

**IN THE OFFICES OF THE GOVERNOR
AND THE MISSOURI BOARD OF PARDONS AND PAROLE**

Roy Michael Roberts,)
Applicant,)
v.)
State of Missouri,)
Respondent.)

**APPLICATION OF ROY MICHAEL ROBERTS
TO GOVERNOR MEL CARNAHAN FOR EXECUTIVE CLEMENCY.**

Innocent of the crime for which he was convicted and sentenced to death, applicant Roy Michael Roberts applies to Missouri Governor Mel Carnahan for an order granting Roberts executive clemency, or, alternatively, either commuting his death sentence to life without parole, or staying the execution and convening a board of inquiry.

Executive clemency exists precisely for cases like this. Governors who have previously granted clemency to inmates with claims of innocence did so based on doubt about guilt. Concern about the horrible possibility that their state might execute an innocent man forced each of these Governors to the same conclusion: mercy must be shown and clemency granted if there is *any* doubt as to guilt.

"While there is guilt for Ronald Monroe, in an execution in this country the test ought not be reasonable doubt; the test ought to be is there any doubt." - Louisiana Governor Buddy Roemer, quoted in, J. Wardlaw & J. Hodge, "Execution Halted by Roemer", New Orleans Times-Picayune, Aug. 17, 1989.

"I cannot in good conscience erase the presence of a reasonable doubt and fail to employ the powers vested in me as governor to intervene." - Virginia Governor L. Douglas Wilder, quoted in The Washington Post, Jan. 24, 1992, Sec. D1 (grant of clemency to Herman R. Bassette Jr.).

"The first question I ask in every case is whether there is *any doubt* about the individual's guilt or innocence. This is the first case since I have been the governor when the answer to that question was 'yes'.... I take this action so that all Texans can continue to trust the integrity and fairness of our criminal justice system." - Texas Governor George W. Bush, Dallas Morning News, Saturday, June 27, 1998, Editorial, Sec. 24A, story Sec. 12A. (granting clemency to Henry Lee Lucas).

"There was *more than sufficient evidence to show he was guilty, but there were some questions as far as I was concerned.* I was able to get some information that I know the judges and jurors did not necessarily receive. Some of the evidence came in after the trial." - Virginia Governor George F. Allen, quoted in, The New York Times, Nov. 10, 1996 (commutation of the death sentence of Joseph Payne).

"My decision finally was reached by some *slight tinge of doubt* about both the commission of the crime and the location of the crime.... I'd have to say in the main that I lean toward the prosecution side. However, as I mentioned, *if there's the slightest doubt, I'm reluctant to have a man executed.*" - Idaho Governor Phil Batt, quoted in, M. Trillhaase, "Batt Spares Paradis' Life," The Idaho Statesman, May 25, 1996, p. 1A.

A fair and reasoned examination of the facts of this case must create not just *any* doubt, but *reasonable* doubt as to Roberts' guilt. We implore Governor Carnahan to have the courage¹ to exercise his clemency powers in this difficult and troubling case, lest the State of Missouri suffer the shame and infamy of executing an innocent man.

INTRODUCTION

Roy Roberts was convicted and sentenced to death for his alleged participation in the stabbing death of a prison guard, Thomas Jackson, during a July 3, 1983 riot in the state prison in

¹ We note that there has been considerable criticism by death penalty supporters of Governor Carnahan's commutation of Darryl Mease's death sentence, following the Pope's request for mercy. The Governor's courageous act in commuting Mease's sentence out of respect for the Pope came at a political price. We fervently hope that fear of additional political fall-out will not prevent Governor Carnahan from granting clemency in this much more deserving case.

Moberly, Missouri, the Moberly Training Center for Men.² Roberts was never accused of stabbing Jackson. Roberts was accused and convicted based on testimony that identified Roberts as the person who restrained Jackson during the riot while other inmates stabbed and murdered Jackson. The murder occurred in the midst of the bedlam and confusion caused by over thirty rioting inmates. Roy Roberts has always maintained his innocence.

All of the surviving guards, that could identify who stabbed Jackson, identified Rodney Carr as the stabber. Carr was convicted of capital murder but received a sentence of *life imprisonment*, rather than death. Another inmate, Robert Driscoll, was also convicted and sentenced to death for stabbing Jackson, but Driscoll's conviction was reversed in 1995 after it was discovered that the prosecution had misled the jury into believing that the dead guard's blood was on Driscoll's knife, when in fact no such blood was present. *See Driscoll v. Delo*, 71 F.3d 701 (8th Cir. 1995). Driscoll has yet to be retried for the crime. Thus, Roberts is the only person under sentence of death for the crime, even though he is the *least culpable*, even under the State's version of the evidence. This disproportionality pales in comparison, however, to that which arises if, as we contend, Roberts is indeed innocent of the crime.

Roberts' claim of innocence is supported by three main points. First, the initial statements of all the eyewitnesses against Roberts at trial failed to describe or mention Roberts as being near Officer Jackson, much less holding Jackson while he was stabbed. The failure of

² Roy Roberts was originally sent to prison as punishment for an armed robbery conviction in 1979. A columnist for the St. Louis Post-Dispatch, Bill McClellan, recently interviewed a man who claimed to have committed that robbery, Carl Harris. After reading the robbery trial transcript, McClellan concluded in an article published on February 21, 1999, that Roberts may well have been wrongly imprisoned in the first instance.

the eyewitnesses to identify Roberts initially raises grave doubts about their later testimony against him. Roberts, a 300 pound behemoth, should have been impossible to miss while allegedly restraining Jackson in a headlock and crushing him against a wall and door frame as Jackson was repeatedly stabbed. Despite the glaring omission of any identification of Roberts by each of the eyewitnesses against him in their initial statements, Roberts' counsel failed to cross examine all but one of those eyewitnesses on that omission at trial. The negligence of appointed counsel thus precluded the jury from learning that the eyewitness identifications of Roberts, the only evidence against him, were thoroughly suspect.

Second, no physical evidence ties Roberts to the bloody scene of Jackson's death, where Roberts' allegedly restrained Jackson in a headlock while he was stabbed in the eye, heart and abdomen. Though the guards were on the lookout for bloody clothes, and indeed confiscated such clothes from Robert Driscoll, Roberts' clothes were scrutinized after the riot, but were not confiscated because they were not bloody.

Third, on February 19, 1999, to prove his innocence, Roy Roberts took a polygraph (lie detector) test, administered by a well-respected, retired Kansas City police officer/polygrapher. Despite being under the stress of a warrant for execution, Roberts passed the polygraph. His test results showed "no deception" in his answers denying involvement in the murder, including specific denials that he was holding the victim during the stabbings.

All attempts at relief in the courts have failed. An appeal for clemency to Governor Carnahan is Roberts' only hope.

DOUBTS ABOUT ROBERTS' GUILT AND THE POSSIBILITY THAT HE IS INNOCENT COMPEL THE EXERCISE OF THE GOVERNOR'S CLEMENCY POWERS TO PREVENT ROBERTS' EXECUTION.

A. THE "EYEWITNESS" IDENTIFICATIONS AT TRIAL ARE INHERENTLY UNRELIABLE AND SUSPECT.

At Roberts trial, four witnesses testified in the guilt phase that Roberts was holding Jackson when Jackson was stabbed. Three witnesses were guards, Denver Halley, Robert Wilson and Wayne Hess, and one was an inmate, Joseph Vogelpohl. At first blush, four eyewitnesses might seem like a strong case for guilt. The facts are otherwise.

As set forth in greater detail below, each of these four witnesses gave initial statements shortly after the riot which omitted any mention or description of Roy Roberts. The inability of anyone to identify Roberts as the inmate who restrained Jackson in the two weeks following the riot is particularly troubling, given Roberts' easily recognized size at the time of 300 pounds. Further, and of great significance to the fairness of Roberts' trial, his appointed lawyer, Tom Marshall, failed to question these witnesses, save one, about their prior inconsistent statements. The jury was led to believe that the eyewitness identifications of Roberts were far more reliable and trustworthy than was in fact the case.

Before addressing the specifics of the eyewitnesses failure to describe or name Roberts initially in their individual statements, it is worthwhile to put the scope and extent of the murder investigation in perspective by examining the summary report by the Department of Corrections' internal affairs investigator, Mark Schreiber. Two weeks after the riot, Schreiber submitted a 17 page internal investigation report of the murder. That memo does not mention Roy Roberts. The report confirms that nobody knows who, if anyone, was holding Jackson while he was being

stabbed. The DOC's report on the riot, dated July 18, 1983, is telling in its *omission of any* mention of Roy Roberts, and in its suggestion that hypnosis be used to identify more suspects. Schreiber's report concluded that additional participants might not ever be identified, because of difficulties in identifying any other assailants of Officer Jackson, other than, of course, those mentioned in the Supplemental Report, inmates Driscoll and Carr. Schreiber's conclusion bears reprinting in its entirety here, as it underscores the completeness of the investigation to that point, makes the candid assessment that no further suspects were likely to be identified, and significantly undermines the credibility of the subsequent identification testimony against Roberts:

Conclusion

Every investigative effort has been and is being made to determine the identity of and to bring to justice the individual or individuals who are responsible for the death of CO/I Thomas Glen Jackson and the subsequent assaults upon other correctional officers at MTCM on July 3, 1983. Due to the number of inmates who were intoxicated and who, to varying degrees participated in the riot, the full extent of the number and identity of those involved may never be known. *The greatest obstacle which has hampered ongoing investigation thus far has been the inability of potential eyewitnesses to remember anything as to the identity of the officers' assailants.* This is not to say that the officers have not honestly made such attempts. The hard facts are that when one is fighting for life itself there is no time to sit down and take notes.

It was suggested by Sgt. L. Dale Belshe that perhaps it might be beneficial if the officers involved were to be placed under hypnosis if they are willing. I feel that such an investigative procedure might be of benefit. Sgt. Belshe has indicated that he is willing to make the arrangements.

A continued effort will be made to identify any individual who was involved in the acts of violence which took place on July 3, 1983. The important factor in an investigation of this magnitude is not who or what agency receives the credit but that agencies working together as a single effective investigative unit do all that is possible within the realm of police science to solve the problem for the benefit of all concerned.

Memo to W. David Blackwell from Mark S. Schreiber, dated July 18, 1983, Re: Supplemental Investigation - MTCM Incident of July 3, 1983, at p. 17 (emphasis added). Memo Attached as Exhibit A.

Roberts has never denied that he was involved in the riot and engaged in fisticuffs with prison personnel. Officer Kroeckel testified that he and Roberts fought in a fist-fight in the control center, Trial Transcript ("TT") at 243-45. This Roberts did, along with 20-40 other inmates, many of whom have presumably served their sentences and are now walking the streets of Missouri. See TT at 240 (testimony of Officer Kroeckel that 20-30 inmates were fighting in the control center); *id.* at 317 (testimony of Officer Hess that 25-40 inmates involved); *id.* at 372 (testimony of Officer Humphrey that 30-35 inmates involved).

What Roberts did not do was hold Officer Jackson while he was being stabbed and thereby prevent Jackson's escape from whatever murderous inmate was stabbing him. Many inmates testified that Roberts did not restrain Jackson. They are not alone. Officer Kroeckel acknowledged that Roberts fought with him, and agreed that he did not see Roberts holding Jackson. TT 245.

The testimony of four people convicted Roy Roberts of the crime for which he is sentenced to die. Examination of their initial statements and comparison to each person's trial testimony reveals how radically different the trial testimony is. Clearly, the witnesses in this case got their story "straight" over time and aimed it directly at Roy Roberts. Such "evolving" testimony is inherently suspect and raises serious doubts of Roberts' guilt.

Captain Denver Halley was the ranking officer during the riot. He testified at trial that from a foot away through the glass window, TT 254, he saw Roberts hold Jackson "by the arm

and also by the hair of the head and keeping him right up against the door casing.” TT 256.

Halley testified that “while Roberts was holding him, I would see Jackson jerking and blood getting all over him.” TT 257. Halley further testified that when Halley attempted to rescue Jackson, Roberts let go of Jackson to hit Halley, and thereafter, Roberts re-took his hold on Jackson. TT 257-58. Excerpts of Halley’s trial testimony are attached as Ex. B.

After the riot, Halley wrote a report that night. TT 269; Transcript of Rule 27.26 Motion Hearing (“PCR TR”) at 29. Excerpts of Halley’s PCR TR testimony are attached as Ex. C.

Halley’s signed report, dated 3:17 a.m. on July 4, 1983, is attached as Ex. D (originally marked as PCR TR Ex. 11). At the time of the riot, Halley knew Roberts. PCR TR 36, Ex. C.

Moreover, he later described Roberts as standing out “like a red rose in the Sahara desert.”

Deposition of Denver Halley in the Robert Driscoll case at 9, excerpt attached as Ex. E.

Despite Roberts’ great size and the specificity of later trial testimony, Halley failed to mention Roberts in his initial statement on July 4. Ex. D. Halley identified only a mob of inmates, no individuals, and stated that “they” were holding him. *Id.*

They [Goodin and Kroeckel] arrived at the steps leading out of the wing with this inmate, and he went to hollering and [at] that time approximately 35 or maybe 40 inmates came running to us. **They** grabbed Officer Tom Jackson first and had him up against the door, and approximately, I would say, 12 or 14 inmates were trying to come out into the Rotunda. Officer Goodin, Officer Wilson, Lt. Kroeckel, and myself -- Captain Halley -- we went to fighting these inmates. a number of them were armed with iron bars and knives. I attempted to help Officer Jackson get away from the inmates. **They** were holding him and during this procedure, I was knocked down twice, plus was hit in the arm with a pipe. I heard Officer Jackson holler and I finally managed to drag him out. He was bleeding profusely and I dragged Officer Jackson across the Rotunda and knew at that time that he was dying.

Ex. D, Statement of Denver Halley dated July 4, 1983 (emphasis added).

Sixteen days later and two days after DOC Internal Affairs investigator Mark Schreiber submitted his report, Ex. A, Halley submitted an investigation report identifying Roberts for the first time as "one of the inmates" holding Officer Jackson. Ex. F, Halley statement dated July 20, 1983.

Two days after the DOC report acknowledged that no more inmates were likely to be identified, Halley selected the biggest and most noticeable inmate to have been in the riot and suddenly implicated him as one of the persons holding Roberts. The evolution of Halley's testimony had begun. That evolution continued and culminated with Halley's trial testimony, in which he stated that Roberts, alone, was holding Jackson.

Correctional Officer Robert Wilson likewise testified at trial that Roy Roberts held Jackson around the neck, TT 296, and that Roberts was the one preventing Jackson from getting away. TT 299 (Wilson trial excerpts attached as Ex. G). Wilson's initial statements are far different:

Officer TG Jackson, KF Goodin & DL Kroeckel went in B wing and brought out a man who was intoxicated.

As they was bring the man out the door about 30 t 40 inmates busted out the wing door after us. I grabbed one inmate by the head and was hitting him. He came out with a knife and cut me on the left hand. Then (S) went for officer T.G. Jackson. At this time Officer Humphrey hit him with bat & (S) went down.

The other inmates drug back into the wing.

By then I was fighting with anoughter (sic) inmate & the other officers got the wing locked down.

Ex. H, Wilson Statement, dated 2:30 a.m on July 4, 1983. Obviously, there is no mention of Roberts in this statement. Nor is there any mention of Roberts in Wilson's next statement, which is much more complete and states in pertinent part:

As they were bringing the drunken inmate out of the wing approximately 35 inmates rushed us. Inmate Rodney Carr # 38428 rushed out the door toward myself. I grabbed inmate Carr around the neck from behind and started hitting him with my flashlight. He pulled a shank and cut me across the left hand freeing himself from my grip. Lunged forward approximately 3 feet sticking Officer Jackson in the chest area. At this time Officer Hess grabbed inmate Carr and they began to scuffle. Carr got in behind Hess and stuck him in the right shoulder. Officer Humphry hit inmate Carr behind the head with a ballbat knocking him to the floor. Carr then dropped the shank as he fell. At this time an unknown inmate hit me in the right shoulder knocking me to the floor. as I was getting up I picked up the shank that Carr had dropped and stuck it in back of my belt. Inmates began dragging Carr and other inmates back into the wing giving us enough time to get the wing doors shut and locked. Myself, Officer Kroeckel and Halley placed Officer Jackson onto a stretcher [illegible] to the prison hospital. Officer Humphry Lt. Kroeckel and a inmate accompanied Officer Jackson to the hospital. Capt. Halley and a new officer by the name of Dillon ran to the administration building to get shotguns and more help. Myself, Officer Goodin and Officer Hess stayed back to hold down the house. Inmates from all four wings were hollering, breaking glass and preparing to come into the Rotunda after us. After approximately 10 minutes Capt. Halley, Officer Dillon and Lt. Arney returned with shotguns. The order was given for the inmates to return to their cells. Some of them did, most did not! At this time Capt. Halley & Lt. Arney & myself began firing into the wings & the inmates ran for their cells.

Ex. I, Wilson statement, dated July 10, 1983. More than two months later, Wilson's statement was virtually the same, still without any reference to Roberts. Ex. J, Report of Officers Merritt and Ullery dated September 13, 1983 (previously identified as PCR TR Ex. 6).

Wilson admitted that he "knew" inmates Carr and Roberts. Ex. K, Robert Wilson deposition in Robert Driscoll case at 5-6. Yet despite this knowledge and Roberts' large size, Wilson named only Carr and failed to identify Roberts in either of Wilson's initial statements.

Wayne Hess, too, failed to identify Roberts in his initial statements. He gave two statements, one dated July 4, 1983, Ex. L, and another dated July 9, 1983. Ex. M. In the July 4 statement, Hess stated that "three or four inmates had ahold of his [Jackson's] head and tried to pull him back into the wing." Ex. L, p. 3. Hess was "right beside him," but Hess did not know any of those inmates. *Id.* Hess only remembered Carr and affirmatively stated that he did not

remember any other inmates that were directly involved in the incident. In the July 9 statement, Hess states that "some of the inmates had Jackson in a headlock." Ex. M, p. 2. He then went on to say that the next day he had been shown photos of inmates, "one I remember was Carr, I think Driscoll, Batey or something like that, and one other I don't remember. I looked at one picture of Carr and I stated this was the man who done the stabbing." Ex. M, p.3.

Hess' failure to identify Roberts in these statements is particularly significant, because Prosecutor Finnical admitted in the Rodney Carr trial that Hess was shown a photograph of Roy Roberts before Hess went to the line-up on July 4. Ex. N, Hess testimony from trial of Rodney Carr. Thus, Hess failed to identify Roberts as an inmate who restrained Jackson in a statement made shortly after Hess was shown Roberts' picture on July 4, Ex. L, and again on July 9. Ex. M. The prosecution attempted to hypnotize Hess to bolster his memory, Ex. O (PCR TR Ex. 3), and still he did not identify Roberts. Ex. O at 6, 12. Hess could not identify Roberts in Hess' initial statements, notwithstanding that he admitted that he knew "Hog" Roberts as the largest man in the wing and knew him by that name. Ex. P, Hess' 27.26 testimony at 16-18.

Nevertheless, Hess' testimony at trial was very specific, alleging that Roberts, a man he had "seen around" before and who weighed "about 300 pounds," had Jackson "in a headlock and Tom Jackson couldn't get away to defend himself." TT 305. Given these circumstances, Hess' trial identification of Roberts is particularly dubious.

Inmate Joseph Vogelpohl was the only other witness who identified Roberts in the guilt phase as the person who restrained Jackson while he was stabbed. Vogelpohl, too, was unable to identify Roberts initially. In Vogelpohl's initial statement on July 4, 1983, Ex. Q, he totally failed to mention Roy Roberts. Despite his later claim to having witnessed Jackson's murder, all

he said in his initial statement was that: he'd seen Robert Driscoll assemble a knife in his cell; then, while near the rotunda from five feet away he saw Driscoll "punch at" Officer Jackson; and finally, he'd returned to his cell, where Driscoll also returned and said to Vogelpohl that Officer Jackson "had got stuck." Ex. Q. In his statement Vogelpohl announced that he was making a statement so that he wouldn't "take the rap" for the crime. *Id.* In his subsequent statement to Officers Merritt and Ullery on October 3, 1983, Vogelpohl stated that Driscoll and John Bolin were the inmates who stated that the inmates should stop the guards from taking Jimmy Jenkins out of the wing, and that Bolin said "let's rush them." TT 341. Vogelpohl also wrote a letter to a friend, Dewitt Burns, saying that he heard that Ed Ruegg, not Roberts, had held Jackson. TT 335.

At trial, however, Vogelpohl's testimony turned on Roberts. First, he stated that Roberts had been the person who suggested that the inmates should "rush" the guards. TT 326-27. Then he stated that Roberts had stopped Jackson at the wing door, TT 328, and that he had seen Driscoll stab Officer Jackson while Roberts held him. TT 329. Excerpts of Vogelpohl's testimony is attached as Ex. R. Vogelpohl's evolving testimony should be seen for what it was, an attempt to evade "the rap" for being in a riot five feet from the murdered guard, and an attempt to curry favor to get paroled early.

Thus, by the time of trial, the State presented four witnesses in the guilt phase³ who gave relatively unambiguous, chilling testimony that placed Roberts at the scene as the one and only

³ One rebuttal witness in the penalty phase, Michael Dunn, testified that from his position in the upper tier of A-wing, he saw Roberts hold Jackson in B-wing, while Driscoll stabbed him. TT 696-98. Dunn has since recanted that testimony. *See* Ex. S, Affidavit of Richard S. Hays.

person restraining Jackson. The dramatic change in the specificity of these witnesses from the time of the riot until trial, in which their stories coalesced and “matured” into adamant certainty that Roberts restrained Jackson and was the sole person to do so, by itself creates significant questions about Roberts’ guilt. The changes in testimony are too dramatic to be believed and seem to confirm the rumor that Prosecutor Finnical was out to get “three for one,” no matter what the cost in terms of integrity or reliability. The questions raised by the changes in testimony creates a reasonable inference that the State of Missouri may be intending to execute a man who may well be innocent.

B. NO PHYSICAL EVIDENCE CONNECTS ROY ROBERTS TO THE MURDER OF OFFICER JACKSON.

No physical evidence connects Roy Roberts to the murder of Officer Jackson. It is uncontroverted that Roberts did not have a weapon. Despite the extensive amount of blood spilled by Officer Jackson, there is no evidence of any blood on Roberts or his clothes. It defies belief that Roberts could have restrained Jackson as described by the adverse eyewitnesses, and not gotten blood on himself.

Roberts was described as having Jackson around the neck, TT 296 (testimony of Wilson), in a headlock, TT 305 (testimony of Hess), and “by the arm and also by the hair of the head and keeping him right up against the door casing.” TT 256 (testimony of Halley). The bleeding from Jackson was profuse. Halley described it as “while Roberts was holding him, I would see Jackson jerking and blood getting all over him.” TT 257. The blood was “all over the front and side of Jackson’s shirt” and was “very, very obvious.” TT 258. Halley said that Jackson looked like a “butchered hog.” TT 281. Jackson’s shirt looked like “solid blood.” TT 375 (testimony

of Officer Humphrey). Given Roberts' supposed close contact with Jackson and the amount of spilled blood, Roberts should have been soaked with blood.

