

BEFORE THE GOVERNOR  
OF THE STATE OF MISSOURI  
THE HONORABLE BOB HOLDEN

In the matter of: )  
)  
**JEROME MALLETT,** ) Execution scheduled for July 11, 2001  
)  
Petitioner. )

**APPLICATION FOR A REPRIEVE FROM, OR COMMUTATION  
OF A SENTENCE OF DEATH**

*Introduction*

Jerome Mallett is a 42 year old African-American male who is incarcerated at the Potosi Correctional Center in Mineral Point, Missouri awaiting execution. He is scheduled to be executed at 12:01 a.m. on July 11, 2001. All legal appeals previously filed have been denied, or are pending uncertain review.

*Summary and History of Proceedings*

On March 7, 1986, Jerome Mallett was convicted of first degree murder<sup>1</sup> of Missouri state highway patrol trooper James M. Froemsdorf, and sentenced to death. Jerome's conviction and sentence of death were affirmed on direct appeal by the Missouri Supreme Court in a 4-3 decision.<sup>2</sup> Jerome's motion for post-conviction relief

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<sup>1</sup> § 565.020 RSMo 1986.

<sup>2</sup> *State v. Mallett*, 732 S.W.2d 527 (Mo. banc), cert. denied, 484 U.S. 933 (1987).

was granted in part, and his conviction and resulting sentence of death were vacated.<sup>3</sup>

The Missouri Supreme Court reversed the motion judge's order, and reinstated Jerome's conviction and sentence of death.<sup>4</sup> Jerome's petition for certiorari to the United States Supreme Court seeking review of the decision of the Missouri Supreme Court was narrowly denied over the dissenting votes of Justices Marshall, Brennan, and Blackmun.<sup>5</sup>

On March 9, 1990, Jerome filed a petition for habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Eastern District of Missouri. The district court denied the petition on July 9, 1996. The district court's decision was

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<sup>3</sup> *Mallett v. State*, No. CV387-47CC (Mo.Cir.Ct. June 6, 1988) (Findings of Fact, Conclusions of Law and Judgment).

<sup>4</sup> *Mallett v. State*, 769 S.W.2d 77 (Mo. banc 1989), *cert. denied*, 494 U.S. 1009 (1990).

<sup>5</sup> *Mallett v. State*, 494 U.S. 1009 (1990).

appealed to the United States Court of Appeals for the Eighth Circuit. On November 16, 1998, the Eighth Circuit issued its Opinion denying Mr. Mallett habeas relief.<sup>6</sup>

The circumstances surrounding the offense, as reported by the Missouri Supreme Court, are as follows:

Shortly after 5:30 p.m., on March 2, 1985, defendant, driving a white over copper Ford, was pulled over for speeding on Interstate 55 in Perry County by Trooper James Froemsdorf. Before Trooper Froemsdorf approached his vehicle, defendant hid his wallet and identification under the front seat. When Trooper Froemsdorf arrived and asked for his driver's license, defendant replied that he did not have it with him. Defendant told Trooper Froemsdorf that his name was Anthony Mallett. Anthony Mallett is defendant's brother. Trooper Froemsdorf handcuffed defendant and then in a search of the Ford found several items bearing the name of "Jerome Mallett," including defendant's wallet containing a Texas driver's license and several pawnshop tickets.

Returning to his patrol car with these items, Trooper Froemsdorf called in to the Highway Patrol radio dispatcher. After running a check on the driver's license, the dispatcher informed Trooper Froemsdorf that defendant was wanted in Texas on four warrants for probation violation and one warrant for aggravated robbery. At 5:40 p.m., Trooper Froemsdorf, in his last radio transmission, told the dispatcher that defendant was in custody, that he needed no assistance, and that the dispatcher could contact him next at the Perry County Sheriff's Office.

At approximately 6:00 p.m., a passing motorist, curious at seeing an apparently unoccupied patrol car with its red lights flashing, stopped to investigate and found Trooper Froemsdorf's body. At 6:15 p.m., a highway patrol trooper also arrived at the scene. The trooper called for

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<sup>6</sup> *Mallett v. Bowersox*, 160 F.3d 456 (8th Cir. 1998), *cert. denied*, 120 S.Ct. 317 (1999).

medical personnel who subsequently pronounced Trooper Froemsdorf dead.

The inside of Trooper Froemsdorf's patrol car was a shambles, evidencing a struggle. Found in the patrol car were defendant's driver's license and the other identifying items Trooper Froemsdorf had taken from defendant's vehicle, along with a partially filled out speeding ticket for defendant and a handwritten note listing defendant's Texas warrants. Missing from the patrol car was Trooper Froemsdorf's service revolver, a .357 magnum. On the hood of the car investigators later found defendant's palm print.

Around 7:00 p.m. that evening, a St Francois County deputy sheriff sighted defendant's copper and white Ford and began a pursuit. The chase ended with defendant missing a turn, running up an embankment, and crashing through a fence into a field. Defendant evaded capture by quickly exiting the vehicle and fleeing on foot. On the front floorboard of defendant's car the deputy found Trooper Froemsdorf's service revolver. The weapon contained four spent and two unspent shells. The only fingerprint found on the revolver belonged to defendant. Defendant's fingerprints were also on the door of the Ford.

After fleeing, defendant swam across a river and spent the first night in a car in a nearby garage, where he also stole a jacket and shoes to replace his own wet clothing. Leaving the garage the next day, defendant saw signs of a search and stole away to a barn where he burrowed under some hay. After spending two nights in the barn, defendant attempted to reach a nearby McDonald's for food. Law enforcement officers, who had been conducting an extensive search, spotted defendant and captured him following a brief pursuit. The officers noticed that handcuffs dangled from defendant's left wrist. When the right cuff was placed on defendant's right wrist, it slid halfway down his hand. It was ultimately discovered that defendant had suffered an injury to his right hand as a child which enabled him to compress it to nearly the size of his wrist and slip out of the handcuffs. After defendant was resecured, he was taken to a highway patrol station where he waived his Miranda rights and gave a

video-taped statement. In the statement defendant admitted shooting Froemsdorf, but claimed it was accidental.

Defendant's story was that Trooper Froemsdorf, after seating defendant in the patrol car, struck him lightly twice and accused him of lying about his name and not having his driver's license; that defendant slipped his hand out of the handcuffs and grabbed the trooper's arm to prevent further physical abuse to himself; that Trooper Froemsdorf drew his revolver; that defendant, fearing the trooper would shoot him, clutched at the trooper's hands and the gun . . . and that in the course of the struggle . . . the gun fired several times.<sup>7</sup>

Subsequent legal claims have centered, in part, on the transfer of Jerome's case on a change of venue to Schulyer County, a county which contained no African-American residents. Said transfer effectively struck all members of Jerome's race from the jury venire. It is of further significance that the trial judge, prior to being assigned the case, sent a plaque in honor of the slain trooper to the Missouri state highway patrol. Despite this clear appearance of partiality, the judge refused to disqualify himself from presiding at Jerome's trial.

While the courts have upheld Jerome's conviction and sentence of death, no less than seven judges who reviewed his case, including three justices of the United States Supreme Court, three Missouri Supreme Court judges, and one Missouri Circuit Court

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<sup>7</sup> *State v. Mallett*, 732 S.W.2d at 531-33.

judge, have concluded that his conviction and/or sentence of death should be set aside or deserved further review.<sup>8</sup>

### *Basis for Commutation of Sentence*

With due respect and deep sincerity, undersigned counsel submit the following justifications for the commutation of Jerome's sentence:

1. The setting in which Jerome's trial took place - in a county without any members of his race; presided over by a judge who, prior to being assigned the case, sent a memorial plaque to the highway patrol in honor of the victim; and in a courtroom under tight security packed with law enforcement officers - created an appearance of impropriety and negatively impacted Jerome's right to a fair trial.
2. Jerome's sentence of death is disproportionate to that imposed in similar cases, particularly that of David Tate, a white supremacist who purposely gunned down two highway patrolmen and received a life sentence.

