IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

PHILIP RAY WORKMAN,

Plaintiff,

v.

PAUL SUMMERS,
Attorney General Of The State Of Tennessee, In His Official Capacity;

JOHN CAMPBELL,
Assistant District Attorney For The 30th Judicial District Of Tennessee, In His Official Capacity;

CHARLES TRAUGHBER,
Chairperson, Tennessee Board of Probation And Parole, In His Official Capacity;

RAY MAPLES,
Board Member, Tennessee Board Of Probation And Parole, In His Official Capacity;

BILL DALTON,
Board Member, Tennessee Board Of Probation And Parole, In His Official Capacity;

DON DILLS,
Board Member, Tennessee Board Of Probation And Parole, In His Official Capacity;

No. 3-01 0290

JURY DEMAND JUDGE ECHOLS

CAPITAL CASE
EXECUTION DATE
1 A.M. MARCH 30, 2001

COMPLAINT

TOWNSEND ANDERSON,	)
Board Member, Tennessee Board	)
Of Probation And Parole, In His	)
Official Capacity;	)
	)
SHEILA SWEARINGEN	)
Board Member, Tennessee Board	)
Of Probation And Parole, In Her	)
Official Capacity;	)
	)
LARRY HASSELL,	)
Board Member, Tennessee Board	)
Of Probation And Parole, In His	)
Official Capacity;	)
	)
RICKY BELL,	)
Warden, Riverbend Maximum	)
Security Institution, In His Official	)
Capacity; and	)
	)
JOHN DOES 1-100,	)
	)
Defendants.	)

COMPLAINT

INTRODUCTION

1. This civil action by Philip Workman, scheduled to be executed on March 30, 2001 at 1:00 a.m., seeks to vindicate constitutional and state-created rights on a claim of actual innocence of homicide, as guaranteed by the Federal Constitution. The Plaintiff's claims are based on at least three fatal flaws in the capital punishment process of the State of Tennessee, as applied in this case.

2. The U.S. Constitution prohibits the execution of an innocent person, and requires the essentials of due process for a clemency hearing, particularly under a claim of actual innocence after conviction. Tennessee provides further liberty interests to be protected by due process through the statutory creation of, and the rules governing, its Board of Pardons and Parole, and governing the

Board's role in the executive clemency process T.C.A. § 40-28-103(a), (c); § 40-28-106(c). The Governor has promulgated Guidelines for Pardons, Commutations and Reprieves, as amended in September 1999, and the Board in December 1999 issued specific rules to govern the "format" of Capital Case Clemency Hearings, of which Workman's was the first so held. Those statutes, regulations, rules and guidelines, and the very rudiments of due process, require the Board to be an autonomous, independent and neutral gatherer and reporter of facts for the Governor, in exercising his Tennessee Constitutional authority of pardons and capital commutation.

3. The Complaint charges that the required impartial conduct of the Board has been Constitutionally violated by the following actions of state officials: (1) the impermissible role of the Attorney General and his office in the entire process, where he has not only been the prosecutor of the Plaintiff, but has been advisor to the statutorily mandated "impartial" Board, and advisor to the Governor; as well as a principal orchestrator of a public relations campaign to pressure the Board in its deliberations; (2) his office's participation further in securing affidavits and testimony for the Board hearing, which contain factual misstatements crucially adverse to Plaintiff's claim of actual innocence; and (3) the presentation of "surprise" supposedly "scientific" evidence at the same hearing, which subsequent sworn statements from scientific professionals at the University of Memphis laboratories and elsewhere have revealed to be factually fabricated and scientifically unfounded. This "scientific" evidence was presented in violation of the Board's own rules and regulations; and its reliability is further impugned by the absence of cross examination and rebuttal denied Mr. Workman in the Board hearing.

4. This flawed and hostile "hearing," held on January 25, 2001, was worthy of the Red Queen's court glimpsed by Lewis Carroll's "Alice" through her looking glass. Further, Workman, his

witnesses, and his counsel were dealt with harshly and at times ridiculed. One Board member said he "resent[ed]" Workman's claim of actual innocence because, in the member's view, it called the officers who had been shot "stupid" or ignoran[t]." The result was a 6-0 vote by the Board against Workman, recommending that the Governor deny clemency. This vote immediately followed the "hearing" in which the above "evidence" was heard.