After prison guards quelled the riot, the inmates were locked into their cells. TT 266 (Halley testimony). Thereafter each room was searched, and the inmates were personally searched. TT 267. Robert Driscoll's clothes were collected from his room and analyzed because they appeared to be covered with blood. *See Driscoll v. Delo*, 71 F.3d 701, 707 (8th Cir. 1995) (blood analysis conducted on the recovered knives, Officer Jackson's clothes, "and the clothes worn by various inmates, including Driscoll, on the night of the riot"). Notably, Roberts' clothes were not saved, tested or ever offered into evidence against him.

The fact that Roberts clothes were not tested or confiscated directly correlates to the absence of blood on them. At the time of the riot, Willie Dennis was a major at the Moberly prison. On February 20, 1999, Dennis spoke with Roberts' investigator, Richard S. Hays of the Federal Defenders of Eastern Washington and Idaho. Major Dennis told Mr. Hays that he arrived at the prison within an hour of the death of Officer Jackson and relieved the guards that were involved in the initial disturbance. Major Dennis acknowledged that he supervised the removal and transfer of inmates from their cells in Wing B who were thought to have been involved in the riot. Major Dennis acknowledged that he supervised the removal of Roy Roberts from his cell, and that he saw no blood on Roberts. Major Dennis further stated that he would have confiscated any article of clothing or other item for evidence, if blood was on it. Affidavit of Richard S. Hays, attached as Ex. T. Major Dennis' claim that he was looking for blood on clothes is corroborated by the record of confiscated clothes in this case. *See Driscoll v. Delo*, 71 F.3d at 707.

The absence of blood on Roberts' clothes raises serious questions about his participation in the murder of Officer Jackson. The likelihood that the witnesses are correct in their description of Roberts' alleged restraint of Jackson is highly improbable.

C. ROY ROBERTS PASSED A POLYGRAPH TEST THAT INDICATED "NO DECEPTION" WHEN HE DENIED INVOLVEMENT IN JACKSON'S MURDER AND DENIED RESTRAINING JACKSON WHILE JACKSON WAS BEING STABBED.

To prove his innocence, Roy Roberts insisted upon, took and passed a polygraph (or lie detector) test on February 19, 1999 at the Potosi Correctional Center while under a warrant of execution set for March 10, 1999. Despite the stress involved in taking a test under those conditions, Roberts' test results were clear: "no deception" in his denial of involvement in Jackson's murder.

Donald I. Dunlap, A.C. P., administered the polygraph test. Mr. Dunlap retired after thirty years with the Kansas City, Missouri Police Department. Dunlap served as a polygrapher for the last 24 years of his service with the Kansas City Police Department. He spent nine years as a full-time polygrapher, followed by more than 15 years as Chief Polygraphist of the department. Since Dunlap's retirement in 1985, he has worked in private practice, presently under the name of Don Dunlap & Associates. He is a highly respected polygrapher who has continued to work for law enforcement, such as the Benton County Sheriff's Department, as well as the Missouri Public Defender's Office, and various private attorneys. His resume is attached as Ex. U.

The polygraph report of the Roberts examination on February 19th is attached as Ex. V. That report reaches the following conclusion:

It is the opinion of the polygraphist that deception was not indicated in this person's polygraph records when he answered the following questions as indicated:

1. When Jackson was being stabbed, were you holding him in any way?
Answer, No.
2. When Jackson was being stabbed, were you holding him by the hair?
Answer, No.
3. Just before Jackson was stabbed, did you pin him against a door casing?
Answer, No.
4. While Jackson was being stabbed, did you have any physical contact with him? Answer, No.

Ex. V, Letter Report of Don Dunlap & Associates to Bruce D. Livingston, dated February 20, 1999, Re: Roy Michael Roberts Polygraph Interview.

The U.S. Supreme Court recently addressed the admissibility of polygraph evidence in the military courts. *United States v. Scheffer*, 118 S.Ct. 1261 (1998). The Supreme Court recognized the trend toward admissibility of such evidence, 118 S.Ct. at 1265-66, though the Court declined to recognize a constitutional right to present polygraph evidence based on a lack of consensus within the lower courts on the reliability of polygraphs. *Id.* In dissent, Justice Stevens compiled the evidence on the reliability of polygraphs:

There are a *host of studies* that place the reliability of polygraph tests at 85% to 90%. While critics of the polygraph argue that accuracy is much lower, even the studies cited by the critics place polygraph accuracy at 70%. Moreover, *to the extent that the polygraph errs, studies have repeatedly shown that the polygraph is more likely to find innocent people guilty than vice versa. Thus, exculpatory polygraphs -- like the one in this case -- are likely to be more reliable than inculpatory ones.*

Scheffer, 118 S.Ct. at 1276 (Stevens, dissenting) (footnotes omitted) (emphasis added). Like the defendant in *Scheffer*, Roberts, too, passed the more reliable polygraph-- an exculpatory one. See

Scheffer, 118 S.Ct. at 1276 n.22 (compiling studies that show exculpatory polygraphs to be more reliable than inculpatory polygraphs).

The polygraph that Roberts passed was reliable not only because it was exculpatory, but also because the examination was administered by a respected, experienced, former member of law enforcement, Don Dunlap. As the chief Polygraphist for the Kansas City Police Department for over 15 years, Dunlap's qualifications are impeccable. As a former police officer, Dunlap is decidedly unlikely to be inclined to favor an accused guard-killer through questionable interpretations of the test results. Dunlap's finding that Roberts passed an exculpatory polygraph test is powerful additional evidence that Roberts is innocent of the crime for which he has been sentenced to death.

Clemency proceedings have turned upon polygraph results previously. Virginia Governor Douglas Wilder would have granted clemency to Roger Coleman in 1991, had Coleman passed a polygraph test. J. Tucker, "May God Have Mercy: A True Story of Crime and Punishment," W.W. Norton & Co. (1997), at 280-81, 300-01. When Coleman failed to pass the polygraph, Governor Wilder declined to intervene. *Id.* at 312. Coleman's polygraph was given under extreme circumstances, hours before his scheduled execution. *Id.* at 305-14. Though that test, which was inculpatory, suffered from more significant reliability concerns than Roberts' exculpatory polygraph, it provides precedent for considering polygraph results in making a clemency decision.

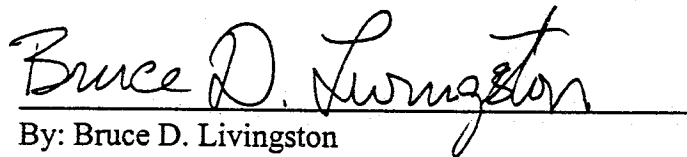
Given the greater reliability of Roberts' exculpatory polygraph, one must have serious doubts about his guilt. Roberts' polygraph result strongly supports his claim of innocence and provides Governor Carnahan with yet another reason to intervene in this case.

CONCLUSION

In conclusion, Roberts implores Governor Carnahan to stop the execution scheduled for March 10, 1999. Roy Roberts deserves clemency, and at least commutation or a board of inquiry. The State of Missouri must not proceed with this execution. The possibility that Roberts may be innocent is too real. Allowing Missouri's machinery of death to continue to operate, wheeling an innocent man on a gurney to the execution chamber in Potosi, is too horrible to contemplate -- the ultimate miscarriage of justice. This application for clemency raises doubts about Roberts' guilt, significant doubts. Those doubts cry out for Governor Carnahan's intervention and mercy. Let not Missouri be the State that knowingly executes an innocent man.

We urgently and respectfully request that Governor Carnahan halt the execution of Roy Michael Roberts.

Federal Defenders of Eastern Idaho and Washington
Capital Habeas Unit



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Exhibit
1



STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
AND HUMAN RESOURCES
DIVISION OF ADULT INSTITUTIONS

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W. DAVID BLACKWELL
Director
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Adult Institutions

July 18, 1983

TO: W. David Blackwell, Director
Division of Adult Institutions

FROM: *Mark S. Schreiber*
Mark S. Schreiber, Chief Internal Affairs Officer

RE: Supplemental Investigation - MTCM Incident of July 3, 1983

On Sunday, July 3, 1983 at approximately 11:00 p.m., I received a telephone call at my residence from Dale Riley, Assistant Director of Adult Institutions, Zone II. Mr. Riley related to me that between 10:00 and 10:30 p.m. on that date a serious disturbance had taken place at Missouri Training Center for Men. Riley related that one corrections officer had been killed in the disturbance and several others had been injured. Riley requested that I report to the institution as soon as possible to assist in the investigation.

At approximately 12:30 a.m. on July 4, 1983 Mr. George Lombardi, Assistant Director, Zone I, and I arrived at the Moberly institution and contacted other officials already present. In the absence of Carl White, Superintendent, J. M. Jones, Assistant Superintendent of Program Services, served as Chief Administrator of the institution. Upon our arrival we were escorted to the office of Lt. Raymond Newberry, Investigator for the institution. Several other individuals unknown to us were located in Lt. Newberry's office area.

After a brief review session during which the events of the disturbance were updated for our benefit, this investigator was introduced to Sgt. L. Dale Belshe of Troop B, Missouri State Highway Patrol. Sgt. Belshe is an investigator for the I & I Division of the patrol. Also present during the initial contact on July 4, 1983 were David Blackwell, Director, Division of

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Adult Institutions, Dale Riley, George Lombardi, and several other individuals to whom we were never introduced. Through information provided by MTCM staff it was determined that the following officers had been killed or injured in a disturbance which took place in housing unit #2 at approximately 9:30 - 10:30 p.m. on July 3, 1983.

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| (1) Thomas Glenn Jackson, CO/I
DOB: June 1, 1921 | Killed - multiple stab wounds |
| (2) Harold Ray Maupin,
DOB: July 5, 1948 | Stab wound to right arm |
| (3) Robert Wayne Hess, CO/I
DOB: August 26, 1944 | Stab wound to right shoulder |
| (4) Robert E. Wilson, CO/I
DOB: July 12, 1947 | Stab wound to left hand |
| (5) Denver F. Halley, CS/I
DOB: May 9, 1922 | Multiple bruises to arms |
| (6) Donald F. Kroeckel, CO/III
DOB: August 23, 1948 | Multiple bruises to arms and head |

For complete details of injuries received by the deceased officer Jackson, refer to detailed medical reports of Fred Ward, Coroner, Randolph County, Missouri and autopsy report of Dr. Jay Dix, M.D. pathologist, who performed an autopsy on the body of Jackson. For a copy of the death certificate and an established time of death, refer to report of Fred Ward. For complete details of what took place during the disturbance, refer to reports of Lt. Raymond Newberry Investigator, MTCM, and Sgt. L. Dale Belshe, Investigator, MSHF.

For the purposes of making this report as useful as possible regarding the investigative assistance rendered by this investigator, there will be no attempt in this report to discuss information regarding the initial incident which has been outlined accurately by other investigative personnel. This memorandum will deal only with the investigative assistance given by the writer.

At approximately 2:00 a.m., July 4, 1983, Sgt. L. Dale Belshe and this investigator took color photographs of the injuries sustained by CO/I Robert Wilson. Photos were taken of lacerations to Wilson's left hand.

At approximately 2:05 a.m., July 4, 1983, photographs were taken of injuries sustained by Lt. Donald F. Kroeckel. Photos were also taken of stains appearing to be blood on the uniform shirt of Lt. Kroeckel.

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At approximately 2:10 a.m., July 4, 1983, photographs were taken of injuries sustained by CS/I Denver F. Halley. Captain Halley also had stains appearing to be blood on his uniform shirt. At approximately 2:12 a.m., photographs were taken of CO/I Marion Humphrey. Humphrey had numerous stains which appeared to be blood on his uniform.

It should be noted that photographs could not be taken of CO/I Robert W. Hess and CO/I Harold R. Maupin because both individuals at the time were undergoing treatment for their injuries at outside hospitals.

At approximately 2:45 a.m., July 4, 1983, Sgt. Belshe and reporting investigator took photographs of deceased officer Thomas Glenn Jackson. The photographs were taken in the infirmary at the MTCM institution. Mr. Fred Ward, Coroner, was present when the photographs were taken. Initial examination of Officer Jackson's body by Fred Ward revealed multiple stab wounds to the left side of the chest and to the lower left side. There were a total of four wounds found in the chest and side of the victim initially. A fifth wound was located on the inside corner of the left eye. For complete details of the wounds found, refer to the medical reports of Ward and Dr. Jay Dix, M.D. Numerous photographs of the victim's body were taken by Sgt. Belshe and this investigator.

Custody of the body and the victim's clothing and property was maintained by Lt. Raymond Newberry, details of which can be found in his report. It should be noted that there appeared to be no defense wounds on the hands or arms of the victim. All photographs were taken with Kodak 35mm color film with an ASA rating of 400. Electronic flash was used where necessary.

At approximately 4:46 a.m., July 4, 1983, Sgt. Belshe and reporting investigator proceeded to housing unit #2 where the incident had taken place. Examination of the area revealed numerous stains appearing to be blood smeared over the entire 2A and 2B side of the housing unit rotunda. An orange towel heavily stained was observed on the floor in the area of the 2A wing door. From officer eyewitness accounts, it was in this area that Officer Jackson had collapsed and died after being stabbed.

Stains which appeared to be blood were located on the interior steps just inside the B-wing door and on the service counter in front of the 2-3 wing door. The counter is the one behind which the rotunda officer is located. Stains were also located on another service counter in the lobby rotunda near the laundry area. Numerous color photographs of the stained areas were taken by investigators for possible later use.

Further investigation revealed that numerous glass windows had been shattered in the housing wings leading into the rotunda area. Some of the windows allegedly had been broken by the rioting inmates while others had been shot out when .12 gauge shotguns were used to bring the situation under control.

Several interior photographs were taken of the interiors and exteriors of the unit wings. One photo taken just outside the 2B wing door revealed approximately five gallons of homemade brew inside a plastic bucket. During investigation, it was revealed that approximately 50 - 70 gallons of home brew were located and removed from various housing units after the disturbance including several gallons located in housing unit #2.

Careful examination of the housing unit interiors by investigators failed to reveal any stains appearing to be blood other than those previously mentioned which were located on the steps leading from the front of wing 2B to the rotunda entrance.

One photograph taken revealed what appeared to be damage resulting from the discharge of shotguns into the unit in order to quell the disturbance. For details of the scenes described refer to the photographs taken.

At approximately 6:22 a.m., July 4, 1983, an interview was conducted with MTCM inmate Rick G. Beatty, #35856, DOB May 1, 1953. Beatty, having resided in housing unit #2, wing B, room #414, was alleged to have been involved in the disturbance of July 3, 1983. Beatty was interviewed in the investigator's office at MTCM. Prior to asking Beatty any questions, he was given his constitutional rights per the Miranda decision by Lt. Raymond Newberry. A standard printed Miranda rights form and waiver of rights form was used for the purpose. Sgt. Dale Selshe and reporting investigator were also present as witnesses. Beatty acknowledged that he understood each of his constitutional rights, would waive them willingly, and would answer questions regarding the incident of July 3, 1983. Beatty signed his Miranda rights form and waiver of rights in the presence of Newberry, Selshe, and reporting investigator.

During the interview with Beatty, it was noticed that he had several stains appearing to be blood on the rear portion of his left shoulder. Beatty, who was wearing cutoff pants at the time interviewed, also had visible stains appearing to be blood on the back of his legs and on his feet. Photographs of the stains were taken by this investigator at the conclusion of the interview. The stains were then removed and secured as possible evidence by Lt. Raymond Newberry. Newberry used cotton swabs for this purpose.

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During the interview with Beatty, he stated that he had not been involved in the riot of July 3, 1983. He stated that he was drunk at the time and had been drinking within unit 2B for some time. According to Beatty he just thought the officers and inmates were in a fight when the trouble started. Beatty said that he had approximately four or five big cups of brew to drink prior to the riot. He stated that he did not know how the blood got on him. He thought perhaps it had come from a small cut on his chin. Beatty stated that he would take a polygraph or PSE test to prove that he had not harmed any officer during the disturbance. The interview with Beatty was then terminated.

At approximately 7:27 a.m. on July 4, 1983, an interview was conducted with inmate Edward Ervin Ruegg, #45477, DOB November 5, 1963. The interview with Ruegg was conducted in the investigator's office at MTCM. Prior to being interviewed Ruegg was advised of his constitutional rights as per the Miranda decision by this investigator. A standard printed Miranda rights form and waiver of rights was used for the purpose. Ruegg acknowledged that he understood each of his constitutional rights and that he would waive each right and answer questions regarding the investigation. Ruegg signed the Miranda rights form and waive in the presence of Sgt. Belshe and reporting investigator. Ruegg related during his oral conversation that on July 3, 1983, he and numerous other inmates were drinking homemade alcohol in housing unit #2. Ruegg lived in B-wing. Ruegg stated that shortly after the 9:00 p.m. count, two officers came into housing unit 2B and attempted to remove inmate Jimmy Jenkins, who was inmate Robert Driscoll's cellmate. Jenkins and Driscoll lived in housing unit 2B, cell #410. According to Ruegg, Officer Thomas Jackson was one of the officers attempting to remove Jenkins. Ruegg related that Jenkins had a piece of steel rod which he had obtained from cell #398. Jenkins, according to Ruegg, had the rod in his pants all evening. For what specific purpose is unknown. When Jenkins became intoxicated, he removed the rod and threw it under his bed. Ruegg stated that several inmates including himself dropped their pants and "shot the moon" at the officers.

Ruegg said that in his opinion half of the housing unit was drunk. Ruegg continued by stating that inmates within the housing unit stated that there would be no trouble "if the cops didn't take anyone to jail. If they do, we will rush them and start killing them." This statement, according to Ruegg, was made by an inmate known and identified as John Bolin, #42144. Bolin, according to Ruegg, was the spokesman for the inmates on July 3, 1983.

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As the officer walked toward the front of the unit and the rotunda with Jenkins, an inmate yelled, "Fuck all this. Let's get them." Ruegg stated to investigator that the inmates, estimated at between thirty-five and forty in number, rushed the officers who were on the steps leading to the rotunda. Ruegg related that he was on the steps by the door. Inmate Jenkins, at this point according to Ruegg, threw up his arms and pulled away from the two escorting officers, one of whom was Jackson. Ruegg then allegedly observed inmate Robert Driscoll rush at the officers with a knife in his right hand. Driscoll reached the top of the steps by the rotunda doorway. According to a description given by Ruegg, the knife was approximately 3" in overall length and was made of stainless steel type material. Ruegg stated that the blade was not very bright, however. He told investigators that he had observed Driscoll in possession of the weapon approximately one week prior to the interview date. Additionally, Ruegg related that the weapon had a brown handle.

Ruegg continued by stating that as Driscoll rushed at the officers he began swinging the knife and stabbed Officer Jackson several times in the chest area. When Officer Jackson fell inside the rotunda door, Driscoll then kicked the wounded Jackson on the left side of the face or head. Driscoll then continued to charge into the rotunda and threw the knife. Ruegg related that he helped carry the mortally wounded Jackson to the infirmary.

Ruegg would not give officers a written statement on the morning of July 4, 1983 because he told us that he was afraid of retaliation from Driscoll or other inmates.

At approximately 8:54 a.m., July 4, 1983, Ruegg was shown several photographs of inmates who were believed to have been involved in the riot of July 3, 1983. Among the photos was one of Robert Driscoll. Ruegg, without hesitation, selected Driscoll as being the individual who stabbed Officer Jackson on July 3, 1983. Ruegg stated that he would be willing to take either a polygraph or PSE examination to verify that he did in fact witness the incident. Note that inmate Ruegg had a small, clean laceration on his left elbow. During questioning, Ruegg admitted that he thought he had received the cut when someone, possibly Driscoll, had swung a knife during the disturbance on July 3, 1983. The wound on Ruegg's elbow was photographed by reporting investigator. The interview with Ruegg was then concluded.

It should be noted at this point that on the evening of July 4, 1983, a second interview with inmate Edward Ruegg was conducted. The second interview was necessary after additional information was received which helped to verify Ruegg's earlier statements. As in the first interview, Ruegg was advised of his constitutional rights. He acknowledged the same, signed his rights form and waiver, and agreed to assist the investigators.

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At approximately 7:21 p.m., July 4, 1983, Ruegg began a two page voluntary written statement in which he basically went over the events discussed during his first interview. For details of what Ruegg related in that statement, refer to existing copies available.

At approximately 9:30 a.m., July 4, 1983, an interview was conducted with CO/I Robert Wayne Hess, DOB July 26, 1944. Officer Hess, as previously mentioned, was one of the officers who was seriously injured on the evening of July 3, 1983. Officer Hess basically related little information during the brief interview conducted. This possibly was due to the fact that he had received some pain medication for his injuries and was not feeling well at the time interviewed. Hess did relate that the inmate who stabbed him and Officer Jackson was wearing a blue tank top shirt with white piping around it. Hess stated to investigators that the inmate who had assaulted him and Jackson was inmate Rodney Carr, #33428. Additionally, Hess stated that he also believed inmate Robert Driscoll was involved in the fight with officers. Hess stated, however, that he could not put a knife in Driscoll's hands. It should be noted that on the morning of July 4, 1983 reporting investigator and other investigators involved in the case conducted a line-up at MTCM to be used for identification purposes. This was done after Officer Hess stated that he could identify inmate Carr as being the assailant of both himself and Officer Jackson. Five inmates were used in the line-up.

The line-up was conducted in an outside corridor located on the second floor of the administration building near the investigator's office. Care was taken to attempt to have all of the subjects used in the line-up appear to have the same basic characteristics. The subjects were all caucasian male inmates having basically the same physical characteristics and dress. All of the individuals used had similar hair styles and tattoos.

Inmate Rodney Carr was placed in the line-up second from the left end. Officer Hess entered the area and looked at the subjects in the line-up. Hess then entered the investigator's office and stated that Carr was located second from the left end. It should be noted that photographs were taken of the line-up to be used for possible later identification and to show that the line-up was conducted in a fair manner. It should be mentioned in this report that investigators Selshe, Newberry, and Schreiber found out a short time later that Officer Hess had seen Carr prior to the line-up on July 4, 1983. From information received, Hess had seen Carr for some time in housing unit #23. This fact potentially might seriously damage the

validity of the line-up utilized by the investigators.

A second interview with Officer Hess was conducted at approximately 11:47 a.m., July 4, 1983. The interview was conducted in the office of Carl White, Superintendent, MTCM. The interview was conducted by reporting officer. Officer Hess responded to oral questions, the answers to which were recorded via shorthand by Barram A. Lipshild, Clerk-Steno III, MTCM.

In the statement, Hess continued to state that inmate Rodney Carr was responsible for Officer Jackson's death and for the assault on his own person. Refer to the statement of Officer Hess for details of information related during the interview.

On July 4, 1983 at approximately 10:12 a.m., an interview was conducted with inmate Rodney R. Carr, #38428, DOB October 10, 1961. The interview with Carr was conducted in the investigator and training office at MTCM. Prior to being interviewed, inmate Carr was advised of his constitutional rights as per the Miranda decision. Carr was advised of his rights by reporting investigator Sgt. L. Dale Belshe, MSHP, and Bill Armontroux, Assistant Warden, Missouri State Penitentiary, were also present. Inmate Carr read the standard Miranda rights form and waiver of rights after he had been advised from the same. Carr acknowledged that he understood each of his constitutional rights, was willing to waive them, and would answer questions directed to him. Carr then signed the form in the two spaces provided. Reporting investigator and Sgt. Belshe witnessed the signing by inmate Carr. It should be noted that Sgt. Belshe did not sign as a witness at the bottom of the form because he forgot to sign in the second space. Reporting investigator did sign in both spaces provided.