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<sup>8</sup> *Mallett v. Missouri*, 494 U.S. 1009 (1990) (Marshall, J., Brennan, J., and Blackmun, J., dissenting); *State v. Mallett*, 732 S.W.2d at 543-45 (Blackmar, J., Donnelly, J., and Welliver, J., dissenting); *Mallett v. State*, No. CV387-47CC (Cir.Ct.Mo. Belt, J. June 6, 1998).

3. Missouri Supreme Court Judges Blackmar, Donnelly, and Welliver disagreed with the majorities' holding denying Jerome relief, and instead called for Jerome's death sentence to be reduced to life imprisonment without probation and parole.
4. Judge Ronald Belt, the circuit judge who presided over Jerome's post-conviction proceedings, held that the transfer of Jerome's case to a county that contained no members of his race violated his right to equal protection and due process of law.
5. Then United States Supreme Court Justices Marshall, Brennan, and Blackmun disagreed with the majorities' denial of certiorari, and agreed with Judge Belt's finding that the transfer of Jerome's case to a county with no inhabitants of his race violated his fundamental equal protection rights.
6. Significant racial justice surveys and/or studies demonstrate disproportionate imposition of the death penalty on African-American defendants who are convicted of killing white victims. This issue has yet to be adequately addressed, examined or resolved by the state of Missouri.
7. Two jurors who sat on Jerome's case recently confided that their sentencing decision was heavily influenced by their skepticism that the alternative punishment - life without probation or parole - actually meant that Jerome would spend the rest of his life in prison.
8. Jerome has adjusted to his incarceration, and has made continual efforts to assist other inmates in dealing with institutional life.
9. Unlike many inmates whose immediate family and friends have renounced them after periods of lengthy incarceration,

Jerome's family and friends remain unwavering in their support.

10. Jerome serves as positive influence upon young male and female members of his extended family by counseling them against drugs, crime and violence.
11. Jerome offered to donate a kidney to Bruce Johnson, a friend of his family, and is willing to donate any viable organ.
12. Jerome is acutely aware of his responsibility for the death of Trooper Froemsdorf and is remorseful for the agonizing suffering that he has caused.

### *Standard of Review*

Article IV, § 7 of the Missouri Constitution grants the Governor the “power to grant reprieves, commutations and pardons, after conviction . . . upon such conditions and with such limitations as he may deem proper.” He is not restricted by strict rules of evidence,<sup>9</sup> and is free to consider a wide range of legal and equitable factors in the exercise of his clemency powers.<sup>10</sup> He may consider any aspect of the case, including claims which the courts have declined to review for procedural reasons. Governor

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<sup>9</sup> See *Whitaker v. State*, 451 S.W.2d 11, 15 (Mo. 1990).

<sup>10</sup> See *Ohio Adult Parole Authority, et al. v. Woodard*, 523 U.S. 272, 280-81 (1998).



Holden is also free to expand the relevant case law and apply his own interpretation to grant relief if he so desires.

Jerome Mallett, by and through undersigned counsel, and with the earnest support of numerous individuals and for the meritorious reasons stated below, respectfully requests that Governor Holden, pursuant to the powers granted him by Article IV, § 7 of the Missouri Constitution, grant him executive clemency and commute his sentence from death to life imprisonment without the possibility of parole. Alternatively, Jerome requests that Governor Holden grant a reprieve, staying his execution, and convene a board of inquiry pursuant to § 552.070 RSMo 2000, to gather information bearing upon whether his sentence of death should be commuted.

***The setting in which Jerome's trial took place created an appearance of impropriety and negatively impacted his right to a fair trial***

***Arbitrary change of venue to Schuyler County***

Jerome Mallett was charged with first degree murder in Perry County, Missouri.

Perry County is located in the southeast corner of Missouri. His lawyers moved for a change of venue pursuant to the Missouri Supreme Court Rule 32.03.<sup>11</sup> After the parties were unable to agree on venue, each side suggested certain counties for transfer. All of the suggested counties contained at least some African-American residents, as did Perry County. Defense counsel expressly requested that venue be changed to a community with an African-American population so that Jerome would have an opportunity of having members of his race on the jury.

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<sup>11</sup> Since Perry County had a population of less than 75,000, Mr. Mallett was entitled to a change of venue as a matter of right.

Ignoring defense counsel's concern that the venue contain members of Jerome's race, Judge Murphy transferred the case to Schuyler County, a county located on the Missouri-Iowa border far and north of Perry County. According to the 1980 census, Schuyler County contained 4,967 people, three of whom were black. Judge E. Richard Webber, who presided during Mr. Mallett's trial, testified at the post-conviction hearing that he was not aware of any African-Americans living in Schuyler County at the time of the trial.<sup>12</sup>

*The change of venue to Schuyler County violated  
Jerome's equal protection rights*

Although both the state and federal court found the transfer of Jerome's case to Schuyler County "troubling," relief was denied on the basis that no precedent existed to support a constitutional violation. Although no direct judicial authority may have existed at the time Jerome's conviction became final, the facts and circumstances surrounding the transfer of his case to Schuyler County, at the very least, created an appearance of impropriety.

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<sup>12</sup> See *Mallett v. State*, 769 S.W.2d at 79.

The state may not deliberately deny members of a defendant's race the right to participate as jurors in the administration of justice.<sup>13</sup> The U.S. Supreme Court has held that a prima facie showing of discrimination in the selection of the jury venire can be established upon proof that "members of the defendant's race were substantially underrepresented on the venire from which his jury was drawn and that the venire was selected under a practice providing the opportunity for discrimination."<sup>14</sup> Jerome's case falls within this category of cases.

The crime with which Jerome was charged arose in Perry County, Missouri, a county with an African-American population. Upon requesting a change of venue, petitioner's counsel specifically voiced their concerns that petitioner's case be transferred to a county with a similar African-American population so that there would be at least a possibility of having members of petitioner's race on the jury. Judge Murphy, the transferring judge, proceeded to ignore all requests and without explanation, sent the case to Schuyler County a county with zero African-American

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<sup>13</sup> *Washington v. Davis*, 426 U.S. 229, 239 (1976), quoting *Alexander v. Louisiana*, 405 U.S. 625, 628-29 (1972).

<sup>14</sup> *Whitus v. Georgia*, 383 U.S. 545, 552 (1967).

residents. In doing so, he effectively deprived Jerome of any chance of having members of his race on the jury.

***Trial judge's pretrial communication with the highway patrol***

The Honorable E. Richard Webber, Circuit Judge, was assigned to hear the case. Prior to being assigned the case, Judge Webber personally presented a plaque to the state highway patrol in memory of Trooper Froemsdorf. Said plaque contained a poem, or other writing composed by Judge Webber. It was signed by him with the pseudonym Hezakiah Davidson. The existence of the plaque was discovered by petitioner's trial attorney when he reviewed the slain trooper's personnel file in preparation for trial. Based on their discovery, defense counsel made a motion for Judge Webber to recuse himself from the case. Said request was denied.

***The trial judge's appearance of impropriety mandated that he recuse himself from Jerome's case***

A criminal defendant is entitled to a trial before an impartial and disinterested judge.<sup>15</sup> In fact, a judge is barred from presiding at a trial in the absence of actual bias where his continued presence does not satisfy the appearance of justice.<sup>16</sup>

The law is very jealous of the notion of an impartial arbiter. It is scarcely less important than his actual impartiality that the parties and the public

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<sup>15</sup> *Tumey v. Ohio*, 273 U.S. 510 (1927); *In re Murchison*, 349 U.S. 133 (1955).