5. This course of conduct has deprived Plaintiff of his most fundamental Constitutional rights to due process, to equal protection of the laws, to be free of cruel and unusual punishment, to confront and cross-examine evidence presented against him to take his life, and in toto by not allowing him the Constitutionally mandated forum to attempt to prove his actual innocence of homicide.

JURISDICTION

6. This Court has jurisdiction under 28 U.S.C. §1331, 1343, 2201, and 2202, and pendent and supplemental jurisdiction pursuant to 28 U.S.C. § 1367. There are no administrative remedies available to the Plaintiff, and therefore any or all administrative remedies available to Plaintiff pursuant to 42 U.S.C. § 1997e(a) have been exhausted.

VENUE

7. Venue is proper in the Middle District of Tennessee because (1) nearly all of the defendants in this matter reside or are found in this district; and (2) more than a substantial part of the events giving rise to the claims in this action occurred in this district. 28 U.S.C. § 1391(a).

PARTIES

8. Plaintiff Philip Ray Workman is a death-sentenced prisoner residing at Riverbend Maximum Security Institution, 7475 Cockrill Bend Industrial Road, Nashville, Tennessee 37212.

The State of Tennessee, and Defendants, intend to execute Workman on March 30, 2001, at 1:00 a.m.

9. Defendant Paul G. Summers is the Attorney General and Reporter for the State of Tennessee and is sued in his official capacity.

10. Defendant John Campbell is an Assistant District Attorney General for Tennessee's 30th Judicial District; and is sued in his official capacity.

11. Defendant Charles Traughber is the Chairperson of the Parole Board, and is sued in his official capacity.

12. Defendants Ray Maples, Bill Dalton, Don Dills, Townsend Anderson, Sheila Swearingen, and Larry Hassell are Members of the Parole Board, and are sued in their official capacity.

13. Defendant Ricky Bell is the Warden for Riverbend Maximum Security Institution, and is sued in his official capacity. Defendant Bell is sued as the Warden under orders from the Tennessee Supreme Court to conduct the execution of the Plaintiff, and for that purpose only. The reference to all Defendants does not include Defendant Bell except the relief seeking to enjoin the execution.

FACTS

14. On August 5, 1981,before the start of the 4:00 p.m. to 12:00 a.m. shift of the Memphis Police Department, officers were alerted to a series of robberies taking place at Wendy's Restaurants by an African-American male at closing time, and to be on the lookout for such activities. About 10:00 p.m. on August 5, 1981, Philip Workman, a white male, admittedly robbed a Wendy's restaurant in Memphis, Shelby County, Tennessee. As Workman left the Wendy's building, he was

accosted in the parking lot by Memphis Police Lieutenant Ronald Oliver. As Oliver approached Workman, Memphis Police Officers Aubrey Stoddard and Stephen Parker arrived at the scene. Workman attempted to run, but fell onto the parking lot of a business adjoining the Wendy's Restaurant, that being Holiday Auto Parts. Oliver and/or Stoddard struck Workman in the head with a blunt object.

15. After Workman was struck in the head, shots were fired. Workman fired three shots from a .45 Colt automatic pistol. The bullets Workman fired were aluminum jacketed hollow point bullets having a soft lead core. Oliver was mortally wounded by a bullet which passed through his chest. Stoddard was wounded by a bullet that struck his arm.

16. When police processed the crime scene during the night of August 5, 1981, and the early morning hours of August 6, 1981, they found, among other things, three shell casings for .45 caliber ammunition and a live round of a .45 caliber aluminum coated bullet having a soft lead core. In the early morning hours of August 6, 1981, a Memphis Crime Scene Officer took Polaroid photographs of the entry wound and exit wound found on Oliver's body. The Polaroid pictures of Oliver's body show a single entry wound to Oliver's left chest, and a smaller exit wound to his right back. The Crime Scene Office took the Polaroid pictures back to police headquarters where he and other members of the Memphis Police Force, including Lieutenant Clyde Keenan, reviewed them and exchanged information.

