² A hallmark symptom of a cocaine-induced psychosis is delusions. Delusions are fixed beliefs that are not amenable to change in light of conflicting evidence (DSM-V). In simple terms, delusions are corrupted thoughts of reality, which the individual may recognize as such but is not able to recenter himself into the actual reality of the environment or situation in which he finds himself. In simpler terms, cocaine has created a new reality for the abuser and it is this pseudo-reality to which the individual reacts. The cocaine-induced psychosis can also create hallucinations or false perceptions that occur without an external stimulus. The psychosis creates vivid and clear perceptions with the full force and impact of normal perceptions, and not under voluntary control. Again, the individual is subjected to attempts to cope with the distorted reality.

“bingers.” With repeated use of cocaine, a cocaine dependence develops that can result in cocaine intoxication, cocaine withdrawal,³ cocaine intoxication delirium, cocaine-induced psychotic disorders with hallucinations and/or delusions, cocaine-induced mood disorder, cocaine-induced anxiety disorder, cocaine-induced sexual dysfunction, and cocaine-induced sleep disorder (*DSM-V*). Paranoia and suspiciousness are often the initial symptoms of cocaine-induced psychosis, which has been reported to occur in upwards of 84% of cocaine abusers. In cocaine-dependent individuals, a withdrawal phase from lack of the drug can occur with accompanying hostility, anxiety, paranoia, depression, and an increased craving to obtain more of the drug, as well as the symptoms described above.

It is also quite common for binge users to go without sleep for several days. The sleep deprivation that occurs with this pattern of use further complicates the psychological deterioration produced by the stimulant. Sleep deprivation alone is known to cause irritability, memory loss or short lapses in memory, spells of delirium, hallucinations, moodiness, and sometimes even psychotic behavior.

The psychotic behavior from cocaine toxicity is generally defined as a very profound disruption of normal mental functioning. It is described as a gross impairment in reality testing and the creation of a new reality. When a person is psychotic, they incorrectly evaluate the accuracy of their perceptions and thoughts and make incorrect judgments about external reality. It has been reported in the scientific literature that high-dose cocaine use also can result in intense temporary anxiety resembling panic disorder or generalized anxiety disorder, as well as paranoid ideation and psychotic episodes that resemble schizophrenia.

Cocaine-induced psychosis shows sensitization. With repeated high dosing, the neurons in the brain become more sensitive to cocaine. This is thought to be a mechanism for eliciting cocaine-induced psychosis. The symptoms of this psychosis mirror the symptoms seen in schizophrenia. In other words, the psychosis becomes more severe and occurs more rapidly with continued cocaine use and is characterized by:

- Persecutory delusions
- Paranoia
- Hallucinations (auditory, visual, tactile)
- Extreme agitation, hyperactivity, hypervigilance
- Unpredictable, inappropriate aggressive behavior
- Possible confusion, non-goal-oriented, non-purposeful behavior (*i.e.*, a break with reality in terms of functioning)

³ General stimulant effects of cocaine last for 1-2 hours. Withdrawal symptoms begin when the concentration of cocaine in the blood and brain begins to decline and the drug's effects wear off. Cocaine has a short-half life in the blood on average of approximately 30-90 minutes. Withdrawal after cessation or reduction or prolonged use of cocaine can also result in a dysphoric mood within a few hours with two or more of the following changes: fatigue, vivid, unpleasant dreams, insomnia or hypersomnia, increased appetite, psychomotor retardation, or agitation. All of these symptoms cause clinically significant distress or impairment and are not attributable to another medical condition or disorder. See, <https://emedicine.medscape.com/article/290195-clinical>, accessed November 17, 2023.

In a pattern of binge use of cocaine like Brian Dorsey's, a stimulant withdrawal syndrome develops within hours to days after cessation of stimulant use. As noted above, the withdrawal syndrome is characterized by the development of intense dysphoric (unpleasant) mood with accompanying fatigue, vivid and unpleasant dreams, insomnia or hypersomnia, increased appetite, and reduced activity or agitation, accompanied by suicidal ideation. (*Id.*, fn 2.) Mr. Dorsey's withdrawals following a binge episode resulted in paranoid delusions (Declaration of [REDACTED]). Anhedonia, the inability to feel pleasure, and drug craving may also be present, which can cause significant distress and an inability to function in social settings (*DSM-V*).

Brian's withdrawals following a binge resulted in paranoid delusions (Declaration of [REDACTED]). Cocaine psychosis may remain long after the cocaine has disappeared from the body, *i.e.*, after the cocaine has been completely metabolized by the body.

BRAIN DAMAGE FROM COCAINE ABUSE

Teenagers, more than any other age group, are at risk for substance addiction, and more than any other age group, teens are at risk for permanent intellectual and emotional damage due to the effects of drugs. MRI imaging studies show that the development of the prefrontal cortex of the brain continues into the early 20s, and may not be completed until the mid-20s. The prefrontal cortex is regarded as the executive cortex, which guides our behavior, constrains our impulses, and oversees our responses to people and places in our environment. Compromised executive control may increase the reinforcing properties of drugs and contribute to the development of addictive behavior.

Psychoactive substances are well-known to alter or damage the development of the brain by changing the function of the neurotransmitters the brain uses to communicate with itself. Interference with neurotransmission can directly damage fragile developing neural connections. Psychoactive substances also alter perceptions, which can negatively impact the development of perceptual skills. The use and repeated use of these substances during adolescence become encoded in the brain as habits of thought, perception, and reasoning that can last a lifetime. Over time, teenagers who do not abuse substances become more motivated to think through problems and more likely to develop better solutions as they refine the brain circuits needed for those skills. Powerful psychoactive substances degrade this ability.

Alterations in neurotransmitter function provide the foundation upon which addiction potential and its resulting damaging effects are built. The neurotransmitter dopamine, for example, provides communication between the prefrontal cortex and other areas of the brain that are involved in learning and memory, motivation, and reward. For example, cocaine and methamphetamine cause a markedly accentuated increase in the neurotransmitter dopamine. This increase is associated with supraphysiological effects associated with normal rewarding behaviors. The tremendous sense of reward caused by cocaine and methamphetamine blunts the perception of other types of reward, and over time overrides the ability to sense rewards accurately in day-to-day interactions. For example, the love one receives from family is less rewarding than the use of cocaine, methamphetamine, or other powerful psychoactive drugs. As

the use of these substances continues, the user becomes more and more dependent upon them to function, generally evolving to the point of losing control over their use of the drugs.

Morphological (changes in the structure of the brain), physiological, and neurochemical abnormalities in chronic drug abusers have been demonstrated by using modern diagnostic techniques such as positron emission tomography (PET), computed axial tomography (CAT), magnetic resonance imaging (MRI) and single photon emission computed tomography (SPECT). Various degrees of cerebral atrophy and brain lesions, particularly in the frontal cortex and basal ganglia, were found in cocaine abusers. Patchy deficits in cerebral blood perfusion in the frontal, periventricular, and temporal/parietal areas have also been found in cocaine/polydrug abusers. Further cocaine use acutely aggravates these deficits. The frontal cortex is not fully developed until the early to mid-twenties, so cocaine's damaging effects on an area essential for impulse control will have serious implications for behavioral control and decision-making. Cocaine abuse in adolescents causes persistent changes in the orbital frontal cortex and reduction in impulse control and impairs decision-making. It is noteworthy that Brian Dorsey was abusing cocaine during this critical time of his cortical development.

The clinical literature also notes that there are marked abnormalities in cerebral glucose metabolism in several brain areas in cocaine/polydrug abusers as compared to normal individuals. Chronic cocaine abusers show a marked reduction in the primary source of cellular metabolism, particularly in the cerebral cortex, which is strong evidence of the bioenergetic⁴ deficits in cocaine addicts. Such deficits are typically observed in individuals who have experienced cerebral hypoxia or ischemia and suggest that chronic cocaine/stimulant abusers may have dysfunctional brain energy production that can subsequently lead to the disintegration of cellular membranes and neuronal death.

Chronic cocaine abusers show signs of neurological deficiencies, particularly dysfunction of the basal ganglia and a decrease in neuronal activity in the frontal cortical lobes. These changes appear similar to those found in a variety of neurological/psychiatric disorders. The frontal lobes are considered the executive brain, that is they are critical for working memory, processing our environment, and planning behavioral responses, *i.e.*, problem-solving. Frontal-cortical hypometabolism⁵ has been demonstrated in patients with unipolar and bipolar depression. Severe hypofrontality (*i.e.*, reduced neuronal activity in the frontal lobes of the brain) is also found in patients with schizophrenia, and in patients with frontal lobe degeneration or atrophy. Typically, frontal lobe degeneration is accompanied by dementia, neuropsychological deficits, apathy, depression, and social disinhibition.

Cocaine abusers also show a decrease in the density of a subtype of dopamine receptor in the cerebral cortex, possibly due to degeneration of dopamine nerve terminals. Because dopamine plays a vital role in CNS reward mechanisms, degeneration of dopamine pathways in long-term cocaine abusers suggests that decreased dopamine function may be an underlying

⁴ The study of the transformation of energy in living organisms. <https://www.merriam-webster.com/dictionary/bioenergetics#:~:text=1.blocked%20physical%20and%20psychic%20energy>, accessed November 17, 2023.

⁵ The activity in the cells in the frontal cortex is lower than in a non-user's brain.

cause of anhedonia and is a driving force behind the craving that leads to the relapse of cocaine use.

The most significant psychopathologies observed in cocaine addicts include anhedonia, anxiety, anergia [loss of energy], paranoia, depression, and bipolar mood disorder. These changes can persist in the parietal cortex, temporal cortex, frontal cortex, and basal ganglia for months or years after an individual has stopped using cocaine. These abnormalities are more likely to occur in individuals who are dependent on alcohol and cocaine. According to Brian Dorsey's and his family's statements, he was a chronic abuser of both cocaine and alcohol.

Although cocaine makes people feel more alert and "on top of things" in the moment, it can leave users vulnerable to a much slower brain in the long run. Chronic use of cocaine ages key parts of the brain at an accelerated rate. Cocaine users often experience early cognitive decline and brain atrophy, and new clinical findings show how these users are, indeed, actually losing gray matter in brain regions that control memory, decision-making, and attention at a much faster rate than people who do not use the drug.

Cocaine abusers exhibit an array of cognitive deficits, particularly in attention, problem-solving, abstraction, arithmetic performance, and short-term memory. These deficits seem to correspond to findings of neurological impairments, particularly hypofrontality. Cocaine and polydrug abusers also show deviant brain electrical activity manifested in abnormal EEG patterns.

ALCOHOL ABUSE AND NEUROTOXICITY

Alcohol is like any other general anesthetic: it depresses the central nervous system. However, alcohol also has a disinhibitory effect on behavior, disrupting complex, abstract, and some learned behaviors. A simple way to conceptualize this is that alcohol first reduces the brakes on the brain's excitatory systems and weakens brain mechanisms that normally restrain impulsive behaviors, including inappropriate aggression.

Inhibitions may decline with the result that aggressive and violent behaviors actually increase. Experimental studies on aggression have demonstrated that acute doses of alcohol facilitate aggressive behavior in a dose-related manner. Moreover, alcohol-induced aggression is more likely to occur in users who are consuming excessively within a given drinking episode. By impairing information processing, alcohol can lead a person to misjudge social cues, thereby overreacting to a perceived threat. Simultaneously, a narrowing of attention may lead to an inaccurate assessment of the future risks of acting on an immediate violent impulse.

One of the organs most sensitive to the toxic effects of chronic alcohol consumption is the brain. Brian Dorsey began to use and chronically consume alcohol from the time he was an adolescent. Such chronic use of alcohol can impair brain development, cause alcohol dementia and brain shrinkage, as well as increase neuropsychiatric and cognitive disorders, and distort brain chemistry.

Alcohol abuse also significantly impairs an individual's social skills due to the neurotoxic effects of alcohol on the brain, especially the prefrontal cortex. Alcoholism is associated with dampened activation in brain networks comprised of the areas of the amygdala and hippocampus that are responsible for emotional processing. Alcoholics are impaired in emotional processing, such as interpreting nonverbal emotional cues and recognizing facial expressions of emotion.

Adolescent alcohol abuse has been associated with structural and functional brain features linked to reinforcement-related behavior. Adolescents are more vulnerable to alcohol-induced neurotoxicity. Studies of adolescents with alcohol use disorder have found smaller prefrontal gray and white matter volumes than age-matched controls. Heavy alcohol drinking in adolescents has been associated with reduced gray matter and reduced volume and thickness of the brain's frontal and temporal lobes. Moreover, impulsivity and risk-taking are associated with early alcohol use. Long-term alcohol abuse results in atrophy throughout the brain and particularly in the frontal lobes.

CONCLUSION

It is well-recognized by psychiatrists, neuropsychologists, other mental health providers, and addictionologists that a long-term cocaine addiction can negatively impact an individual's ability to conform their behavior to the laws of society. In its simplest definition, addiction is the loss of control. Brian Dorsey's documented heavy and long-term abuse of cocaine and alcohol by definition constitutes a substance abuse disorder (*i.e.*, addiction). That is, his drug use was out of control for the majority of his life. He was severely dependent on crack cocaine and alcohol and he continued their abuse to the detriment of his well-being. The fact that he experienced paranoia and hallucinations during his heavy use of cocaine suggests that he was experiencing a cocaine-induced psychosis on the night of the events leading up to his conviction.⁶ Paranoia and suspiciousness are the hallmark signs of cocaine-induced psychosis, a condition that can lead to impulsive, aggressive, and violent behavior (*DSM-V*). Chronic cocaine abuse has been linked to neurotoxic and pathological changes in the brain, in particular in the frontal lobes, which are critical for working memory, processing the environment, and planning a behavioral response, *i.e.*, problem-solving.

To be "consciously" aware of one's actions, an individual must be aware of their thoughts, memories, and feelings. On the night of the offense, it is my opinion that Brian's brain had been hijacked by the effects of bingeing on cocaine and alcohol.