<sup>16</sup> *Offutt v. U.S.*, 348 U.S. 11 (1954).

have confidence in the impartiality of the arbiter. Where a judge's freedom from bias or his prejudgment of an issue is called into question, the inquiry is no longer whether he actually is prejudiced; the inquiry is whether an onlooker might on the basis of objective facts reasonably question whether he was so.<sup>17</sup>

As set out in the American Bar Association's Manual for Professional Conduct:

A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned...<sup>18</sup>

The trial judge's presentation of a plaque in honor of the slain trooper to the highway patrol could certainly cause a reasonable onlooker to question the judge's impartiality. As such, Judge Webber had a duty to disqualify himself from presiding at Jerome's trial.

*Heightened security measures and extensive law enforcement presence*

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<sup>17</sup> *State v. Lovelady*, 691 S.W.2d 364, 365 (Mo.App. 1985).

<sup>18</sup> ABA Code of Judicial Conduct, Canon 3, Section E(1); *United States v. DeLuna*, 763 F.2d 897, 907 (8th. Cir. 1985), cert. denied 474 U.S. 980 (1985).

The trial took place in the city of Lancaster, a small rural community of less than one thousand people. As described in a special edition of the local newspaper, *The Lancaster Excelsior*<sup>19</sup>, the trial had a profound impact on the city. It was the main topic of conversation amongst the townspeople, and attracted many visitors, among them, a multitude of law enforcement officers. Security at the courthouse was extensive.

The trial security at the trial of Jerome Mallett was very tight. The Missouri State Highway Patrol had been made responsible for the prisoner's security by Circuit Judge Kenneth Pratte.

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At any given time during the trial, at least three Highway Patrol officers were stationed inside the courtroom. These men, who were in plain clothes, also escorted the defendant to the courthouse at Lancaster from Adair County Jail, where he was housed.

Also in the courtroom and in the halls of the courthouse were members of the Schuyler County and Adair County sheriffs' departments. Uniformed troopers were also very much in evidence outside the courtroom, in the town, and on the highways.

Other security included a patdown and a metal detector search of all persons entering the courtroom, troopers stationed outside the door and window when the defendant conferred in private with his lawyer, and two patrol planes flying at odd intervals over the county. There was also a patrol plane on the ground and a patrol car at the Kirksville airport in case they were needed.

Many of the troopers were from outside the Troop B area, and it is believed that all of the troops in the state were represented in the security forces.

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<sup>19</sup> *The Lancaster Excelsior*, Extra Edition, January 25, 1986.

The widow of the slain trooper was personally escorted at all times by Capt. J.H. Ford, commander of Troop C.

All but one of the top 12 men in the Missouri State Highway Patrol were believed to be in attendance at the trial. Many troopers in plain clothes also attended the trial on their own time.<sup>20</sup>

***Heightened security precautions and excessive law enforcement presence created a hostile trial atmosphere and deprived Jerome of a fair trial***

The due process clauses of the Missouri and the United States Constitutions guarantee a criminal defendant the right to a fair trial. Due process includes the right to be tried in a neutral atmosphere free from impermissible factors which affect the trial process.

Specifically, the courts must guard against "the atmosphere in and around the courtroom [becoming] so hostile as to interfere with the trial process, even though...all the forms of trial conformed to the requirements of law..."<sup>21</sup>

As evidenced by the attached newspaper articles, petitioner's trial completely consumed the city of Lancaster. The case was featured in the local newspapers. The city was invaded by the state media, and more importantly, the Missouri State Highway Patrol. Large numbers of patrol cars filled the street. Two (2) patrol planes patrolled

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<sup>20</sup> *The Lancaster Excelsior*, Extra Edition, January 25, 1986, p. 3, col. 3, 4.

<sup>21</sup> *Estes v. Texas*, 381 U.S. 532, 561 (1965).

the sky above the courthouse while the case was going on. While some of the troopers were there for security, most were there to show their support for the slain trooper and his family. Both uniformed and plain clothes troopers filled the courtroom. Eleven (11) of the top twelve (12) men in the state highway patrol attended the trial. One of them, the commander of Troop C headquarters in Kirkwood, Missouri, escorted the widow of the deceased trooper daily to the trial.

This case is strikingly similar to *Woods v. Dugger*.<sup>22</sup> Woods was convicted and sentenced to death for the murder of a prison guard. His trial took place in a small rural community overwhelmed by the trial in a courtroom packed with prison guards in full uniform. The Eleventh Circuit held in *Woods* that the trial atmosphere constituted an unacceptable risk that Woods' conviction was based on impermissible factors instead of the evidence adduced at his trial.<sup>23</sup>

Like the prison guards present at Woods' trial, it is clear that the large contingent of law enforcement officers present at petitioner's trial were there to send a message to the jury. That message being to bring back a conviction of murder in the first degree

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<sup>22</sup> 923 F.2d 1454 (11th Cir. 1991).

<sup>23</sup> *Woods v. Dugger, supra*, 923 F.2d at 1460.



and the death penalty. The whole atmosphere of the trial including the pre-trial publicity, the extensive security measures, and the presence of the large number of troopers at the trial posed an unacceptable risk that appellant was convicted and sentenced to death as a result of said atmosphere and not based solely on the evidence presented at trial.

***Jerome's sentence of death is disproportionate to that imposed in similar cases, particularly that of David Tate***

A comparison of Jerome's case with that of *State v. Tate*,<sup>24</sup> mandates that Jerome's sentence be mitigated to a sentence of life imprisonment without parole. *Tate* involved the murder of a state highway patrol trooper, and the wounding of a second by a neo-nazi involved in an armed insurrection against the United States and the State of Missouri.<sup>25</sup>

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<sup>24</sup> 731 S.W.2d 846 (Mo.App. 1987).

<sup>25</sup> *State v. Mallett*, 732 S.W.2d at 544 (Blackmar, J., dissenting).

David Tate, a twenty-three year old white male was stopped while driving a van by two highway patrolmen in Greene County, Missouri. At the time of the stop, Tate was transporting numerous automatic weapons and hand grenades. Upon being ordered out of the van, Tate opened fire with a .380 caliber machine pistol, killing one trooper and wounding the other. Tate's trial took place in Boone County, Missouri on a change of venue. The jury, which contained members of Tate's race, found him guilty of first degree murder, and chose a life sentence over that of death.<sup>26</sup>

Although both cases involved the tragic deaths of law enforcement officers, a comparison of the two shows the facts of Tate to be far more egregious. David Tate was a member of several white supremacist groups, including the "Identity Movement," and the "Order." He had weapons and survivalist training, and had prepared for just such a confrontation with the authorities as in fact occurred. He was transporting a number of automatic weapons and hand grenades at the time of the stop. He used one of the automatic weapons in shooting the troopers. He shot the deceased highway patrolman eleven times and wounded his partner.

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<sup>26</sup> These facts were taken from the report of the trial judge filed in the Missouri Supreme Court.

Jerome's death sentence is clearly disproportionate and excessive in comparison with the punishment imposed upon David Tate.<sup>27</sup> Without intending to depreciate the seriousness of Trooper Froemsdorf's death, it is factually significant that the instant crime involved an unanticipated encounter which turned into a violent struggle for the trooper's weapon, and a panicked reaction. Further, unlike the *Tate* case where there were eyewitness accounts, there was absolutely no direct evidence as to the sequence of events that occurred inside Trooper Froemsdorf's patrol car. The facts and circumstances were just as consistent with Jerome's version - that he reacted to the trooper's actions and acted in accordance with his reasonable belief that he had to defend himself - as they were with the state's version of the offense. While Jerome's conduct was avoidable and tragic, it is far removed from the preplanned, deliberate and cold-blooded attack perpetrated by David Tate under more controlled circumstances.

Further, the facts and circumstances of Jerome's case are also less egregious than others involving the murders of law enforcement officers. In order to serve as a basis for comparison, the following is a description of other cases which have resulted in life sentences.

**Larry Thomas**

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<sup>27</sup> *State v. Mallett*, 732 S.W. at 530-32.