17. Also on that afternoon, police went to the scene of the Oliver shooting and took a picture of a spent bullet lying on the Holiday Auto Parts parking lot. This bullet was a .45 caliber aluminum coated bullet having a soft lead core. The aluminum jacket covered this bullet. Other than a slight depression on its side, the bullet was pristine. No person saw the bullet, police photographed on

August 6, 1981, when police processed the crime scene during the night of August 5, 1981, and the early morning hours of August 6, 1981.

18. On the afternoon of August 6, 1981, an African-American male, Harold Davis, identified Workman as the man who shot Oliver. Davis claimed that he and his car were in the middle of the vacant Wendy's parking lot during the shooting, that he saw Officers Oliver and Stoddard struggle with Workman, and that he saw Workman shoot Oliver. While Davis swore that he remained at the scene of the Oliver shooting as "a bunch" of policemen arrived. No contemporaneous police report of the event mentions Davis or any person who could have been him.

19. On March 25, 1982, the State of Tennessee tried Philip Workman on charges of felony-murder, a capital offense in the State of Tennessee. In opening argument, the prosecution claimed that the bullet police photographed on the Holiday Auto Parts lot the day after the shooting (Trial Exhibit 35) came from Workman's gun and was the bullet that killed Oliver.

20. At Workman's trial, Harold Davis was the only witness who testified that he saw the shooting of Lieutenant Oliver. Specifically, Davis testified that he was near the entrance to the Wendy's restaurant when he saw Oliver confront Workman, after which a struggle ensued. Davis claimed he was no more than ten (10) feet away from the struggle and saw Workman shoot Oliver: "I saw a white male [Workman] shoot the policeman who fell back and drew his revolver and started shooting." Davis further claimed he saw the gun and described what he claimed was the struggle over the gun in Workman's hand. Davis claimed that Workman's gun was no more than 2-3 feet from Oliver when Workman shot Oliver.

21. Officers Parker and Stoddard testified at the trail that they did not see Oliver get shot and they never fired a weapon the night of the Oliver shooting. Workman testified that he fired his pistol

shooting first up into the air then shot at a person who first fired a shot at him.

22. Also at the trial FBI Agent Gerald Wilkes testified that when he examined Trial Exhibit 35 (the bullet) under a microscope he saw no blood, body fluid, or other indication that the bullet had passed through a human body. Agent Wilkes further testified that if Trial Exhibit 35 (the bullet) had killed Oliver, he would expect the bullet to be more mutilated.

23. At closing argument, the prosecution retreated from its claim that Trial Exhibit 35 killed Oliver. The prosecution maintained, instead, that Trial Exhibit 35 was the bullet that struck Stoddard. The prosecution also asserted that the State had proved that Workman shot Oliver because (1) Davis said he saw Workman shoot Oliver; and (2) Stoddard and Parker testified that they did not fire their weapons. The prosecution further told the jury that based on Davis's testimony, the State had proved that Workman cooly and deliberately shot Oliver. To find Workman guilty of first-degree felony-murder, the jury had to find that Workman shot Oliver. The jury did so, and convicted Workman of first-degree felony murder, and sentenced him to death.

24. On July 18, 1994, Workman filed in the United States District Court for the Western District of Tennessee an application for a writ of habeas corpus. In his habeas application, Workman alleged, among other things, that Davis committed perjury when he claimed at trial that he saw Workman shoot Oliver; the prosecution withheld evidence and presented false testimony concerning the circumstances of the offense; and defense counsel was ineffective for failing to investigate Davis's lies and ballistics evidence which establishes that Workman did not shoot Oliver.

25. The District Court on June 1, 1998 authorized Workman to issue subpoenas commanding the production of documents and things. Workman served on the Shelby County Medical Examiner's Office on June 15, 1995 a subpoena commanding production of, among other things,

any x-ray taken of Oliver's corpse. The Medical Examiner's Office produced documents responsive to the subpoena Workman served. It did not produce an x-ray taken of Oliver's chest.