Based upon the information provided, it is my opinion that on the day of the offense for which Brian Dorsey was convicted, the toxic effects from bingeing on cocaine followed by a

⁶ A cocaine-induced psychosis, like the psychosis of schizophrenia, results from a major disruption in central nervous system function. With cocaine, the psychosis occurs when the brain is exposed repeatedly and with increasing amounts to the drug. Its psychotic symptoms (most often delusions and hallucinations) will persist until levels of cocaine in the blood and brain decline to a point where the brain can attempt to begin recuperating back toward normal function. Until that point is reached the individual is "at the mercy" of the deranged mental processes causing the cocaine-induced psychosis.

cocaine withdrawal and his ingestion of large amounts of alcohol severely degraded Brian Dorsey's abilities to reason and control his behavioral response to his environment.

Brian's ingestion of large amounts of alcohol likely resulted in alcohol-induced amnesia. There is evidence from Brian's statements that over the several years of his alcohol abuse, he had experienced alcohol-induced blackouts (Declaration of [REDACTED]). Also, Dr. Smith stated in his report that Brian had intermittent memories of the events resulting in the deaths of Sarah Bonnie and Ben Bonnie in December of 2006. This intermittent loss of memory is often referred to as an "alcoholic brownout" or "fragmentary blackout." Details of what happened while intoxicated are missing, and the memories that remain are somewhat vague and distorted.

Brian's attempt to recall the events surrounding the deaths of the Bonnies is consistent with what is termed confabulation. Confabulation is a type of memory error in which gaps in a person's memory are unconsciously filled with fabricated, misinterpreted, or distorted information. When someone confabulates, they confuse things they have imagined with real memories.

At the time of the incident, Brian Dorsey appears to have been suffering from withdrawal from his binge use of cocaine and the intoxicating effects of his use of excessive amounts of alcohol. Cocaine use, especially when repeated frequently, can distort perceptions, and impair judgment, which can result in behavioral toxicity. This behavioral toxicity leads to drug-induced aggression and impairment of mechanisms that the brain uses to inhibit inappropriate behavior. This type of aggression is referred to as impulsive aggression characterized by a lack of planning, precipitation by an immediate frustration, and the absence of clear goals in mind. It typically results from a perceived stressful situation where the individual overreacts to an environmental stressor. The facts reveal that Mr. Dorsey had been pressured to pay back a "drug debt," which forced him to seek monetary relief from family members. He described having to do so painfully difficult and embarrassing.

In my opinion, the cocaine-induced psychosis and the symptoms that occur during cocaine withdrawal, coupled with lack of sleep, and binge use of cocaine and alcohol would have diminished Mr. Dorsey's cognitive abilities, in particular his judgment. Thus, he may not have been able to formulate intent or plan a reasonable or rational response to the perceived or actual behavior of others with whom he was interacting.

Sincerely,



Edward D. French, Ph.D.
Emeritus Professor of Pharmacology
The University of Arizona College of Medicine

ADDENDUM

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Brian Dorsey v. Vandergriff

12/18/2023

DEFENDANT: Brian Dorsey
CIVIL NUMBER: 15-08000
DATE OF BIRTH: 03/21/1972
AGE: 51 Years
CHARGES: Two Counts Capital Murder
DATE OF OFFENSE: 12/23/2006

LEGAL REFERRAL:

Arin Brenner, Assistant Federal Public Defender for the Office of the Federal Public Defender for the Western District of Pennsylvania, contacted me to serve as a forensic psychologist and neuropsychologist consultant in her client and capital defendant's, Brian Dorsey, end-stage proceedings. The Federal Public Defender for the Western District of Pennsylvania is representing Mr. Brian Dorsey in litigation and clemency proceedings prior to his execution, currently scheduled for April 9, 2024. The Federal Public Defender team requested I consult as to potential forensic psychological and neuropsychological issues that are relevant to his case and, in particular, his mental state at the time of the instant offense, as well as potential neuroscientific mitigation evidence.

BRIEF SUMMARY OPINION:

It is my opinion within a reasonable degree of psychological and neuropsychological certainty that at the time of the offenses, Mr. Brian Dorsey had evidence of a genetic based dual diagnosis condition including major depressive disorder, anxiety disorder, and cocaine and alcohol use disorders with cocaine withdrawal and alcohol intoxication. Forensic mental health professionals involved at the trial and postconviction levels presented evidence of Mr. Dorsey's dual diagnosis condition but failed to address neuroscientific issues as to these mitigating mental health conditions and their relationship to his offenses.

RELEVANT HISTORY

I will summarize Mr. Dorsey's history, the offense, and then relevant mitigating psychological and neuropsychological issues.

- Mr. Dorsey's family had a history of mental health and substance abuse issues. His father had a history of dual diagnosis including alcohol abuse and reported depression and a legal history of several DUI arrests. Mr. Dorsey also had a maternal great aunt and a maternal uncle that suffered from substance use problems.

Similarly, Mr. Dorsey had evidence of major depressive disorder and psychiatric treatment for the same with a variety of antidepressant medications and suffered from severe substance use disorders to alcohol and cocaine. His depression was so severe that he attempted suicide in 1992 by overdose of Aspirin and prescription medications. He was psychiatrically hospitalized at St. Mary's Hospital and then transferred to Valley Hope Substance Abuse Treatment Program. Mr. Dorsey continued to suffer from depression, substance abuse, and suicidality, and attempted suicide again in 2004 by cutting his left wrist. Again, he was taken to St. Mary's Hospital and psychiatrically hospitalized. The chronicity of the suicidality ranged essentially from ages 21 to the time of his arrest. Mr. Dorsey acknowledged experimenting and using a number of substances related to alcohol, cocaine, methamphetamine, ecstasy, hallucinogens (mushrooms), Valium, Xanax, and opiates (Darvocet and Percocet). He had a chronic substance use history, beginning use of alcohol at age 14 and drinking frequently in high quantities. He started experimenting with drugs several years later, around age 18, and his drug of choice was cocaine. He consistently, frequently, and intensely used alcohol and cocaine and was under the influence of these substances at the time of the offenses. Mr. Dorsey participated in a number of inpatient and outpatient mental health and substance abuse treatment programs that were ultimately ineffective.

Concerning the nature of the instant offense, it is my understanding that on 12/23/2006, Brian Dorsey called his cousin Sarah Bonnie to borrow money to pay two drug dealers who were in his apartment and demanded payment on a debt. Sarah's husband, Ben, then called his friend Darin Carel and told him that he needed help getting the people to leave Brian Dorsey's apartment. Sarah and Ben drove to Mr. Dorsey's apartment. After the two drug dealers left the apartment, Mr. Dorsey went with Sarah and Ben to their home, where they were joined by Carel and others. At some point after Sarah and Ben went to bed, Mr. Dorsey shot and killed Sarah and Ben. He also allegedly had sexual intercourse with Sarah's body. He then stole personal property items from the home and then allegedly poured bleach on Sarah's body. He left the home in Sarah's vehicle, drove to Jefferson City, and met a woman from whom he had borrowed money to buy drugs and who had previously held him hostage. On 12/26/2006, Mr. Dorsey voluntarily surrendered himself to the police and took responsibility for the deaths of Ben and Sarah. He pled guilty to two

counts of first-degree murder, and the jury sentenced him to death for each murder.

DUAL DIAGNOSIS

Major Depression, Suicide, and Homicide

- Mr. Dorsey's primary psychiatric disorder was major depressive disorder with evidence of suicidality. Major depressive disorder is a common psychiatric illness; it is not only characterized by depression and dysregulation of affect and mood but is also associated with cognitive impairment.

Importantly, there is an established neurobiology of major depressive disorder.¹ Stress hormones are indicated in major depressive disorder due to dysfunction of the hypothalamic pituitary adrenal (HPA) axis.² There is evidence that there are abnormalities in the HPA axis associated with a hyperactive response to stress found in depressed patients. The neurobiological consequences of elevated cortisol levels (stress hormone), have been shown to alter three major areas of the brain, including the medial prefrontal cortex (executive functioning including processing of emotion), the hippocampus (memory and learning), and the amygdala (processing of fear and emotion). This dysregulation places an individual at risk for inadequate processing of negative affect and emotions and proper adaptation to stressful situations.^{3,4,5} It is well-known that the neurotransmitter serotonin is reduced in patients diagnosed with MDD, and that antidepressants, commonly referred to selective serotonin reuptake inhibitors (SSRIs), increase levels of serotonin in the brain.⁶ Overall, MDD has several pathophysiological mechanisms.

Suicidal behavior may be associated with an abnormal physiological stress response. It is

¹ Villanueva R. (2013). "Neurobiology of Major Depressive Disorder." *Neural Plast.* 2013;2013:873278. doi: 10.1155/2013/873278. PMID: 24222865; PMCID: PMC3810062.

² Watson S., Mackin P. (2006). "HPA Axis Function in Mood Disorders." *Psychiatry.* 5(5):166–170.

³ Cerqueira J.J., Pêgo J.M., Taipa R., Bessa J.M., Almeida O.F., Sousa N. (2005). "Morphological Correlates of Corticosteroid-Induced Changes in Prefrontal Cortex-Dependent Behaviors." *J Neurosci.* 24;25(34):7792-800. doi: 10.1523/JNEUROSCI.1598-05.2005. PMID: 16120780; PMCID: PMC6725252.

⁴ Campbell S., MacQueen G. (2006). "An Update on Regional Brain Volume Differences Associated with Mood Disorders." *Current Opinion in Psychiatry.* 19(1):25–33.

⁵ Duman R.S. (2002). "Pathophysiology of Depression: The Concept of Synaptic Plasticity." *European Psychiatry.* 17(3):306–310.

⁶ Jason Dean, Matcheri Keshavan (2017). "The Neurobiology of Depression: An Integrated View." *Asian Journal of Psychiatry.* Volume 27. Pages 101-111. ISSN 1876-2018.

my understanding that Mr. Dorsey had been suicidal immediately before the instant offense. There are similarities in psychopathology and brain function/dysfunction in those who have been suicidal and homicidal.⁷ Research has revealed evidence of neurodegenerative alterations in the cerebral cortex in those who have committed homicide and suicide. Serotonin has again been known to be involved in emotional and cognitive functions including suicidal behavior.⁸ Abnormal neuropsychological, biochemical, neuroanatomical, and endocrinological findings are often characteristic of psychiatric illness and mental disorder.⁹ Low serotonin has been associated with impulsivity and aggression. The elevations of the neurotransmitter norepinephrine (a neurotransmitter hormone plays a critical role in the body's fight or flight response) has also been related to higher levels of aggression and suicidality.^{10,11} Similarly, there are concerns as to the increase of the neurotransmitter dopamine and its association with aggressive behavior and violent suicide attempts and/or completions.¹²

Concerning the neurobiology of homicide, homicide offenders have shown reduced gray matter in areas of the brain responsible for behavioral control and social cognition.¹³ Similarly, suicidal individuals with mood disorder, such as MDD, have also been found to have gray matter volume alterations.

As emphasized, Mr. Dorsey had evidence of mental illness and addiction in his family.

⁷ Stępień T, Heitzman J, Wierzbą-Bobrowicz T, Gosek P, Krajewski P, Chrzczonowicz-Stępień A, Berent J, Jurek T, Bolechała F. (2021). "Neuropathological Changes in the Brains of Suicide Killers." *Biomolecules*. 11;11(11):1674. doi: 10.3390/biom11111674. PMID: 34827673; PMCID: PMC8615963.

⁸ Carballo J.J., Akamnonu C.P., Oquendo M.A. (2008). "Neurobiology of Suicidal Behavior. An Integration of Biological and Clinical Findings." *Arch Suicide Res*. 12(2):93-110. doi: 10.1080/13811110701857004. PMID: 18340592; PMCID: PMC3773872.

⁹ Gottesman I.I., Gould T.D. "The Endophenotype Concept in Psychiatry: Etymology and Strategic Intentions." *American Journal of Psychiatry*.

¹⁰ De Lucas V., Tharmalingam S., Sicard T., et al. (2005). Gene-Gene Interaction Between MAOA and COMT in Suicidal Behavior." *Neuroscience Letters*. 383:151–154.

¹¹ Mann J.J. (2003). "Neurobiology of Suicidal Behaviour. Nature Reviews." *Neuroscience*. 4:819–828.

¹² Rujescu D., Giegling I., Gietl A., et al. (2003). A Functional Single Nucleotide Polymorphism (V158M) in the COMT Gene is Associated with Aggressive Personality Traits." *Biological Psychiatry*. 54:34–39.

¹³ Sajous-Turner A., Anderson N.E., Widdows M., Nyalakanti P., Harenski K., Harenski C., Koenigs M., Decety J., Kiehl K.A. (2020). "Aberrant Brain Gray Matter in Murderers." *Brain Imaging Behav*. 14(5):2050-2061. doi: 10.1007/s11682-019-00155-y. PMID: 31278652; PMCID: PMC6942640.

There are genetic influences to both mental illness and substance use disorders.¹⁴ There is a significant overlap of genetic factors involved in substance use disorders and mood and anxiety disorders.

Cocaine

- Mr. Dorsey's major depression and suicidality coupled with alcohol and cocaine use disorders comprise a severe dual diagnosis condition. A dual diagnosis condition often includes a self-medication effect. As Mr. Dorsey's depression progressed and worsened, his substance use increased. He would use the substances to numb and escape the emotional symptoms of depression such as low self-esteem and hopelessness, but one can only use substances for so long, and when they crash from stimulants they become more depressed, and therefore, their depression is aggravated.