Defendant was well-known to the police officers working in the area near defendant's home. The slain officer, Officer John O'Sullivan, had arrested defendant three times and had testified against him in court. Defendant called the police to his home numerous times to make complaints. On the day before the crime, December 11, 1978, he made four such calls. On the morning of the murder he called police to complain that someone had stolen one of his dogs. He asked the officers who responded to the call if they knew Officer O'Sullivan, and told them he was going to "get even with that mother fucker if it's the last thing I do."

A short time later on the same morning, a telephone repairman, driving down 68th Street some three blocks from defendant's residence, noticed a black man driving a red Rambler in front of him. The Rambler was identified by license plate as belonging to defendant. The repairman noticed a Doberman Pinscher sitting in the back seat. The Rambler pulled up to Myrtle Street and made a left turn. The repairman was still behind the Rambler, waiting to make a similar turn on Myrtle. A police car was stopped on Myrtle, and it and the Rambler were now side by side, facing opposite directions. The driver's door of the police car was open. The man in the Rambler said something to the officer in the police car. The officer responded by saying "Wait a minute" to the man in the Rambler. The officer then reached for his radio, and while he was not looking, the man in the Rambler pointed a gun out of the window of the car and shot the officer in the side. The man in the Rambler drove away. The repairman got out of his truck, took the microphone out of the dying officer's hand, and broadcast that an officer had just been shot at 68th and Myrtle. The repairman noticed the officer's revolver was still in its holster.<sup>28</sup>

### **James Darrell Stephens**

Freeman testified that on Thursday, October 16, after drinking beer all day, he, Randy Gamble, and "Tail" Johnson, went to Betty's Bar at Reeds Spring. There they spent the evening drinking, playing pool, and

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<sup>28</sup> *State v. Thomas*, 625 S.W.2d 115, 119-20 (Mo. banc 1981).

smoking marijuana. Also at the tavern was defendant Stephens with whom Freeman had been acquainted for a couple of years. A trio consisting of Freeman, defendant, and Johnson left the tavern late in the evening, using a Pinto vehicle. The trio headed toward Crane, with defendant driving, Freeman sitting on the passenger's side of the front seat, and Johnson in the back seat. As the Pinto drove through the business area of Reeds Spring they saw the police car and defendant said, "I ought to just shoot that man." Freeman was "pretty well intoxicated." The next thing Freeman remembered was being in Galena, a nearby town, and seeing the defendant coming out of a mobile home carrying a shotgun.

Defendant then drove the trio to Reed Spring where, at the request of defendant, Freeman took over the driving and the defendant got in on the passenger's side. Defendant told Freeman to pull alongside the parked police car and Freeman did so. While the vehicles were three feet apart defendant pointed the shotgun at the police officer and fired the gun. The officer's head jerked. Defendant said, "I shot that punk, let's go."<sup>29</sup>

### **Vincent Sargent**

In January 1983 Sergeant Charles James, a Pine Lawn police officer, was shot in the head as he and other Pine Lawn officers attempted to execute a search warrant for marijuana and PCP on a residence at 6050 Grimshaw in Pine Lawn, Missouri.

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<sup>29</sup> *State v. Stephens*, 672 S.W.2d 714, 715-16 (Mo.App. 1984).

Sgt. James knocked on the door, identified himself as a police officer, and requested entry into the residence announcing that he had a warrant to search the residence. . . With no response forthcoming, James used a battering ram to force the door open. As the door gave way, Sgt. James lost his balance or stumbled in the doorway to one-third of his height. At that moment, a man, later identified as Vincent Sargent, defendant, stepped around a corner from the kitchen into an archway between the kitchen and the dining room, fired a shot and stepped back behind the corner. The shot struck James in the right temple. The impact caused James to fall to the left and back away into the left arm of another officer, West, who tried to support him, but James continued to fall backward into an iron gate which secured the front door. Defendant stepped into the archway again and aimed but West fired a shot in the direction of the defendant who retreated behind the corner. Defendant appeared again, and officer West fired another shot at him. Defendant appeared a final time and another officer fired a shot at him. None of the shots struck the defendant. Officers then began to enter through the front of the residence and saw defendant in the kitchen pointing his cocked gun toward the back door where other officers were entering the house. The defendant was subdued and disarmed.<sup>30</sup>

### **Leslie Lomax**

[D]efendant, acting with others, murdered Gregory Erson, an undercover police officer who was working a prostitution detail in a high crime area in St. Louis known as the "Stroll."<sup>31</sup>

### **Dennis Blackman**

At 1:13 a.m., Officer Liscombe reported to the dispatcher that she was on a "pedestrian check." Meanwhile, another driver, Steve Carter, saw the man at the corner of Old Halls Ferry and Patricia Ridge. As Carter turned the corner, the man gave him a "frightening" look, causing Carter to lock

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<sup>30</sup> *State v. Sargent*, 702 S.W.2d 877, 879 (Mo.App. 1986).

<sup>31</sup> *State v. Lomax*, 712 S.W.2d 698, 699 (Mo.App. 1986).

his car door. Carter saw Officer Liscombe pull up, stop in the intersection and turn her spotlight toward the man. The man initially tried to run away up a hill but was unsuccessful because of the amount of ice on the ground. He saw Officer Liscombe get out of her car and walk toward the man.

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Meanwhile, the dispatcher tried to reach Officer Liscombe but received no response. The dispatcher called for another car to check on her. As another motorist approached the intersection of Old Halls Ferry Road and Patricia Ridge, he saw Officer Liscombe lying on the ground with blood on her hand and in her hair. Her flashlight and glasses were lying several feet away and her gun was missing from its holster. He and other motorists came to her assistance. The first police officer arrived at 1:23 a.m. All noticed a massive head wound. She was eventually taken to a hospital.

Officer Liscombe was in shock upon arrival at the hospital and never regained consciousness. She had two bullet wound in close proximity to the right side of her head, both of which were fatal. She also suffered a gunshot wound to her left hand which entered through her palm and would have immediately incapacitated her hand. She had a horizontal linear wound to the back of her head, caused by a blunt object, which split open her scalp and extended to her bone. This wound would have cause momentary, stunning reaction sufficient to knock her to the ground, but not to lose consciousness. She also suffered a linear bruise to her thigh and numerous contusions to her legs. Several fingernails had broken off and the fragments were found at the scene, indicating a struggle. Blood patterns on her shirt indicated she was lying down when she was shot in the head.<sup>32</sup>

***Missouri Supreme Court Judges Blackmar, Donnelly and Welliver called for Jerome's death sentence to be reduced to life imprisonment without probation or parole***

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<sup>32</sup> *State v. Blackman*, 875 S.W.2d 122, 127-28 (Mo.App. 1994).

Missouri Supreme Court Judges Blackmar, Donnelly and Welliver dissented from the majority opinion of the Missouri Supreme Court upholding Jerome's conviction and sentence of death. Each of these judges believed that Jerome's death sentence should be reduced to life imprisonment without eligibility for probation or parole.

Judge Charles Blackmar opined as follows:

For the reasons above assigned I am of the opinion that this case should be reversed and remanded for new trial,<sup>33</sup> and so I would not reach the

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<sup>33</sup> Judge Blackmar was of the belief that MAI-CR2d 3.42 - a circumstantial evidence instruction then in effect - should have been given as requested, and that the failure to give such



issue of proportionality review under § 565.035.2 and .3, RSMo 1986. Since the Court considers the point I vote for a mitigation of the sentence.

The comparison to the Tate case is patent. The principal opinion refers to this defendant's other convictions as a distinguishing feature. Balanced against those are Tate's having shot and seriously wounded a second trooper with intent to kill and his involvement in an incipient armed insurrection against the United States and the State of Missouri.