At the beginning of the interview, inmate Carr was extremely upset and emotional regarding the events which had taken place the previous night. Carr stated numerous times that he had not stabbed any employee or anyone even though he was being accused of it. Several times, inmate Carr broke down in tears and cried, maintaining that he had not stabbed any officer as alleged by Officer Hess.

At this time, investigators informed Carr that no one was going to harm him and that if he was not responsible for the officer's homicide and the assaults on other officers, everything would be done from a legal standpoint to prove that he was innocent. This seemed to have a positive effect on Carr who started to settle down. Investigators then told Carr to be honest in his statements and the situation would work out for the best. Carr then related the following information.

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This document is housed in the Capital Punishment Clemency Petitions (APAP-214) collection in the M.E. Grenander Department of Special Collections and Archives, University Libraries, University at Albany, SUNY.

Rodney Carr stated that on the evening of July 3, 1983, he and numerous other inmates had been drinking in housing unit #2B. Carr stated that he had been drinking orange juice wine and had become highly intoxicated. At around 10:00 to 10:30 p.m., several officers came to the unit regarding the intoxicated inmates. At least two officers entered B-wing to remove inmate Jimmy Jenkins, #45908, who lived in 2B #410 with Robert Driscoll.

Carr stated that he was standing by an officer talking to him about why they were locking Jimmy Jenkins up. The officer allegedly responded "Because he is drunk". Carr stated that he could not name the officer to whom he was talking; however, he said that he was caucasian, tall, and had brown hair and a mustache. According to Carr, as the officers approached the rotunda with Jenkins, a large group of inmates rushed them, screaming and yelling. According to Carr, the inmates intended to take Jenkins away from the officers.

Carr stated that inmate John Bolin, #42144, and another unidentified inmate were the subjects who told the others to charge the officer. Carr said that the intoxicated inmates did rush the officers and Jenkins was taken away. Along with the officers, Carr was pushed into the rotunda area by the mob.

Carr stated that he did not see anyone stab an officer because as soon as he was pushed into the lobby he was struck on the head by someone. (Carr's head was bandaged at the time of the interview, as were his ribs.)

When asked about what he was wearing on July 3, 1983, Carr stated that he could not remember for certain, however, he thought he had on a white t-shirt or no shirt at all. When asked if he had on a blue tank top shirt with white trim or piping, he stated "no".

Carr was then asked what he knew about Robert Driscoll, Jenkins' cellmate. He related that Driscoll's nickname was "Rabbit". He stated that approximately two weeks prior to July 3, 1983, he had observed Robert Driscoll make a homemade knife from a steel rule at the MTCM sign shop. Carr related that to the best of his memory the weapon was approximately seven or eight inches in length and had a brown wood handle. According to Carr, Driscoll had told him that he was going to use the weapon when he was returned to the state of California in the near future for court.

At the conclusion of the interview with Carr, he was shown the weapon which was in the possession of Lt. Newberry as the possible weapon used to kill Officer Jackson. The weapon was a homemade knife made from a steel rule and had a brown wooden handle. Numerous stains appearing to be blood were on the weapon.

Carr looked at the item in the presence of investigators and without hesitation identified the item as being identical to that in the possession of inmate Driscoll two weeks prior. Carr indicated at the end of the interview that if requested to do so he would be willing to take a polygraph to prove that he had stabbed no one and that the information he had related was the truth. Carr wanted investigators to administer the examination immediately. He was informed that it would be impossible to give him a polygraph examination on July 4, 1983, but that one would be given as soon as possible. The interview with Carr was then terminated.

On July 7, 1983, a written statement was obtained from inmate Rodney Carr regarding information related by him during the interview of July 4, 1983. The written statement was obtained at the Missouri State Penitentiary in Jefferson City. Carr was advised of his constitutional rights as per the Miranda decision. Carr was advised by reporting investigator. A standard printed rights form and waiver of rights was used for the purpose. Carr signed the form and waiver in the presence of Bill M. Armontrout, Assistant Warden, Lt. George Brooks, investigator, MSP, and reporting investigator. Carr then completed in his own hand a two page statement relating the same information which had been discussed on July 3, 1983. Refer to copy of the statement for details.

On July 8, 1983, inmate Carr was given a polygraph examination to verify his statements. The examination was administered at Troop F, Missouri State Highway Patrol, Jefferson City, Missouri. Sgt. George Payne administered the examination to Carr. At the time of this report, written results have not been forwarded to this office. However, verbal contact with Sgt. Payne indicates that inmate Carr was basically truthful in his response to questions asked during the examination. A complete copy of the polygraph examination will be forwarded when it is received. According to Sgt. Payne, the most significant information to come from the examination was that inmate Carr evidently did not stab any officer during the July 3, 1983 disturbance and indications are that he did not have a knife in his possession at that time.

On July 4, 1983 at approximately 3:07 p.m., an interview was conducted with inmate John J. Bolin, #42144, DOB August 19, 1950. The interview with Bolin was conducted in the investigators and training office at MTCM. Prior to being interviewed, Bolin was advised of his constitutional rights as per the Miranda decision by Sgt. Dale Belshe. A standard printed Miranda rights form and waiver of rights form was used for the purpose. Lt. Raymond

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Newberry and reporting investigator signed the form as witnesses. Solin acknowledged that he understood each of his rights and he was willing to waive each right and answer questions regarding the incident of July 3, 1983. Solin signed the form in the presence of the investigators previously mentioned. Solin stated that he was Rick Beatty's cellmate and they were assigned to housing unit 23, cell #414 on July 3, 1983.

Solin related that on July 3, 1983, he had been drinking extensively. According to Solin, numerous inmates both black and white had been drinking homemade alcohol within the housing unit on July 3, 1983. Solin stated that at around 9:30 p.m. on July 3, 1983, Officer Jackson entered the unit in an attempt to settle the inmates down. Solin said that a group of inmates started to harass Jackson by yelling obscenities at him. Solin said that his cellmate Rick Beatty was "running his head" and harassing the officer. Solin admitted that he was among those who were giving the officer problems; however, he denied actually causing any physical harm to the officer.

According to Solin, there was tension in the housing unit between white and black inmates. Solin mentioned specifically inmate Horace Bonner, a black inmate with considerable influence. Bonner is well known to reporting investigator as he was assigned to MSP for several years.

Solin also mentioned inmate Tim Rutledge, a caucasian inmate who, according to Solin, was having problems with Bonner within the unit. Solin, who goes by the nickname "BoBo", stated that he was at the end of the housing unit when the trouble broke out. Solin stated that a group of inmates did rush the officers when they attempted to take a drunk inmate from the housing unit. When asked to name the intoxicated inmate, Solin said that he thought it was inmate Jimmy Jenkins. However, he was not certain. Solin stated that Jenkins and his cellmate, identified as Robert "Rabbit" Driscoll, were blowing on Horace Bonner and that trouble would have developed between them. According to Solin, Jenkins and Driscoll are active members in the prison organization known as the "Aryan Brotherhood". Solin denied being associated with the organization himself. He said that he could not say who stabbed the officers. He stated that he had not and he also denied being the inmate who told the others to charge or rush the officers. Solin did indicate that he would be willing to take a polygraph examination to verify his statements and non-involvement. The interview with Solin was then terminated.

It should be noted that Solin was later transferred to MSP in Jefferson City. He was given a polygraph examination at Troop F

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Missouri State Highway Patrol by Sgt. George Payne on or about July 3, 1983. Results of that examination have not been received at the time of this report. Results will be forwarded as they are received.

On the afternoon of July 4, 1983, reporting officer and Mr. Bill Armentrout, Assistant Warden at MSP conducted an interview with inmate Jimmy Jenkins, #45908, housing unit #2B-410. Jenkins was the cellmate to inmate Robert Driscoll. The interview with Jenkins was conducted in the training office at MTCM. Prior to being interviewed, Jenkins was advised of his constitutional rights as per the Miranda decision by reporting investigator. A standardized Miranda rights form and waiver of rights form was used for the purpose. Jenkins acknowledged that he understood each of his rights. He willingly signed the form and waiver in the presence of Mr. Armentrout and this investigator. Jenkins stated that he would answer questions regarding the incident of July 3, 1983.

Jenkins admitted that he was a member of a white power organization known as the Aryan Brotherhood. A white power emblem was tattooed on his upper left arm. Photographs of the emblem were taken by reporting investigator.

Jenkins admitted that on July 3, 1983, he had been drinking homemade wine in housing unit #2B. He also admitted that officers came into the unit and attempted to remove him from it. Jenkins stated that as they reached the front of the unit he pulled away from the officers as other inmates rushed at the officers. Jenkins was shown the recovered weapon alleged to have been made and used by inmate Robert Driscoll. Jenkins seemed rather evasive when he responded that he had never seen the item.

When asked if he would be willing to take a polygraph examination Jenkins would not give an answer. The interview with Jenkins was then terminated.

On the late afternoon of July 4, 1983, an interview was conducted with inmate Joseph Vogelwohl, Jr., #45439. The interview was conducted in the training office at MTCM. Bill Armentrout and reporting investigator conducted the interview with Vogelwohl. Prior to being questioned, he was advised of his constitutional rights as per the Miranda decision by this investigator. Vogelwohl acknowledged that he understood each of his rights, that he would willingly sign the printed rights form and waiver and would answer questions directed to him. He then signed the form in the presence of those previously mentioned. Vogelwohl stated that he was a witness to the incident of July 3, 1983. He indicated that he would give us an oral statement because he did not want to be involved in getting the blame for a "case" he was not good for.

He related that on July 1, 1983, he was in Robert Driscoll's room 2B-410. He observed Driscoll get out a knife made from a steel rule. Vogelwohl stated that Driscoll then got out the wooden handle for the weapon and put it together. According to Vogelwohl, trouble was expected in the housing unit between the white and black inmates. Vogelwohl related that numerous inmates in the housing unit had been drinking, including Driscoll. He continued by stating that the inmates had been giving the officers a difficult time when they had entered the housing unit. Vogelwohl also related that he had seen the same weapon made from the steel rule several weeks ago. The weapon had been in Driscoll's possession at that time as well. Vogelwohl continued by stating that on July 3, 1983, Driscoll then put the assembled weapon in the back of his pants and the two of them walked out of the cell. They proceeded to the steps leading to the rotunda of housing unit 2B. As the officers approached the steps with an intoxicated inmate, Driscoll and other inmates rushed them. Vogelwohl then saw Driscoll punching at Officer Jackson's chest. Vogelwohl then got out of the doorway and away from Driscoll and Officer Jackson who were approximately five feet away.

Vogelwohl then went back to cell #410 and started to watch television. Driscoll then returned to the cell and told him that one of the officers, "Jackson", has been stuck. Additionally, Vogelwohl related that Driscoll was wearing a blue tank top shirt, gray pants, and Nike tennis shoes. Vogelwohl maintained that he was not involved in the assault of Officer Jackson or any officer. He stated that he would take a polygraph examination. A polygraph will be given to Vogelwohl when a date is available.

At approximately 5:30 p.m., July 4, 1983, a written statement consisting of two pages was obtained from Vogelwohl. He related the same information in writing that he had given a short time before in his oral statement. At approximately 4:40 p.m., July 3, 1983 Sgt. L. Dale Belshe and Lt. Raymond Newberry began an interview with Robert W. Driscoll, #45522, 2B-410. The initial interview with Driscoll was started during the time that the interview with Vogelwohl was being conducted. For this reason, reporting investigator was not present when Driscoll was initially advised of his constitutional rights or when questioning began. Refer to reports of L. Dale Belshe and Raymond Newberry. Reporting investigator was present, however, for portions of Driscoll's statement and this officer did sign as a witness to Driscoll's written statement which was dictated by him to Lt. Newberry. Refer to statements for details related by Driscoll.

Driscoll did admit that he had in his possession a homemade knife on July 3, 1983. Driscoll described the weapon as being made

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from a steel ruler with a wooden handle. He gave the accurate description prior to being shown the weapon which he later identified as being one and the same. Driscoll stated that he stabbed at an officer on July 3, 1983 using the knife recovered. He admitted that he had been drinking.

Driscoll also admitted that he was a member of Aryan Brotherhood. He showed to reporting investigator a tattoo on his chest which is identified with the Aryan organization. After the interview was completed with Driscoll, photographs of the tattoo were taken by this investigator. Additionally, inmate Driscoll described in detail the clothing he was wearing on July 3, 1983. The description matched that given by other witnesses exactly. Driscoll had not been told about information received from other witnesses either prior to or during his statement. Reporting investigator asked Driscoll what he had done with his clothing after he had returned to his cell on July 3, 1983. Driscoll stated that as far as he knew the clothing was still in the cell.

Driscoll was also asked why he had given a statement and had admitted that he had in fact stabbed at an officer on July 3, 1983. Driscoll indicated that he had been treated fairly by investigators and that he respected such treatment. Additionally, he told those present that he felt badly about what had taken place on July 3, 1983. Driscoll completed his statement to investigators at approximately 6:30 p.m., July 4, 1983.

Investigators then left Driscoll in the custody of Bill Armontrout. This investigator and the others involved then proceeded to housing unit #2B, cell #410, which had been assigned to Driscoll and Jenkins on July 3, 1983. The cell was unoccupied and was locked. Lt. Newberry opened the cell with a master key. Upon entering the cell, investigators observed and recovered a blue tank top shirt and a pair of gray pants and a pair of Nike tennis shoes. All of the items had stains appearing to be blood on them. Reporting investigator took several photographs of the interior and exterior of cell #410. The items seized were secured by Newberry and Belsha as evidence. Upon our return to the investigator's office, inmate Driscoll was shown the items which had been recovered. Without hesitation, Driscoll identified the items as being his and the ones which he had worn on July 3, 1983.

On July 15, 1983, reporting investigator accompanied by Lt. George Brooks, investigator, MSP, contacted inmate Driscoll at the MSP hospital. The contact was made at approximately 12:15 p.m. Prior to being interviewed, Driscoll was given his constitutional rights as per the Miranda decision. Driscoll acknowledged that he understood each of his rights and he signed the Miranda form and waiver of rights in the presence of those mentioned.

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Driscoll was then asked if he would be willing to take a polygraph examination in order to verify that his oral and written statements had been truthful. Driscoll seemed rather surprised at the request. He wanted to know why this investigator wanted him to take a polygraph examination. It was explained to Driscoll that there had been previous officer homicides and assaults which had been investigated by this individual and that inmates who had in no way been responsible or involved had attempted to claim responsibility or credit for the crimes. It was explained in detail to Driscoll that we just wanted to make certain that he was in fact responsible for the crime and that he was not attempting to take the weight for someone else.

Driscoll stated that this was the first time in his life that anyone had ever questioned a confession which he had given. He said that he did not feel like it should be necessary for him to take a polygraph exam because he was good for what he had related in his statement and he had been truthful. Driscoll, at our request, stated that he would consider the matter and would give this investigator an answer on or about July 13, 1983. On July 18, 1983, I recontacted Driscoll and he stated that he would decline at this time to take a polygraph examination. He continued to maintain that all of the information given to investigators was accurate and truthful. No further contact has been made with Robert Driscoll at the time of this report.

On the afternoon of July 5, 1983, contact was made at the Boone County Hospital with MTCM Officer Harold Roy Maupin, DOB July 5, 1948. Officer Maupin, a patient at the hospital on July 5, 1983, had been stabbed seriously on July 3, 1983. Maupin received a severe stab wound to the inside of his right arm. The wound resulted in damage to the artery. For details of Officer Maupin's injuries and of treatment administered, refer to medical reports to be submitted by attending medical staff.

Maupin related that on July 3, 1983, he had been assigned to the housing unit 23 rotunda area. At around 9:30 - 10:30 p.m., CO/I Marion Humphrey observed that there were numerous intoxicated inmates in the housing unit. Humphrey called the control center by telephone and reported the situation. A short time later, three officers arrived at the housing unit to assist the three officers who were already on duty. Maupin stated that he was handing out ice in the rotunda area. The officers entered the 23 wing and started to bring out an intoxicated inmate. Maupin could not remember the inmate's name. Officer Tom Jackson was one of the officers who assisted in attempting to remove the inmate.

July 13, 1983

MTCM Staff Inmate Investigation

This document is housed in the Capitalism Investigation (APAP-214) collection in the M.E. Grenander Department of Special Collections and Archives, University Libraries, University at Albany, SUNY.

The officers started to come out of the B wing and Jackson was walking behind them. As they reached the rotunda wing door, an unidentified caucasian male inmate rushed at Jackson screaming. Other inmates, approximately 35 to 40 in number, also rushed at the officers. The inmate who rushed at Jackson had dirty blonde hair. Maupin did not observe a weapon and he cannot identify the inmate. He stated that it happened so fast that he cannot remember a great deal.

Maupin stated that when the inmates charged into the rotunda area he was struck on the head by an unknown assailant. He then saw Officer Jackson fall to the floor between the rotunda and the A-wing door. Maupin was then stabbed in the right arm by an unknown subject. Maupin stated that he then started bleeding profusely and had to leave the housing unit. He headed for the administration building where he received emergency medical treatment prior to being transferred to the Boone County hospital. Maupin was unable to relate any additional information of value. A written statement is to be obtained from Maupin by either Lt. Newberry or Sgt. Selshe when his condition allows.

On July 6, 1983, reporting investigator received information from Warden Donald Wyrick and Assistant Warden Bill Armontreut, both of MSP, Jefferson City, Missouri, that there was a possibility that the riot at MTCM had been planned. Both officials then related that information had been received from Deputy Sheriff Albert Turley of St. Francois County, Missouri that he had information prior to July 3, 1983 that a riot might be planned for the MTCM institution. According to information received from both Warden Wyrick and Assistant Warden Armontreut on or about July 1, 1983, Turley had been told by a female known and identified as Mary Barton that the penal institution at Moberly was "in for a big surprise over the fourth of July weekend". Turley was told by Barton that there was going to be a riot at the institution. Barton has a husband at MTCM identified as Marshall Barton. Turley did not think too much of the information at the time because the subject who gave him the information he deemed as not being overly reliable. Turley went on vacation on July 2, 1983. On Monday, July 4, 1983, Turley heard about the Moberly riot via the news media. Turley later contacted MSP and talked to Warden Donald Wyrick. He told Wyrick of the information he had received.

Per the request of MSP officials, Officer Turley contacted a female known and identified as Sandra Goodwin. Sandra Goodwin was with Mary Barton on July 1, 1983 when she told Turley of the planned disturbance at MTCM. On July 7, 1983, Turley obtained from Sandra Goodwin a written statement regarding the information. Turley also made a written report himself on what he had been told prior to July 3, 1983.

Turley then mailed both statements to Bill Armontrout at WSP. On July 10, 1983, Mr. Armontrout transferred the statements obtained by Turley to reporting investigator. It should be noted that a statement has not been obtained from Mary Barton because she left the area and is believed to be in the Rolla area at the present time.

Conclusion

Every investigative effort has been and is being made to determine the identity of and to bring to justice the individual or individuals who are responsible for the death of CO/1 Thomas Glen Jackson and the subsequent assaults upon other correctional officers at MTCM on July 3, 1983. Due to the number of inmates who were intoxicated and who, to varying degrees, participated in the riot, the full extent of the number and identity of those involved may never be known. The greatest obstacle which has hampered ongoing investigation thus far has been the inability of potential eyewitnesses to remember anything as to the identity of the officers' assailants. This is not to say that the officers have not honestly made such attempts. The hard facts are that when one is fighting for life itself there is no time to sit down and take notes.

It was suggested by Sgt. L. Dale Belshe that perhaps it might be beneficial if the officers involved were to be placed under hypnosis if they are willing. I feel that such an investigative procedure might be of benefit. Sgt. Belshe has indicated that he is willing to make the arrangements.

A continued effort will be made to identify any individual who was involved in the acts of violence which took place on July 3, 1983. The important factor in an investigation of this magnitude is not who or what agency receives the credit but that agencies working together as a single effective investigative unit do all that is possible within the realm of police science to solve the problem for the benefit of all concerned.

There will be no attempt in this brief report to identify the underlying causes of the events of July 3, 1983. A report addressing these issues has already been submitted by Mr. George Lombardi, Assistant Director, with extensive input from reporting investigator.

Exhibit
2

1 observed Tom Jackson standing where you put the X and the T.J.?

2 A. I came inside here and I stepped over here so I could
3 try to observe and which I did observe through the glass, the
4 inmates.

5 Q. Now, can you put P.S. where the prisoners were all
6 rushed on the flag area as you saw as you were looking out?

7 A. All rushed in this whole area including the doorway.

8 Q. At that point after you went around the partition, had
9 the prisoners began to edge out into the rotunda control center
10 area?

11 A. Yes. This group had come up here, some had already
12 managed to get into the rotunda area.

13 Q. Now, retake your seat.

14 A. (Witness complies.)

15 Q. Sir, from your perspective on the other side of the
16 glass within the control center area, as you saw Tom Jackson
17 being held can you describe to the Ladies and Gentlemen of
18 the jury the manner in which he was being restrained?

19 A. They had him by the arm and by the hair of the head
20 and had his head twisted completely around holding him right up
21 against the door casing.

22 Q. Okay. If the door casing -- the glass wasn't separating
23 you, how far would you have been from where they were holding
24 him up against the casing?

25 A. About a foot.

1 Q. As you were observing through this glass area, what were
2 you trying to do?

3 A. I tried to reach around and get hold of Officer Jackson's
4 shoulders trying to pull him around because he had already been
5 knocked away and this was the only alternative at that particular
6 time that I had.

7 Q. Now, sir, I ask you -- I am directing the jurors attention
8 now for the record to State's Exhibit 15 and ask you to step
9 down here.

10 A. (Witness complies.)

11 Q. This is the doorway pictured on Exhibit 15, is that right,
12 on Exhibit 8?

13 A. Yes.

14 Q. This door is wide open?

15 A. It is wide open.

16 Q. You were standing on the other side of the partition?

17 A. Yes.

18 Q. And you reached around over the glass panel, is that
19 right?

20 A. That's right.

21 Q. To try and --

22 A. Try and get ahold of him.

23 Q. As you reached around the glass panel trying to get ahold
24 of Tom Jackson, what, if anything, happened to you?

25 A. I got hit.

1 Q. Where did you get hit?

2 A. In the jaw.

3 Q. When you were looking through the glass, did you
4 recognize anybody holding Tom Jackson?

5 A. I did.

6 Q. Who did you recognize?

7 A. An inmate by the name of Roberts.

8 Q. Do you see inmate Roberts in the courtroom today?

9 A. Sitting over there at the table.

10 Q. Next to --

11 A. Next to Mr. Marshall.

12 MR. FINNICAL: Your Honor, may the record reflect
13 the witness identified the Defendant, Roy Roberts.

14 THE COURT: It will so reflect.

15 Q. You indicated Tom Jackson was being restrained by the
16 arm and holding his hair?

17 A. Yes.

18 Q. In what manner was the Defendant restraining Tom Jackson
19 in the hallway?

20 A. I didn't understand you.

21 Q. In what manner was the Defendant restraining Officer
22 Jackson?

23 A. Had him by the arm and also by the hair of the head and
24 keeping him right up against the door casing.

25 Q. Did you see any other inmates out there close to Tom

1 Jackson that you knew or came to know?
2 A. Yes. Rodney Carr was over to the right.

3 Q. Any other inmates?

4 A. Mercy, I can't remember his name here. Well, I can't
5 call the name.

6 Q. Can you describe him?

7 A. He was a smaller fellow. I would say a hundred and
8 fifty (150) pounds or sixty (-60), somewhere along there,
9 maybe fifty-five (-55), five foot four (5'4").