Causes of the comorbidity between mental illness and substance abuse (dual diagnosis) may include evidence of self-medication, genetic vulnerability, environment or lifestyle, underlying shared origins, and/or a common neural substrate.¹⁵

Nearly one-third of the patients with major depressive disorder also experience substance use disorders.¹⁶ Thirty-seven percent of alcohol abusers and fifty-three percent of drug abusers have at least one serious mental illness.¹⁷ There are also concerns that the probability of suicide is elevated in poly drug users which is the case with Mr. Dorsey (alcohol and cocaine).¹⁸ Ninety percent of people who die by suicide have one or more comorbid psychiatric disorders.¹⁹ Incidentally, an Emergency Department study found a

¹⁴ Stoychev K., Dilkov D., Naghavi E., Kamburova Z. (2021). "Genetic Basis of Dual Diagnosis: A Review of Genome-Wide Association Studies (GWAS) Focusing on Patients with Mood or Anxiety Disorders and Co-Occurring Alcohol-Use Disorders." *Diagnostics (Basel)*. 8;11(6):1055. doi: 10.3390/diagnostics11061055. PMID: 34201295; PMCID: PMC8228390.

¹⁵ Buckley P.F. (2006). "Prevalence and Consequences of the Dual Diagnosis of Substance Abuse and Severe Mental Illness." *J Clin Psychiatry*. 67 Suppl 7:5-9. PMID: 16961418.

¹⁶ Davis L., Uezato A., Newell J.M., Frazier E. (2008). "Major Depression and Comorbid Substance Use Disorders." *Curr Opin Psychiatry*. 21(1):14-8. doi: 10.1097/YCO.0b013e3282f32408. PMID: 18281835.

¹⁷ National Mental Health Association (NMHA). Retrieved July 17, 2006, from National Mental Health Association Web site: <http://www.nmha.org/infoctr/factsheets/03.cfm>.

¹⁸ Youssef I.M., Fahmy M.T., Haggag W.L., Mohamed K.A., Baalash A.A. (2016). "Dual Diagnosis and Suicide Probability in Poly-Drug Users." *J Coll Physicians Surg Pak*. 26(2):130-3. PMID: 26876401.

¹⁹ Bertolote J.M., Fleischmann A., De Leo D., et al. (2004). "Psychiatric Diagnoses and Suicide: Revisiting the Evidence." *Crisis*. 25:147-155.

special link between the specific combination of substance misuse to alcohol and cocaine as being a significant risk for suicide, which as noted are the substances that Mr. Dorsey was using at the time of the offenses.²⁰

At the time of the instant offenses, Mr. Dorsey qualified for longstanding cocaine dependence and cocaine withdrawal conditions. Cocaine is a stimulant drug and acts as a central nervous stimulant that energizes the brain and activates and accelerates mental and physical processes. The person may experience a rush including euphoria and extreme mood elevation, alertness, high energy, confidence, increased heart rate and blood pressure, and pupil dilation.²¹ Cocaine blocks and inhibits the reuptake of the neurotransmitter dopamine.²² Higher dopamine levels and dopamine receptor activation can lead to euphoria and arousal.²³ Cocaine also inhibits the serotonin and norepinephrine (neurotransmitters) transporters inhibiting their reuptake. The increased activation of serotonin and norepinephrine lead to the mental and physical effects of cocaine exposure.²⁴ Cocaine intoxication can also lead to psychosis, hallucinations, paranoia, irritability, and aggression.²⁵

²⁰ Arias S.A., Dumas O., Sullivan A.F., Boudreaux E.D., Miller I., Camargo C.A. Jr. (2016). "Substance Use as a Mediator of the Association Between Demographics, Suicide Attempt History, and Future Suicide Attempts in Emergency Department Patients." *Crisis*. 37(5):385-391. doi: 10.1027/0227-5910/a000380. Epub 2016 Apr 4. PMID: 27040130; PMCID: PMC5104660.

²¹ Robert Malcolm, Kelly S. Barth, Lynn M. Veatch, Chapter 68 - Cocaine Addiction, Editor(s): Peter M. Miller, Principles of Addiction, Academic Press, 2013, Pages 669-678

²² NIDA. 2020, June 11. How does cocaine produce its effects?. Retrieved from <https://nida.nih.gov/publications/research-reports/cocaine/how-does-cocaine-produce-its-effects> on 2023, November 21

²³ Wise RA, Robble MA (January 2020). "Dopamine and Addiction". *Annual Review of Psychology*. 71 (1): 79–106. doi:10.1146/annurev-psych-010418-103337. PMID 31905114.

²⁴ Azizi SA (December 2020). "Monoamines: Dopamine, Norepinephrine, and Serotonin, Beyond Modulation, "Switches" That Alter the State of Target Networks". *The Neuroscientist*. 28 (2): 121–143. doi:10.1177/1073858420974336. PMID 33292070. S2CID 228080727.

²⁵ Morton WA. Cocaine and Psychiatric Symptoms. *Prim Care Companion J Clin Psychiatry*. 1999 Aug;1(4):109-113. doi: 10.4088/pcc.v01n0403. PMID: 15014683; PMCID: PMC181074.

Cocaine use and intoxication create a peak of pleasure due to its stimulating effects, and occasionally there may be psychotic symptoms including hallucinations and delusions that arise during and after use.²⁶ This pleasure phase is quickly replaced by a severe depressive phase with related depressive symptoms, anhedonia, anxiety, as well as suicidality.²⁷ The significance of depressive and psychotic symptoms is also related to the level of severity of addiction and as we know, Mr. Dorsey had a severe level of cocaine addiction.²⁸ Research has also indicated that an individual reporting depressive symptoms is more likely to experience psychotic symptoms when using cocaine compared to non-depressive cocaine users.²⁹ Additionally, it is my understanding that Mr. Dorsey had experienced sleep deprivation for about 72 hours at the time of the offenses. Sleep deprivation and severe insomnia can have detrimental effects on brain functioning, even leading to psychotic symptoms.³⁰ More chronic cocaine exposure places an individual for an abnormal sleep recovery pattern, which Mr. Dorsey was at risk for.³¹

Notably, research has indicated that cocaine places an individual at high risk for psychiatric symptoms.³² Cocaine-induced psychosis can occur during intoxication or withdrawal and can lead to hallucinations and delusions with a paranoid-violent theme. Morton (1999) proposes that violent behavior due to cocaine use is predictable based on the effects of

²⁶ Vorspan, Brousse G, Bloch V, Bellais L, Romo L, Guillem E, et al. Cocaine-induced psychotic symptoms in French cocaine addicts. *Psychiatry Res.* (2012) 200:1074–6. doi: 10.1016/j.psychres.2012.04.008

²⁷ D'Souza MS, Markou A. Neural substrates of psychostimulant withdrawal-induced anhedonia. *Curr Top Behav Neurosci.* (2010) 3:119–78. doi: 10.1007/7854_2009_20

²⁸ Conner KR, Pinquart M, Holbrook AP. Meta-analysis of depression and substance use and impairment among cocaine users. *Drug Alcohol Depend.* (2008) 98:13–23. doi: 10.1016/j.drugalcdep.2008.05.005

²⁹ Cabé J, Brousse G, Pereira B, Cabé N, Karsinti E, Zerdazi EH, Icick R, Llorca PM, Bloch V, Vorspan F, De Chazeron I. Influence of Clinical Markers of Dopaminergic Behaviors on Depressive Symptoms During Withdrawal in Cocaine Users. *Front Psychiatry.* 2021 Nov 22;12:775670. doi: 10.3389/fpsy.2021.775670. PMID: 34880796; PMCID: PMC8645893.

³⁰ Petrovsky, Nadine; Ettinger, Ulrich; Hill, Antje; Frenzel, Leonie; Meyhöfer, Inga; Wagner, Michael; Backhaus, Jutta; and Kumari, Veena. (2014). “Articles, Behavior/Cognitive.” *Journal of Neuroscience.* 34 (27) 9134-9140; DOI: <https://doi.org/10.1523/JNEUROSCI.0904-14.2014>.

³¹ Bjorness, T.E., Greene, R.W. (2021). “Interaction Between Cocaine Use and Sleep Behavior: A Comprehensive Review of Cocaine's Disrupting Influence on Sleep Behavior and Sleep Disruptions Influence on Reward Seeking.” *Pharmacol Biochem Behav.* 206:173194. doi: 10.1016/j.pbb.2021.173194. Epub 2021 May 1. PMID: 33940055; PMCID: PMC8519319.

³² Morton WA. Cocaine and Psychiatric Symptoms. *Prim Care Companion J Clin Psychiatry.* 1999 Aug;1(4):109-113. doi: 10.4088/pcc.v01n0403. PMID: 15014683; PMCID: PMC181074.

cocaine on neurotransmitter dysfunction. When considering the connection between cocaine and violence, research has noted pharmacological mechanisms underlying cocaine-associated aggression and violence, likely involve neurotransmitter systems that are affected by cocaine and, in particular, affect the limbic area of the brain.³³

Pertaining to the facts of this case, Mr. Dorsey was experiencing the beginning of a withdrawal condition of cocaine. Importantly, cocaine withdrawal develops after periods of regular cocaine use, and the withdrawal leads to emotional and motivational deficits including depressive symptomatology as well as decreased motor activity, social withdrawal, lower blood pressure, agitation, restlessness, and drug craving.³⁴ The withdrawal effects can have heightened consequences on one who is depressed and suicidal to begin with.

Importantly, mood disordered individuals, in particular those with depression, are at risk of becoming dependent on cocaine and experience an increased suicide risk.^{35 36} Accordingly, there is also neurotransmitter involvement of dopamine in the onset of depressive symptoms during cocaine withdrawal.³⁷ Again, this concern is compounded by his concurrent major depressive disorder and suicidality at the same time of the offense.

It is my understanding in this case that Mr. Dorsey had a severe cocaine use disorder and had crack binges lasting two to five days. Heavy binge users are more likely to be cocaine dependent and experience a withdrawal crash.³⁸ Cocaine withdrawal is not only linked to

³³ Miller NS, Gold MS, Mahler JC. Violent behaviors associated with cocaine use: possible pharmacological mechanisms. *Int J Addict*. 1991 Oct;26(10):1077-88. doi: 10.3109/10826089109058942. PMID: 1683859.

³⁴ Gawin FH, Ellinwood EH (1989). "Cocaine dependence". *Annual Review of Medicine*. 40: 149–61. doi:10.1146/annurev.me.40.020189.001053. PMID 2658744.

³⁵ Icick R, Karsinti E, Lépine J-P, Bloch V, Brousse G, Bellivier F, et al. Serious suicide attempts in outpatients with multiple substance use disorders. *Drug Alcohol Depend*. (2017) 181:63–70. doi: 10.1016/j.drugalcdep.2017.08.037

³⁶ Conway KP, Compton W, Stinson FS, Grant BF. Lifetime comorbidity of DSM-IV mood and anxiety disorders and specific drug use disorders: results from the National Epidemiologic Survey on Alcohol and Related Conditions. *J Clin Psychiatry*. (2006) 67:247–57. doi: 10.4088/jcp.v67n0211

³⁷ Cabé J, Brousse G, Pereira B, Cabé N, Karsinti E, Zerdazi EH, Icick R, Llorca PM, Bloch V, Vorspan F, De Chazeron I. Influence of Clinical Markers of Dopaminergic Behaviors on Depressive Symptoms During Withdrawal in Cocaine Users. *Front Psychiatry*. 2021 Nov 22;12:775670. doi: 10.3389/fpsy.2021.775670. PMID: 34880796; PMCID: PMC8645893.

³⁸ John A. Renner, E. Nalan Ward, CHAPTER 27 - Drug Addiction, Editor(s): Theodore A. Stern, Jerrold F. Rosenbaum, Maurizio Fava, Joseph Biederman, Scott L. Rauch, Massachusetts General Hospital Comprehensive

a depressive crash but also can manifest severe anxiety states based on an increase of release of corticotropin-releasing factor/hormone in the center of the amygdala which is the brain's alarm system and activates the fight/flight response system.³⁹ This area of the brain is critical in regulating decision making instinct and motivation.⁴⁰

Cocaine withdrawal can lead to drastic mood changes and depressive symptomatology which is likely related to changes in dopamine and serotonin release in the nucleus accumbens, a center in the brain responsible for integrating information from cortical and limbic structures that mediate goal-directed behaviors.^{41,42}

Importantly to this case, during the withdrawal phase, anxiety, paranoia, hostility, depression, suicidality, and violence can occur.⁴³ During the intoxication phase, cocaine rewards certain areas of the brain with the release of the neurotransmitter dopamine and during the depressive and agitated withdrawal phase, the neurotransmitters norepinephrine and serotonin are lowered due to the depletion caused by cocaine use.⁴⁴ A concern of violent behavior associated with cocaine and crack cocaine use is predictable based on the effects of cocaine on neurotransmitter dysfunction. As noted, while there are increased levels of neurotransmitters in the brain's pleasure centers, dramatic changes in levels of norepinephrine and serotonin in other parts of the brain might provoke aggression and hyperactivity, paranoia, and impaired judgment and decision making. Inhalation of crack

Clinical Psychiatry, Mosby, 2008, Pages 355-369, ISBN 9780323047432, <https://doi.org/10.1016/B978-0-323-04743-2.50029-9>. (<https://www.sciencedirect.com/science/article/pii/B9780323047432500299>)

³⁹ <https://www.jefferson.edu/academics/colleges-schools-institutes/skmc/departments/neurosurgery/research/cocaine-effects-norepinephrine-amygdala.html>

⁴⁰ Šimić G, Tkalčić M, Vukić V, Mulc D, Španić E, Šagud M, Olucha-Bordonau FE, Vukšić M, R Hof P. Understanding Emotions: Origins and Roles of the Amygdala. *Biomolecules*. 2021 May 31;11(6):823. doi: 10.3390/biom11060823. PMID: 34072960; PMCID: PMC8228195.

⁴¹ Scofield M.D., Heinsbroek J.A., Gipson C.D., Kupchik Y.M., Spencer S., Smith A.C., Roberts-Wolfe D., Kalivas P.W. (2016). "The Nucleus Accumbens: Mechanisms of Addiction across Drug Classes Reflect the Importance of Glutamate Homeostasis." *Pharmacol Rev*. 68(3):816-71. doi: 10.1124/pr.116.012484. PMID: 27363441; PMCID: PMC4931870.