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The racial question also impacts the issues. It is unfortunate that the judge initially assigned sent the case to a county in which there were no black residents available for jury service. I have every confidence that he did this for the sole reason that he wanted to get the case a long way away from Perry County, as the defendant requested, and without any racial motivation whatsoever. When the problem was called to the attention of the successor judge, however, I believe that the case should have been transferred to another county. We should be mindful of appearances when life is at stake. I do not suggest that the jurors of Schuyler County did not do their duty as they saw it, nor do I argue that a defendant is entitled to have persons of his own race on the panel. But the appearances remain.

I would exercise our duty to "consider the punishment" pursuant to § 565.035.2 by reducing the sentence to life imprisonment without probation or parole. In addition to the factors discussed earlier, I give attention to the nature of the homicide, which, although it could be found

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to be deliberate by the rather legal standard defining that term, was nevertheless quite impulsive.<sup>34</sup>

Judge Donnelly, joined by Judge Welliver, wrote as follows: Whenever the death penalty is imposed in any case, “the sentence shall be reviewed on the record by the supreme court of Missouri” and this Court must determine whether such sentence “was imposed under the influence of passion, prejudice, or any other arbitrary factor.” § 565.035, RSMo 1986.

In *Godfrey v. Georgia*, 446 U.S. 420, 428, 100 S.Ct. 1759, 1764, 64 L.Ed.2d 398 (1980), this Court held “that if a State wishes to authorize capital punishment it has a constitutional responsibility to . . . apply its law in a manner that avoids the arbitrary and capricious infliction of the death penalty.” And the Court held that a death sentence cannot be permitted to stand when the circumstances under which it was imposed “create a substantial risk that the punishment will be inflicted in an arbitrary and capricious manner.” 446 U.S., at 427, 100 S.Ct., at 1764.

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<sup>34</sup> *State v. Mallett*, 732 S.W.2d at 544-45 (Blackmar, J., dissenting).

Given the circumstances in this case, I would set the judgment aside and resentence appellant to life imprisonment without eligibility for probation, parole, or release except by act of the governor.<sup>35</sup>

It is disconcerting to realize that reasonable jurists sitting on our state's highest court could differ so dramatically on such a fundamental issue. It is even more shocking, however, that Jerome Mallett could be executed over the strong dissents of three prominent, experienced, and distinguished judges. Jerome requests that Governor Holden, in concurrence with Judges Blackmar, Donnelly and Welliver, exercise his discretion and commute Jerome's sentence to life imprisonment without the possibility of probation or parole.

***Circuit Judge Ronald Belt found that the transfer of Jerome's case to Schuyler County violated his rights to equal protection and due process of law***

After his conviction and sentence of death were affirmed on direct appeal, Jerome filed a motion under former Missouri Supreme Court Rule 27.26 for post-conviction relief. One of the issues raised in the motion was that the transfer of his case to Schuyler County, a county without any members of his race, violated his equal protection and due process rights as guaranteed by the United States Constitution.

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<sup>35</sup> *State v. Mallett*, 732 S.W.2d at 545 (Donnelly, J., dissenting).

Circuit Judge Ronald M. Belt was assigned by the Missouri Supreme Court as special judge to hear Jerome's post-conviction motion. Judge Belt found that the change of venue to Schuyler County had the same effect as if a prosecutor had struck all members of Jerome's race from the jury panel. Just as the latter situation would violate a defendant's equal protection rights under *Batson v. Kentucky*,<sup>36</sup> so, reasoned Judge Belt, did the change of venue to Schuyler County.

Black defendants alleging that members of their race have been excluded from the venire in violation of the equal protection clause of the Fourteenth Amendment may make out a prima facie case for purposeful discrimination by showing that the totality of relevant facts give rise to an inference of discriminatory purpose. *Batson v. Kentucky*, 90 L.Ed.2d 69, 85 (Sup. Ct., 1986).

A state's purposeful or deliberate denial to blacks on account of race of participation as jurors in the administration of justice violates the equal protection clause of the Fourteenth Amendment.

In this case the court finds that the actions of Judge Murphy in granting Change of Venue is state action that requires scrutiny as to the equal protection clause. The act of transferring this cause to Schuyler County which has no blacks has a discriminatory impact which denies movant of any chance of members of his own race being on the jury. *Batson* states that a purposeful or deliberate denial of blacks to serve on the jury must occur. As quoted above that purpose of intentional discrimination can be established by a showing that the totality of relevant facts gives rise to an inference of discriminatory purpose.

The relevant facts here are (1) that the case involves a cross-racial murder of a state trooper; (2) the decision of Judge Murphy was made without

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<sup>36</sup> 476 U.S. 79 (1986).

giving defense counsel an opportunity to object; (3) counties which were of equal convenience to witnesses; equally free of pre-trial publicity; of equal, greater or less distance; and included blacks were tendered by the defense and prosecution; (4) no specific or compelling reason existed to send the case to Schuyler County; (5) there were no blacks living in Schuyler County at the time of trial; (6) Movant is a black man; (7) the defense expressed concern that the county chosen include blacks.

Viewing these facts, noting that this court need not find that Judge Murphy acted with a discriminatory purpose, this court finds that an inference of discriminatory purposes exists. By making this finding a prima facie case of purposeful discrimination is established. There being nothing in the record to rebut said finding, and no specific neutral explanation for the denying of the movant any possibility of members of his own race from appearing on his jury this cause must be reversed and remanded for new trial.<sup>37</sup>

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<sup>37</sup> *Mallett v. State*, No. CV387-47CC, Slip Op. at 28-30 (Mo.Cir.Ct. June 6, 1988) (Findings of Fact, Conclusions of Law and Judgment).

The Missouri Supreme Court set aside Judge Belt's judgment and reinstated Jerome's conviction and sentence of death.<sup>38</sup> In doing so, the Missouri Supreme Court found the *Batson* decision to be "of limited usefulness" in analyzing Jerome's equal protection claim.<sup>39</sup> The court found that *Batson's* "inference of purposeful discrimination" did not apply and that, based upon the facts of the case, Jerome failed to prove that Judge Murphy abused his discretion in sending the case to Schuyler County.

***Justices Marshall, Brennan and Blackmun also believed that the transfer of Jerome's case to Schuyler County violated his fundamental equal protection rights***

Jerome's attorneys filed a petition for certiorari asking the United States Supreme Court to review the decision of the Missouri Supreme Court in *Mallett v. State*. Four votes are needed for certiorari. Jerome came up one vote short, with Justices Marshall, Brennan and Blackmun voting to accept the case. Justice Marshall, took the majority to task in his opinion dissenting from the denial of certiorari.<sup>40</sup>

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<sup>38</sup> *Mallett v. State*, 769 S.W.2d at 79-81.

<sup>39</sup> *Mallett v. State, Id.* at 80-81.

<sup>40</sup> *Mallett v. Missouri*, 494 U.S. 1009 (1990) (Marshall, J., dissenting).

Justice Marshall agreed with Judge Belt that the *Batson* principals applied to the judge's transfer decision, and that the facts surrounding the transfer gave rise to a prima facie case of purposeful discrimination.<sup>41</sup> Justice Marshall dispensed with the state's argument that the non-retroactivity rule of *Teague v. Lane*<sup>42</sup> prohibited the court from granting relief by finding that Jerome's equal protection argument was dictated by precedent existing at the time his conviction became final.<sup>43</sup> Justice Marshall concluded that:

When it transferred this capital murder trial to a county with no inhabitants of Mallett's race, the trial court violated Jerome Mallett's fundamental equal protection rights. The transfer is particularly appalling because the defense counsel emphasized to the trial court that the venue should be one where members of Mallett's race resided, and because the judge could have selected other counties in Missouri that satisfied this valid concern. *Id.*

Justice must be more than fair. It must also appear to be fair. The transfer of Jerome's case to Schuyler County compromised the integrity of the judicial system. Regardless of the transferring judge's intent, it appears as if he greased the skids for the

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<sup>41</sup> *Mallett v. Missouri*, 494 U.S. at 1010.