10 Q. Did you see this fellow doing anything to Officer Jackson
11 as the Defendant was holding him?

12 A. No. The only thing that I could see was when this other
13 person was behind Officer Jackson which while Roberts was holding
14 him I would see Jackson jerking and blood getting all over him.

15 Q. Did you make another attempt after getting your hands
16 knocked away to get him out?

17 A. Yes. I made two or three more attempts.

18 Q. On one of the attempts, did you actually enter into the
19 door area to get Tom Jackson out?

20 A. I did. I tried and got knocked down again.

21 Q. When you tried the second time to get hold of Tom Jackson,
22 who stepped in the doorway and knocked you down?

23 A. The Defendant.

24 Q. At the time he hit you, was he also holding Tom Jackson?

25 A. Turned loose of him and took the second hold on him.

- 1 Q. When did he take the second hold of him?
- 2 A. I was down on the floor.
- 3 Q. When you took hold of the door facing there was a jab?
- 4 MR. MARSHALL: Object, leading.
- 5 THE COURT: It is a little leading.
- 6 Q. How many times did you see the Defendant let go of Tom
- 7 Jackson and regrab ahold of him?
- 8 A. He held him on the initial first time and turned loose
- 9 of him and then grabbed him a second time.
- 10 Q. When you reached in the second time to grab Tom Jackson
- 11 into the rotunda area, describe his shirt?
- 12 A. It was completely red with blood all over the front and
- 13 the side.
- 14 Q. Was it hard to recognize it was blood or easy?
- 15 A. Very easy.
- 16 Q. After you were knocked down by the Defendant, he regrabbed
- 17 ahold of Tom Jackson?
- 18 A. He regrabbed him.
- 19 Q. After he regrabbed ahold of Tom Jackson the second time
- 20 did you see anybody else making stabbing motions toward Tom
- 21 Jackson while Roberts was holding him?
- 22 A. Rodney Carr was making a stabbing motion toward him.
- 23 Q. You say the blood on the shirt between the two times you
- 24 were hit was obvious?
- 25 A. Very, very obvious.

1 borderline. I just didn't take time to count everything and
2 write everything. Your life was on the line and you had to.

3 Q. After you went back to the Administrative Building, after
4 the riot was suppressed, did you have occasion to write a report?

5 A. Yes.

6 Q. How long a report did you write?

7 A. A very short report because I was the highest ranking
8 officer at the institution at that time. No one else had
9 reached there yet. We had law officers coming in from everywhere
10 I was answering the telephone calls and answering questions and
11 a short one was all I got. I did write one later. I don't
12 know, the 20th or somewhere I wrote a report on what I saw.

13 Q. As the investigation began around the riot and the
14 killing of Tom Jackson, how many different agencies would you
15 say you may have talked to?

16 A. Well, I talked to Sgt. Belshe, Investigator for the State
17 Highway Patrol which was -- his interest was the killing. I
18 talked to the Sheriff of Randolph County, then the Public Safety-
19 Public or Public Office -- whatever you want to call it, and I
20 also talked with the F.B.I., plus I had talked with the Internal
21 Investigator of the institution, and then I was questioned by
22 the State Highway Patrol Investigators which wasn't on the
23 killing but it was on whether we were abusive or not towards
24 the inmates.

25 Q. So an investigation of all sides of the issue? That was

Exhibit
3



12
20
29

1 ORVILLE PRICE puts Robert Wayne Hess into a Hypnosis state.

2 ORVILLE PRICE: Wayne, I want you to go back in time now to July
3 3, 1983. I want you to think about and recall July 3, 1983. Do you
4 remember July 3, 1983, Wayne? HESS: Yes.

5 PRICE: Ok, Wayne, it's Sunday, July 3, 1983 and you're going to
6 work at the Moberly Training Center. You have arrived at the Training
7 Center now and it's around 2:30-3:00 o'clock in the afternoon you have
8 arrived at the Moberly Training Center and you're going on duty. What
9 was your duty that day Wayne?

10 HESS: Food Service

11 PRICE: Ok, Wayne, you have went on duty at the food service, and
12 let yourself completely relax, you went on duty at the Training Center
13 in Food Service. Sometime that evening, Wayne, after Food Service,
14 there was an incident in the Training Center. Somebody got you and
15 sent you down to B Wing, who asked you to go down to B Wing? Did
16 somebody do that? HESS: Yes.

17 PRICE: Who was that person?

18 HESS: Captain Halley.

19 PRICE: Did you go to B Wing with Captain Halley then, that
20 night? HESS: Yes.

21 PRICE: Ok, Wayne, now you're in B Wing with Captain Halley and
22 other guards completely relax now--let yourself be completely relax--
23 your completely relaxed. Tell us what you see when you get down to
24 B wing that night with Captain Halley, Wayne.

25 HESS: He'd gone down to get a drunk.

4, 6, 12, 29

1 PRICE: Somebody went down to get a drunk?
2 HESS: Yes.
3 PRICE: Ok. Had they already gone down before you got there?
4 HESS: No.
5 PRICE: Who went down to get a drunk, then, Wayne?
6 HESS: Donald Kroeckel, Officer Goodin, and Officer Tom Jackson.
7 PRICE: Ok, more and more relaxed, continued relaxed, Wayne.
8 Where are you at, Wayne, when they go and get the drunk?
9 HESS: Down in the wing.
10 PRICE: Who else did you see there, Wayne?
11 HESS: There was Officer Dillon there and Hess and they went
12 down to get this man, I don't know his name.
13 PRICE: Ok, is there anybody else you see around there, Wayne?
14 HESS: Just a bunch of inmates.
15 PRICE: They're standing around in the Wing?
16 HESS: Yes.
17 PRICE: Ok, more and more relaxed, Wayne. Let yourself
18 completely relax. Ok, can you see down in the wing to see where
19 they get the drunk out of? HESS: Yes.
20 PRICE: Do they bring the drunk up.
21 HESS: Yes.
22 PRICE: Who's bringing the drunk--who's got ahold of the
23 drunk, Wayne?
24 HESS: Kroeckel and Goodin.
25 PRICE: Ok. Do you see Officer Jackson?

1 HESS: Yes.

2 PRICE: Where is--Whereabouts do you see him at?

3 HESS: He's behind Kroeckel and Goodin with the inmate.

4 PRICE: Ok. What happens then, Wayne?

5 HESS: They start bringing the man back out and when they got
6 up by the steps, the man broke loose.

7 PRICE: Got up to the steps and then what?

8 HESS: He broke loose, the man did, from Kroeckel and Goodin.

9 PRICE: Ok, let yourself relax, now, completely relax. More
10 and more relaxed, let yourself completely relax. I'm going to count
11 to three and touch you on your left shoulder and I want you to more
12 and more completely relax. One, completely relax. Two, completely
13 relax, now. Three, let yourself completely relax, completely relax.
14 Wayne, your're in the B wing and they're bringing this drunk out and
15 you say he's broke loose from Kroeckel and Goodin. Whereabouts are
16 they at now, where do you see them at?

17 HESS: Up by the steps.

18 PRICE: Is that by the steps that uh-come into the Rotunda or
19 what, Wayne?

20 HESS: Come up out of the wing.

21 PRICE: Come up out of the wing. What do you see happens next
22 after he breaks loose?

23 HESS: A bunch inmates coming. Ther--ones got a knife.

24 PRICE: Somebody's got a knife? HESS: Yes.

25 PRICE: How do you know somebody's got a knife?

1 HESS: I see it.

2 PRICE: You see it? HESS: Yes.

3 PRICE: Who's got a knife, Wayne? HESS: An inmate

4 PRICE: Do you know who it is? HESS: No.

5 PRICE: Ok, then what do you see next, Wayne?

6 HESS: He stabbed Jackson.

7 PRICE: He stabbed Jackson? HESS: Yes.

8 PRICE: And then what did he do then?

9 HESS: He said knife.

10 PRICE: He what?

11 HESS: He said knife away from him.

12 PRICE: Did somebody say to get the knife away from him, you're

13 saying? Just tell me what you see, Wayne.

14 HESS: Get that knife.

15 PRICE: Get that knife?

16 HESS: He's sticking Jackson.

17 PRICE: He's sticking Jackson? Then what do you see next,

18 Wayne?

19 HESS: He's coming after me.

20 PRICE: What happened then, Wayne. Wh--

21 HESS: I-I got to go to Jackson.

22 PRICE: What happen th--

23 HESS: (inaudible)

24 PRICE: Just tell me what you're seeing.

HESS: An inmate sticking--he's coming after me with it.

1 PRICE: And then what happens, Wayne?

2 HESS: He stuck me.

3 PRICE: He stuck you? HESS: Yes.

4 PRICE: Then what happens, Wayne? What are you seeing?

5 HESS: We had gone back up and Jackson fell down to the
6 floor.

PRICE: Jackson fell down to the floor?

8 HESS: Yes.

9 PRICE: Do you see any inmates coming through the doors?

10 HESS: Yes, a whole bunch of them.

11 PRICE: Who do you see first coming in the door, do you know them?

12 HESS: No, about ten or fifteen.

13 PRICE: Jackson-do you see Jackson now? Is he on the floor or
14 what?

15 HESS: Yes.

16 PRICE: What else do you see, Wayne, what's happening?

17 HESS: We--we're getting them back in the wing, they're fighting
18 us, knocking us down.

19 PRICE: Did you know any of them, Wayne?

20 HESS: No.

21 PRICE: Do you see anybody get--does any--do you get stuck?

22 HESS: Yes.

23 PRICE: Do you see the knife?

24 HESS: Yes.

25 PRICE: Who stuck you, Wayne? Do you know?

1 HESS: An inmate, I don't know his name.

2 PRICE: Let yourself completely relax, now. Let yourself just
3 completely relax and just look at what you're--this is July 1 and
4 you've got trouble in the wing. Tell me, uh, do you see any of
5 the other guards?

6 HESS: Not at this time.

7 PRICE: Not at this time?

8 HESS: No. I still see the inmates.

9 PRICE: You just see the inmates.

10 HESS: Um-huh.

11 PRICE: Wh--whereabouts are you standing at Wayne?

12 HESS: On the other side of Jackson in the doorway.

13 PRICE: On the right side of Jackson in the doorway?

14 HESS: Yes.

15 PRICE: Let yourself completely relax. Is there any other
16 guards standing with you?

17 HESS: I don't see none.

18 PRICE: You don't see none. Do you recall where Captain
19 Halley is at?

20 HESS: No.

21 PRICE: Ok, you can't see any of the other guards?

22 HESS: Just the inmates.

23 PRICE: Ok. Let yourself completely relax. Are the inmates
24 coming through the door into the Rotunda?

25 HESS: Yes.

1 PRICE: Do they come on through--do you--are you in the Rotunda.
2 now, or where are you at?
3 HESS: I'm at the wing door.
4 PRICE: You're still at the wing door.
5 HESS: And they came over to the wing door and they pushed
6 their way up to the door and that's when it all happened.
7 PRICE: Tell us what you see happening Wayne.
8 HESS: The man has a knife in his hand.
9 PRICE: What does the man look like that's got the knife in
10 his hand?
11 HESS: He's/^{got}Blonde hair, about 5'7"--5'8", got a white, blue
12 tank top on, he's got white taping on the knife at the--at the end
13 of where the other tape's at.
14 PRICE: White tape on the knife?
15 HESS: Yes, white, gray tape.
16 PRICE: Does he say anything? HESS: No.
17 PRICE: Do you hear any yelling? HESS: Yes, a bunch of it.
18 PRICE: Can you tell what anybody says?
19 HESS: No, I can't. Just get that knife away from him.
20 PRICE: Let yourself completely relax, more and more relaxed.
21 Is someone trying to get the knife away from him?
22 HESS: I'm trying.
23 PRICE: You're trying to get the knife away from him. Ok.
24 HESS: I've been cut.
25 PRICE: You've been cut. You've been cut now?

1 HESS: In my fingers.

2 PRICE: On your finger. Let yourself completely relax, more
3 and more relaxed. Completely relax, Wayne. More and more relaxed.
4 Let yourself completely relax now, just completely rest, Wayne.
5 Just completely relax. Completely relax, Wayne. Alright. Completely
6 relax, more and more. You're on the--you're in the wing now, we're
7 gonna--you're going to have to come back, Wayne, we're gonna bring
8 you back and I going to count to five and you are gradually going
9 to come back. I want you to come back and we're gonna finish later.
10 One, you / ^{are} gonna gradually wake up Wayne, at the count of five you'll
11 wake up. Two, you're coming back, Wayne. Three, Four, Five, Wayne
12 wake up now, please. Let yourself wake up now Wayne. How do you
13 feel, Wayne?

14 HESS: Tired.

15 PRICE: Didn't rest long enough, did you? Where'd you cut
16 your finger at Wayne?

17 HESS: Right there(indicating). Across my hand.

18 PRICE: You got cut across your hand, too?

19 HESS: Yes, it's gone now. Hot.

20 PRICE: Hot from what? (inaudible) That's natural, Wayne.
21 Want a drink, Wayne?

22 HESS: No.

23 PRICE: You're completely--you're real good about relaxing,
24 Wayne. Your only problem is that probably that you should do it
25 laying down so you could really rest. But, we're half way through

1 HESS: Can I get up and walk?

2 PRICE: Yeah, sure.

3

4

BEGINNING OF SECOND SESSION

5 ORVILLE PRICE puts Robert Wayne Hess into a Hypnosis state.

6 PRICE: Okay, Wayne, the Prosecutor, Paul Oesterreicher, is
7 here and he wants you to go back and think about July 3. You're
8 in the B Wing, the inmates are yelling, you've been cut on your
9 fingers. Your finger is cut, you tried to take the knife. The
10 Prosecutor wants to ask you a few questions. Paul--I am going to
11 turn it over to Paul now and Wayne he's going to ask you a few
12 questions about what you see that night.

13 OESTERREICHER: Wayne, can you describe for me what the knife
14 looks like?

15 HESS: It's about 7 to 10 inches long, it's got a gray handle
16 with white on it, and that's all I seen of the knife. To this day
17 I've been seeing the knife.

18 OESTERREICHER: Was it sharpened on both ends?

19 HESS: Yes.

20 OESTERREICHER: Were there any particular markings on the actual
21 knife blade?

22 HESS: Not that I see.

23 PRICE: Completely relax, Wayne.

24 OESTERREICHER: When did you first see that knife, Wayne?

25 HESS: On the night of July the 3rd in B Wing between 10 and

1 10:30.

2 OESTERREICHER: Who had the knife?

3 HESS: An inmate. I don't know his name.

4 OESTERREICHER: Describe that inmate, if you can.

5 HESS: He was about 5'7"-5'8", between 120 to 150 pounds,
6 dishpan sandy blonde hair, and a white man with a white, blue tank
7 top, with white trim down in the neck. Then the man took off down
8 the wing.

9 OESTERREICHER: Was the tank top short sleeve?

10 HESS: Sleeveless.

11 OESTERREICHER: Did he have any tatoos on him?

12 HESS: Yes.

13 OESTERREICHER: What type of tatoos?

14 HESS: I don't know, but I know he did have one on his arm.

15 OESTERREICHER: Which arm?

16 HESS: I think low. I'm not sure on that. A bunch of inmates.

17 OESTERREICHER: What happen when you first saw the knife in the
18 hands of this inmate?

19 HESS: I tryed yell for--hollar there's a knife. And that's
20 when I noticed this inmate taking stabbing motions towards Officer
21 Jackson.

22 OESTERREICHER: Did you see the knife go into Jackson?

23 HESS: I just seen the stabbing motions.

24 OESTERREICHER: What did Jackson do?

25 HESS: Jackson didn't have a chance. He had him in a head lock.

1 OESTERREICHER: Who has him in a head lock?

2 HESS: A bunch of inmates.

3 OESTERREICHER: Did you know any of them?

4 HESS: No. I don't know any of them.

5 OESTERREICHER: Could you described who had him in a head
6 lock?

7 HESS: No, I can't. I seen them holding Jackson's head pulling
8 him back into the wing.

9 OESTERREICHER: Were there any guards around?

10 HESS: There was guards behind but I can't see who they were.
11 I tryed to pull Jackson back out of the wing. I said come on Jackson
12 get up. I couldn't get him. That's when he was getting stabbed.

13 OESTERREICHER: Where was he getting stabbed?

14 HESS: In the middle of the chest. They--

15 OESTERREICHER: Where was he facing towards you?

16 HESS: Jackson had his head out into the wing. Let's get the
17 knife.

18 OESTERREICHER: Was his full body in the Rotunda area?

19 HESS: Yes, he just had his head inside the wing. Let's get the
20 knife away from him, he's gonna kill. They stabbed him. They stabbed
21 him with the knife. (Inaudible)

22 OESTERREICHER: You grabbed for the knife?

23 HESS: Yes, get the knife.

24 PRICE: Completely relax, Wayne. Completely relax.

25 HESS: Kill. I'll kill 'em my way. I'll kill them if I get--

1 PRICE: Completely relax, it's alright Wayne. Completely
2 relax.

3 OESTERREICHER: Where did you get cut, Wayne?

4 HESS: In the fingers.

5 OESTERREICHER: Was that your first cut?

6 HESS: Uh-yes.

7 OESTERREICHER: Where did you get--did you get any other cuts?

8 HESS: Yes.

9 OESTERREICHER: Where?

10 HESS: On the right shoulder. It hurts.

11 OESTERREICHER: Who gave you that cut?

12 HESS: The same inmate. And that's when I get the knife away
13 from him. The one that got Jackson.

14 OESTERREICHER; After the stabbing of Jackson, did you see any
15 guards any where?

16 HESS: Yes. On the left. I don't know what the guards name
17 is. He's on the left side of me.

18 OESTERREICHER: Anybody else?

19 HESS: One be--there's a guard behind me. I don't know what
20 his name is. I don't know who he is.

21 OESTERREICHER: After you got stabbed, did you see the knife?

22 HESS: No.

23 OESTERREICHER: Do you know what happened to the knife?

24 HESS: No. There's a guard there. He's got a knife in his
25 hand, the guard does.

1 OESTERREICHER: The guard has the knife?
2 HESS: Yes.
3 OESTERREICHER: The same knife that stabbed you?
4 HESS: Yes.
5 OESTERREICHER: Was that knife--
6 HESS: The one with the tape on it.
7 OESTERREICHER: Was that guard do with that knife?
8 HESS: He picked--he stuck it--he's got it in his hand. I think
9 he's sticking it in his pocket.
10 OESTERREICHER: Was there any blood on that knife?
11 HESS: Yes, from what I can see.
12 PRICE: It's alright Wayne, let yourself relax. Completely
13 relax. Wayne, we're going to gradually come back now. On the count
14 of five I am going to tap you on your left shoulder and you're going
15 to open your eyes and gradually, slowly come back now. One, gradually
16 slowing come back. Two, slowly. Three, slowly coming back. Four,
17 slowing coming back, slowly. Five, slowing coming back. Just sit
18 there and relax, Wayne. Did you work today?
19 HESS: No.
20 PRICE: You're off today.
21 HESS: Uh-uh.
22 PRICE: When did you--
23 HESS: Three days.
24 PRICE: Three days? When did you get off, last night?
25 HESS: Monday at noon time.

1 PRICE: Monday at noon time. (inaudible)

2 HESS: Uh-mm

3 PRICE: Do you still work in Food Services?

4 HESS: No.

5 PRICE: Where are you working at?

6 HESS: Visiting Room.

7 PRICE: Visiting Room.

8 HESS: I've worked for the Food Services one time since I've

9 been back.

10 PRICE: Is Goodin still working?

11 HESS: Yes.

12 PRICE: What's he do?

13 HESS: He's the zone man to walk around the yards.

14 PRICE: Do you have a hard time waking up, do you? You do

15 that every time, I bet you have a hard time waking up.

16 HESS: It takes me an hour to wake up.

17 PRICE: It does. I can really see it.

18 OESTERREICHER: Can I ask any more questions, Orville?

19 PRICE: Mm

20 OESTERREICHER: Can I ask any more questions?

21 PRICE: Yeah.

22 OESTERREICHER: Feel up to answering one or two more questions?

23 HESS: Yeah.

24 OESTERREICHER: You described the man that you saw doing the

25 stabbing motion at Jackson and that cut you. When did you see him next?

1 HESS: The next morning.

2 OESTERREICHER: How?

3 HESS: In D cell, in the adsec 3 house or whatever they want
4 to call it over there.

5 OESTERREICHER: By himself?

6 HESS: He was in the cell by himself. They wanted me to come
7 back out and make a statement out at the prison now. They said they
8 had the man. I want over there and that was the man.

9 OESTERREICHER: Who was that man?

10 HESS: Inmate Call.

11 OESTERREICHER: He is the one that you saw doing the stabbing?

12 HESS: Yes, he had the knife in his hand. I think he is in 789
13 over there in adsec 3 house. I'm not for sure what room he was in.

14 PRICE: Did you ever see this other guy that has confessed
15 to it?

16 HESS: I didn't see him at all.

17 PRICE: Did you ever see him down at the adsec or anything?
18 In adsec locked up or anything?

19 HESS: No, I haven't cause usually if I am not assigned to a
20 house.

21 PRICE: Yeah. Well, I thought maybe the next day they had
22 you pick out the guys.

23 HESS: Well, they showed me pictures.

24 PRICE: Was he involved?

25 HESS: In the office they did.

1 OESTERREICHER: Were they black and white or color photos?
2 HESS: Black and white. Like they have out at the prison.
3 OESTERREICHER: Right.
4 HESS: With their numbers and everything on them, too.
5 RON DULANY: Wayne, when you saw the inmate in the D wing, or
6 adsec---
7 HESS: Adsec.
8 DULANY: What was he wearing?
9 HESS: He had on grey pants on and he didn't have not shirt on.
10 DULANY: Just a pair of grey pants and not shirt.
11 HESS: Yes. He had a bandage wrapped around his head, bandage
12 to chest here(indicating). They put him in a line up with five in-
13 mates.
14 PRICE: But, you had already seen him downstairs before the line
15 up, hadn't you?
16 HESS: Well, I didn't take that much of a glance of him, I just
17 walked by him and then I seen him in there.
18 PRICE: Ok. In the line up, when you picked him out of the line
19 up, did he have a shirt on then?
20 HESS: No.
21 PRICE: Ok.
22 HESS: None of the inmates had shirts on.
23 PRICE: None of them did. Ok. Did he have any tatoos on him.
24 HESS: Yes.
25 PRICE: Where?