⁴² Nunes J.V., Broderick P.A. (2007). "Novel Research Translates to Clinical Cases of Schizophrenic and Cocaine Psychosis. *Neuropsychiatric Dis Treat*. 3(4):475-85. PMID: 19300576; PMCID: PMC2655083.

⁴³ Weddington W.W., Brown B.S., Haertzen C.A. (1990). "Changes in Mood, Craving, and Sleep During Short Term Abstinence Reported by Male Cocaine Addicts." *Arch Gen Psychiatry*. 47:861-868.

⁴⁴ Morton W.A. (1999). "Cocaine and Psychiatric Symptoms." *Prim Care Companion J Clin Psychiatry*. 1(4):109-113. doi: 10.4088/pcc.v01n0403. PMID: 15014683; PMCID: PMC181074.

cocaine use has been found to produce a more significant and greater amount of anger and violence than intranasal cocaine use.⁴⁵

Additionally, cocaine has been known to destroy gray matter and similar areas of the brain associated with emotional and behavioral functioning such as the temporal lobe, frontal lobe, insula, middle frontal gyrus, superior frontal gyrus, and limbic lobe regions.⁴⁶

Alcohol

- At the time of the instant offense, Mr. Dorsey qualified for alcohol intoxication. There is a significant link between alcohol intoxication, violence, and homicidal offending, with 48% of homicide offenders being under the influence of alcohol and 37% being intoxicated at the time of their offenses.⁴⁷

When considering the effects of alcohol, neurotransmitters, and violence, alcohol activates dopamine circuits in several regions of the brain including the nucleus accumbens, frontal cortex, and amygdala, and this effect is thought to play a role in its relationship with aggression and violence.⁴⁸ There has been recent research citing that alcohol and stimulants may cause a dose-related aggression.⁴⁹ The combination of both alcohol and cocaine can lead to violent thoughts and threats and increase violent behaviors.⁵⁰ Cocaine users who also abuse alcohol are more likely to engage in deviant and/or violent

⁴⁵ Giannini A.J., Miller N.S., Loisel R.H., et al. (1993). "Cocaine-Associated Violence and Relationship to Route of Administration." *J Sub Abuse Treatment*. 10:67-69.

⁴⁶ Beheshti I. (2023). "Cocaine Destroys Gray Matter Brain Cells and Accelerates Brain Aging. *Biology*. *Basel*. 21;12(5):752. doi: 10.3390/biology12050752. PMID: 37237564; PMCID: PMC10215125.

⁴⁷ Kuhns, J. B., Exum, M. L., Clodfelter, T. A., & Bottia, M. C. (2014). "The Prevalence of Alcohol-Involved Homicide Offending: A Meta-Analytic Review." *Homicide Studies*. 18(3):251-270.

⁴⁸ Fritz, M.; Soravia, S.-M.; Dudeck, M.; Malli, L.; Fakhoury, M. (2023). "Neurobiology of Aggression—Review of Recent Findings and Relationship with Alcohol and Trauma." *Biology* 12, 469. <https://doi.org/10.3390/biology12030469>.

⁴⁹ Kuypers K., Verkes R.J., van den Brink W., van Amsterdam J., Ramaekers J.G. (2020). "Intoxicated Aggression: Do Alcohol and Stimulants Cause Dose-Related Aggression? A review." *Eur Neuropsychopharmacol*. 30:114-147. doi: 10.1016/j.euroneuro.2018.06.001. Epub 2018 Jun 23. PMID: 29941239.

⁵⁰ Pennings E.J., Leccese A.P., Wolff F.A. (2002). "Effects of Concurrent Use of Alcohol and Cocaine." *Addiction*. 97(7):773-83. doi: 10.1046/j.1360-0443.2002.00158.x. PMID: 12133112.

behaviors.⁵¹ While it is well-established that alcohol dependence increases one's risk for suicide, research has also outlined that alcohol intoxication is associated with violent methods of suicide.⁵²

Additionally, chronic alcohol use is associated with changes of brain structure and connectivity, including lower gray matter reductions in areas responsible for emotional and behavioral functioning such as the prefrontal cortex, insula, superior temporal gyrus, limbic areas, thalamus and supramarginal regions, insula, and middle frontal gyrus.^{53,54,55}

Drug Overdose and the Brain

- Mr. Dorsey had at least one drug overdose crisis where he apparently lost consciousness. There are long term effects of drug overdoses on the brain (toxic brain injury). Drug overdose can lead to an impedance of nutrients, such as oxygen that is required for normal brain function. Toxic brain injury may lead to alterations in neurotransmitters, brain tissue, nutrients, blood, and oxygen, and can cause brain damage, injury, and neuronal death. Furthermore, toxic brain injury can also lead to psychiatric disorders including major depression, anxiety, and psychosis and an overall dual diagnosis condition. Drug-related overdoses can have significant detrimental impact on brain structure and function.⁵⁶ A diagnosis of leukoencephalopathy, a form of encephalopathy (brain dysfunction) that

⁵¹ Denison M.E., Paredes A., Booth J.B. (1997). "Alcohol and Cocaine Interactions and Aggressive Behaviors." *Recent Dev Alcohol*. 13:283-303. doi: 10.1007/0-306-47141-8_15. PMID: 9122499.

⁵² Kaplan M.S., McFarland B.H., Huguet N., Conner K., Caetano R., Giesbrecht N., Nolte K.B. (2013) "Acute Alcohol Intoxication and Suicide: A Gender-Stratified Analysis of the National Violent Death Reporting System." *Inj Prev*. 19(1):38-43. doi: 10.1136/injuryprev-2012-040317. Epub 2012 May 24. PMID: 22627777; PMCID: PMC3760342.

⁵³ Daviet, R., Aydogan, G., Jagannathan, K. et al. (2022). "Associations Between Alcohol Consumption and Gray and White Matter Volumes in the UK Biobank." *Nat Commun*. 13, 1175. <https://doi.org/10.1038/s41467-022-28735-5>.

⁵⁴ Wang P., Zhang R., Jiang X., Wei S., Wang F., Tang Y. (2020). "Gray Matter Volume Alterations Associated with Suicidal Ideation and Suicide Attempts in Patients with Mood Disorders." *Ann Gen Psychiatry*. 10;19(1):69. doi: 10.1186/s12991-020-00318-y. PMID: 33302965; PMCID: PMC7727241.

⁵⁵ Lee Y.J., Kim S., Gwak A.R., Kim S.J., Kang S.G., Na K.S., Son Y.D., Park J. (2016). "Decreased Regional Gray Matter Volume in Suicide Attempters Compared to Suicide Non-Attempters with Major Depressive Disorders." *Compr Psychiatry*. 67:59–65. doi: 10.1016/j.comppsy.2016.02.013.

⁵⁶ Winstanley E.L., Mahoney J.J. 3rd, Castillo F., Comer S.D. (2021). "Neurocognitive Impairments and Brain Abnormalities Resulting from Opioid-Related Overdoses: A Systematic Review." *Drug Alcohol Depend*. 226:108838. doi: 10.1016/j.drugalcdep.2021.108838. Epub 2021 Jun 24. PMID: 34271512; PMCID: PMC8889511.

specifically affects white matter has been found as a consequence of overdose.⁵⁷ There is more significant risk of damage to white matter tracts devoted to higher cerebral function.⁵⁸

PRIOR MITIGATION EVIDENCE

- Relevant to mental health mitigation investigations at the trial level, Mr. Dorsey was evaluated by clinical psychologist, Robert Smith, Ph.D. Dr. Smith had seen Mr. Dorsey in 2007 and 2008 and focused on Mr. Dorsey's dual-diagnosis condition. He described that Mr. Dorsey had intermittent memory of the events regarding the instant offenses due to his intoxicated state and proneness to alcohol-related blackouts. Dr. Smith diagnosed Mr. Dorsey with major depressive disorder, alcohol dependence, and cocaine dependence. He noted that the substances directly affected Mr. Dorsey's cognitive functioning causing impulsivity, mood swings, irritability, poor judgment, difficulty concentrating, and distortions of memory. Throughout the time prior to the offense, Mr. Dorsey consumed an excessive amount of alcohol and cocaine. Dr. Smith opined that each of these disorders would significantly impair Mr. Dorsey's perception of his behavior at the time of the instant offense. The combination of these two disorders had a synergistic effect, and each disorder exacerbated the effects of the other.

I will highlight that Dr. Smith emphasized Mr. Dorsey's dual diagnosis condition. However, he did not seem to detail how Mr. Dorsey's brain would have been affected by the combination and interaction of the acute psychosocial stressors (fear of being held hostage, shame about getting his family involved, feelings of abandonment by his parents for refusing to enable him for the first time, etc.); psychiatric disorders; and drug effects at the time of the instant offenses.

Dr. Smith did not describe the genetic and environmental risk factors related to an onset of mental illness (major depressive disorder) and substance dependence (alcohol and cocaine). Dr. Smith also did not provide any type of neuroscience testimony as to Mr. Dorsey's psychiatric and substance use disorders.

Mr. Dorsey was also evaluated by a forensic psychiatrist, A. E. Daniel in 2011 for his post-conviction relief motion. He also testified during the PCR hearing. The psychiatrist diagnosed Mr. Dorsey with major depressive disorder recurrent without psychotic features versus bipolar disorder type II, cocaine dependence, and polysubstance dependence to crack-cocaine and alcohol. Dr. Daniel opined that Mr. Dorsey did not have the right state

⁵⁷ Lyon G., Fattal-Valevski A., Kolodny E.H. (2006). "Leukodystrophies: Clinical and Genetic Aspects. Top." *Magn. Reson. Imaging*. 17 (4), 219–242.

⁵⁸ Filley C.M., Kleinschmidt-DeMasters B.K. (2001). "Toxic Leukoencephalopathy." *N. Engl. J. Med* 345 (6), 425–432.

of mind to form the necessary intent to commit first degree murder. Similarly to Dr. Smith, Dr. Daniel did not provide any neuroscience based information and testimony as to brain mechanisms, structure, and function pertaining to Mr. Dorsey's dual-diagnosis condition and its relationship to the instant offenses.

NEW MITIGATION EVIDENCE

- When considering the data outlined in this case, I have concerns about Mr. Dorsey's profound dual diagnosis condition, emphasized by his major depressive disorder and suicidality and chronic alcohol and cocaine use disorders, as well as the acute alcohol intoxication and cocaine withdrawal states that he was experiencing at the time of the instant offenses. Critical to this case, there are a number of neurotransmitters, i.e., serotonin, norepinephrine, and dopamine that play profound roles in major areas of the brain that are responsible for emotional, behavioral, and executive functioning, i.e., prefrontal cortex, striatum, and insula. Ironically, major depressive disorder, suicidality, alcohol, and cocaine effect the same neurotransmitters and many of the same critical areas of the brain responsible for emotional and behavioral processing and regulation. The neurobiology and neuroanatomy of the brain is dramatically affected by the combination of psychiatric disorder and the effects of substance use, which is relevant in this case.

Ideally, there would have been neurotransmitter blood testing lab information and neuroimaging implemented in this case. Neuroimaging techniques have enabled the study of drug abuse interactions and consequences on brain structure and function.⁵⁹ Most research assessing the neuroimaging of dual-diagnosis has relied upon magnetic resonance imaging (MRI) that have included voxel-based morphometry (VBN) to study volumetric differences in a number of areas of the brain.⁶⁰ Diffuse tensor imaging (DTI) measures the connectivity and integrity of the white matter of the brain, which is critical in transmitting information from one area of the brain to another. DTI helps explain neuropathological mechanisms and different neuropsychiatric conditions.⁶¹ Furthermore, positive emission tomography (PET) functional magnetic resonance imaging (fMRI), single-photon emission commuted tomography (SPECT), and magnetic resonance spectroscopy (MRS) are neuroimaging techniques which have been found to address the detrimental effects of

⁵⁹ Fowler JS, Volkow ND, Kassed CA, Chang L. Imaging the addicted human brain. *Sci Pract Perspect.* 2007;3(2):4-16. doi:10.1151/spp07324

⁶⁰ Stoychev, K.R. (2019). "Neuroimaging Studies in Patients With Mental Disorder and Co-occurring Substance Use Disorder: Summary of Findings." *Front Psychiatry.* 23;10:702. doi: 10.3389/fpsy.2019.00702. PMID: 31708805; PMCID: PMC6819501.

⁶¹ Cherubini, A., Spoletini, I., Peran, P., Luccichenti, G., Di, P.M., Sancesario, G., et al. (2010). "A Multimodal MRI Investigation of the Subventricular Zone in Mild Cognitive Impairment and Alzheimer's Disease Patients." *Neurosci. Lett.* 469, 214-218. Doi: 10.1016/j.neulet.2009.11.077.

substance abuse on brain functioning (executive functioning, reward, memory, and stress systems).⁶²

Expert witness testimony should have illuminated the fact that Mr. Dorsey did not exhibit a pattern of violence by history, but there were a constellation of psychiatric symptoms, substance use, and situational stressors that led to his offenses.

Finally, further investigation and evaluation regarding forensic legal issues pertaining to Mr. Dorsey's mental state at the time of the instant offenses was lacking. Pursuant to MO RS § 565.020 ("A person commits the offense of murder in the first degree if he or she knowingly causes the death of another person after deliberation upon the matter"); § 565.002(5) ("Deliberation" means "cool reflection for any length of time no matter how brief[.]"). I have concerns that Mr. Dorsey's combination and interaction of immediate psychosocial stressors; psychiatric symptoms; and effects of substances on brain functioning impaired his cognitive, emotional, and behavioral capacity and overall mental state at the time of the offenses. From a forensic mental health perspective, these factors potentially compromised his capacity to be consciously aware of his actions and their consequences.