<sup>42</sup> 489 U.S. 288 (1989).

<sup>43</sup> *Mallett v. Missouri*, 494 U.S. at 1012.

administration of a death sentence. It is precisely when the judicial system operates under a cloud of impropriety as it did here, that executive intervention is most appropriate. The justice system must appear to be fair for all its citizens. Jerome Mallett should not be put to death under a judicial process where, due to judicial intervention, no member of his race had a chance to sit on his jury.

***Significant racial justice surveys and/or studies demonstrate disproportionate imposition of the death penalty on the basis of race***

Countless studies have confirmed that racial discrimination pervasively infects the capital sentencing process across the country.<sup>44</sup> Both the race of the defendant and the race of the victim play a controlling role in determining who will receive the ultimate criminal sanction. Indeed, nationwide, the death penalty has been a punishment largely meted out on the basis of race.<sup>45</sup>

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<sup>44</sup> See, e.g., *United States of America - Killing With Prejudice: Race and the Death Penalty in the USA*, Amnesty International - Report - AMR 51/52/99, May 20, 1999; *Equal Justice in the Death Penalty, A Legal and Empirical Analysis*, David Baldis, George Woodward and Charles Pulaski, Northeastern University Press, 1990.

<sup>45</sup> *Id.*



In twenty year period from 1976 to 1996, three hundred and thirty-five (335) executions have taken place in this country.<sup>46</sup> Of those individuals executed, fifty-six percent (56%) were white and thirty-eight percent (38%) were African-American.<sup>47</sup> This is despite the fact that African-Americans comprise only twelve percent (12%) to thirteen percent (13%) of our total population. The racial discrepancies become even more evident when one considers the race of the victim. In eighty-two percent (82%) of the cases, the victims were white.<sup>48</sup> Only thirteen percent (13%) of those executed were condemned to die for the murder of an African-American victim.<sup>49</sup>

A 1990 General Accounting Office Report, which reviewed and analyzed twenty-eight (28) separate empirical research studies conducted regarding the influences of racial factors in death penalty litigation, found a documented pattern “indicating racial disparities in the charging, sentencing and imposition of the death penalty.”<sup>50</sup> Eighty-two percent (82%) of the studies examined concluded that the “race

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<sup>46</sup> NAACP Legal Defense and Educational Fund, Inc., *Death Row, U.S.A.* (Summer, 1996), p. 2.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> U.S. General Accounting Office, “Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities” (1990).

of the victim . . . influence[d] the likelihood of being charged with capital murder or receiving the death penalty.<sup>51</sup>

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<sup>51</sup> *Id.* at 5.

The American Bar Association (ABA), a national organization comprised of over 365,000 members including prosecutors, defense attorneys, judges, legislators, and educators, has taken no official position on the constitutionality or morality of capital punishment; however, the ABA has openly dedicated itself to ensuring that the death penalty is imposed “fairly and impartially”. The ABA has recognized the role that race has played in the administration of the death penalty.<sup>52</sup> Accordingly, on February 3, 1997, the ABA formally called for a moratorium on capital punishment across the nation:

“RESOLVED, That the American Bar Association calls upon each jurisdiction that imposes capital punishment not to carry out the death penalty until the jurisdiction implements policies and procedures that are consistent with the following longstanding American Bar Association policies . . . .

(iii) striving to eliminate discrimination in capital sentencing on the basis of the race of either the victim or the defendant (adopted August, 1988, August 1991); . . . .<sup>53</sup>

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<sup>52</sup> American Bar Association, Section of Individual Rights and Responsibilities Recommendation and Report, February 3, 1997, p. 12-13.

<sup>53</sup> *Id.* at 1.

A report released in June 1998 by the Death Penalty Information Center summarized the research to date and reached the conclusion:

Examinations of the relationship between race and the death penalty, with varying levels of thoroughness and sophistication, have now been conducted in every major death penalty state. In 96% of these reviews, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both. The gravity of the close connection between race and the death penalty is shown when compared to studies in other fields. Race is more likely to affect death sentencing than smoking affects the likelihood of dying from heart disease. The latter evidence has produced enormous changes in law and societal practice, while racism in the death penalty has been largely ignored...<sup>54</sup>

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<sup>54</sup> *The Death Penalty in Black and White, Who Lives, Who Dies, Who Decides*, available from: Death Penalty Information Center, 1320 18th Street NW, 5th Floor, Washington, D.C. 20036, USA.

Unfortunately, the State of Missouri follows the national trend. According to a report prepared by Professor John F. Galliher, Ph.D., and David Keys, M.A., for the Missouri Public Defender Commission, racially discriminatory factors critically impact the capital sentencing process in our state.<sup>55</sup> Young African-Americans defendants are much more likely to be sentenced to death than their white counterparts.<sup>56</sup> While a white offender who kills a white victim has a ninety-seven percent (97%) chance that the state will not seek the death penalty, a similarly situated African-American has only an eighteen percent (18%) chance that the prosecutor will waive the death penalty.<sup>57</sup> More telling is the fact that, as compared to white defendants, African-American defendants are twenty times more likely to be sentenced to death in Missouri when no member of their race serves on the jury.<sup>58</sup> The report concludes that race is an arbitrary factor which influences the imposition of the death penalty in Missouri because:

- Young African-American defendants are in greater jeopardy of receiving the death sentence than similarly situated white defendants;

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<sup>55</sup> *Report to the Office of the Missouri Public Defender on Proportionality and Sentencing in Death Penalty Cases*, John F. Galliher and David Keys, 1994.

<sup>56</sup> *Id.* at 8.

<sup>57</sup> *Id.* at 12.

<sup>58</sup> *Id.* at 14-15.

- Prosecutors are clearly influenced by the race of the victim in deciding whether to seek the death penalty; and
- About one-half (1/2) of the African-Americans sentenced to death have no members of their race sitting on their jury.<sup>59</sup>

All of the racial factors cited in the report as being arbitrary factors influencing the death penalty were present in Jerome's case. He was a twenty-seven (27) year old African-American charged with killing a white highway patrol trooper, tried before a jury on which no members of his race had a chance to serve. Given the circumstances of Jerome's case and the statistical evidence reported by Professor Galliher and Dr. Reed, race clearly played a part in the imposition of Jerome's sentence of death.

***Jurors in Jerome's case recommended the death penalty because they did not believe that the alternative - life without the possibility of probation or parole - actually meant that Jerome would spend the rest of his life in prison***

Two of the jurors in Jerome's case, Joe Schmid, the foreman, and Doris Anderson, recently spoke about Jerome's trial and sentencing. Both expressed their belief that Jerome, if sentenced to life without parole, would eventually get out of prison, and that this factor played a large part in their decision to recommend the death penalty.

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<sup>59</sup> *Id.* at 17.

According to juror Schmid, the jurors all agreed that Jerome might be released if they did not impose the death penalty. Juror Schmid decided that he did not want "to take the risk" and, therefore, voted for a sentence of death. He concluded, "the bottom line is that people don't trust the system" and no one wants to "take risks . . . we all discussed it, [and] we all agreed [that] life without parole" might mean something different.

Juror Anderson felt that the murder of Trooper Froemsdorf indicated a strong possibility of future dangerousness. Concerned that Jerome would be let out of prison some day, and fearing that he would pose a threat to society, she believed that it was her duty to ask for the death sentence.

The candid admissions of these jurors that their distrust of the system played a large part in their sentencing decision undermines the integrity of Jerome's death sentence. Accordingly, his death sentence should be commuted to life without the possibility of probation or parole.

### *Jerome has adjusted to institutional life*

Jerome has adjusted well to prison life at the Potosi Correctional Center. But for a few skirmishes on the basketball court, he has not been involved in any type of

violent or aggressive incidents during his sixteen years at the prison. His most recent disciplinary report was in February, 2001, for a sleeping through a count. In February, 2000, he was found to be in possession of an Ativan, psychiatric medication prescribed to him for anxiety. In November, 2000, he had a “dirty urine” when he tested positive for methamphetamines.