1 HESS: On his chest and on his arms.
2 PRICE: Which arm?
3 HESS: They had all--five of them had tatoos on them. I think
4 it is the left arm, here(indicating). He had five in-- up there
5 had tatoos the same way on them and I picked him out and they told
6 me not to say nothing to any of the inmates, just you and pick the
7 man out, go back into the office and wait til they come in there.
8 I picked the man out and that's when you (inaudible). They didn't
9 have to tell me if I picked out the right man or not.
10 PRICE: After you were cut, where'd you--what happened--where
11 did you go to from there?
12 HESS: The hospital.
13 PRICE: Who took you to the hospital?
14 HESS: I went by myself.
15 PRICE: Did someone tell you to go to the hospital?
16 HESS: Yes.
17 PRICE: Who?
18 HESS: Captain.
19 PRICE: Captain Halley?
20 HESS: Yes.
21 PRICE: Where did he--you hadn't seen him, where did he appear
22 at?
23 HESS: I seen him when he came back in with the shot guns.
24 PRICE: Oh, that's when he told you to go to the hospital.
25 HESS: Yes, you see me, Wilson and Goodin was in the house by

1 ourselves and Halley cam in there and he and two or three others had
2 shotguns.

3 PRICE: Oh, you were still there at that time?

4 HESS: Yes, I was still in the housing unit. I was there about
5 10 minutes when I guess Officer Wilson said Hess was stabbed and Halley
6 looked and said you're going to the hospital Hess.

7 PRICE: Go ahead, but he had the shotguns and was back with the
8 shotguns?

9 HESS: Yes.

10 PRICE: Did you ever see Halley go after the shotguns? Did
11 you see him when he left?

12 HESS: Yes, I seen him when he walked--went out the door to get
13 them.

14 PRICE: He ran out the door to get them?

15 HESS: Yes, but we had everybody back in the wing and everybody
16 was back in the wing when (inaudible).

17 PRICE: When he went to go get the guns, they were back inside the
18 wing?

19 HESS: Yes, with them back in the wing--

20 PRICE: With the door shut?

21 HESS: We had them back and locked inside the house.

22 PRICE: In the wing.

23 HESS: Yes.

24 PRICE: That's when they were beat--trying to beat the door open
25 or beat the glass?

1 HESS: Yes. Somebody threw something at the door glass and
2 tried to break it out. They tried to come back out again and--
3 PRICE: That's when Halley ran for the guns?
4 HESS: Yes.
5 PRICE: That left you, Wilson and--
6 HESS: Goodin.
7 PRICE: Goodin. And that's the three that were left. Oh,
8 Al Freiz wasn't he there somewhere?
9 HESS: He took--I guess he took Jackson up--helped carry Jackson
10 up front.
11 PRICE: He wasn't there, anyhow?
12 HESS: No. He was there when all this stuff happened, but---
13 PRICE: He wasn't there when Halley went after the guns?
14 HESS: No. Halley went out the same time they were packing
15 Jackson out to the front.
16 PRICE: Ok, well they had the inmates help pack Jackson, didn't
17 they?
18 HESS: Yes.
19 PRICE: Did you know that inmate?
20 HESS: No, I didn't. Only thing I know is what that inmate
21 said, he said we'll try to get---
22 PRICE: Yeah, what I want to know, Wayne, did you know any of
23 the inmates down there that night that helped do anything?
24 HESS: No.
25 PRICE: No inmate in there?

1 HESS: No, that is I can't remember names. I can remember
2 faces.

3 PRICE: Would you know the names of any of them?

4 HESS: No. I couldn't try to remember 150 inmates, I do know
5 some inmates in there but they wasn't involved in it, blacks.

6 PRICE: Were there any guns fired before you left the Rotunda-

7 HESS: Yes.

8 PRICE: before you went to the hospital?

9 HESS: Yes.

10 PRICE: So you were there for part of that, too?

11 HESS: Yes. Untill they got more help in the house and that's
12 when they told me go on.

13 PRICE: Somebody else come in to releave you?

14 HESS: Well, I was in the Rotunda and that's when they told
15 me to go on. I got out there, I'd say, by the canteen area and that's
16 when I seen some more guards packing guns. I guess they are called
17 the M squard, the goone squard or whatever you want to call them.

18 PRICE: You said Dillion was there?

19 HESS: Yes.

20 PRICE: Where did Dillion go to or what?

21 HESS: I don't know what happen to the man.

22 PRICE: Only you three were there when Halley went after the
23 guns. Where was Dillion?

24 HESS: I don't know what Dillion--he went into the office--
25 he just disappeared on us. I learned later on that Dillion helped

1 pack Jackson out front.

2 PRICE: Did he?

3 HESS: That's what I learned later on that he done. But that
4 night there, I didn't know what happened to him. I thought he just
5 probably got scared and run on us.

6 PRICE: Paul, do you have something else?

7 OESTERREICHER: No, that's all I can think of.

8 PRICE: I understand you said the baldes were sharpened on
9 bothy sides, did it come down to a point?

10 HESS: Yes.

11 PRICE: To a point.

12 HESS: Yes.

13 PRICE: Was the blade silver, did the blade have any color to
14 it at all, that you could see?

15 HESS: No, that I could see. It just look like a piece of
16 metal what they made a knife out of.

17 PRICE: You couldn't stick in or not?

18 HESS: No, I seen the knife there when the man, when I saw
19 him sticking it into Jackson in a stabbing motion.

20 PRICE: You seen a guard pick it up then?

21 HESS: Yes.

22 PRICE: Do you know which one it was?

23 HESS: No, I don't know which guard it was.

24 PRICE: You think he put it in his pocket, front or back?

25 HESS: I think he put it in his back pocket, but I'm not for sure.

1 PRICE: He made a motion back there?

2 HESS: Yes, he made a motion back there.

3 PRICE: Did you see any other knives on the floor?

4 HESS: No, I didn't.

5 PRICE: Did you see a ball bat that night?

6 HESS: No, I didn't. The only thing I heard was when somebody

7 got hit they went down to the floor. I came back up swinging and

8 I slipped in the blood and I fell back down again. Then I noticed

9 that someone was back on my back again.

10 PRICE: You noticed somebody on your back--did someone knock

11 him off or how did--what--

12 HESS: He got knocked off. Some guard hit him with something,

13 I don't know what it was. Some guard hit him and got him off my back.

14 PRICE: Was that inside the Rotunda or outside?

15 HESS: It was outside the Rotunda. Right out side, between the

16 Wing and the Rotunda.

17 PRICE: Ok. Would that have been by the desk or whatever the

18 Rotunda officer stands by?

19 HESS: Yes.

20 PRICE: You were right there by it?

21 HESS: Yes. It was about as far as from here to--back to the

22 Rotunda about as far as from here to that door right there(indicating)

23 to the wing door. But you don't have much--

24 PRICE: Oh, you're just right there at it.

25 HESS: Yeah, because the big Rotunda--

1 PRICE: If I got inside the door of the wing, then I'm right
2 next to the Rotunda desk.
3 HESS: You are about 2 to 3 feet from it.
4 PRICE: Ok.
5 HESS: Not over 4 feet at the most.
6 PRICE: So, then the fighting was going on right around that
7 desk, wasn't it?
8 HESS: There's a big oval mound desk. It takes about the
9 whole Rotunda up, it does. It's like I said, between 3 and 4 feet
10 between each wing door there is.
11 PRICE: Ok. So it's right at the desk all the time, when all
12 this is going on.
13 HESS: Yes.
14 PRICE: Then the man could stand behind that desk and hit you
15 on the head.
16 HESS: No, he couldn't he has to come outside the wing.
17 PRICE: Why? He had a bat.
18 HESS: The desk is too high.
19 PRICE: But if I was standing up couldn't I hit you over the
20 head with a ball bat?
21 HESS: No. Cause the desk is--when I stand up it comes up
22 about here on me(indicating).
23 PRICE: Ok. Couldn't you hit a man on the other side with a
24 wooden ball bat?
25 HESS: No, I can't cause the thing is about that wide(indicating).

1 PRICE: Do what?

2 HESS: It's about 2 or 3 feet wide at the top of the desk, and
3 as wide as this one right here(indicating), this table. You have
4 kinda hide behind the gate.

5 PRICE: Ok. Is it wider than this table(indicating)?

6 HESS: It is about as wide as this table, the Rotunda is.

7 PRICE: Ok.

8 HESS: It's about as round--wide as this whole--

9 PRICE: You know the bat's this long(indicating).

10 HESS: We got two ball bats. We've got on that long--

11 PRICE: If you're ever back in the Rotunda or go back into the
12 Rotunda, would you stand behind it and see if could take that bat and
13 hit a man on the other side if he's standing up on the other side or
14 if he's on somebody's back.

15 HESS: If he's right by it, he can. But they was over by the
16 wing door, there was no way he could--

17 PRICE: But he could if he was standing right by it.

18 HESS: If I was standing right beside it, you know--

19 PRICE: If somebody was on your back right beside it,

20 HESS: He could reach right over the top of it and hit the man,
21 he can.

22 PRICE: That's what I wanted to know.

23 HESS: If he hits a man as they go by the wing door the man has
24 to open up the gate and then when he comes out--

25 PRICE: Sure, but you said that there's only, two or three foot.

1 HESS: I said--oh about that much space in between them(indicating
2 but not over 5 feet at the most when I open the wing door to the Ro-
3 tunda.

4 PRICE: Ok.

5 HESS: I never measured, I have

6 PRICE: Yeah, ok.

7 HESS: If I ever measured, I could tell you right down to the
8 inch.

9 PRICE: Yeah. Do you work with Wilson?

10 HESS: No. He works (inaudible).

11 PRICE: Do you work with Halley?

12 HESS: Uh?

13 PRICE: Do you work with Halley?

14 HESS: No.

15 PRICE: Do you ever see them?

16 HESS: Yeah. At roll call time and during the morning time when
17 we eat and stuff.

18 PRICE: I wish you would tell Halley that there is noting to this
19 hypnosis that he--there's nothing to be afraid or noting to run from.
20 Him and Wilson both. They're just like you to start out with, nobody
21 wants to. There's nothing to it, you can see that. We would like to
22 finish it all up and they're the only ones asked to.

23 HESS: Did Maupin take one?

24 PRICE: Who?

25 HESS: Maupin.

1 PRICE: Maupin?

2 HESS: The one who got cut in the arm.

3 PRICE: No, not yet. He hadn't. I think he was out of right
4 at the start of it. I don't think he saw anything, he couldn't
5 have.

6 HESS: I think he got cut right off the bat. I didn't know
7 that he was cut, too.

8 PRICE: Yeah, see--

9 HESS: I was out at the hospital, I seen him laying out there.

10 PRICE: He didn't even see Jackson fall, so see he's out of it.
11 He wouldn't have seen enough, see. We could give it to him, but I
12 don't see an advantage. You know, just the ones that saw so that
13 they can see what they saw.

14 HESS: I talk--I talk them but I don't know.

15 PRICE: Wilson and Halley, isn't it?

16 HESS: The only reason I did is because my wife told me.

17 PRICE: Told you what?

18 HESS: Told me it would be best to go ahead and do it.

19 PRICE: Don't you think it is?

20 HESS: Yeah.

21 PRICE: I would, I would want to clear everything up about how
22 this man was killed out there. I want to help him.

23 OESTERREICHER: Because, that's all we're looking for is as much
24 help as we can get.

25 PRICE: I would appreciate it if you would say something to them.

1 HESS: Well, I will talk to them, Orville. I'll go back, let's
2 see, I'll be back Thursday night at midnight.

3 PRICE: Well, maybe we'll have them by then, but if we haven't
4 I wish you say something to them.

5 HESS: I'll talk with Wilson. Halley, you just can't say
6 nothing hardly to him, cause he's the captain.

7 PRICE: But you could let him know that you've done it and that
8 there wasn't nothing to it. There wouldn't be no harm--wrong with
9 that.

10 HESS: Did Goodin take one?

11 PRICE: No. Who took it Kroeckel?

12 OESTERREICHER: Kroeckel's the only one so far.

13 PRICE: Yeah.

14 OESTERREICHER: Besides hisself.

15 PRICE: We haven't asked Goodin, have we?

16 OESTERREICHER: No, we haven't.

17 PRICE: He's one of the guys--see Goodin was bringing the guy
18 out, ok Kroeckel was one of those. What I want is the guys at the
19 wing door on the other side and see what they saw, so you come here
20 first. I'm sure that someone else at the door saw knife. There's a
21 very good possibility. There wouldn't be a very good possibility
22 that Kroeckel and Gooding seen it because they had ahold of the guy
23 bringing him out. I aimed to ask you while ago, was Jackson behind
24 them coming out?

25 HESS: Yes.

1 PRICE: Har far beyind was he?

2 HESS: Oh, I don't know, five feet. Jackson was (inaudible).

3 He never gave anybody no trouble.

4 PRICE: Yeah. You don't think he was further behing than he

5 should've been?

6 HESS: No. Not over five feet at the most.

7 PRICE: The guy broke loose before they ever got inside the
8 door, uh?

9 HESS: Yes, he broke loose before they got him up, oh I'd say
10 maybe not over two steps coming up out of the wing. I don't know
11 how many steps there is, but I'd say not over two steps coming up
12 out of the wing. The man broke loose and that's when somebody said
13 you're not going to take him out. Then in went Kroeckel and Goodin
14 they got almost to the the gate and got out of the wing door and
15 that's when all just followed Jackson right up the steps.

16 PRICE: You're saying Kroeckel and Goodin didn't get the drunk
17 inside the Rotunda.

18 HESS: No. They never did get him inside the Rotunda, cause
19 is we did we would have had the doors locked.

20 PRICE: So he broke before they got him inside the Rotunda.

21 HESS: Yes. The man got loose from them and then that's when
22 they all followed Kroeckel, Goodin and Jackson coming up and
23 Kroeckel and Goodin was almost at the--

24 PRICE: When the man broke loose which way--where did he run to?

25 HESS: He went back down toward the wing, he did. Inside the

1 wing. He went back into the crowd with the other guys. When we
2 first went in there, we heard a man and Wilson sitting there talking
3 we heard a piece of metal hit the concrete floor. And we said there
4 is a shank in there. You could tell when the metal hit that floor
5 there was something that wasn't suppose to be in there and I know
6 somebody's going to go down in there and take that piece of metal.
7 I stood there and I could've I could've.

8 PRICE: You could've what?

9 HESS: I could've run outside when I heard that, but I wasn't
10 going to do it. I was going to stay inside that wing, if you went
11 inside the house, there was a fight, if anything did happen to come
12 down.

13 PRICE: Mm-uh.

14 HESS: It all came down to fast then. Before--we were going
15 to have to do something to get it under control. I think when the
16 man got hit with the ball bat, that's when he went back into the
17 wing and the rest of the inmates went back in there with him. We
18 got it under control, we got the wing door shut and locked but it
19 wasn't under control, yet, was it?

20 PRICE: Any of those guys involved in that been brought back
21 up yet?

22 HESS: No, not that I see of.

23 OESTERREICHER: I want to thank you for helping us. Every little
24 bit helps. As I told you, we're just trying to get it all sorted so
25 that we can (inaudible).

Exhibit
4

This is the statement of Robert Wayne Hess, which began at 11:47 A.M., Monday, July 4, 1983, regarding the incident at the Missouri Training Center for Men on July 3, 1983.

Schreiber: Give your full name.

Hess: Robert Wayne Hess.

Schreiber: Give your date of birth.

Hess: August 26, 1944.

Schreiber: Give your address.

Hess: 524 Austin Street, Moberly, MO.

Schreiber: Were you employed at the Missouri Training Center for Men on July 3, 1983, at the time of this incident?

Hess: Yes, I was.

Schreiber: Give your rank.

Hess: Corrections Officer 1.

Schreiber: On July 3, 1983, were you working at the Moberly institution?

Hess: Yes.

Schreiber: What was your job assignment?

Hess: Food Service.

Schreiber: Were you on duty at 10:00 P.M., Sunday, July 3, 1983?

Hess: Yes, I was.

Schreiber: Tell in your own words what happened?

Hess: I was coming from the Food Service after I let the Ramadan's out. I was bringing the radio and the keys up to the Control Center, and they told me to get back out to House 2. They said they were having some trouble there. There were some drunks in B-Wing.

Schreiber: Name the other officers.

Hess: Lt. Kroeckel, Officer Goodin, and Officer Jackson.

Schreiber: Do you recall who the inmate was that was drunk?

Hess: No I do not know who the inmate was.

Schreiber:

Hess: As we got to the Housing Unit, they said they were having trouble in B-Wing. That is when they got the inmate out. They got him to the steps and he broke loose from them.

Schreiber:

Hess: A bunch of inmates followed them up there. The other inmates hollered to not take the man up there. That is when the trouble broke out. I noticed that one inmate had a shank and that is when he stabbed Officer Jackson and then he stabbed me. After that I went to the Hospital for treatment.



PAGE 2

Schreiber: How did you get the word?

Hess: Captain Halley was on duty.....

Schreiber: Who were the officers on duty?

Hess: Me, Officer Dillon, Officer Wilson, Officer Maupin, and Officer Humphrey.

Schreiber: Which officers went down into the wing:

Hess: Lt. Kroeckel, Officer Goodin, and Officer Jackson.

Schreiber: Where did you remain?

Hess: I stood inside the door. Officer Dillon and Officer Wilson stood on the other side. Officer Humphrey was behind the Rotunda. Officer Maupin was somewhere in the Rotunda.

Schreiber: Did you see Officer Jackson get stabbed?

Hess: Yes.

Schreiber: Where was Officer Jackson?

Hess: Officer Jackson was behind

Schreiber: Was the inmate who did the stabbing black or white.

Hess: White.

Schreiber: Was the inmate intoxicated?

Hess: Yes.

Schreiber: Were there a number of inmates in the wing?

Hess: Yes.

Schreiber: How many approximately, inmates were there in the wing?

Hess: I would say about 60 to 70 inmates in the whole wing, 2-B.

Schreiber: As the officers approached with the intoxicated inmate, what did the other inmates do?

Hess: They just followed the officers up toward the front.

Schreiber: Did the inmates rush the officers?

Hess: Yes, they did.

Schreiber: Did the inmates actually, physically, take the officers?

Hess: No, not as I saw it.

Schreiber: Did the prisoner get away?

Hess: Yes.

Schreiber: How did the inmate accomplish this?

Hess: Just broke loose.

Schreiber: Was Officer Jackson the first officer to be attacked?

Hess: Yes.

Schreiber: What was Officer Jackson's location?

Hess: Right outside the 2-B Wing door.

Schreiber: The inmates did not have Officer Jackson down inside the wing?

Hess: No. ~~dispute~~ dispute

Schreiber:

Hess: I had ahold of Jackson's arm and tried to pull him out of the wing and I said "Come on Jackson".

Three or four inmates had ahold of his head and tried to pull him back into the wing.

Schreiber: How close were you to Officer Jackson?

Hess: I was standing right beside him.

Schreiber: Did you know any of the inmates?

Hess: No, I did not.

Schreiber: Did you see the inmate with the knife?

Hess: Yes, I saw him, but I did not know his name at that time.

Schreiber: Did you see where the inmate came from?

Hess: No, it happened so quick that I didn't know where he came from.

Schreiber:

Hess: The next think I know, I saw blood.

Schreiber: Was the inmate white or black?

Hess: White.

Schreiber: About how old would you say the inmate was?

Hess: About middle age--20's.

Schreiber: What was the inmate wearing?

Hess: He was wearing a shift, blue tank top, with white outlining.

Schreiber: What color was his hair?

Hess: Dish pan blond.

Schreiber: What type of weaon did the inmate have?

Hess: A knife with tape around the handle, between 7 inches to 10 inches.

It was a home made k nife, with white colored tape around the handle.

Schreiber: What area of the body did the inmate attempt to stab Officer Jackson?

Hess: In the gut--It was in the chest area, the left side of the chest..

Schreiber: Where did Jackson go down when he was hit?

Hess: Just inside the wing door, but the officers drug him back into the Rotunda beside the A-wing door.

Schreiber:

Hess: Inmates were striking me and knocked me on the floor and somebody kicked me, but I could not tell the inmate. Somebody kicked me with his shoe.

Schreiber:

Hess: I tried to get back up and then I slipped in the blood. Then I did get back up.

Schreiber:

Hess: I got stabbed over the top of my shoulder. He then stabbed me in the right shoulder close to the neck.

Schreiber: Did you see more than one knife.

Hess: I just saw the one knife.

Schreiber: What happened to the knife?

Hess: I do not know what happened to it.

Schreiber: Do you know if it was recovered?

Hess: No.

Schreiber: Have you seen the knife since the incident?

Hess: No.

Schreiber:

Hess: We locked the door so the inmates could not come back out into the Rotunda.

Schreiber: You were shown a line-up of the people, the five people in the line-up

Hess: Were all of the individuals caucasian males?

Hess: Yes.

Hess: They all had bandanas around their heads; all had bands wrapped around their rib cage.

Schreiber: Did any of the men have tattoos?

Hess: They all had tattoos.

Schreiber: Out of the five people, did anyone tell you or did I indicate to you anything about these inmates?

Hess: No.

Schreiber: In the line up were you able to identify any of the individuals as being the person who assaulted you and Officer Jackson with a knife on July 3, 1983?

Hess: Yes.

Schreiber: After you identified this individual, do you remember, for the purpose of this interview, where he was in the line up?

Hess: He was the second man from the left.

Schreiber: After you identified this man and mentioned it to us, do you recall what the man's name was?

Hess: Inmate Carr, Rodney Carr.

Schreiber: To the best of your knowledge, was he the man who stabbed Officer Jackson?

Hess: Yes.

Schreiber: Do you recall or remember an inmate by the name of Robert Driscoll?

Hess: No I do not.

Schreiber: Would you know him if he walked into this room?

Hess: No.

Schreiber: Do you remember anyother inmates who were directly involved in this incident?

Hess: No.

Schreiber: Is this statement true and correct to the best of your knowledge?

Hess: Yes.

The statement ended at 12:13 P.M., July 4, 1983.

7-4-83
DATE

Robert Wayne Hess COI
ROBERT WAYNE HESS, COI

July 4, 1983
DATE

Barbara Lipshield
WITNESS: BARBARA A. LIPSHIELD
Clerk-Steno III

Exhibit
5

VOLUNTARY STATEMENT

This document is housed in the Capital Punishment Clemons v. Evans (APAP-214) collection in the M.E. Grenander Department of Special Collections and Archives, University Libraries, University at Albany, SUNY

...cases concerning the events I am about to make known to Bob Spurling
without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information
my own free will, for whatever purposes it may serve.

I am 38 years of age, and I live at 514 Quenton Meloy, Jr.
Bethany, W.C. 21029 was coming from Grand
Grand got to the back of the Administration building
with Officer Jackson, Officer Gooden, Officer Williams,
Gooden and I all headed for 2 houses. They
all stated there was trouble in 2 houses but
some doubt.
We got to 2 houses, one of the officers said
there was trouble down in the way.
Officer Jackson, Officer Gooden, Officer Williams, went
down into the way to get the man.
They got the man, and Officer Jackson and Officer Gooden
held the man, Officer Jackson was behind
me.
I was standing inside the way door on the
west side, Officer Nelson was standing on
the east side.
Officer Williams was standing outside the door.
When they started bringing the man up they
got about half way out of the way and
some inmates yelled don't bring that man
out of here.
Officer Jackson and Gooden still had hold of the
man when they got the man to the station.
The man spoke from the way, and that
was all the trouble started.
The inmates then pushed the officers, I
noticed that one inmate had a knife.
I yelled once get a knife.