Respectfully submitted,

John Matthew Fabian

/s/ John Matthew Fabian

e signature

John Matthew Fabian, PSY.D., J.D., ABPP
Board Certified Forensic & Clinical Psychologist
Forensic & Clinical Neuropsychologist

⁶² Murnane KS, Edinoff AN, Cornett EM, Kaye AD. Updated Perspectives on the Neurobiology of Substance Use Disorders Using Neuroimaging. *Subst Abuse Rehabil.* 2023 Aug 10;14:99-111. doi: 10.2147/SAR.S362861. PMID: 37583934; PMCID: PMC10424678.

DANIEL FORENSIC PSYCHIATRIC SERVICES

Teleph

PSYCHIATRIC REPORT BY A. E. DANIEL, MD

Name: Brian Dorsey (DOB: 3/21/1972)

Brian Dorsey, a 51-year-old white male, was sentenced to death after he pled guilty to two counts of First Degree Murder which occurred on December 23, 2006, in Callaway County, Missouri. Currently, he is housed at Potosi Correctional Center.

Purpose of the Report:

The purpose of this psychiatric report is to provide my opinions to Mr. Dorsey's counsel for their use as necessary.

I interviewed Mr. Dorsey in 2011 for several hours in connection with his Post-Conviction Relief (PCR) motion and testified during the PCR hearing. I have reviewed his records as part of my evaluation and, later, several additional documents identified below.

My Qualifications:

I, a Board Certified psychiatrist in the State of Missouri for the past 49 years, have held senior governmental administrative positions, including the Superintendent of Mid-Missouri Mental Health Center, Columbia, Missouri (1984-1991), the Director of Psychiatric Services for the Missouri Department of Corrections (2000- 2007) and Clinical Professor of Psychiatry at the University of Missouri (1988-2012).

During my career, I have performed over 1200 pretrial psychiatric evaluations of criminal defendants and have testified during numerous competency hearings and trials involving insanity defense. Furthermore, since 1991, I have testified in numerous PCR hearings.

As the Director of Psychiatric Services for the Missouri Department of Corrections, I worked with the correctional staff in providing evaluation and treatment services to inmates at Potosi Correctional Center and other centers such as Jefferson City Correctional Center and Eastern Reception and Diagnostic Correctional Center at Bonne Terre. I had the occasion to closely observe and evaluate inmates, particularly their adjustment to incarceration, interaction with the staff and other inmates, conduct violations, and employment. I have found that stable employment and the absence of conduct violations are the most significant factors in predicting an inmate's future risk of violence to others.

Earlier in my career, in the 1990s, I had the privilege of providing recommendations to Governor Carnahan for his consideration of commutation of sentences of five women who were convicted of murdering their spouses, who abused and battered them.

I continue to practice forensic psychiatry and provide expert consultations on suicide in jails and prison-related lawsuits in many jurisdictions in the US.

Records Reviewed:

1. Mr. Dorsey's Social History completed by Cindy Malone, MSW, Capital Mitigation Specialist
2. Barber School Records
3. Capital Region Medical Center, Jefferson City Records
4. Two Rivers Psychiatric Hospital, Kansas City Records
5. GED records
6. St. Mary's Hospital, Jefferson City Records
7. Criminal Records
8. Anthem Blue Cross and Shield Records
9. Mexico Recovery Center Records
10. Valley Hope Rehabilitation Center, Boonville Records
11. Permanent Employment Records
12. Report by Joseph Smith, Ph. D, dated August 25, 2007, and March 31, 2008
13. Testimony by A. E. Daniel, MD, during Mr. Dorsey's PCR hearing
14. Testimony by Joseph Smith, Ph.D. during Mr. Dorsey's PCR hearing
15. Testimony by Robert Smith, Ph.D. during trial
16. Callaway County Jail records
17. Records from the Missouri Department of Corrections
18. Declaration of Mark Cunningham, Ph. D
19. Declaration of Christopher Slusher, attorney at law
20. [REDACTED] Affidavit
21. Declaration of Valerie Leftwich, attorney at law

This report is abbreviated because much of what I would ordinarily include in such a report was part of my testimony at the Rule 29.15 post-conviction hearing on December 7-8, 2011.

Diagnoses of Mr. Dorsey at the Time He Committed the Offenses:

1. Major depressive Disorder, Recurrent without psychotic Features vs. Bipolar Disorder, Type II
2. Cocaine Dependence
3. Polysubstance Dependence - Crack Cocaine and Alcohol.

Mr. Dorsey's State of Mind at the Time of the Offenses:

Based on the information that I gathered from him during my three lengthy interviews, interview with his parents, review of all records, including the testimony by Dr. Smith and myself, I conclude with a reasonable degree of medical certainty that Mr. Dorsey met the criteria for a mental disease or defect at the time of the offenses as per the Missouri Statute RSMO 552, due to Major Depressive Disorder, cocaine withdrawal, and lack of sleep. Mr. Dorsey also used alcohol extensively to self-medicate his Major Depressive Disorder.

I further conclude that because of the severely altered mental state caused by these conditions during the night of December 23, 2006, he *did not have the requisite state of mind to form the necessary intent to commit first-degree murder. Furthermore, he could not coolly reflect the pros and cons of his actions at the time.* In short, I fully concur with the conclusions of

Robert L. Smith, Ph.D., who testified at Mr. Dorsey's trial. Because he testified only at the capital sentencing proceeding, he did not have an opportunity to explain to the jury that Mr. Dorsey did not coolly reflect on his actions, and, to a reasonable degree of medical certainty, did not deliberate before committing the homicides.

Mr. Dorsey has expressed significant remorse for his actions and accepted full responsibility. However, he could not fully recall the events of the night because of blackouts and repression of the painful events that he generally recalled as soon as the effects of alcohol and cocaine wore off. As a result, he continued to repress the painful memories. Given his drug and alcohol use and lack of sleep, this is not unusual, particularly after experiencing so traumatic an event.

During my interview with Mr. Dorsey, he vaguely recalled standing over Sarah but he had no recollection of actually shooting her and Ben. As he recovered from the state of intoxication and had slept for an extended time the next day, he became overwhelmed with guilt and horror of the trauma that he caused to Sarah, Ben, himself and his family. In this context, it is likely that he made presumptions that filled in the gaps in his memory, admitting to his guilt and responsibility. These two explanations, i.e., his patchy memories of the events during the night of December 23, 2006 and admission of shooting Sarah and Ben can simultaneously co-exist because of his severe mental illness, alcohol intoxication and cocaine withdrawal. Once he pieced together generally what happened during the night of December 23, 2006, he never wavered in accepting his guilt and responsibility.

Mr. Dorsey's Adaptation to Incarceration:

Mr. Dorsey has adjusted remarkably well to prison life. His absence of conduct violations, lack of membership in a gang, and stability of employment as a barber at the Missouri Department of Corrections during the last 14 years are unique. In addition, he was never involved in any assaultive or sexual violence before the December 23, 2006 incidents.

In my professional experience working in the Missouri Department of Corrections for eight years, and reviewing the records of inmates in numerous jails and prisons in the US, I have not seen an inmate with absolutely no conduct violations over a very long time other than Mr. Dorsey.

Mr. Dorsey would adjust remarkably well to a life sentence. During his pretrial confinement in Callaway County Jail and South Central Correctional Center (SCCC), Mr. Dorsey had no conduct violations (disciplinary infractions). In addition, records show that he was in the general population in the honor unit at SCCC rather than in restricted housing, indicating the security staff considered him of no risk. He has also lived in an honor dorm at Potosi Correctional Center for over a decade. The absence of pretrial infractions strongly shows, from a predictive perspective, his potential for future violence is minimal.

Records from the Potosi Correctional Center since 2008 reflect he has never had any disciplinary infraction over the past 14 years. In addition, the investigative report and affidavit by [REDACTED] indicate that Mr. Dorsey did not cause any behavior problems and was well adjusted to a life of confinement, was productive as a barber, and maintained emotional stability in his relationship with the correctional staff and inmates. I fully concur with the conclusions reached by Dr. Mark Cunningham.

Mr. Dorsey's good institutional adjustment is confirmed by his Department of Corrections records. A typical medical summary, for example, such as that of December 19, 2017, shows

that he has been well adjusted, showing no evidence of violence and problem behaviors. Furthermore, they show his positive attitude to staff and other inmates.

It states that "his institutional adjustment is deemed to be good, as he has apparently made a satisfactory adjustment to incarceration and his CP status. The offender has been in the honor dorm for the past 12 months and has received no Conduct Violations. Officers stated that he conforms to institutional rules and has a good attitude towards staff."



A. E. Daniel, M.D.

Date of Report: June 14, 2023



MISSOURI STATE PUBLIC DEFENDER

Mary Fox, Director

February 14, 2024

The Honorable Michael L. Parson
Governor
Capitol Building, Room 216
Jefferson City, MO 65101

RE: Clemency Petition for Brian J. Dorsey

Dear Governor Parson:

I am writing in support of the clemency application of Brian J. Dorsey who is scheduled to be executed on April 9, 2024.

Mr. Dorsey is scheduled to be the second execution within a year of a person represented by private counsel paid a flat fee by Missouri State Public Defender to provide death penalty representation. That flat fee payment arrangement occurred seventeen years ago in 2007. That payment of a flat fee for Mr. Dorsey's representation in a death penalty case no longer occurs as it is recognized that it was a violation of the ABA Guidelines and Missouri Rules of Professional Conduct. Missouri State Public Defender acknowledges the prevalence of unconstitutional and ineffective assistance of counsel in death penalty flat fee cases and as a result now only provides representation in death penalty cases through the specially trained and supervised attorneys in our three Capital Litigation Offices.

The 2003 American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Guideline 9.1B.1 provides:

“Counsel in death penalty cases should be fully compensated at a rate that is commensurate with the provision of high-quality legal representation and reflects the extraordinary responsibilities inherent in death penalty representation. 1. Flat fees, caps on compensation, and lump-sum contracts are improper in death penalty cases.”

Even the 1989 version of these standards mandated an hourly rate for death penalty counsel. Mr. Dorsey's counsel, however, were each paid a flat fee of \$12,000. A typical death penalty case involves over 3,500 hours of work and that flat fee would equate to a fee of a little over three dollars an hour, as opposed to the hourly rate of \$200 per hour paid in federal capital cases in Missouri.

Rule 4-1.7(a)(2) of the Missouri Rules of Professional Conduct for attorneys provides:

“...a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if...there is a significant risk that the representation of one or more

clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer."

The result of the flat fee representation is clear, counsel has no incentive to spend the time to provide the client with effective assistance of counsel. That result is crystal clear in Mr. Dorsey's case where a plea of guilty was entered by Mr. Dorsey to the capital charge, after absolutely no investigation or negotiation on Mr. Dorsey's behalf and against the advice of experienced capital counsel.

The flat fee counsel conducted no investigation into the facts of the case, did no mitigation investigation, presented no expert witness testimony, conducted no investigation into Mr. Dorsey's mental state, and presented an instruction on only one mitigating circumstance, but then presented no expert or other testimony on that mitigating circumstance.

I do not know Mr. Dorsey, but I am deeply impressed by the impact he has had on the correctional staff who have lived with him for these many years. With no incentive to speak on his behalf, they have been able to acknowledge the dignity of his life and the reality that a State action to end his life serves no purpose.

I respectfully request that you consider all the information provided to you on behalf of Mr. Dorsey, grant his request for clemency, and allow him to continue to serve others while being incarcerated in the Department of Corrections for the remainder of his natural life.

Sincerely,

A handwritten signature in black ink that reads "Mary Fox". The signature is written in a cursive, flowing style.

Mary Fox
Director, Missouri State Public Defender



December 22, 2023

Re: Flat Fee Contracts in Death Penalty Cases

To Whom It May Concern,

On behalf of the National Association of Criminal Defense Lawyers, I write to express our opposition to the use of flat fee contracting for public defense representation. This practice is contrary to the promise of our nation's constitution--that every person has a right to counsel and to a meaningful opportunity to defend themselves against the state's accusation, and the use of such a contract in a capital case is abhorrent to the fundamental notions of justice.

NACDL is the nation's preeminent organization advancing the interests of the nation's criminal defense bar, to ensure justice and due process for persons accused of crime or wrongdoing. With more than 10,000 members across the country, and 90 state, regional, and local affiliate organizations with tens of thousands more members, we represent defense lawyers from all parts of the criminal legal system, including private criminal defense lawyers, public defenders, military defense counsel, law professors, judges, and others who share our vision for a rational and humane criminal justice system. Critical to our mission are our efforts to identify and reform flaws and inequities in the criminal legal system and address systemic racism and its impact on the administration of justice.

Flat fee contracts pit the financial interests of the defense lawyer directly against the interests of their clients as each moment spent working on the case (drafting and filing motions, meeting with the client, interviewing a witness, etc.) reduces the lawyer's income. While this is not to say lawyers are only acting to further their financial gains, the fact remains that flat fee contracts, like virtually all public defense representation, typically pay poorly. Inherently, these contracts incentivize lawyers to maximize profit by minimizing the time invested in representation. While the attorney's ethical obligation calls for them to be a zealous advocate, it is challenging to do so when the lawyer suffers financially for every moment spent on the case.

Recognizing this inherent conflict of interest, and to bring consistency, clarity, and a high level of representation to death penalty cases, more than 20 years ago the American Bar Association published the Guidelines for Appointment and Performance of Defense Counsel in Death Penalty Cases ("ABA Guidelines"). The ABA Guidelines outline the skills, strategies, and techniques necessary for an effective defense in capital cases and the common mistakes that lead to injustices. This compendium of best practices today is recognized as the national standard of care for the defense effort in death penalty cases.



Guideline 9.1 addresses compensation for capital lawyers, including recognizing:

“Counsel in death penalty cases should be fully compensated at a rate that is commensurate with the provision of high quality legal representation and reflects the extraordinary responsibilities inherent in death penalty representation.”

In the immediate wake of their call for adequate compensation for those attorneys entrusted with the awesome responsibility of protecting another individual’s very life, the ABA also specifically called for [an end to the use of flat fees](#), compensation caps, and lump sum contracts for any death penalty case.