Were it not for an unwritten policy discouraging correctional staff from talking about inmates facing execution, numerous staff from Potosi Correctional Center — including Lieutenant Browers, Recreational Officer Cody, Lieutenant Cunningham, Superintendent Delo, Mrs. Freeman, Officer Glore, Officer Kittowski, Sergeant Montgomery, Officer Newberry, Officer Skaggs, and Officer Singleton — would report that Jerome has achieved an exemplary correctional adjustment.

*Jerome serves as a mentor to other incarcerated individuals*

Jerome has a unique understanding of the needs of newly incarcerated individuals. Jerome consistently reaches out to his cellmates and other inmates on his tier. Jerome provided support and guidance for Andre Cole, a man sentenced with the death penalty in February, 2001. When Andre Cole was first incarcerated at Potosi Correctional Center, he was angry and negative. Jerome encouraged him to think more positively. Similarly, Roger Nunley, who nearly “went crazy” after being sentenced with the death penalty, benefitted from the support and guidance Jerome offered.



Willie Stewart and James Fields were angry gang members who, with Jerome's help, renounced their respective gang and now live peacefully with the other inmates at the prison.

Willie Stewart wrote the following to Governor Holden: "He's the best dude in this prison. If you don't believe me ask anybody that been around him. You can ask guards or anybody and they will say everybody like him because he try to help people. If you find one person that said Jerome have did something to them or started something with them I'll take his place because they will be lying."

In a recent letter to the governor, Donald L. Williams, one of Jerome's former cellmates, wrote "I was in a gang and he showed me that I could do other things with my life . . . He showed me that I could go to college and make it . . . He also told me other ways I could make money the right way. I'm not in a gang no more and I want to fix computers when I get out . . . He help everybody and show us that you can do right and still be cool."

***Unlike many inmates whose family and friends have renounced them after periods of lengthy incarceration, Jerome's family and friends remain unwavering in their support***

Jerome has a loving and supportive family. They include his father, a sister, three brothers, and numerous nieces and nephews. Despite the fact that he has been incarcerated since March of 1985, he remains a vital, integral part of this family unit. He has continued to provide guidance and thoughtful wisdom born from one who has recognized the mistakes of his own past.

Sarah Murray, Jerome's older sister, is a supervisor at the Johnson Space Center in Houston, Texas. She maintains a close relationship with her brother Jerome. They talk on the phone often and have reconnected as adults since Jerome's incarceration. Sarah relates being surprised when she realized the similarities in their outlook on the world. She is able to talk with Jerome about the difficulties in third-world countries. When they hear reports of thousands of children dying each day due to hunger or illness, they can cry together. When they talk about the holocaust, they cry about what happened.

Jerome and his sixty-six year old father, Roosevelt Mallett, have established a rewarding adult relationship. They reminisce about Jerome's childhood and talk about Roosevelt's childhood. Freddie Mallett, Jerome's paternal uncle, who is fifty-three years old, worries about how Jerome's execution will impact his brother, who was widowed about eight years ago. "It would be devastating. I hate to think about it . . . I have been worrying about how he is feeling, and wondering what is on his mind."

Patrick Mallett, Jerome's younger brother, is a computer technician as well as a captain in the Army Reserves. He is accustomed to seeking and receiving advice from Jerome. Patrick recalls Jerome explaining the importance of an education and talking with him about the realities of the world. Following Jerome's advice, Patrick worked hard in school and eventually received a full college scholarship. Later, when Patrick and his wife, Gayle, separated and then divorced, Jerome was instrumental in helping them work through their problems. Due in large parts to Jerome's efforts, they were remarried about two years ago. Even now — with a pending execution date — Jerome is still giving Patrick advice. As recently as early June, Jerome helped him consider different ways of talking to and influencing teenagers to do the right thing.

Jerome has become the family's artist. He regularly sends them cartoons. One he sent to Sarah recently depicts a man in a cell, smiling. Two guards see him smiling, and wonder why he looks so happy. The guards ask the inmate why he is smiling. The man replies that he was smiling because he was thinking about God. The family also sends Jerome photographs of their children, which he then copies using pencil and paper. Sarah Murray's favorite may be one of her son, huge, crouched on a skateboard, above a city. She also relates — with pleasure — visiting one of her cousins in Mississippi and seeing similar pencil drawings Jerome has made for them.

In addition to that of his family, Jerome also has the support of a number of friends. Among them, Melvin Bonner, Lavera Reed, and Darlene Gholson.

Melvin Bonner, a quadriplegic, reflected on the ways that Jerome helped him. Melvin moved in with his mother after he became disabled due to a football injury. "My mother didn't have anyone to actually help me get in and out of bed but Jerome, his brothers, and friends would always come over and get me in and out of the bed." Melvin recalls that they youngsters in the neighborhood spent a lot of time with him, and that Jerome "took the initiative to take me out a lot of places despite my being older." He remembers Jerome as a young man who was "willing to help others no matter what he had to do."

According to Lavera Reed, Jerome had a heart for people. She remembers Jerome meeting a homeless mother on the street in Dallas, and giving the woman and her child a place to stay. In an interview, Ms. Reed explained that she believes Jerome suffered from low self-esteem, which, in part, caused him to spend his life trying to help others. Jerome "used to take care of everyone . . . If you needed food, he would get it." She wonders if Jerome was so giving because he wanted to "buy" friends, and believes this mindset may have lead to Jerome to a life of crime.

Darlene Gholson found that Jerome "was always looking out for everybody else. Trying to feed them and seeing that they had a place to stay."

*Jerome has exerted a positive influence upon the young male and female members of his extended family*

The children in the family are very important to Jerome. He is particularly close to Sarah's three youngest children — Derek Murray, age seven, Shayla Murray, age eight, and Patrick Murray, age nine. They live in Texas, but visit him whenever possible. Even though they were born after he was already incarcerated, they are very close to him. They understand that a date has been set for his execution, and want to see him before that.

Jerome has watched his twenty-one year old nephew, Quintin Murray, grow with pride. For the most part, Quintin has done well. However, when he was thirteen, fourteen, or maybe even sixteen, Sarah Murray recalls that there were some struggles. She and her husband were pressuring Quintin to concentrate and focus in school, and to do the things he needed to do. Quintin was becoming depressed. He talked to Jerome, who provided guidance and encouraged him not to go the wrong way. She recalls seeing some of the letters Quintin wrote to Jerome. She is thankful for the support and guidance Jerome provided. Quintin is doing well now.

Even now that Jerome is facing execution, he is still actively working to encourage his nieces and nephews to do positive things with their lives. In fact, he said that if he is executed, he is going to "milk it for all it is worth," and extract promises

from each of his nieces and nephews that they will go to college. He intends to tell them that college was a dream he never achieved, and to ask them to go to college — and excel — in his name.

***Jerome serves as a father figure to his cousin's children, Latoya Jordan, age 19, Jennetta Jordan, age 17, and Tanesha Jordan, age 13***

Jennifer Jordan, Jerome's cousin, is a widow. Her husband died of a brain tumor three years ago. Jerome called the family approximately one month after Jennifer's husband died. He had always been close to the family, but initiated more regular contact after their father's death. Jennifer says that contact has been especially important since her husband's death. Jennifer is thankful for the support and guidance Jerome has offered over the past three years. He has regular contact with her children, and has become a big inspiration for her seventeen year old daughter, Jennetta Jordan. For Jennetta, Jerome has been a guiding light as she has gone through her teenage years. She relies on Jerome to be her sounding board, and talks with him about things she is not comfortable discussing with her mother. Jennifer is confident that Jennetta values Jerome's input, as she will often share things Jerome has told her with her mother. Jennifer is moved by the strength of their relationship even though they have never met each other in person. She worries about Jennetta's response if Jerome is executed. "She really just cannot understand it."