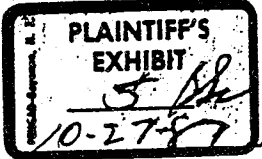
I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any
or my initials, and I certify that the facts contained herein are true and correct.

dated at _____ this _____ day of _____ 19 _____

WITNESS: _____

Robert W. Hessa
Signature of person giving voluntary statement

WITNESS: _____



Robert W. Jesse

I noticed the inmates with a knife and some of the inmates had Jackson on a head lock.

When I noticed this one inmate making an upward jolting motion at Jackson's chest and the other one that was doing this to Jackson got me.

I grabbed Jackson's right arm and told Jackson to come on, then a whole bunch of them jumped on me, while these inmates had a hold of me the same one who grabbed Jackson got me on the upper right shoulder and cuts on my right hand when I tried to grab the knife.

The man who got me and Jackson is described as follows: he had a blue tans top with white trim, 5'7-5'9, blonde hair, grey pants and he is white.

I didn't know this man's name at the time.

After this I went to the hospital for treatment, I walked by myself.

The next day (May 4th 1953) I went back to the prison and I went out to 3rd floor in Alder and identified the man who got me (and Jackson). The man's name is Carl, Robert W. Jesse

Robert W. Jesse

STATEMENT OF:

Robert Wayne Nease

7-9-83

I think the man's first name is Joe.
This man Carr is the same one. I first
saw with the knife he made the state-
ment at Jackson and he got me.
I saw at least 2 more, known in the
hands of other inmates but I couldn't id.
these people.

I left 3 hours and went to the Ad. Cus
I went upstairs and they talked to me
for awhile. ~~They~~
Lt. Newberry told me that some people
wanted to talk to me upstairs, at the
time Lt. Newberry never talked to me.
These people upstairs showed me 3 or 4
pictures of inmates, one I remember was
Carr. I think Alvin, Porter or something
like that, and one other I don't remember.
I looked at this one picture of Carr and
stated this was the man who did the
clubbing.

They asked me if I could identify this man
in a line up and I said yes.
They told me to go back down to the
Central Center and stay there til they call
about every 15 mins to 1/2 hour they called
Central Center and told me to come back

Robert W. Nease

STATEMENT OF Robert Wayne Hess

supstairs.

I got back up there and they had 5
cubes lined up, all had bandages under
their head, a wrap around bandage under
their waist and chest area.

They told me not to say anything to the
men, but look at them and if I could
identify one to go back to the office.

I identified the one man, 2nd man in
line from the left side of the door. The
man I identified was inmate Cas.

They took me back downstairs for
another statement, they said me to sign
you signed a hearing. They all left while
they were typing the statement.

I looked the 2 photos over - I gave on
July 4th 1983 and signed both of them.

The same people I talked to the 1st time
was the same ones I identified Cas
to.

On July 5th 1983 I went back because I
needed I had to sign some more papers
that occurred in the morning.

A Newberry came up and said that he
going to prove you wrong. Heive got the
Newberry man. That one inmate Buckel gave
a statement that he stabbed Jackson. I was in
the Ad. Building down by the office.

My wife was with me during this

Robert W. Hess

Exhibit
6

MISSOURI STATE HIGHWAY PATROL

Jefferson City, Missouri

September 13, 1983



From: Sergeant L. G. Ullery and Corporal J. L. Merritt
Subject: Investigation of events at Moberly Training Center for Men - Supplement #30
To : Commanding Officer
Missouri State Highway Patrol
Jefferson City, Missouri
(CONFIDENTIAL)

1. In continuing the investigation into this incident, on September 10, 1983, Sergeant L. G. Ullery and I contacted C. O. I Robert E. Wilson, date of birth July 12, 1947, of Route 4, Box 83, Moberly, Missouri, at the Missouri Training Center for Men. This interview was conducted in Major Dennis' office at the training center.
2. On July 3, 1983, Mr. Wilson was working the 4:00 p.m. to 12:00 midnight, shift and was assigned to the control center. When help was requested in Housing Unit #2, Mr. Wilson went with Captain Halley, Lieutenant Kroeckel, Officers Goodin and Dillon to two house. Wilson said he waited in the rotunda area while Officers Jackson, Goodin and Lieutenant Kroeckel went into B wing to remove an intoxicated inmate. Mr. Wilson said this is a routine matter and not much thought was given to it. As Goodin and Kroeckel were coming back out of the wing with the inmate, he saw a "mob" of inmates start towards the officers. At this time Jackson was some distance behind the other two officers, standing at the bottom of the landing. Wilson said Jackson just didn't hurry and even turned and faced the inmates. In the ensuing struggle, Jackson was caught in the rotunda door where he was stabbed. Wilson saw inmate Rodney Carr with a knife and was cut on the hand by Carr. He then saw Carr get on the back of Officer Hess. This is when it is thought that Hess was stabbed in the back. While Carr was on Hess' back, he was struck on the head by Officer Humphrey causing him to drop his knife which Officer Wilson recovered.
3. After fighting the inmates (approximately ten) back into the wing and locking the door, Captain Halley left to get shotguns. C. O. Maupin had already left to obtain medical assistance for his stab wound. C. O. Humphrey and Lieutenant Kroeckel left to take C. O. Jackson to the infirmary. This left C. O.'s Wilson, Goodin and injured Officer Hess to secure the housing unit. Wilson said the inmates were up next to the rotunda doors and glass area beating and kicking. He said one section of glass in D wing was knocked out but no one came through it. The officers were armed with contraband items that had been seized and held at the rotunda desk, i.e., baseball bat and metal bed extensions. Wilson said he kept calling the control center requesting assistance.
4. Mr. Wilson said that in approximately ten to fifteen minutes Captain Halley and Lieutenant Arney returned with shotguns and the captain immediately

September 13, 1983

Investigation of events at Moberly Training Center for Men - Supplement #30
(CONFIDENTIAL)

fired into A wing - he thought it was A wing. Wilson relates that after the second and third rounds the inmates started to move back. Wilson could not recall exactly how many times he fired into the wings after obtaining a shotgun. He said there were lots of things about that night that he doesn't remember. He said, "I don't know that I hit any of them (inmates)."

5. After the shooting subsided, the inmates were deadlocked into their cells. During the lockdown, Wilson said that he was just inside the rotunda door with a shotgun. He indicated that the inmates were getting pretty willing about this time. When asked about removing the inmates who had caused the original disturbance, Wilson said there was just the normal drunk problems and he didn't see any real problems. As these inmates were moved into the rotunda area and secured on the laundry table, Wilson said that he could not recall seeing any problems, nor did he know of any difficulties in moving the inmates from the laundry table on to the infirmary or segregation cells.

6. Wilson, in reviewing the incident, said that during the shakedown he observed three empty bottles of street whiskey. He said it is not uncommon for this type contraband to be brought in to the inmates. This, plus the homemade whiskey the inmates acquire, creates a bad situation.

7. In talking about the attitude of the officers involved in going down into the wings for the lockdown and shakedown, Wilson said, "There was a little ass kicking done. Those guys were a little hot when they went down there, but I don't think they went overboard on it."

Jack L. Merritt
J. L. Merritt, Corporal

L. G. Ullery
L. G. Ullery, Sergeant

JLM:btr

Exhibit
7

1 from he and Carr at the doorway?
2 A. Yes. He was in the rotunda fighting -- I believe it was
3 with Lt. Kreockel or it was some officer.

4 Q. How long do you think it was from the time that the inmates
5 attacked the door and held Officer Jackson until they were pushed
6 back into the wing?

7 A. I would have to estimate and it would be just an estima-
8 tion. Anywhere from three to five to six minutes.

9 Q. Were firearms later used to quell the disturbance?

10 A. Yes.

11 Q. Did you use a firearm?

12 A. Yes.

13 Q. What kind of firearm did you use?

14 A. A 12 gauge shotgun.

15 Q. Where did you get the 12 gauge shotgun?

16 A. Brought in from the front end. Cpt. Halley brought one.
17 I think three or four were brought out.

18 Q. When you saw Carr stabbing at Tom Jackson and Roberts
19 there with him, did you see Tom Jackson make any attempt to
20 block the stabbing thrust?

21 A. No. He couldn't have made an attempt to block. Inmate
22 Roberts was holding him. He couldn't have blocked it.

23 Q. When you say he was holding him around the neck, do you
24 know if inmate Roberts was using his right or left arm?

25 A. He was using his right arm around his neck.

1 Q. Did it appear they were struggling there?

2 A. No, sir.

3 Q. How did Tom Jackson's body appear in the grasp of Roberts
4 when Carr stabbed him?

5 A. Like I said, when Carr stabbed him, I saw Officer Jackson
6 lean forward as though something hit him in the stomach.

7 Q. Did you ever talk to Tom Jackson after you drug him away?

8 A. No, sir. I believe he was dead.

9 Q. What led you to that belief?

10 A. He was covered in blood. Had one eye missing and pretty
11 well lifeless when we drug him out.

12 MR. FINNICAL: Pass the witness.

13 THE COURT: Cross-examination.

14

15 CROSS-EXAMINATION by Mr. Marshall:

16 Q. Sergeant, you were struggling with Carr and Carr had a
17 blade or a knife?

18 A. Yes, sir.

19 Q. He cut you on the hand?

20 A. Yes, sir.

21 Q. So you were forced to let him loose because he cut you
22 on the hand?

23 A. Yes.

24 Q. And he ran over, you say, and cut at Officer Jackson and
25 it looked like Officer Jackson reacted because he sort of went

1 forward; is that right?

2 A. Yes, sir.

3 Q. You didn't actually see the knife stick Officer Jackson
4 because Carr's back was turned and you just couldn't see around
5 his back, is that right?

6 A. I saw the knife when he cut me.

7 Q. When he cut you, you saw the knife?

8 A. Yes.

9 Q. Now, were -- how many inmates were right around Officer
10 Jackson at that time?

11 A. There were other inmates there. I don't know. I couldn't
12 say how many there were. Approximately 20 to 25 altogether into
13 it. This was in the rotunda, too. Somewhere out in the rotunda.

14 Q. Did you have any idea of how many were right there at
15 Jackson's location?

16 A. There was at least two or three others.

17 Q. How many inmates had their hands on Jackson or appeared
18 to be holding him in some way or another?

19 A. I remember inmate Roberts is the only one I knew and
20 there was another, probably two other inmates there, too.

21 Q. Two other inmates, also, were holding him?

22 A. Yes.

23 Q. Had their hands on him at any rate, right?

24 A. Yes, sir.

25 Q. Now, during the time that you saw Roy Roberts, did you at

1 any time see anything in his hand?
2 A. No, sir. I did not.

3 Q. You never saw any kind of weapon?

4 A. Just Officer Jackson. I never seen a weapon. I never
5 seen him have a weapon.

6 MR. MARSHALL: No further questions.

7 THE COURT: Re-direct?

8 ---

9 RE-DIRECT EXAMINATION by Mr. Finnical:

10 Q. Who was preventing Officer Jackson from defending himself?

11 MR. MARSHALL: Object as calling for conclusion.

12 THE COURT: Overruled.

13 A. Inmate Roberts.

14 Q. Who was preventing Officer Jackson from getting away
15 from the door where the stabbing occurred?

16 MR. MARSHALL: Object as calling for conclusion.

17 THE COURT: Did you see it?

18 A. Yes, sir.

19 THE COURT: Overruled.

20 A. Inmate Roberts.

21 Q. How much size advantage did inmate Roberts have over
22 Tom Jackson?

23 A. Quite a bit heavier than Mr. Jackson.

24 Q. How old a man was Tom Jackson?

25 A. I believe Mr. Jackson was sixty-four (64) or sixty-five

2 Q. What kind of weapons did Tom Jackson have?

3 A. He didn't have any.

4 Q. How many people out there were helping Tom Jackson defend
5 himself?

6 A. There was none at that time.

7 THE COURT: You may step down.

8 MR. MARSHALL: I have a couple of questions.

9 ---

10 RE-CROSS EXAMINATION by Mr. Marshall:

11 Q. Sergeant, you also just said, as I understand it, that
12 two other inmates at least then also had their hands on Officer
13 Jackson at that same time?

14 A. I couldn't say they were holding him. They may have
15 touched him and there were inmates around him. Inmate Roberts
16 is the only one I can actually say was holding him, keeping
17 him from moving.

18 MR. MARSHALL: Nothing further.

19 THE COURT: You may step down.

20 (Witness excused.)

21 ---

22 (Counsel approach the bench and the following discussion
23 was had out of the hearing of the jury:)

24 MR. FINNICAL: This is the guy that was hypnotized.

25 If he is going to cross-examine on that point I would like

Exhibit
8

Statement of ROBERT E. Wilson DOB 7-12-14 Age 35
Address Rt 4 Box 83 Moberly, Mo. taken at MTCM

Statement began at 230 a.m. July 4- 19 83

At 10³⁰ pm myself KL Goodin DL Krawinkel & DF
Halley were called to Housing Unit #2
to lock up some Drunks.

Officer TG Jackson, KF Goodin & DL
Krawinkel went in B wing and brought
out a man who was intoxicated.

As they was bring the man out the
door about 30 & 40 inmates busted out the
wing door after us. I grabbed one inmate
by the head and was hitting him. He
came out with a knife and cut me on
my left hand. Then (S) went for officer
TG Jackson. at this time officer Humphrey
hit him with Bat & (S) went down.

The other inmates drug back into the
wing.

By then I was fighting with another
inmate & the other officers got the wing
locked down.

I have read the above statement consisting of 1 pages, and attest it is a
true and accurate account of the events which took place on 7-3-83
given by me freely and voluntarily, without fear of threat or promise
or reward.

Witness Capt A. F. Halley

Signature RE Wilson
Witness DL Krawinkel
Pages

OF: 10-10-73 Page No. 1

inmate accompanied Officer Jackson to the hospital. Capt. Halley and a new Officer by the name of Dillon ran to the administration building to get shotguns and more help. Myself, Officer Goodin and Officer Hesse stayed back to hold down the house. Inmates from all four wing were hollaring, breaking glass and preparing to come into the Rotunda afterwards. After approximately 10 minutes Capt. Halley, Officer Dillon and Lt. Arney returned with shotguns. The ORDER was given for the inmates to return to their cells. Some of them did, most did not. At this time Capt Halley & Lt. Arney & Myself began firing into the wings & the inmate ran for their cells.

Robert E. Wilson

Exhibit
9

MTCM CUS FORM # 24

STATE OF MISSOURI
MISSOURI TRAINING CENTER FOR MEN

Moberly, Missouri

INVESTIGATION REPORT:

Date: July 20, 1983

To: The Assistant Superintendent - Programs

Subject: 37209 Roberts, Roy-2-B-415 (Med)

At about 10:15 (Time) A.M. (P. M.) Sunday (Day) 7/3/83 (Date)

DETAILS: Inmate Roberts was in the first group of inmates to make the attack on us at the wing door of 2-B. Inmate Roberts was one of the inmates helping hold Officer Jackson as he was being stabbed. Due to the size of inmate Robert, he is a very easy person to identify. When I was trying to get Officer Jackson loose from the group, inmate Roberts was directly behind Officer Jackson holding ^{the} Officer against the door frame and glass of the wing door. When I made my first attempt to get Officer Jackson loose from the inmates, inmate Roberts hit me with his fist on the right side of my head near my temple.

Capt. R. F. Halley
SIGNATURE & RANK

Exhibit
10

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI
AT ROLLA
DIVISION I

2	STATE OF MISSOURI,)	
3)	
4)	
5	Plaintiff,)	
6	vs.	)	Case No. CR-5-83-692-FX
7	ROBERT DRISCOLL, a/k/a)	
8	ALBERT EUGENE JOHNSON,)	
9	Defendant.	)	September 5, 1984 Moberly, Missouri

o0o

DEPOSITION OF ROBERT EUGENE WILSON, a witness
produced, sworn, and examined on the 5th day of September,
1984, between the hours of 8:00 a.m. and 6:00 p.m. of that
day at the Missouri Training Center for Men, in the City of
Moberly, County of Randolph, State of Missouri, before:

NANCY A. FOX
Registered Professional Reporter

and Notary Public within and for the State of Missouri,
commissioned in Cole County, in the above-entitled cause,
on the part of the defendant, pursuant to agreement.

o0o

BREDEMAN & ASSOCIATES, INC. --- COURT REPORTERS --- JEFFERSON CITY --- MISSOURI

open.

2 Q So you were in the rotunda area?

3 A Yes.

4 Q As the inmates came out, what happened?

5 A As they was -- well, they was bringing the
6 inmate out the door. Kroeckel and Officer Goodin was.
7 And the inmates started coming from the back of the wing
8 yelling, You're not taking Jimmy anywhere. Referring to
9 the inmate.

10 Q What happened after the inmates said that?

11 A The other group by the toilet joined in with
12 these and they came up to the door. Officer Jackson was
13 at the back of Goodin and Kroeckel. And he was at the
14 bottom of the steps by then when they was coming up to it.
15 And he started up the steps. He didn't quite get to the
16 door when the other inmates reached him to where he was at.
17 Goodin and Kroeckel had already come through the door and
18 was out in the rotunda.

19 Q What happened when the inmates reached the guards?

20 A Well, there was a lot of commotion. They started
21 fighting, pushing up to the door to where I was at. And
22 by this time I started fighting with Rodney Carr.

23 Q How do you know that you were fighting with
24 Rodney Carr?

25 A Well, I knew him.

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Q Had Rodney Carr been close to Officer Jackson prior to the time that you started fighting with Carr?

A He came by him.

Q He came by Jackson?

A Yes, he come by him.

Q Where was Jackson standing?

A He was standing in front of the window right as you come out the door.

Q Were there other inmates up there besides Carr?

A Yes, there was.

Q Do you know any of them?

A I knew Hog Roberts and I knew some others by face. I didn't know all their names.

Q You knew Carr by face?

A Yes.

Q How did you happen to know Carr by face?

A Well, I'd seen him around the yard and stuff, around the institution.

Q How would you describe his build?

A I would describe him as medium built, probably around -- I'm not very good at judging height, but I'd say five-eight, five-nine, something like that.

Q How old would you estimate him to be?

A I'd estimate him to be around early 20's.

Q Did you see any of the inmates with a knife?

Exhibit
11

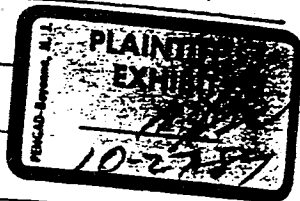
Statement of DENVER F. HALLEY

DOB (May 29) 1922 Age 61

This document is housed in the Capital Punishment Clemency Petitions (1922-1983) in the M.E. Grenander Department Special Collections and Archives, University Libraries, University at Albany, SUNY.

313 North Wentz Street, Macon, MO

taken at MTCM



Statement began at 3:17 a.m. Monday, July 4 19 1983

received a call from COI Marion Humphry, Rotunda Officer, Housing Unit #2. He stated he had a bunch of drunks in B-Wing and that they had run Officer Tom Jackson out of the wing. I then notified Lt. Kroeckel and Officer Wilson and Officer Hess to go with me to Housing Unit #2 to check in on this matter. After arriving, Lt. Kroeckel and Officer Goodin went into the wing and found one drunk inmate and were going to bring him to the Rotunda. They arrived at the steps leading out of the wing with this inmate, and he went to hollering and that that time approximately 35 or maybe 40 inmates came running on us. They grabbed Officer Tom Jackson first and had him up against the door and approximately, I would say, 12 or 14 inmates were trying to come out into the Rotunda. Officer Goodin, Officer Wilson, Lt. Kroeckel, and myself--Captain Halley--we went to fighting these inmates. A number of them were armed with iron bars and knives. I tried to help Officer Jackson get away from the inmates. They were holding him and during this procedure, I was knocked down twice, plus was hit in the arm with a pipe. I heard Officer Jackson holler and I finally managed to drag him out. He was bleeding profusely and I dragged Officer Jackson across the Rotunda and knew at that time that he was dying. After getting Officer Jackson out, I then discovered Officer Hess had been stabbed and Officer Maupin, who was severely stabbed. Officer Maupin had to be taken by Randolph County ambulance to the University of Missouri Medical Center in Columbia, MO. Seeing that we could not handle these men and no help to call, I then went to the Administration Building and when I entered the Administration Building I had Officer Petre to hit the siren, hoping it would bring more help in. Arriving shortly thereafter was Mr. Joe Dunnington, Education Supervisor, and Mr. Allen Personette, Plant

I read the above statement consisting of 2 pages, and attest it is a true and accurate account of the events which took place on July 3, 1983. I signed this by me freely and voluntarily, without fear of threat or promise.

D.F. Halley

Signature: *Capt. D.F. Halley*
Witness: *R.A. ...*

Statement began at 3:17 ~~xxxx~~ a.m. Monday, July 4, 1983
(Continued from Page 1)

Maintenance Engineer II. I gave them a shot gun each and by that time, Lt. William Arney arrived, and he took a shot gun, and I took a gun. We arrived at Housing Unit #2, and the inmates were breaking glass and still attempting to try to come out of the wing.. Shots were fired through the glass in the direction of the inmates, but this did put them in their rooms. The Emergency Squad was called, and all other available personnel, and we then got the situation in hand. Wings were--inmates were deadlocked in their rooms, and the wings were locked down. The guns were left in the Housing Unit to stand guard in the walk-way and the Rotunda.

(Statement ended at 3:17 A.M., Monday, July 4, 1983)

I read the above statement consisting of 2 pages, and attest it is a true and accurate account of the events which took place on July 3, 1983, and I signed the same freely and voluntarily, without fear of threat or promise.

P.F. Kirschner CO. ET

Signature: Capt. W.F. Haller
Witness: REINOLD

Exhibit
12

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI
AT ROLLA
DIVISION I

STATE OF MISSOURI,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. 5-83-692-FX
)	
ROBERT DRISCOLL, a/k/a)	
ALBERT EUGENE JOHNSON,)	
	)	September 5, 1984
Defendant.	)	Moberly, Missouri

o0o

DEPOSITION OF DENVER FRANKLIN HALLEY, a witness produced, sworn, and examined on the 5th day of September, 1984, between the hours of 8:00 a.m. and 6:00 p.m. of that day at the Missouri Training Center for Men, in the City of Moberly, County of Randolph, State of Missouri, before:

NANCY A. FOX
Registered Professional Reporter

and Notary Public within and for the State of Missouri, commissioned in Cole County, in the above-entitled cause, on the part of the defendant, pursuant to agreement.

o0o

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Q After you were unable to get to him at that time what happened?

A I was back around again in front of the doorway. There was Officer Wilson and I, and we kept battling.

Q With whom were you battling?

A Unknown inmates as far as I'm concerned. I don't know at that time. Only -- the only one that I do know is Hog Roberts. Because he stands out like a red rose in the Sahara Desert. No one would miss him.

Q That's because he's a large man.

A He's a big man and a lot of dealings with him.

Q Very well. Do you know whether Mr. Jackson stayed at that same location?

A They wouldn't turn him loose. That's right. They wouldn't turn him loose.

Q Was there anyone between you and Mr. Jackson?

A Inmates.

Q Did you observe any inmate strike Mr. Jackson?

A No, I did not see any with the exception of one that made a jab at him. And he you know had a painful look on his face and all, which you knew he was getting hurt in some way. But you didn't -- I didn't know who was hurting him with the exception of Hog Roberts.