NACDL shares the ABA’s views. In May of 2003, NACDL adopted and endorsed the ABA Guidelines and with it called for an end to flat fee contracts.

Often viewed as a “cost control measure,” flat fee contracts put dollars before due process, deciding long before a verdict is reached, that those accused are deserving of only a veneer of justice. It is for this reason that more and more states (Nevada, Michigan, Idaho, South Dakota, and Washington, just to name a few) are moving toward [eliminating the use of such practices](#), either through legislation or court action.

The 6th Amendment guarantees that every person, regardless of their charges or resources, has a skilled, well-resourced, and zealous advocate by their side when they stand accused of a crime. A death penalty defense attorney who is compensated by flat fees, caps and/or lump-sum contracts is not a well-resourced advocate.

Please do not hesitate to contact me should you have any questions.

Sincerely,

Michael P. Heiskell
President, NACDL



SCHOOL OF LAW

March 4, 2024

Honorable Michael Parson
Governor
Capitol Building Room 216
Jefferson City, MO 65101

Re: Clemency Petition for Brian Dorsey

Dear Governor Parson,

There are rare cases where those of us who sit in judgment of a man convicted of capital murder got it wrong. The decisions affirming Brian Dorsey's death sentence is just such a case, even though there is no dispute that Mr. Dorsey killed the two victims in the case.

While there are many reasons that others may cite in support of Mr. Dorsey's Petition for Clemency (not the least of which are the pleas from his correctional institution's officers), mine relates to a rare failing of the legal system itself. I was one of the Missouri Supreme Court judges who upheld the judgment including his sentence of death in the direct appeal of Mr. Dorsey's case in 2009. At that time, none of us on the Court were aware of how compromised and ineffective his trial lawyers were. The first defect, which undoubtedly influenced everything, was that the two lawyers who were appointed to represent Mr. Dorsey were paid a flat fee by the Missouri Public Defender System. Missouri Public Defenders now do not use the flat fee for defense in recognition of the professional standard that such an arrangement gives the attorney an inherent financial conflict of interest. In this case, none of the basic preparations were done to determine whether Mr. Dorsey truly was eligible for the death penalty.

The undisputed fact that Mr. Dorsey killed the two victims in this case does not qualify him for the death penalty. In the circumstances of Mr. Dorsey's case, which was before the Court on direct appeal and post-conviction appeal, the attorneys and the Court did not know what we now know, that Mr. Dorsey was in a drug induced psychosis at the time of the crime and incapable of deliberation, which is the required mental state for capital murder. The fact that Mr. Dorsey's attorneys pleaded him guilty with death penalty as a possibility, without doing the expert evaluation or investigation which would have shown that he had a viable defense to the death penalty, was clearly caused or induced by the conflict created by the flat fee arrangement. Had these attorneys done even the minimum work on this crucial point, they would have known that he had a defense and that they actually could and should negotiate a guilty plea without the imposition of the death sentence or go to trial and make that case before the jury.

The legal system has changed regarding flat fees in capital cases since 2008, when Mr. Dorsey was convicted. Missouri State Public Defender no longer does this arrangement, as I have noted, and Mary Fox, director of the Public Defender Program, is quite clear about this. The Public Defender recognizes now that this is a conflict of interest of a financial nature that skews the sentences with unfortunate and dire results and violates best practices as delineated by the American Bar Association and is contrary to the Missouri Rules of Professional Conduct. None of this was evident at the time I sat in judgment of Mr. Dorsey's direct appeal, nor was it known to the court when there was a subsequent appeal of his Rule 29.15 post-conviction matter, where the question of competency of counsel is litigated.

Higher purpose. Greater good.

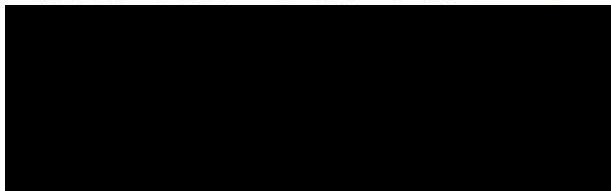
Mr. Dorsey is an outstanding candidate for clemency. The only thing that I would suggest, and I believe Mr. Dorsey is requesting, is that he be relieved of being executed by the State. He will of course spend the rest of his life in prison for the crimes he has committed. Executing Mr. Dorsey, however, will dishonor our system of capital punishment.

I sincerely ask you to take this into account in determining how you exercise the discretion that our Constitution gives to you, and you alone, to grant or deny clemency to Mr. Dorsey.

Sincerely,



Michael A. Wolff
Judge, retired; Dean, retired
Professor *Emeritus*



February 22, 2024

Dear Governor Parson,

We, Republican Representatives of Missouri, are writing you in support of clemency for Brian Dorsey, who is scheduled for execution on April 9, 2024. We believe in law and order and that criminals must be punished. Brian Dorsey, however, is uniquely deserving of mercy and should not be executed. We are not asking for his release, but we strongly believe that life without the possibility of parole is the appropriate sentence in this case.

Mr. Dorsey's impeccable record over seventeen years of incarceration, and the overwhelming support for clemency from over 70 correctional officers and the former warden of the prison, indicate that Mr. Dorsey is a rehabilitated man. It is our understanding that this is the first time correctional officers have come out in such numbers to publicly support clemency in a capital case. We, like you, have always supported law enforcement throughout our careers. With so many officers supporting clemency, we believe their voices should be recognized.

We are also concerned that the flat fee contract paid to Mr. Dorsey's attorneys negatively impacted their representation of him, given that they pleaded Mr. Dorsey guilty to a capital offense without any benefit, and with the death penalty still on the table. We recognize that the Missouri State Public Defender no longer utilizes flat fee contracts in capital cases because of the skewed financial incentives. Given these circumstances, we have serious questions whether Mr. Dorsey's death sentence was ever a just sentence in this case.

In any event, given who Mr. Dorsey is today and that he is not a risk if allowed to live out the rest of his life in prison, while giving back to society and providing a service to the state as the staff barber, we strongly believe that a commutation to life without the possibility of parole is now the just result in this. We strongly urge you to show Mr. Dorsey mercy and grant him a commutation.

Sincerely,


District 64


District 32


District 105

March 5, 2024

Mr. Evan Rodriguez
General Counsel
Office of the Governor Michael L. Parson
P.O. Box 720
Jefferson City, MO 65102
Via email: Evan.Rodriguez@governor.mo.gov

Re: Clemency Petition for Brian Dorsey

Dear Governor Parson and Mr. Rodriguez:

We are law professors from each of Missouri's law schools who have extensive experience teaching legal ethics and/or criminal law and criminal procedure. As this letter will explain, we strongly support the clemency petition for Brian Dorsey because his trial counsel, who received a low flat fee of \$12,000 each, had a personal conflict of interest in that the low flat fee incentivized them to minimize the time spent on his representation. As a result, they pleaded their client guilty for no benefit (with the death penalty still on the table), before they conducted investigation of the case or completed a necessary expert evaluation of their client. Had they investigated the case and completed the psychological evaluation of their client, they would have known that they had a viable defense to first-degree capital murder because their client did not have the requisite mens rea. With this knowledge, they could have negotiated on behalf of their client to obtain a plea deal with an actual benefit, or proceeded to trial with a plausible defense. Moreover, despite the fact that counsel's work was limited to investigation of mitigation evidence and preparation for the penalty phase, the investigation into Mr. Dorsey's background was shallow and superficial, and the jury that sentenced him to die heard virtually nothing about his troubled upbringing and long history of mental health symptoms.

The American Bar Association (ABA) has promulgated *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*.¹ Guideline 9.1B.1. addresses funding and compensation of defense counsel, and it states: "Flat fees, caps on compensation, and lump-sum contracts are improper in death penalty cases."² This guideline recognizes that flat fees lead attorneys to cut corners and perform minimal work for their clients. As the *ABA Standards for Criminal Justice: Providing Defense Services* further explains: "The possible effect of such rates is to discourage lawyers from doing more than what is minimally necessary to qualify for flat payment."³ Based on our understanding of Mr. Dorsey's plea and sentencing,

¹ The ABA GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF DEFENSE COUNSEL IN DEATH PENALTY CASES is available at

https://www.americanbar.org/groups/committees/death_penalty_representation/resources/aba_guidelines/2003-guidelines/.

² Guideline 9.1 B.1, available at

https://www.americanbar.org/groups/committees/death_penalty_representation/resources/aba_guidelines/2003-guidelines/2003-guideline-9-1/.

³ ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES Standard 5-2.4 (3rd ed. 1992).

his counsel were discouraged from providing Mr. Dorsey with the level of representation he deserved.

Rule 4-1.7(a)(2) Missouri Rules of Professional Conduct states, in relevant part, that a concurrent conflict of interest exists when “there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer.” The flat fee contract that resentencing counsel had created such a personal conflict of interest – the personal interests of counsel were to perform as little work as possible to earn their fee.

Mr. Dorsey’s assigned counsel admitted that that their funding arrangements with the Missouri Public Defender System hamstrung their investigation. All competent capital defense teams use skilled mitigation specialists, who function like forensic psychiatric social workers in the investigation and preparation of a thorough social history that is necessary for reliable mental health findings. However, assigned counsel admitted that his funding arrangement with the public defender did not allow him to retain a mitigation specialist. Instead, he used a secretary/paralegal from his firm, and Rollin Thompson, an investigator from his firm with no mental health training or experience. Thompson testified that he only conducted telephone interviews of a few mitigation witnesses, which in itself is substandard work. Mr. Dorsey’s mitigation case was literally “phoned in.”

Although some life history records had been collected by the public defender system, there was clearly no follow-up on the content of those records by a skilled mitigation specialist. This is a serious lapse on the part of the defense team because the unskilled and narrow investigation left the mitigation case without sufficient depth of information to support a persuasive theory of mitigation or withstand adversarial testing at the penalty phase.

Empirical data shows that capital jurors “attach significant mitigating potential to facts and circumstances that show diminished mental capacity, such as mental retardation or extreme emotional or mental disturbance at the time of the offense.”⁴ While there is data that jurors may have little patience for defendants who attribute their wrongdoing to drugs or alcohol,⁵ Data also indicates that introduction of drug involvement in the underlying crime during the guilt-or-innocence stage of the crime can set the table for an effective penalty phase defense based on mental or emotional impairment and remorse.⁶ Trial counsel’s testimony indicates that no consideration whatsoever was given to the pursuit of diminished mental capacity or other avenues which would have supported an argument for conviction of a noncapital lesser offense or laid the groundwork for a robust penalty phase defense. A thorough life history investigation would have presented defense counsel with a broad range of viable alternatives that would not have been as vulnerable to the prosecutor’s predictable attack. Reviewing the totality of the work performed by Mr. Dorsey’s public defenders, cumulatively, the mitigation and mental health case developed in state court is shallow, superficial, and incomplete.

⁴ Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What Do Jurors Think?*, 98 COLUMBIA L. REV. 1538, 1539 (1998).

⁵ *Id.*

⁶ Scott E. Sundby, *The Capital Jury and Absolution: The Intersection of Trial Strategy, Remorse and the Death Penalty*, 83 CORNELL L. REV. 1557, 1594 (1998).

Attached in the addendum is just a brief summary of the investigation that was never undertaken by Mr. Dorsey’s defense counsel, but could have and should have been undertaken. Because the many categories of mitigation, which could have been addressed by countless witness who were never contacted was less put on the stand, the evidence in the addendum was never heard by the jury. The limitations on review inherent to our federalist system mean that this evidence has never been considered by any court or given the significant weight it should have bene accorded.

Unfortunately, after the adoption of the Anti-Terrorism and Effective Death Penalty Act, counsel who were appointed to represent Mr. Dorsey in federal habeas corpus proceedings were not able to investigate and develop the complete mitigation case that trial counsel should have presented for Mr. Dorsey.⁷ Mr. Dorsey’s clemency application is his first and only opportunity to have his evidence considered.

It is our opinion that the flat fee arrangement denied Mr. Dorsey adequate legal representation, a fair trial, and a fair sentencing trial. Mr. Dorsey was not able to present in state and federal court all of his evidence supporting his claim that his assigned lawyers were ineffective because of procedural technicalities that bar federal courts from considering evidence that was not uncovered and presented by counsel assigned by the Missouri Public Defender System. This application is Mr. Dorsey’s first opportunity to present all of his evidence, free of technical procedural barriers. Our conclusion, based on our review of the evidence and the record, is that Mr. Dorsey did not receive the level of representation necessary to support a reliable jury verdict that he deserves to be put to death.

We urge you to consider Mr. Dorsey’s clemency petition in light of the conflict of interest his resentencing counsel had, and their resulting poor performance, and we urge you to recommend that Governor Parson grant the clemency petition.

Sincerely,

Peter A. Joy
Henry Hitchcock Professor of Law
Washington University in St. Louis*

Chad W. Flanders
Professor of Law
St. Louis University*

Barbara Glesner Fines
Dean & Ruby M. Hulen Professor of Law
University of Missouri Kansas City*

Patrick Brayer
Associate Professor of Law
University of Missouri Kansas City*

Sean O’Brien
Professor of Law
University of Missouri Kansas City*

Rodney J. Uphoff
Elwood L. Thomas Missouri
Endowed Professor Emeritus
University of Missouri Columbia*

⁷ See 28 U.S.C. sec. 2254(e), forbidding a federal court from hearing evidence that the habeas petitioner “failed to develop” in state court proceedings.

* Titles and university affiliations are for identification purposes only.