Jennifer has amassed some of the letters that Jerome has written to her daughters. She was especially moved by a letter that Jerome wrote to Jennetta on March 21, 2000. "You have a lot of talent . . . I am not able to do anything so I want you to all the things I can't. Just have fun with your life and make smart decisions. Don't think the way I used to think. Think as I think now."

While Jerome and Jennetta have developed a special relationship, Jerome makes certain that Jennifer's other children do not feel left out. Latoya Jordan, who is nineteen, is disabled. While it is difficult for her to talk with Jerome over the phone, she appreciates the correspondence he sends her. Jennifer relates that Jerome is careful that none of her children feel left out. He recently sent Tanesha, the thirteen year old, a cartoon about school. The cartoon shows her sitting in a classroom with two other students and a teacher. It is titled *What do you know?* The caption reads, "Nesha, if you had \$833.00 and you paid 18.5 percent taxes, what would you have?" The response, "A damn headache!" At the bottom of the cartoon, Jerome wrote, "The more you know, the farther you go."

Jerome serves as a role model for Patrick's five children, who range in age from six to nineteen. He uses his situation as a bad example, and urges his nieces and nephews to think about the consequences of their actions before they act. Recently, while visiting with him, one of Patrick's children talked about a situation which had

occurred at school. The child was rebellious and defiant, but in talking with Jerome, began to understand that he was wrong. The children listen to Jerome when he tells them they should do something.

Gina Barry and Patrick Mallett are Marcetio Barry-Mallett's parents. Gayle Mallett is his step-mother. All three adults recognize the powerful influence Jerome has had on this seventeen year old youth. While Marcetio has three strong role models at home, he looks to Jerome for guidance in terms of staying out of trouble. Gayle Mallett remembers a time not too long ago when they were beginning to have trouble with Marcetio, who was having some issues with his identity. She remembers that he was beginning to make poor choices, miss school, and that he had begun some experimentation with drugs. Having been told of the parental concerns, Jerome wrote Marcetio a powerful letter, addressing the issues Marcetio was facing. In the letter, Jerome encouraged him to listen to his parents, stay in school, and make positive choices. Jerome was clear with Marcetio about the kinds of problems which can come from poor life choices. Gayle Mallett reports that they saw an increase in the efforts Marcetio made, in terms of getting to school on time, coming home after school, and spending less time on the streets. When Jerome called, he would ask for updates on Marcetio's behavior. Sometimes, if Jerome had concerns about the progress Marcetio was making, he would ask that someone from the family bring Marcetio for a visit.



Gayle and Patrick Mallett recognize that there is some value in the “fear” of being summoned to visit Uncle Jerome at Potosi Correctional Center.

Both Gayle Mallett and Gina Barry agree that Marcetio respects Jerome. Marcetio listens to him. On a recent visit, Marcetio asked Jerome what he had been doing. Jerome talked about a basketball tournament he had just finished. Marcetio, who loves basketball, replied that maybe he should go to prison so that he could play basketball every day. Jerome “checked” him immediately, saying “Do not ever say that!” Marcetio, who had been teasing, explained that he was only kidding. Jerome was forceful in his response, in which he again told Marcetio that such topics are not joking matters.

In addition to having formed a strong personal relationship, Jerome also encourages Marcetio to develop his passion — art. Because Jerome and Marcetio both like to draw, they have a regular exchange of drawings through the mail. Gina Barry believes this interaction is important as Jerome encourages her son’s drawing. Gina Barry believes “that his contact with Jerome has been positive.” While Marcetio has not talked about Jerome’s execution, she worries it will be “devastating” for him and the “whole family.”

***Jerome offered to donate a kidney to the minister of his brother’s church, and is willing to donate any viable organ***

Bruce Johnson, a 49 year old minister and father of three — two daughters, aged twenty-five and twenty-three and a son, aged fourteen — donated a kidney to his mother in 1974. He suffered complete kidney failure in 1996. He has been dialysis dependent since that time, and has been on the kidney transplant waiting list for more than four years. Bruce has been married to his wife, Janet, for twenty-seven years. She was, and still is, supportive of her husband's decision to donate a kidney to his mother. However, she is troubled by the deterioration she has witnessed in her husband's health. She has watched her formerly energetic and active husband wither; growing to rely upon dialysis to keep him alive while he awaits a kidney transplant. Now, when Bruce returns from dialysis, he is so weak and exhausted that he goes directly to bed.

Jerome was made aware of Mr. Johnson's predicament by his brother, Patrick, and his sister-in-law, Gayle. He offered to donate his kidney, if possible, to Mr. Johnson. The Johnson family was thrilled to learn that Jerome was willing to donate his kidney; however, the family recently learned that Barnes-Jewish Hospital, the facility they are working with, is opposed to transplanting an organ from an incarcerated individual as the risks of disease are higher. The Johnson family has placed their trust in the doctors, but remain hopeful that Jerome could be cleared — medically — to donate his kidney.

The Johnson family understands that Jerome is responsible for the tremendous loss the Froemsdorf family suffered. Nevertheless, they were hopeful that Jerome would not only spare their family a loss in the near future, but through his gift, essentially give life. Regardless of what happens, the family feels strongly that Jerome's selfless offer should be recognized.

In February, 2001 — months before an execution date was set — Jerome talked with his sister, Sarah Murray, about his desire to become a living kidney donor. She was supportive of the concept. When it became apparent that Jerome would be unable to donate a kidney, Sarah and Jerome have talked about the tremendous waste of his organs. Jerome has decided that, if at all possible, he would be willing to donate any viable organs if in fact he is executed.

***Jerome is remorseful for the death of Trooper Froemsdorf***

Jerome Mallett is not the same individual he was sixteen years ago. He has been removed from his reckless, drug-infested lifestyle. He has grown. He has taken responsibility for his own behavior, and the consequences of that behavior. He is aware of his role in the death of Trooper Froemsdorf and is remorseful for the suffering of the Froemsdorf family.

Jerome has expressed remorse to his family. He and his sister, Sarah, often talk about Officer Froemsdorf's family. Jerome has told Sarah that he did not intend to kill anyone, but recognizes that his actions led to Trooper Froemsdorf's death. Sarah relates that Jerome is particularly concerned about Trooper Froemsdorf's widow and the difficulties he imagined she faced in raising children alone. Jerome also worries about the couple's children, and talks about how sorry he is that they had to grow up without a father.

Jerome has told his brother, Patrick, that he is troubled that there is nothing he can say to the Froemsdorf family which will make things better, help them to forgive him, and promote healing. He is tremendously sorry for the loss he caused.

Jerome rarely talks about the offense with his cousin, Jennifer Jordan, but when he does, he always tells her the same thing: he never planned to hurt anyone, he is sorry for the loss he caused.

In a letter to Governor Bob Holden dated March, 2001, Darlene Gholsen wrote, "I know he is sorry for the family of the State Trooper. Because he said to me he was sorry." According to Gayle Mallett said, "he is haunted by the knowledge that someone died at his hands. He does not believe that that was his purpose in life."

### *Conclusion*

In acknowledgment of the facts set forth, counsel, family and friends of Jerome Mallett respectfully request that his sentence of death be commuted to a sentence of life without the possibility of parole, or alternatively, that a reprieve be granted staying Jerome's execution, and a board of inquiry be convened to examine the racial disparity in Missouri's application of the death penalty.

Respectfully submitted,

CARYN PLATT TATELLI, LCSW  
Forensic Social Worker  
P.O. Box 237  
Highwood, Illinois 60040  
(847) 926-8644  
(847) 926-8645 - FAX  
E-mail: caryn@tatelli.com

MICHAEL J. GORLA, #26399  
Attorney at Law  
720 Olive Street, Suite 2301  
St. Louis, Missouri 63101  
(314) 621-1617  
(314) 621-7449 - FAX  
E-mail: mjgorla@msn.com