Q But you say you saw an inmate jab at him. Did you see an inmate jabbing at him with a weapon or just

Exhibit
13

2 MR. FINNICAL: Your Honor, we call Wayne Hess.

3
4 WAYNE HESS,

5 being first duly sworn by Hershel Schafer, Clerk, testified as
6 follows:

7 DIRECT EXAMINATION

8 By Mr. Finnical:

9 Q. Sir, would you please state your name.

10 A. Robert Wayne Hess, Sr.

11 Q. Mr. Hess, where do you live?

12 A. 633 North 8th, Moberly, Missouri.

13 Q. How long have you lived there, Mr. Hess?

14 A. I lived there about all my life in Moberly.

15 Q. How are you employed?

16 A. MTCM.

17 Q. What does that stand for?

18 A. Moberly Training Center for Men.

19 Q. Is that the prison there in Moberly?

20 A. Yes.

21 Q. And how long have you been employed there at Moberly
22 Training Center for Men?

23 A. Five years and seven months.

24 Q. And what are your duties there at the Missouri Training
25 Center for Men?

- 1 A. Captain Halley.
- 2 Q. Do you remember what time that was?
- 3 A. About 10, 10:15.
- 4 Q. Was anybody else there?
- 5 A. Yes.
- 6 Q. Who else was with Captain Halley that night?
- 7 A. Krecckel, Wilson, me, and Officer Dolan.
- 8 Q. When you arrived at 2 House, what did you do?
- 9 A. Well, they said they was having trouble there in the house.
- 10 Q. And what happened?
- 11 A. Well, they went down to get this guy out of the wing and
- 12 somebody hollering out and said, "You are not going to take
- 13 that man out." And that's when all of the trouble started.
- 14 Q. Okay. Now, did you see the guards go down to get the inmate
- 15 out of the cell?
- 16 A. Yes.
- 17 Q. Where were you standing when you saw them do that?
- 18 A. Inside the door.
- 19 Q. Inside the doorway. Does that mean inside? Let me ask
- 20 this question: Inside on the wing side or inside in the
- 21 control center?
- 22 A. Inside the wing.
- 23 Q. Where were you standing inside the wing?
- 24 A. On the right-hand side of the door.
- 25 Q. Okay. Were you still on the flag?

- 1 A. Yes.
- 2 Q. Who had a knife?
- 3 A. Rodney Carr.
- 4 Q. Do you see that person here in the courtroom today?
- 5 A. Yes, I do.
- 6 Q. Would you point him out by what he's wearing.
- 7 A. He's wearing the blue coat over there, jacket, and blue
- 8 pants.
- 9 Q. Where was Rodney Carr when you saw him with a knife?
- 10 A. Up on the top of the stairway, up on top of the flag.
- 11 Q. Okay. And where were you when you observed this?
- 12 A. Right inside right beside the doorway.
- 13 Q. Okay. Inside the control center or inside the wing?
- 14 A. Inside the wing.
- 15 Q. Now, after you observed him coming up there with a knife --
- 16 Can you describe the knife for the folks?
- 17 A. Yes. It was about 7 or 10 inches long with white tape on it.
- 18 Q. Okay. Now, as you observed, were there other inmates with
- 19 Rodney Carr?
- 20 A. Yes.
- 21 Q. Okay. About how many would you say were coming up on the
- 22 flag area?
- 23 A. Between 25 and 40.
- 24 Q. And as you observed that, where did you go?
- 25 A. I stood outside, you know. I just walked back outside there

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toward the flag.

Q. Before you saw him stabbed by this individual, was his shirt already bloody?

A. Yes.

Q. So prior to the time you saw this inmate stab this Tom Jackson, it appeared that Jackson was already bleeding already?

A. Yes.

Q. Okay. Now, where was it when you saw -- Where was Tom Jackson now when you saw him stabbed?

A. Right there in the middle of the doorway.

Q. Okay. Now, who did you see stab Tom Jackson?

A. Rodney Carr.

Q. Is that the same Rodney Carr you have identified?

A. Yes.

Q. Okay. Sir, I will show you what's been marked -- Can you describe the knife that you saw?

A. It had white tape bound around it.

Q. Okay. I will show you what's been marked as State's Exhibit No. 27 and ask you if you can identify that.

A. Yes. That's the knife there.

Q. Now, can you testify that this is the exact knife or one that appeared that way?

A. One that appears that way.

Q. Was it a white handle you say?

1 stabbed Tom Jackson in the stomach area?

2 A. He was, you know -- What do you mean by that?

3 Q. Well, would you step down here, please.

4 Pretend that I am Tom Jackson and that you are Rodney
5 Carr. Did he use his right or left hand?

6 A. He used his right, but I am left-handed.

7 Q. Assume that is the doorway and I am right at the doorway
8 aiming into the control center area and you are Rodney
9 Carr. Can you describe the manner in which you saw the
10 Defendant stab Tom Jackson?

11 A. Yes. Like this here.

12 Q. Move forward?

13 A. Yeah. He moved forward up like this here. He leaned into
14 the body of Tom Jackson.

15 Q. Okay. Now, Mr. Hess, could you come down here again.

16 Okay. You are Rodney Carr. I am Tom Jackson. You
17 have stabbed me. Where was your point of view -- I mean,
18 where did you get this view? Were you standing here, back
19 here, over there? Where were you standing?

20 A. I was standing right here.

21 Q. About how many feet away would you say?

22 A. About 3 or 4 feet.

23 Q. Is that your best guesstimate?

24 A. Yes.

25 Q. Now, after you saw the Defendant Rodney Carr stab Tom Jackson

1 Q. Was the Defendant on you when he cut you? Was he
2 holding on to you?

3 A. Yes.

4 Q. What, if anything, happened that caused the Defendant to
5 leave you?

6 A. Another officer hit him with a ball bat.

7 Q. Did you see this officer hit him?

8 A. No, I did not.

9 Q. Okay. Could you hear it?

10 A. Yes, I could hear it.

11 Q. What did it sound like when you heard the ball bat hit?

12 A. Like a big old boom.

13 Q. After you heard the sound, what, if anything, happened to
14 Rodney Carr?

15 A. Well, he went back in the wing.

16 Q. Okay. And did the inmates stay in the wing?

17 A. Yes.

18 Q. Okay. Now, did they go ultimately back into the wing area?

19 A. Well, we forced them back in then, you know, I got the
20 door locked down.

21 Q. Okay. After the door was locked down, what happened then?

22 A. Well, we stayed there, the help came.

23 Q. How long did you stay there cut before help came?

24 A. Oh, about -- I don't know. I don't know. I'm just taking
25 a guess. About ten minutes. Ten, fifteen minutes.

1 Q. Do they fairly and accurately represent the photograph of
2 blood that was left behind on the floor in B Wing?

3 A. Yes.

4 MR. FINNICAL: Your Honor, we offer State's Exhibits
5 Nos. 23 and 24.

6 MR. OSSMAN: I have no objection to 23, Your Honor. I
7 object to No. 24 in that counsel hasn't laid a proper
8 foundation particularly in regard to a time frame with
9 regard to Exhibit 24.

10 MR. FINNICAL: I will.

11 THE COURT: Very well.

12 Q. Is that the way the floor appeared after the inmates were
13 pushed back to the wing?

14 A. Yes.

15 MR. FINNICAL: Again we will re-offer State's Exhibit
16 24.

17 MR. OSSMAN: Again I will object. We don't know what
18 day, what hour, what month, what year.

19 THE COURT: That objection will be overruled. Exhibit
20 24 will be admitted.

21
22 (State's Exhibits 23 and 24 were admitted into evidence.)
23

24 Q. Now, I will ask you if that evening you had occasion
25 for treatment.

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MR. OSSMAN: Your Honor, I assume Mr. Finnical plans to introduce or is trying to introduce State's Exhibit No. 25., which is a line-up that was held I think on July 4.

MR. FINNICAL: Right, July 4.

MR. OSSMAN: And I think Mr. Finnical will agree that there is evidence -- or I will make an offer of proof that there is evidence that this witness was shown other photographs before he was taken to this line-up to identify the Defendant. And on that basis I think the identification is tainted, and I would move the Court to strike any evidence pertaining to this identification.

MR. FINNICAL: It's my understanding that there were -- When we arrived at the Missouri Training Center for Men, there were a group of photographs there. He looked at the photograph of Roberts, Driscoll and indicated that it was not the person that he saw stab Jackson, and one other individual was not Rodney Carr. He did not see a photograph of Rodney Carr.

THE COURT: Is it your contention that there is such a photograph that was shown to him?

MR. OSSMAN: Of Carr?

THE COURT: Yes. At that time.

MR. OSSMAN: Yes. May I make an offer of proof?

1 Q. Now, Mr. Hess, I believe you indicated at the time that you
2 saw the Defendant Rodney Carr put the blade into the side of
3 Tom Jackson, was it lower than the chest area or the chest
4 area?

5 A. Lower chest area.

6 Q. You mean down here or up here?

7 A. Down here.

8 Q. Okay. Now, throughout this trial have you come to know a
9 man by the name of Robert Driscoll?

10 A. Yes.

11 Q. I will show you what's been marked as State's Exhibit 26.
12 And I will ask you if you can identify that individual.

13 A. Yes. That's Robert Driscoll.

14 Q. Okay. Now, I believe you indicated that the time that
15 Rodney Carr stabbed Tom Jackson there was already blood on
16 him; is that right?

17 A. Yes, sir.

18 Q. Did you see Robert Driscoll stab Tom Jackson?

19 A. No, I did not.

20 Q. You cannot testify to that?

21 A. No, I cannot.

22 Q. Okay. Now, can you see what was happening to Tom Jackson
23 while he was being restrained out here before he came around
24 the doorway?

25 A. This man had ahold of him.

1 it may have been taken.

2 MR. FINNICAL: Well, Your Honor, I will ask another
3 question.

4 THE COURT: All right.

5 Q. Does this picture fairly and accurately represent the way
6 Robert Driscoll appeared on that day, you say the next day,
7 the 26th? Did you see him the next day, excuse me, the
8 4th?

9 A. Yes.

10 Q. You saw him the next day?

11 A. Yes.

12 Q. This is how he appeared?

13 A. That's how he appeared right there.

14 MR. FINNICAL: Okay. Offer State's Exhibit 26.

15 MR. OSSMAN: No objection, Your Honor.

16 THE COURT: State's Exhibit 26 will be admitted.

17 - - -
18 (State's Exhibit 26 was admitted into evidence.)

19 - - -

20 MR. FINNICAL: Pass the witness.

21 THE COURT: Cross.

22 MR. OSSMAN: Thank you, Your Honor.

23 - - -

24 CROSS-EXAMINATION

25 By Mr. Ossman:

1 A. Gray pants.

2 Q. What kind of shoes?

3 A. I didn't pay attention to no shoes.

4 Q. All right. Now, it's your testimony, is it not, that you
5 actually saw a knife in this man's hand and actually saw
6 that knife go into the body of Officer Jackson?

7 A. Yes.

8 Q. Is that correct?

9 A. Yes, I did see the knife in his hand.

10 Q. Is this knife that Mr. Finnical has in his hand?

11 A. Yes.

12 Q. Did you see any other weapons that night?

13 A. No, I did not.

14 Q. You only saw one knife?

15 A. One knife.

16 Q. How many times did you actually see or did you allegedly
17 see this Defendant stab Officer Jackson?
18

19 A. One time.

20 Q. That's the only motion you saw?

21 A. That's the only motion.

22 Q. All right. And you say that you actually physically saw the
23 blade go in to the body?

24 A. Yes.

25 Q. Now, did you have an occasion to see that knife after that?

A. No, I did not.

1 confused about who did that.

2 Now, on July 9, 1983, did you or did you not give a
3 handwritten statement concerning this incident?

4 A. To the sheriff I did not give no handwritten statement. He
5 took the statement down. I did not use my hand.

6 Q. I want to show you a copy dated July 9, 1983. It says:
7 statement of Robert Wayne Hess. There are two pages as
8 best I can tell. Now, this is a copy. I want to ask you
9 if you signed that statement, not necessarily whether you
10 wrote it. Did you sign it? ...

11 A. Yes.

12 Q. Okay. So that is your statement? You recall it?

13 A. Well, I cannot recall it.

14 Q. You recall making a statement?

15 A. I recall making a statement.

16 Q. Would you like time to look at it?

17 A. Yes, I would.

18 Q. Okay.

19 MR. FINNICAL: Jay, what day was the statement?

20 MR. OSSMAN: July 9.

21

22 (Defendant's Exhibit 1 was marked for identification.)

23

24

25 Q. Mr. Hess, I'm going to show you what's been marked as
Defendant's Exhibit 1 and ask you if you can take a look at

1 Q. Is that in fact part of your statement what Lieutenant,
2 Newberry said to you?

3 A. Yes.

4 Q. And what did he tell you?

5 A. He just said he was going to prove me wrong.

6 Q. Uh-huh.

7 A. But --

8 Q. Sir, let me ask the questions, please.

9 A. Okay.

10 Q. Isn't it a fact that in your statement you say that
11 "Lieutenant Newberry came up to me and said, 'Hess, I'm
12 going to prove you wrong. You've got the wrong man. That
13 one inmate'" -- I assume that's Driscoll -- "gave a
14 statement that he stabbed Jackson." Is that what's in your
15 statement?

16 A. Yes.

17 MR. OSSMAN: Can I have just a second, Your Honor?

18 I have no further questions of the witness, Your
19 Honor.

20 THE COURT: Redirect.

21
22 REDIRECT EXAMINATION

23 By Mr. Finnical:

24 Q. What was the day of that statement? July the 9; is that
25 correct, Mr. Hess?

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Q. In that deposition you were asked to describe the person who assaulted you or stabbed Officer Jackson. Do you recall that?

A. Yes.

Q. Do you recall what you said about the person who stabbed you as far as facial hair goes?

A. No.

Q. You do not recall?

A. What do you mean by that there?

Q. Sir?

A. What do you mean by that there?

Q. Do you remember what you said in the deposition?

A. No because I never read the deposition.

Q. Would you like a chance to look at it?

A. Yes, I would.

Q. And I am specifically calling your attention to page 10. And you will note on the front that is the deposition of Robert Wayne Hess.

Have you had a chance to review that deposition page 10, sir?

A. Yes.

Q. And what do you now recall what you said concerning facial hair on the person who attacked you and Officer Jackson?

A. Not the way you said it was.

Q. What did you say in your deposition?

1 "A. What do you mean by that?"

2 "Q. Did he have a beard of moustache?"

3 "A. No."

4 Do you recall that?

5 A. I don't recall that.

6 Q. Okay.

7 I have no other questions, Your Honor.

8 THE COURT: Redirect.

9 MR. FINNICAL: I have no other questions.

10 THE COURT: May this witness be excused?

11 MR. OSSMAN: No, Your Honor.

12 THE COURT: Very well. You will step down, remain
13 outside.

14 Call your next witness.

15 MR. FINNICAL: Robert Wilson, please.

16
17 ROBERT WILSON,

18 being first duly sworn by Hershel Schafer, Clerk, testified as
19 follows:

20 DIRECT EXAMINATION

21 By Mr. Finnical:

22 Q. Sir, would you please state your name.

23 A. Robert Wilson.

24 Q. Mr. Wilson, where do you live?

25 A. Route 4, Moberly, Missouri.

Exhibit
14

IN THE MISSOURI COURT OF APPEALS

EASTERN DISTRICT

ROY ROBERTS,)	
)	
Appellant,)	
	)	Appellate No. _____
vs.)	
)	
STATE OF MISSOURI,)	
)	
Respondent.)	

IN THE CIRCUIT COURT OF MARION COUNTY
STATE OF MISSOURI

ROY ROBERTS,)	
)	
Movant,)	
	)	No. CV386-315CC
vs.	)	Honorable Ronald R.
	)	McKenzie
STATE OF MISSOURI,)	
)	
Defendant.)	

TRANSCRIPT OF

27.26 MOTION

SEPTEMBER 15, 1988

Randall W. Wells, C.C.R.
Official Court Reporter
10th Judicial Circuit
Hannibal, Missouri

COPY

1 Q Back on July 3rd, 1983, how were you employed?

2 A I worked for the Department of Corrections,
3 Randolph County, Moberly Medium Security Prison.

4 Q And subsequent to that time you've retired,
5 is that correct?

6 A I retired in '85.

7 Q Now, on July 3rd, 1983, did you know the man
8 who's sitting next to me?

9 A Very well.

10 Q Can you identify him, tell us who he is for
11 the record?

12 A All I knew him by was Hog Roberts.

13 Q So you knew him by name?

14 A Just Hog. That's all I can recall.

15 Q I want to show you what's been marked as
16 Plaintiff's Exhibit 11, and can you tell me and the
17 Court what that is?

18 A This is just a report of what I wrote on the
19 happenings of that particular night.

20 Q Okay. When did you make that report?

21 A You're asking me something now -- I can't
22 remember what I done yesterday much less since 1983.

23 Q I'm not trying to test your memory. Does the
24 report reflect when you made that report?

25 A Well, that's the night it took place, July

1 and so many things took place that it's hard for me to
2 say now, but I definitely gave his name as a man who was
3 holding him because I was right there beside him.

4 MR. WOLFRUM: I object. This is getting into
5 a narrative. Non-responsive.

6 THE COURT: Sustained.

7 Q (BY MISS MESCHER) Do you know whether or not
8 you would have made such a statement close in time to
9 July 3 of 1983?

10 A July 3?

11 Q 1983.

12 A Would I have made such a statement?

13 Q Somewhere close in time to that. Do you know
14 whether or not you would have said that Roy Roberts was
15 holding Officer Jackson sometime near July 3 of 1983,
16 your statement occurring sometime near that date?

17 A Well, it didn't happen until the 4th, did it?
18 You're asking me if I made that statement on the 3rd?

19 Q No. I'm asking you if you would have made a
20 statement, whether or not you would have made a
21 statement that Hog Roberts was involved holding Officer
22 Jackson sometime near the events of July 3rd?

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

25 Q It's probably my wording and not anything

Exhibit
15

IN THE MISSOURI COURT OF APPEALS

EASTERN DISTRICT

ROY ROBERTS,)	
)	
Appellant,)	
	)	Appellate No. _____
vs.)	
)	
STATE OF MISSOURI,)	
)	
Respondent.)	

IN THE CIRCUIT COURT OF MARION COUNTY
STATE OF MISSOURI

ROY ROBERTS,)	
)	
Movant,)	
	)	No. CV386-315CC
vs.	)	Honorable Ronald R.
	)	McKenzie
STATE OF MISSOURI,)	
)	
Defendant.)	

TRANSCRIPT OF

27.26 MOTION

SEPTEMBER 15, 1988

Randall W. Wells, C.C.R.
Official Court Reporter
10th Judicial Circuit
Hannibal, Missouri

COPY

1 hynosis or because that's what you observed?

2 A That's what I observed.

3 MISS MESCHER: I don't have any further
4 questions.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY MR. WOLFRUM:

8 Q You say that even though you didn't know his
9 name, Roy Roberts was easily identifiable to you because
10 of his size. I assume the minute you saw whatever you
11 saw, because of his size he was one of the easy people
12 to pick out, is that what you're saying?

13 A There's about twelve hundred inmates and you
14 can't remember everybody's name and face at that
15 institution.

16 Q I'm asking you what you testified to on
17 cross-examination.

18 You said you could pick him out because of
19 his size, about the biggest guy at the institution?

20 A In that wing he was. Not in the institution.

21 Q In that wing?

22 A In that wing. He lived up on the top wall.

23 Q And you're saying that at the time of the
24 incident you saw what you saw and you could identify Roy
25 Roberts because of his size, is that correct?

1 A Okay. I turned around and looked and I seen
2 this man right here had Mr. Jackson in a headlock.

3 Q But my question, we've all heard that, my
4 question is you could -- you're saying you could
5 identify him because of his size?

6 A Not because of his size, but of his feature
7 and his face. I could not forget the man's face.

8 Q You had seen him before?

9 A I seen him around in the institution.

10 Q Did you know any nicknames that people called
11 him?

12 A Yes.

13 Q On July 3rd what -- on July 3rd, 1983 what
14 nicknames did you know that people called him by?

15 A Hog Roberts.

16 Q You knew that on the day prior to the
17 incident?

18 A I just knew they called him Hog Roberts.

19 Q And so you're saying that when you gave the
20 statements in Plaintiff's Exhibit 4 and Plaintiff's
21 Exhibit 5, you're saying that you knew who Roy Roberts
22 was, is that correct?

23 If you gave those statements on July 4th and
24 July 9th of 1983, you're saying you knew him by the
25 nickname Hog Roberts?

1 A I just heard the inmates call him Hog
2 Roberts.

3 Q Fair enough. You knew that when you gave
4 Plaintiff's Exhibits 4 and 5, right?

5 A Yes.

6 Q And in spite of the fact that you testified
7 you gave a lot of statements, you didn't give any
8 statements that you believed to be untrue or incomplete,
9 did you?

10 A No.

11 Q Okay. What walk did you say he lived on, Roy
12 Roberts?

13 A Huh?

14 Q What walk did you say he lived on?

15 A In B Wing.

16 Q Is that upper, lower?

17 A That's up. Lower and an upper.

18 Q Which one of those wings did he live on?

19 A Would be the wing on the upper wall.

20 MR. WOLFRUM: Unless Mr. Roberts has some
21 more questions, I don't.

22 Nothing further.

23 MISS MESCHER: No recross.

24 THE COURT: You may step down.

25 Call your next witness.

Exhibit
16

STATEMENT

Statement of Joe Vogelhorn DOB 9/15/63 Age 19
address 2B-417 taken at M.T.C.M

Statement began at 5:30 ^{a.m.} July 4 1983

On July 3, 1983 I was in the room, 2B-410 with inmate Robert Dussone. He got out the handle and blade and put it together. He then stuck the knife in his pants and we both walked out of the room. We went up to the steps of 2B. He then started to punch at officer Jackson. I then got the hell out of there. I was stuck approximately 1/2 inch away from Dussone and the officer. I then went to 2B-410 and started watching the television. Then Dussone came in saying, "One of the officers, which was officer Jackson, had been stuck. I had seen the handle of knife about 2-3 weeks earlier to this situation."

This took place at around 10:00 P.M. July 3, 1983.

He was wearing a blue tank top and grey trousers and blue tennis shoes (Nike's). The knife which I had was approximately 2 inches long. The handle was about 3 inches long and wooden. The metal blade was about 4 inches long made from a ruler.

I have read the above statement consisting of 2 pages, and agree it is a true and accurate account of the events which took place on July 3, 1983. I was given by me freely and voluntarily, without fear of threat or promise of reward.

Signature Joseph Vogelhorn 45439
Witness _____
100

STATEMENT

Statement of Toz Nagolpohi Date 9/15/63 Age 19
Address 2 B-417 Taken at M.T.C.M.

Statement began at 5:30 July 4 1963

I write this statement because I didn't want to be involved with this case. Because I did not wish to participate in this case and don't feel I should take the rap or so accessory to the crime.

[Handwritten scribbles and a large wavy line]

I have read the above statement consisting of 2 pages, and accept it as a true and accurate account of the events which took place on July 3, 1963. It was given by me freely and voluntarily, without fear of threat or promise of reward.

Signature Joseph Nagolpohi 45437
[Signature]

Exhibit
17

1 THE COURT: You may step down.

2 MR. FINNICAL: Same situation, your Honor, subject
3 to recall.

4 THE COURT: Yes. Right?

5 MR. MARSHALL: Yes.

6 THE COURT: You may leave and return to your home
7 but you are subject to recall so make arrangements
8 so somebody can get hold of you if they have to.