Joseph C. Welling
Adjunct Professor of Law
St. Louis University*

Jennifer Merrigan
Adjunct Professor of Law
Washington University School of Law*

ADDENDUM

SEAN D. O'BRIEN

March 4, 2024

Mr. Evan Rodriguez
General Counsel
Office of the Governor Michael L. Parson
P.O. Box 720
Jefferson City, MO 65102
Via email: Evan.Rodriguez@governor.mo.gov

Dear Governor Parson and Mr. Rodriguez,

I am writing in support of Mr. Brian Dorsey's application for commutation of his sentence from death to life without the possibility of parole. I have some expertise in capital punishment law and procedure. I was the chief public defender in Kansas City in the 1980's, and in the 1990's until I joined the faculty of UMKC Law School in 2005 I was Executive Director of the Death Penalty Litigation Clinic, originally called the Missouri Capital Punishment Resource Center, a federal Community Defender Organization that specialized in the representation of people under sentence of death. I have qualified as an expert witness on capital punishment and performance of counsel issues in death penalty cases in state and federal courts in seventeen state and the U.S. Military, and I have been asked to provide testimony on issues affecting capital punishment by members of the Missouri, Kansas and Nebraska legislatures. Lawyers appointed to represent people on death row across the United States often ask me for help and advice on their cases. Mr. Dorsey's federal habeas corpus attorney, Rebecca Woodman, asked me to provide an assessment of the funding needed to investigate and develop the case that should have been presented to Mr. Dorsey's sentencing jury. I provided a detailed affidavit in support of Ms. Woodman's funding motion. Unfortunately, that motion was denied because of procedural barriers put in place by the Anti-Terrorism and Effective Death Penalty Act, which prohibits a federal court from hearing evidence that the habeas petitioner failed to develop in state court. Unfortunately, the investigation that I recommended as necessary to a constitutional death penalty sentencing trial has never been completed. I respectfully suggest that you consider the work that was not done in time to be of any use to Mr. Dorsey in his legal proceedings.

My first step in responding to Ms. Woodman's request was to meet with her and then review all the documents in the case that were available, including school records, trial transcripts, police reports, and other information that was available. These records provided substantial investigative leads that had never been pursued. As you know from your years of experience as a law enforcement officer, investigation is circular; documents are used to identify

ADDENDUM

events and witnesses, and investigative interviews identify more events, more documents, and more witnesses. I am the primary researcher and author of the national standards for investigating and developing mitigation evidence in death penalty cases.¹ The thorough life history investigation described in those standards had not been conducted in Mr. Dorsey's case by his trial or postconviction attorneys.

My review of the trial record and Mr. Dorsey's life history documents indicated that there are entire categories of mitigating evidence that were not explored by Mr. Dorsey's trial and state post-conviction counsel. The defense did present evidence about Mr. Dorsey's drug use, but addictions are often co-morbid with other mental or emotional disorders and trauma, including head injuries. There is no evidence that any of Brian Dorsey's immediate or extended family were questioned about such subjects. The picture that the defense testimony gave the jury was that the Dorsey family was a large, close-knit family that enjoyed regular reunions and outings together, and that Mr. Dorsey was the sole exception. That was at best only half true: addiction issues typically run in families, yet there is no indication that qualified interviews were conducted of Brian Dorsey's extended family. Family members who testified at trial were never asked about family mental health or addiction history, and include

[REDACTED]

The foregoing witnesses either testified or were mentioned during the trial, so trial counsel unquestionably had notice that they could possess relevant mitigating evidence. However, there is no indication that any witness was asked about the important issues regarding Brian's personal and family history.

I also identified at least 17 family witnesses who were never interviewed in person by any member of Mr. Dorsey's defense teams, but who were a part of Mr. Dorsey's life as a child, adolescent, and young adult. These witnesses include:

[REDACTED]

¹ *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*, 36 HOFSTRA L. REV. 677 (2008).

ADDENDUM

[REDACTED]

Competent capital defense teams will interview employers and coworkers who can shed light on the client's character and ability to function. Mr. Dorsey's trial and post-conviction counsel failed to present any evidence of Mr. Dorsey's efforts to earn an honest living and creating a stable life for himself, as described in part by [REDACTED], a Jefferson City attorney who coached one of Mr. Dorsey's little league baseball teams and testified that Mr. Dorsey learned to cut hair and worked for [REDACTED] barber, whose name was never mentioned, but who is clearly a person who should have been interviewed. Mr. Dorsey's mother testified that Brian worked for two or three years at Dollar General in Jefferson City, but there was no attempt to interview supervisors or coworkers there. Mr. Dorsey met [REDACTED] [REDACTED], through his employment at Dollar General. Employers and co-workers can be a rich source of mitigation evidence because they have personal knowledge of the clients' strengths and weaknesses in social settings and in the work environment. Such evidence can help trace the client's ability to function over time, and can humanize the defendant to the jury, as they can relate to witnesses with whom they can identify. In addition the 17 family members who were never interviewed, we identified at least nine former employers and co-workers whom trial counsel never interviewed.

Teachers and coaches are also an important source of mitigating evidence. Mr. Dorsey's friend Rudy York testified at trial about coaches who worked with Mr. Dorsey in his youth, who should have been interviewed by trial and post-conviction counsel. He identified by name at least five coaches who had worked with Mr. Dorsey, but only one, Coach Ron Cole, was interviewed by trial counsel. Mr. York testified, "The coaches would actually try to make Mr. Dorsey mad to make him, you know, more aggressive. That's the truth." However York and Cole were asked only general questions about Mr. Dorsey's playing days. It would have been important to know that Mr. Dorsey played as a defensive lineman under Jefferson City High School Coach Pete Atkins, the winningest high school football coach in Missouri history. It would have been important for the jury to have heard from Coach Atkins about Mr. Dorsey's contributions to the Blue Jays' championship seasons.

Football coaches and players should also have been interviewed about Mr. Dorsey's potential head trauma from playing competitive high school football. Trial counsel asked no one was asked about times when Mr. Dorsey "had his bell rung" in play or in practice. Given what is known about head injuries in high school sports and the high risk created by multiple concussions, it was very important for trial and post-conviction counsel to ask Rudy, all the coaches, and fellow players about times when Mr. Dorsey may have taken a hit to the head in practice or during games. Such experiences are known to correlate highly with addiction, impulsive and violent behavior later in life. Indeed, this was the case with Jovan Belcher, the Kansas City Chiefs player who killed his fiancée and then himself. Autopsy findings confirmed that he suffered Chronic Traumatic Encephalopathy (CTE), a form of brain damage found in athletes and others with a history of repetitive brain injuries.² Mr. Dorsey played football

² See Steven Marcus and Bob Glauber, *Jovan Belcher Autopsy Shows Signs of CTE, Brain Damage*, *NEWSDAY*, Sept. 29, 2014, available online at <http://www.newsday.com/sports/football/jovan-belcher-autopsy-showed-signs-of-cte-brain-damage-1.9437224>. Also see Tracy B. Carter, *From Youth Sports to Collegiate Athletics to Professional*

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throughout his youth, so this was vital history for the defense to explore. This is in addition to other reasons that school records and teachers are routinely explored in the defense of death penalty cases.

It was also vital to interview Mr. Dorsey's friends, [REDACTED], to fill in the gaping holes in Mr. Dorsey's development and life history and describe Mr. Dorsey's positive qualities. Such witnesses often provide a more objective view of the defendant's family and life history. The trial transcript provides multiple leads to friends and acquaintances; I identified in the records at least fifty friends, teammates, and associates who were never interviewed by trial counsel.

Testimony at trial from Mr. Dorsey's mother established that he was treated for addiction and mental health problems in multiple facilities, including St. Mary's Hospital, Two Rivers Psychiatric Hospital, and Valley Hope in Booneville. She also named Dr. John Lyskowski, M.D., who treated Mr. Dorsey at St. Mary's after his suicide attempt. Mr. Dorsey's mental health records that were in counsel's possession identify a number of treating health care experts. Interviewing these witnesses is extremely important because "juries tend to view experts as 'hired guns' who are cloistered from the real world, rather than as objective authorities who understand what is really happening on the streets.... By contrast, juries find certain types of lay witnesses particularly persuasive precisely because they are seen as trustworthy and full of worldly knowledge."³ Non-retained treating experts were described by capital jurors as "highly influential" in many cases in which they testified, and, unlike retained experts, almost never "backfired" on the defense.⁴ Therefore competent capital defense lawyers understand that it is essential to talk to the professionals who treated the client in various settings throughout his life. That was not done by trial or post-conviction counsel in this case.

In all, I identified nearly 100 potential mitigation witnesses who lived in the area, were familiar with Mr. Dorsey, and would have been easy for trial counsel to locate and interview. The fact that it was not done is inexcusable when the client's life is on the line.

I have reviewed the statements of Warden Troy Steele and corrections officers submitted in support of Mr. Dorsey's application for clemency. In my experience this level of support from corrections professionals for a man under sentence of death is exceedingly rare, if not unprecedented. While all of these law enforcement personnel met Mr. Dorsey only after he was sentenced to death, the consistency of their observations over time is good evidence of who Mr. Dorsey truly is as a person, independent of his falling into drug use at the time of his crime. It is the best evidence of who Mr. Dorsey is when these other outside pressures and influences are removed. With a competent mitigation investigation and presentation at the time of Mr. Dorsey's trial, the jury could have been shown the same person whom Warden Steele and his fellow Missouri Department of Corrections professionals are describing to you today. My point in

Leagues: Is There Really "Informed Consent" by Athletes Regarding Sports-Related Concussions, 84 UMKC L. Rev. 331 (2015), discussing the frequency of concussion-related injuries in contact sports and the long-term impairments associated with CTE.

³ Scott E. Sundby, *The Jury As Critic: An Empirical Look at How Capital Juries Perceive Expert and Lay Testimony*, 83 VA. L. REV. 1109, 1115 (1997).

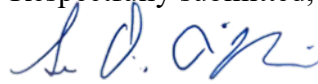
⁴ *Id.*

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urging clemency for Mr. Dorsey is not just that these corrections professionals see Mr. Dorsey as a man who should be spared, but that competent representation at his trial would have enabled the jury to see him that way, too.

I am available to you and your staff for any other assistance you would like in considering Mr. Dorsey's application for clemency. Thank you for your consideration.

Respectfully submitted,



Sean D. O'Brien

March 14, 2024

The Honorable Michael Parson
Governor of Missouri
Capitol Building Room 216
Jefferson City, MO 65101

Re: April 9, 2024, Scheduled Execution of Brian Dorsey

Dear Governor Parson,

I am writing on behalf of the American Bar Association (“ABA”) regarding Missouri death-row prisoner Brian Dorsey, who is scheduled to be executed on April 9, 2024.

While the ABA does not take a position for or against the death penalty *per se*, it is committed to advocating for due process of law and effective representation by qualified counsel in all capital cases. The ABA has long observed that the quality of representation provided to indigent defendants is directly linked to fairness and accuracy in death penalty cases. The ABA’s *Guidelines for the Appointment & Performance of Defense Counsel in Death Penalty Cases* (“ABA Guidelines”)¹ set forth longstanding and well-accepted professional norms that promote high quality representation and have been recognized by courts and lawmakers throughout the country as reflecting the standard of care in capital defense.² These Guidelines bar the use of low bid or flat fee contracts in capital cases because of “the adverse effects such schemes have on capital representation.”³

I understand that Mr. Dorsey’s two trial attorneys were paid a low flat fee for their representation and persuaded their client to plead guilty without any concessions from the State, without the benefit of an adequate investigation, and without empowering their client to make an informed decision. Based on the information that has previously been presented to the courts, it appears that Mr. Dorsey’s death sentence could have been the product of ethically conflicted representation that fell far below prevailing professional norms. Because the courts have been unable to give meaningful consideration to these issues, I urge you to exercise your authority under the Missouri Constitution to commute his sentence to life in prison without the possibility of parole.

¹ ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, 31 Hofstra L. Rev. 913 (2003), available at <https://ambar.org/2003guidelines>.

² See, e.g., *Rompilla v. Beard*, 545 U.S. 374 (2005); *Florida v. Nixon*, 543 U.S. 175 (2004); *Wiggins v. Smith*, 539 U.S. 510 (2003); *Ortiz v. United States*, 664 F.3d 1151, 1163 (8th Cir. 2011); *Taylor v. Steele*, 372 F.Supp.3d 800 (E.D. Mo. 2019). See also ABA Death Penalty Representation Project, List of Opinions Citing the ABA Guidelines (2021), http://www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/allcite_s.authcheckdam.pdf.

³ See ABA Guideline 9.1, commentary, at 987.

The ABA has long advocated for capital attorneys to be fully compensated at a rate consistent with high quality representation, saying that “**flat fees, caps on compensation, and lump-sum contracts are improper in death penalty cases.**”⁴ Flat-fee contracts not only provide insufficient funding for the “extraordinary efforts” required of capital defense counsel,⁵ they also place counsel in an ethical quagmire, forcing a choice between their own livelihood and zealous advocacy for their client. The ABA Guidelines note that “[w]hen assigned counsel is paid a predetermined fee for the case regardless of the number of hours of work actually demanded by the representation, there is an unacceptable risk that counsel will limit the amount of time invested in the representation in order to maximize the return on the fixed fee.”⁶ This conflict is magnified when the flat fee is far below the market rate.

Courts reviewing this case have found that Mr. Dorsey’s two defense attorneys were appointed pursuant to a flat fee arrangement.⁷ Each attorney received \$12,000 as compensation for the entirety of their work—whether they went to trial or not. Some level of additional funding may have been available for ancillary services such as experts and investigators, but no further payment would be made to the lawyers themselves, regardless of actual time invested.⁸ Drawing upon decades of expertise gained from working with capital defense lawyers, the ABA has observed that preparing and litigating a capital trial typically involves thousands of attorney hours.⁹ Even setting aside the cost of supporting services and the overhead costs of running a law office, Mr. Dorsey’s counsel were faced with the prospect of earning less than \$10 an hour for work that could occupy their entire legal practice for a year or more. Because of the nature of the fee arrangement, these attorneys would receive the same amount whether they put in all the time needed to properly prepare for a capital trial or whether they did *nothing at all*.¹⁰ Operating under this flat fee arrangement, it appears that defense counsel failed to conduct a proper investigation, draw from any of the funds allocated by the court to pay an investigator, or hire a mitigation specialist.¹¹ Any such limitations on counsel’s investigation into Mr. Dorsey’s state of mind during the homicides and his life history fell below accepted norms of representation.¹²

⁴ ABA Guideline 9.1(B)(1).