9 (The witness was excused subject to recall.)

10 ---

11 JOE VOGELPOHL

12 duly sworn by the Clerk of the court, testified:

13 DIRECT EXAMINATION by Mr. Finnical:

14 Q. Sir, please state your name.

15 A. Joseph Vogelwohl.

16 Q. Mr. Vogelwohl, where do you reside?

17 A. Missouri Correctional Center, Pacific, Missouri.

18 Q. How long have you lived there?

19 A. About two months now.

20 Q. Prior to that where did you live?

21 A. Algoa, A.C.C.

22 Q. Now, I will ask you if you had occasion to reside in the
23 Moberly Training Center for Men on July 3, 1983?

24 A. Yes, sir.

25 Q. What was your status there?

1 the hallway?
2 A. Yes, sir.

3 Q. Who was in the hallway?

4 A. John Bolin, Doug McWorthy, Rick Beatty, myself, Robert
5 Driscoll, Rodney Carr, Roy Roberts. The others I can't remember
6 the names. Melvin Steikel, Tim Rutledge. That's all I can
7 remember.

8 Q. Now, as the group were standing in the middle of the
9 hallway -- strike that. Were you standing in about this general
10 area (pointing)?

11 A. Yes, sir.

12 Q. As you were standing there with the group of -- how many
13 inmates?

14 A. Approximately thirty (30).

15 Q. As you were standing there, who, if anybody, did you
16 observe coming down the hall?

17 A. Tom Jackson and two other officers.

18 Q. What did you see them do?

19 A. Go to Room 410 and take Jimmy Jenkins out to ad-seg.

20 Q. Was anything said as Tom Jackson and the guards were
21 taking the inmate Jimmy Jenkins out? Were any statements made?

22 A. Yes, sir.

23 Q. What kind of statements were being made by the people in
24 the group?

25 A. Roy Roberts and John Bolin said to the other inmates, are

1 we going to let them -- the guards -- take Jimmy out like that.

2 They said, let's rush them.

3 Q. Were any other statements made to the guards?

4 A. No, sir.

5 Q. And as the guards start going up the hall, what if
6 anything, happened?

7 A. They rushed the guards and attacked Thomas Jackson.

8 Q. Did the group of inmates overcome Thomas Jackson as he
9 was returning, walking down the hallway?

10 A. Yes, sir.

11 Q. Where were you in the group?

12 A. I was off to the left side and they were in the middle
13 of the wing. Thomas Jackson and Jenkins got to the steps and
14 he was pushed down. They were at the door.

15 Q. There are steps leading up to the doorway?

16 A. Yes, sir.

17 Q. Other inmates were surrounding the door?

18 A. Yes.

19 Q. Where were Thomas Jackson and Jimmy Jenkins when you
20 observed this?

21 A. About in the middle of the steps.

22 Q. What happened then?

23 A. The inmates had attacked him and were trying to hold him
24 back. He managed somehow to slip away from them and headed for
25 the control center.

- 1 Q. As Tom got to the control center door, was he stopped
2 by anyone?
- 3 A. Yes.
- 4 Q. Who stopped Tom from getting into the control center area?
- 5 A. Roy Roberts.
- 6 Q. Was Roy Roberts in the front or back of the group?
- 7 A. He was in the front.
- 8 Q. Now, as Roy Roberts stopped Tom Jackson from getting in
9 the control center did other inmates come up around the control
10 center door?
- 11 A. Yes.
- 12 Q. What if anything, happened then?
- 13 A. Some went out in the control center to fight with other
14 officers and some were fighting there at the flag on top of
15 the stairs and some on the steps.
- 16 Q. How far were you from where Tom Jackson, Roy Roberts
17 and Robert Driscoll were?
- 18 A. Approximately seven feet.
- 19 Q. By the back of the flag?
- 20 A. Yes, sir.
- 21 Q. Did you see Robert Driscoll do anything with the knife?
- 22 A. He was stabbing at Tom Jackson.
- 23 Q. What was Tom Jackson doing when Driscoll stabbed him with
24 the knife?
- 25 A. Trying to go out into the control center.

1 Q. Was something preventing him from getting into the control
2 center?

3 A. Yes, sir.

4 Q. What was preventing Tom Jackson from getting into the
5 control center area?

6 A. Carr was inside the wing and prevented the door being
7 shut. While Driscoll was stabbing Jackson, Roy Roberts was
8 holding him.

9 Q. Did you actually see Robert Driscoll put a knife in the
10 chest of Tom Jackson?

11 A. Yes.

12 Q. How many times did you see it penetrate the shirt and go
13 in the chest of Tom Jackson?

14 A. Twice.

15 Q. After you saw the knife penetrate the chest of Tom
16 Jackson, did you notice anything on his shirt?

17 A. Blood.

18 Q. After you saw it, what did you do?

19 A. When I seen it, I was in the process of turning around
20 and going back to 410 to watch T.V. I didn't want anything to
21 do with it.

22 Q. Why didn't you want anything to do with it?

23 A. I am not a killer. I do not believe in killing somebody
24 like that.

25 Q. Do you remember the exact words that Roy Roberts used in

1 the back of the wing when they were taking Tom out -- taking
2 Jimmy Jenkins out? The exact words he used?

3 A. Not the exact words.

4 Q. Just generally?

5 A. In general, are we going to let them take him out like
6 that, sit here and watch them do it or do something about it.

7 MR. FINNICAL: I offer State's Exhibit 23.

8 THE COURT: Any objection?

9 MR. MARSHALL: 23 is Driscoll's knife? No
10 objection.

11 THE COURT: It is admitted.

12 (State's Exhibit No. 23, so offered and received in
13 evidence, is not included herein but will be filed separately.)

14 Q. Did Robert Driscoll after the incident and after the
15 inmates were pushed back into the wing, did Robert Driscoll
16 ever come to you and say anything?

17 A. Yes, sir.

18 Q. What did he tell you?

19 A. Did I take him out, JoJo, or did I take him out, referring
20 to Tom Jackson.

21 Q. Had Roy Roberts escaped back into the wing after the
22 melee?

23 A. I don't know. I didn't see him come back in.

24 Q. Where did you stay after you left and saw Jackson being
25 stabbed?

Exhibit
18

1 Q. All right, you deny that. Do you remember writing a
2 letter to DeWitt Burns?

3 A. Yes, sir.

4 Q. B-u-r-n-s?

5 A. Yes, sir.

6 Q. Do you remember saying in that letter, old Ed Ruegg is
7 over in H-Hall in P.C. He really got involved in some heavy
8 shit. I heard he held Jackson while Robert was stabbing him?

9 A. That is what I heard.

10 Q. So you said that in the letter to DeWitt Burns?

11 A. Yes, I said that. I said that is what I heard because it
12 is what I heard but what I saw, I saw that man in that suit hold
13 Jackson.

14 Q. Not what you had been saying at the time?

15 A. I wrote that for one purpose. It also says in the letter
16 when I was dispersing from that scene I turned around and knocked
17 him on his rearend for one reason: The people up on Hospital 5
18 were friends of his talking to me about it, how they knew him,
19 et cetera. They were bringing me my food. How would I know if
20 they were friends of his they wouldn't put rat poison in my
21 food? I was told at another time people on that -- people being
22 paid to put poison on the food. I wrote that letter for my
23 protection, to make them believe I wasn't testifying against
24 Roy Roberts.

25 Q. That is why you said when you were leaving you knocked Roy

RE-CROSS EXAMINATION by Mr. Marshall:

2 Q. You talked earlier about how you heard before the rush
3 occurred, you heard some inmates saying let's rush them or
4 something like that?

5 A. Yes.

6 Q. Who was saying that?

7 A. John Bolin and Roy Roberts.

8 Q. Do you remember being interviewed by Sgt. Ullery and
9 Corp. Merritt of the Highway Patrol on October 3, 1983, you were
10 at the hospital on the fifth?

11 A. Yes, sir.

12 Q. Did you tell the officers at that time that you overheard
13 inmate Robert (Rabbit) Driscoll and John Bolin say they should
14 prevent the taking out of Jim Jenkins and you related that
15 Bolin said let's rush them? Do you remember saying that to the
16 officers?

17 A. What I told the officers, I said Roy Roberts. If I did
18 say that, I wasn't in the right mind because I know Rabbit didn't
19 say nothing. He was a quiet person. Robert Driscoll, he was a
20 quiet person. He put that knife in his back and walked out.
21 Didn't say a word. He was like that before that, he was a quiet
22 person.

23 Q. If that is what it says, it is not true?

24 A. Yes.

25 MR. MARSHALL: Nothing further.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 26, 1999.

I am Richard Hays, investigator for the Capital Habeas Unit of the Federal Defenders of Eastern Washington and Idaho. I work with the attorneys representing Missouri death row inmate Roy Roberts.

Mr. Roberts was convicted in the killing of a prison guard, Thomas Jackson. During the course of my investigation of the Roy Roberts case I interviewed numerous people including Willie Dennis. I interviewed Mr. Dennis at his home, 1101 South 4th Street, Moberly, Missouri, on February 20, 1999 at approximately 6 pm.

At the time of the murder of Mr. Jackson Mr. Dennis was a Major working at the Moberly Training Center. According to Major Dennis he arrived at the prison within an hour of the death of Mr. Jackson. Major Dennis relieved the guards that were involved in the initial disturbance and proceeded, with 3 other guards, to transfer inmates thought to be involved in the riot from B-Wing, where the riot had taken place. The transfer of inmates took place within two hours of them being locked in their cells after the guards took control of the wing. Major Dennis told me that he supervised the removal of Roy Roberts from the cell. Major Dennis told me that he saw no blood on Mr. Roberts and that had he seen any blood, that he would have confiscated any article of clothing or other item, with blood was on it for evidence. Major Dennis did not want to sign an affidavit.

FURTHER AFFIANT SAITH NAUGHT.

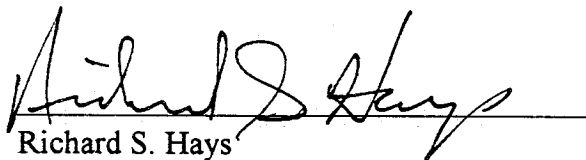

Richard S. Hays

Exhibit
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**POLYGRAPH QUALIFICATION OF
DONALD I. DUNLAP**

March, 1973

Appointed to the Kansas City, Missouri Police Department December 1, 1955, as a patrolman and was promoted to "Plain Clothes" Unit as an investigator in 1959.

Transferred to Polygraph Unit on August 1, 1960 for training as a Polygraphist. Received two years "preceptor" training under Supervisor Kenneth Johnson (Reid Control Question Technique). (Kenneth Johnson was trained by John E. Reid.) Conducted approximately 1,200 examinations during the two year training period.

Attended National Training Center of Polygraph Science, New York City, in 1966. Received six week 220 hour formal training. Mr. Richard O. Arther (formerly associated with John Reid) is director of National Training Center.

Have been supervisor of the Polygraph Unit since Mr. Johnson retired in 1969. Was involved in training of one polygraphist in 1964 and since 1969 have personally trained five polygraphists (except for their formal six-week school) four of whom still are under my supervision in the Kansas City Police Department Polygraph Unit. Have personally conducted in excess of 7,500 Polygraph examinations as a police polygraphist over the past 16½ years on Criminal cases, Internal investigations, and pre-employment examinations. Since 1962 have been a partner of Johnson-Dunlap & Associates (private polygraph firm) conducting private examinations for businesses on internal problems, etc., (approximately 1,500 exams).

Have testified numerous times in Jackson County, Missouri Circuit Court as an expert witness. Also testified in Cooper County, Missouri.

Accepted as an active member of the Academy for Scientific Interrogation (an international professional polygraph association) on July 1, 1963. Became a charter member of the American Polygraph Association on August 23, 1966 when the Academy for Scientific Interrogation merged with three other professional polygraph organizations.

On June 1, 1964, helped organize the Missouri Polygraph Association and became a charter member. Served as chairman of the membership qualifications committee from May, 1965, to October, 1973. Elected President of Missouri Polygraph Association in October, 1973, and served two (2) year terms. Presently Chairman of the Board.

Dunlap, Donald I.
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Charter member of the American Association of Police Polygraphists.

1974 through 1976 helped organize Greater Kansas City Polygraph Association. A charter member. Presently (1978) serving on the Affirmation Committee.

Elected a Distinguished Fellow in the Academy of Certified Polygraphists.

Have done research on pre-employment polygraph examinations conducted at the Kansas City, Missouri Police Department and submitted a paper on same to the National Training Center of Polygraph Science, results of which were used in the 1972 National Training Center Seminar.

Personally drafted the stipulation form presently used by the Kansas City Police Department for court admissability of polygraph evidence. Received honorable mention in the Journal of Polygraph Studies (Vol. VIII #2 Sept.-Oct. 1973) for contributing to the "model" stipulation form recommended by the N.T.P.S.

Have lectured on proper procedures for the investigator in regards to the use of polygraph to numerous detective training classes at the Regional Center of Criminal Justice and also at Training Classes for Metro Squad Detectives.

Presently Chairman of Audit Committee AAPP.

Presently Chairman of Board-Missouri Polygraph Association.

Have personally drafted proposed polygraph licensing bills introduced in Missouri Senate for the past four sessions.

Have had full responsibility of operation of Polygraph Unit since Mr. Johnson retired in 1969.

Attended and completed courses on Organization and Management, Human Relations and Supervisory Training and Police Operations and Methods at the University of Kansas City in 1958.

Have attended numerous supervisory and management courses offered by this department during the past several years.

Have attended seminars and short courses on polygraph as follows:

1963 - University of Oklahoma - Polygraph Examination Clinic

1964 - University of Oklahoma - Polygraph Examination Clinic

Dunlap, Donald I.
Page 3

- 1964 - Academy for Scientific Interrogation Seminar
(St. Louis)
- 1967 - National Training Center Seminar - New York City
- 1968 - National Training Center Seminar - New York City
- 1969 - National Training Center Seminar - New York City
- 1970 - National Training Center Seminar - Los Angeles
American Polygraph Association Seminar - Los Angeles
- 1972 - National Training Center Seminar - Chicago
American Polygraph Association Seminar - Chicago
- 1973 - National Training Center Seminar - Jefferson City, MO
American Polygraph Association Seminar - Miami, FL
- 1972/ John E. Reid Seminars, Series I, II, III, IV and
1974 Interrogation Seminar - Chicago
- 1976 - Coordinated Missouri Polygraph Association and Greater
Kansas City Polygraph Association Seminar - Kansas
City, Missouri. Conducted by Ronald E. Decker,
Director, U.S. Army Polygraph School
- 1977 - Texas Department of Public Safety Polygraph Seminar -
Austin, Texas
- 1977 - Missouri Polygraph Association Seminar - St. Louis
- 1978 - American Association of Police Polygraphists Seminar
- Austin, Texas

Have accumulated a "Library" of over 20 books and publications pertaining to Polygraph Technique. Presently receive periodicals from the National Training Center and American Polygraph Association on a bi-monthly basis.

UPDATE: (1982)

Present Position:

Chief Polygraphist, Kansas City, Missouri Police Department, Polygraph Unit Commander (Equivalent, Captain) Supervising four polygraphists.

Owner, Dunlap-Johnson & Associates (Private Polygraph Business)

Dunlap, Donald I.
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Additional Training:

- 1978 Missouri Polygraph Association Seminar, Kansas City, R.O. Arther, Seminar Leader.
- 1978 American Polygraph Association Seminar, St. Louis.
- 1980 Missouri Polygraph Association Seminar, Springfield. Dr. Stanley Abrams, Lecturer.
- 1981 Missouri Polygraph Association Seminar, Kansas City. John F.X. Lyng, Lecturer.
- 1981 American Polygraph Association Seminar, Houston, Texas

Have coordinated the Missouri Polygraph Association effort to enact a licensing law in Missouri for the past several years. (Since 1964).

DON DUNLAP & ASSOCIATES

Certified Polygraphists
Personell Consultants
HCR 66 • Box 150-A15
Warsaw, Missouri 65355

January, 1995

DON DUNLAP, A.C.P.
TELEPHONE 816-438-6829

Since retirement from the Kansas City, Missouri Police Department in 1985, I have practiced private polygraph testing, conducting examinations in criminal and civil cases at the federal and state level and in military cases.

Since 1989 I have conducted polygraph examinations in law enforcement cases for the Benton County Missouri Sheriff's Department as a Deputy Sheriff Reserve, in cases in Benton County, Henry County, Cooper County and Morgan County.

My present work involves Polygraph work for dozens of attorneys, including the Missouri Public Defenders Office, over the State of Missouri, and many in the State of Kansas.

DUNLAP - DUKE & ASSOCIATES

CERTIFIED POLYGRAPHISTS

SUITE 1045 OZARK BUILDING

906 GRAND AVENUE

POST OFFICE BOX 15602

KANSAS CITY, MISSOURI 64106

LESTER L. DUKE, A.P.A.
TELEPHONE 421-2772
AREA CODE 816

DON DUNLAP, A.C.P., A.P.A.
TELEPHONE 474-4494
AREA CODE 816

January, 1985

ANNOUNCEMENT

After more than 24 years of law enforcement polygraph experience (9 years as a full time Polygraphist and 15½ years as Chief Polygraphist) I must retire from the Kansas City, Missouri Police Department with 30 years service.

I have, for several years, maintained a private polygraph business, Dunlap-Johnson & Associates, more recently Dunlap-Duke & Associates, at 906 Grand Avenue.

Having studied under the most highly qualified polygraph professionals, such as John E. Reid, Chicago, Richard O. Arther, New York, and Kenneth Johnson, Kansas City, I believe my background in the polygraph profession qualifies me for any Polygraph Consultation and Examinations.

I plan to continue my private polygraph practice, conducting polygraph examinations in criminal cases, pre-employment screening, internal matters and continuous polygraph programs.

Should you, in the future, have need for my services I would consider it a privilege to consult with you.

DON DUNLAP & ASSOCIATES

Certified Polygraphists
Personnel Consultants
HCR 66 • Box 150-A15
Warsaw, Missouri 65355

February 20, 1999

DON DUNLAP, A.C.P.
TELEPHONE 316-438-6829

Bruce D. Livingston
Capital Habeas Attorney
Federal Defenders of Eastern Washington and Idaho
Capital Habeas Unit
201 North Main
Moscow, Idaho 83843

Re: Roy Michael Roberts
Polygraph Interview

Dear Sir;

As per your request, an appointment was made for a polygraph examination of Roy M. Roberts in regard to the stabbing of Correction Officer Thomas Jackson which occurred on July 3, 1983, at the Missouri Training Center for Men, Moberly, Missouri. At 9:44 a.m. on February 19, 1999, Mr. Roberts voluntarily submitted for said examination which was conducted at the Missouri Department of Corrections, Potosi, Missouri.

It is the opinion of the polygraphist that deception was not indicated in this person's polygraph records when he answered the following questions as indicated:

1. When Jackson was being stabbed, were you holding him in any way? Answer, No.
2. When Jackson was being stabbed, were you holding him by the hair? Answer, No.
3. Just before Jackson was stabbed, did you pin him against a door casing? Answer, No.
4. While Jackson was being stabbed, did you have any physical contact with him? Answer, No.

This opinion is based on recordings of physiological changes in the first two relevant charts of the examination. During the interview, the subject being uncomfortably cool, asked for his jacket. However, due to prison regulations, he was not allowed to have it in the interview room. Prior to the third (last) relevant chart, the subject was noticeably shivering which, in the opinion of the polygraphist, caused distortions in the recordings of the

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FEB 25 1999

FEDERAL DEFENDERS OF
EASTERN WA & ID

(Page 2)

Polygraph Interview
Roy Michael Roberts

chart. These distortions do not, in the opinion of the polygraphist, indicate deception.

A form release was signed by the subject prior to the examination and is incorporated as part of our file in this case.

Respectfully,



Don Dunlap, A.C.P.
Polygraphist

DD/sh

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 26, 1999.

I am Richard Hays, investigator for the Capital Habeas Unit of the Federal Defenders of Eastern Washington and Idaho. I work with the attorneys representing Missouri death row inmate Roy Roberts.

Mr. Roberts was convicted in the killing of a prison guard, Thomas Jackson. During the course of my investigation of the Roy Roberts case I interviewed numerous people including Michael Dunn. I interviewed Mr. Dunn at an Iowa correctional in Clarinda, Iowa.

Mr. Dunn testified at Roy Roberts trial in January of 1985. At that time he claimed to have seen Roberts hold Tom Jackson while Mr. Jackson was stabbed. When I spoke with Mr. Dunn February 19, 1999 he told me that he had lied at Roy Roberts trial and that he had not seen Roberts hold Jackson. Mr. Dunn told me that he lied in order to get parole from the state of Missouri.

FURTHER AFFIANT SAITH NAUGHT.

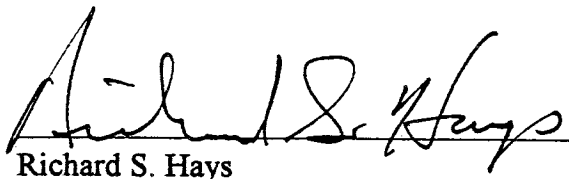

Richard S. Hays

Exhibit
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VOLUNTARY STATEMENT

This document is housed in the Capital Punishment (NOT UNDER ARREST) (APAP-214) collection in the M.L. Cooper Papers, Department of Special Collections and Archives, University Libraries, University at Albany, SUNY.

I, ROBERT E. WILSON, am not under arrest for, nor am I being detained for any criminal offense concerning the events I am about to make known to HAROLD WOLVERTIN RANDOLPH COUNTY SHERIFF'S DEPT. being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 35 years of age, and I live at Route 4 Box 83 Moberly Missouri

At approximately 10:30 p.m. myself Officer Goodin, Lt. Don Krockel and Capt. Denver Halley along with Officer Robert Hess was called to Housing Unit #3 for a drunken disturbance. Upon entering the house Lt. Krockel, Officer Goodin, Capt. Halley went into 2 B to bring out the drunk causing the trouble. Officer Jackson accompanied them to identify the prisoner myself and the others stayed in the Receiving as back up. As they were bringing the drunken inmate out of the wing approximately 35 inmates rushed us. To make Rodney Carr #38428 rushed out the door toward myself. I grabbed inmate Carr around the neck from behind and started hitting him with my flashlight. He pulled a shank and cut me across the left hand freeing himself. In my grip lunged forward approximately 3 feet striking Officer Jackson in the chest area. At this time Officer Hess grabbed inmate Carr and they began to scuffle. Carr got in behind Hess and stuck him in the right shoulder. Officer Humphrey hit inmate Carr behind the head with a ball bat knocking him to the floor. Carr then dropped the shank as he fell. At this time an unknown inmate hit me in the right side then knocking me to the floor as I was getting up I picked up the shank that Carr had dropped and stuck it in back of my belt. Inmates began dragging Carr and other inmates back into the wing. I was given time to get the wing doors shut and locked myself, Officer Krockel, Capt. Halley, and Officer Jackson with a supervisor to go to the prison hospital. Officer Humphrey, Lt. Kruse and a

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, and I certify that the facts contained herein are true and correct.

at _____, this _____ day of _____, 19 _____

WITNESSES: _____
WITNESS: _____

Robert E. Wilson
Signature of person giving voluntary statement