⁵ ABA Guideline 1.1, commentary, at 923 (“Due to the extraordinary and irrevocable nature of the penalty, at every stage of the proceedings counsel must make ‘extraordinary efforts on behalf of the accused.’”). *See also* Guideline 9.1 (“Counsel in death penalty cases should be fully compensated at a rate that ... reflects the extraordinary responsibilities inherent in death penalty representation.”).

⁶ ABA Guideline 9.1, commentary, at 988.

⁷ *See, e.g., Dorsey v. State*, 448 S.W.3d 276, 300 (Mo. 2014) (“Counsel were paid \$12,000 each for representing Mr. Dorsey regardless of whether the case proceeded to trial or ended in a guilty plea.”).

⁸ *Id.*

⁹ *See* ABA Guideline 6.1, commentary, at 968 (“[R]ecent studies indicate that several thousand hours are typically required to provide appropriate representation”). Assuming a modest estimate of 2,500 attorney hours to adequately prepare and try Mr. Dorsey’s case, his counsel would have earned \$9.60/hour under their flat fee contract – not even taking into account the cost of paying their in-house investigator or other overhead expenses.

¹⁰ Pet. for Writ of Habeas Corpus, *Dorsey v. Vandergriff*, No. SC100388, at 9 (Mo. Dec. 21, 2023).

¹¹ *Id.* at 10-11, 28-29. *See also* ABA Guideline 10.4 (requiring lead counsel to form a defense team that includes, at minimum, two qualified lawyers, a fact investigator, a mitigation specialist, and someone trained to screen for the presence of mental disorders).

¹² *See* ABA Guideline 10.7 (calling upon counsel to conduct a “thorough and independent investigation” that includes detailed evaluation of the facts of the crime, the State’s evidence, and the client’s mental and physical health and history); *Wiggins v. Smith*, 539 U.S. 510, 524 (2003) (finding counsel’s performance deficient because “counsel abandoned their investigation of petitioner’s background after having acquired only rudimentary knowledge of his history from a narrow set of sources.”).

Instead, trial counsel advised Mr. Dorsey to plead guilty—which eliminated the need to invest time into investigating the evidence of their client’s guilt and to subject the State’s case to meaningful adversarial testing.¹³ They introduced the possibility of pleading guilty to Mr. Dorsey for the *first time on the morning of the scheduled plea hearing* and advised him to plead guilty.¹⁴ Mr. Dorsey had no opportunity to reflect on this decision or consult with his family.¹⁵ His attorneys lacked the information needed to advise him on the likelihood of success at trial, because they had not completed their investigation.¹⁶ There was no plea “deal” offered by the State. In exchange for a course of action that was entirely to the benefit of his lawyers and conferred no advantage to Mr. Dorsey, he was left vulnerable to a death sentence.¹⁷ As the U.S. Supreme Court has rightly observed, pleading guilty in a capital case under such circumstances without any reciprocal concessions from the State “holds little if any benefit for the defendant.”¹⁸

Had counsel invested even a little more time before urging their client to plead guilty, they would have learned that Mr. Dorsey had a viable guilt-phase defense based on his diminished capacity at the time of the offense, and they could have properly advised their client about the risks and benefits of proceeding to trial.¹⁹ It is notable that trial counsel later attempted to introduce this evidence of Mr. Dorsey’s diminished capacity during sentencing proceedings, having recognized its significance.²⁰ Unfortunately for Mr. Dorsey, this recognition came too late. He had already pled guilty to having the required mental state for the offense, and the court excluded the evidence from consideration during sentencing. The ABA Guidelines note the critical importance of “mak[ing] certain that the client understands the rights to be waived by entering the plea and that the client’s decision to waive those rights is knowing, voluntary and intelligent.”²¹ When defense counsel fails to invest the time and effort necessary to investigate the case, they cannot possibly advise their client in a way that allows him to make that informed decision.

The impact of trial counsel’s advice to Mr. Dorsey has no remedy in the courts, and executive clemency is the last meaningful path available to him. While Mr. Dorsey’s post-conviction counsel attempted to raise claims related to his counsel’s conflicted representation, these efforts were hamstrung by his trial counsel’s ongoing ethical conflict along with procedural technicalities that prevented courts from properly considering the merits of his claims.²² Executive clemency is a unique part of our American legal tradition that allows for the presentation of evidence that the courts were unable to properly consider, free from procedural

¹³ Pet. for Writ of Habeas Corpus at 25.

¹⁴ *Id.* at 10, 25.

¹⁵ *Id.*

¹⁶ *Id.* at 41.

¹⁷ *Id.* at 10, 25.

¹⁸ *Florida v. Nixon*, 543 U.S. 175, 191 n. 6 (2004) (citing ABA Guideline 10.9.2).

¹⁹ Pet. for Writ of Habeas Corpus at 42.

²⁰ *Id.*

²¹ Guideline 10.9.2(B)(1)(a).

²² See *Dorsey v. State*, 448 S.W.3d at 300 (relying upon trial counsel’s testimony that there was no conflict without further examination into the tension between counsel’s finances and the duties necessary to defend a capital client); *Dorsey v. Steele*, No. 4:15-08000-CV-RK, 2019 WL 4740518, *4-5 (W.D. Mo. Sep. 27, 2019) (deferring to state court judgment under procedural rules because of a lack of prior decisions of the U.S. Supreme Court based on the same fact pattern).

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limitations and other rules that prioritize expedience over fairness. The U.S. Supreme Court has described executive clemency as the “fail-safe in our criminal justice system.”²³ Here a decision to grant clemency would not only result in a more balanced outcome based on the arguments for mercy in Mr. Dorsey’s case that the jury never heard, but it would also protect the integrity of the legal profession and justice system by preventing an execution from proceeding under the specter of injustice created by the conflict of interest inherent to flat fee systems.

As the decision maker in Missouri, we urge you to exercise your clemency powers and commute Mr. Dorsey’s sentence to life without the possibility of parole.

Sincerely,

A rectangular box containing a handwritten signature in cursive script that reads "Mary Smith".

Mary Smith

²³ *Herrera v. Collins*, 506 U.S. 390, 414 (1993).



Date: February 7, 2024
To: The Honorable Michael Parson
Governor
Capitol Building, Room 216
Jefferson City, MO 65101
From: Mallory Rusch, Executive Director , Empower Missouri
RE: Clemency Petition for Michael Dorsey

I am writing in support of the clemency application for Brian Dorsey, who is scheduled to be executed by the State of Missouri on April 9, 2024.

Empower Missouri has been committed for over 120 years to improving the quality of life for all Missouri residents through advocacy and policy change. Since our inception, Empower Missouri has focused on the criminal justice system and its impacts. We are opposed to the death penalty, but understand that many in our state feel differently. However, regardless of your stance towards capital punishment, the evidence is clear that Brian Dorsey's case was mishandled from the beginning, and he should have never received the death penalty. There are three primary points to consider: the flat fee payment structure used that disincentivized Brian's attorneys from providing competent counsel, the wealth of mitigating evidence that was not considered at trial, and Brian's institutional record during his time incarcerated that has led to an outpouring of support for Brian's clemency from current and former correctional officers.

Brian Dorsey stands convicted of killing his cousin Sarah and her husband Ben Bonnie. Brian was represented at the retrial of his sentencing hearing by contract counsel paid a flat fee by Missouri State Public Defender. The state paid Brian's attorneys, Chris Slusher and Scott McBride, just \$12,000 each to represent Brian at both trial and sentencing. To put that number in context, the average capital case takes *3,557 hours* of work. Had the attorneys done the kind of work one expects in a capital case, they would have made *\$3.37 per hour*. Counsel appointed to a federal capital case in Missouri (which has no flat-fee system) make \$210 per hour.

MSPD no longer contracts death penalty cases to contract attorneys for flat fees, and the process is contrary to both the American Bar Association's guidelines for death penalty cases and the Missouri Rules of Professional Conduct. The use of flat fees disincentivizes attorneys from performing the essential mitigation investigation, trial preparation, and trial presentation work necessary to effectively represent a person charged with a capital offense. The representation provided by Brian Dosey's counsel demonstrates that flat fee compensation is not appropriate in death penalty cases, as he received subpar representation across the board.



Here are just a few examples of the inferior representation Brian was subjected to: his attorneys advised him to plead guilty before they fully investigated his case and without securing a life-without-parole sentence in exchange. They never hired a capital investigator, despite being granted the funding to do so. Then, despite staking Brian's life on mitigation, they never hired or used a mitigation specialist. Unsurprisingly, they missed significant and readily available mitigating evidence that might have persuaded the jury to spare Brian's life.

The wealth of mitigating factors that should have been presented at trial includes Brian's mental health challenges, history of head trauma, family history of substance use, and, most critically, testimony from Brian and Sarah's family members. Brian had a lifelong history of major depression that was resistant to medication, had attempted suicide twice and was hospitalized several times due to mental health crises. His depression was a primary factor in his substance use, which had spiraled out of control the night Brian killed Sarah and Ben. Perhaps the most important mitigating evidence left out by his attorneys was the live testimony provided by Brian and Sarah's family members. Eleven victim-family members wrote to the trial court judge before sentencing, asking him not to impose the death penalty. Brian's attorneys failed to interview, prepare, and call those family members as witnesses on Brian's behalf for the penalty phase of the trial, forfeiting a critical opportunity to humanize Brian in the eyes of the jury and show that much of the victim's family did not believe Brian deserved to die. We now know that many more family members would have added their voices to this chorus had they been asked.

Brian has been incarcerated for the past 17 years, and in that time has not received even a single disciplinary infraction. There has been an unprecedented outpouring of support from prison staff for his clemency petition, with over 65 current and former correctional officers signing on. During his time in prison, Brian has been assigned the honor of being the prison's barber for the other incarcerated people, the staff of the prison, and even a warden. Despite the dark place he was in before coming to prison and his capital sentence, Brian has been a shining light inside prison walls for staff and incarcerated people alike.

Had Brian's attorneys done an adequate job representing him, he would never have been given the death penalty. The flat fee payment structure used to pay his attorneys was a major injustice to Brian, disincentivizing his representation from doing the bare minimum to ensure Brian faced a fair trial. They failed to provide massive amounts of mitigating evidence at trial, evidence which the jury could have taken into account when considering Brian's sentence. In his time incarcerated, Brian has shown that he is an asset to the community at Potosi Correctional Center. Executing him would be a gross miscarriage of justice. We hope that you take these factors into consideration and grant Brian Dorsey clemency. Thank you for your time.

Christopher Santillan



14th March 2024

To whom it may concern,

My name is Christopher Santillan, co-founder of Unlocked Labs, a non-profit organization that employs Justice-Impacted Individuals to build the infrastructure to provide access to education in correctional facilities. Prior to this, I myself was incarcerated in Potosi Correctional Center for 28 years for a crime I committed as a juvenile.

During my time in PCC I had the opportunity to meet people from all walks of life and at various points of their rehabilitative journey. Brian Dorsey was one such individual. I was his neighbor for a number of years in the honor dorm of PCC. Over time I witnessed Brian to be nothing but pleasant and respectful to staff and offenders alike. More than that, he was kind, compassionate, and gave freely of his time and energy to make everyone who worked and lived within those walls feel safe and cared for. Growing up in PCC, I found myself fortunate not only to call Brian my neighbor, but also my friend.

When deciding whether or not Brian Dorsey merits a reprieve from his sentence, please consider all the good things that Brian has done for his carceral community to make life better. I am sure that if you decide to grant clemency to him, he will continue the good work that he is currently doing well into the future.

Sincerely,

Christopher Santillan

Co-founder, Unlocked Labs

March 15th, 2024

Jessica Hicklin



Re: Clemency Request for Brian Dorsey

To Whom It May Concern:

I am writing this letter to humbly request your compassionate consideration in granting clemency to Brian Dorsey, whose life story has intersected with a path that many find difficult to traverse – one that has led to the dire prospect of an execution. My plea stems not only from the stark realities and statistics surrounding the death penalty but also from a deeply personal place of understanding and empathy.

As someone who has experienced the justice system's complexities firsthand, I've come to recognize the transformative power of redemption and the profound impact of second chances. The journey of my life, particularly my transition and growth within the confines of the justice system, has instilled in me a firm belief in the potential for change and rehabilitation in every individual.

The use of the death penalty, as we know, carries with it irreversible consequences. Statistically, the death penalty has not proven to be an effective deterrent to crime. Research shows that states with the death penalty do not have significantly lower murder rates than those without. This raises profound questions about the efficacy and morality of such a punitive measure.


Moreover, the finality of an execution leaves no room for the possibility of rehabilitation or redemption. It negates the potential for an individual to make amends, contribute positively to society, or even to fully come to terms with their actions and seek forgiveness. This aspect is particularly poignant in Brian Dorsey's case, as every life, regardless of its past, holds the capacity for transformation and redemption.

On an emotional level, I implore you to consider the profound human cost of proceeding with an execution. The pain and suffering extend beyond the individual; they touch the lives of family members, friends, and even members of the broader community who believe in the potential for change. The finality of an execution extinguishes all hope, not just for the individual in question but for all who believe in the power of transformation and second chances.

In my work with Unlocked Labs, I have witnessed firsthand the incredible impact of providing opportunities for growth, education, and contribution to those who have been impacted by the justice system. We firmly believe in the potential for positive change and the invaluable contributions individuals can make when given the chance. This belief is not rooted in naivety but in tangible, witnessed transformations.

Thus, I beseech you to consider clemency for Brian Dorsey. In doing so, you affirm the values of mercy, redemption, and the inherent worth of every human life. You also send a powerful message about our society's capacity for compassion and the belief in the potential for change that lies within us all.

With utmost respect and hope,


Jessica Hicklin

Ezekiel 33:11, "I take no pleasure in the death of the wicked, but rather that they turn from their ways and live."