26. On September 15, 1995, Workman responded to the State's Motion For Summary Judgment. In so responding, Workman presented all then-available evidence in support of his claims, including:

a. Statements from five witnesses at the scene that they did not see Davis or any person that could have been him;

b. Contemporaneous police reports listing witnesses to the crime which did not include Davis or any person who could have been him;

c. The Declaration of Dr. Kris Sperry, a Medical Examiner for the State of Georgia, that because the exit wound to Oliver's back was smaller than the entrance wound to his chest, Oliver's fatal wound was inconsistent with wounds caused by the .45 caliber hollow-point bullets that were in Workman's gun;

d. The sworn statement of Steve Craig, an independent witness first found by the defense in 1995, that he saw Parker fire a shotgun (upon Workman's arrest he was treated for shotgun wounds in his buttocks) during the incident; and

e. The sworn statement of Garvin Null, another independent witness first found by the defense in 1995, that when he arrived at the scene, Stoddard's pistol was out of its holster and that Stoddard urged him to take the gun to pursue Workman.

27. Following the hearing, the District Court granted summary judgment in favor of the State on October 30, 1996. Two years later, on October 30, 1998, the United States Court of Appeals for the Sixth Circuit affirmed the District Court's decision granting the State summary judgment. On

November 13, 1998, Workman filed a motion requesting that the Sixth Circuit reconsider its decision and on May 10, 1999, the Sixth Circuit denied Workman's rehearing request. In doing so, the Sixth Circuit wrote:

> Although this Court expresses no view as to whether Workman is actually innocent, if that is the situation, 'the traditional remedy for claims of innocence based on new evidence, discovered too late in the day to file a new trial motion, has been executive clemency.' *Herrera v. Collins*, 506 U.S. 390, 417 (1993). Under Tennessee law, the governor may grant clemency, *see* Tenn. Code Ann. §40-27-101, so Workman may present evidence to the governor that the fatal shot must have come from someone else's gun.

28. The Tennessee statute creating the Board is clear in its intent to create an autonomous Board in all respects. The Boards Rule 1100-1-1-02 states that it is "the intent of the General Assembly in creating the Tennessee Board of Paroles that it be autonomous and in all respects functionally and administratively separate from any other state agency." In addition to its Rule, the Board adopted a "Capital Based Clemency Hearing Format."

29. On September 20, 1999, General Summers, Michelle Long (then Legal Counsel to the Governor), and Parole Board Chairman Charles Traughber met. At the meeting, General Summers circulated a memorandum describing the facts of the Workman case. At the same meeting, Chairman Traughber inquired what role the Attorney General's Office should play if a formal hearing was held on a clemency petition in a capital case. Summers said he would consider that question and advise the Board of his role.

30. About the same time, September 24, 1999, Vivian Porter, found by the defense that day, executed an affidavit that Davis was with her at the time of the Oliver shooting, and that neither she nor Davis could have seen the shooting because they were in a car removed from the scene.

31. On September 30, 1999, Davis, having been found by the Defense, admitted to counsel

that he lied at Workman's trial when he claimed to have seen Workman shoot Oliver.

32. General Summers informed Traughber in writing on September 30, 1999 that he and his assistants had considered the issue of what role the Attorney General's Office should play at a capital clemency hearing. General Summers informed the Chairman that the role of he and his assistants would be that of Legal Advisor to the Parole Board.

33. On November 19, 1999, Davis again confirmed to Workman's counsel that he lied at Workman's trial when he claimed to have seen Workman shoot Oliver.

34. On January 3, 2000 the Tennessee Supreme Court set April 6, 2000 as the date for Workman's execution. Supreme Court Justice Drowota in concurring in the decision setting the April 6, 2000, execution date, wrote:

> I have no hesitation in observing that the circumstances of this case are by no means as egregious as most of the death penalty cases I have reviewed [citing numerous cases]. . . . Furthermore, the circumstances of this case are less egregious than many of the life sentence cases I have reviewed.[citing numerous additional cases] .... [W]ith respect to any executive clemency application that may be filed . . . it is my belief that a final decision should be rendered only after full scrutiny and careful consideration has been given to both the circumstances of [this] particular case and the circumstances of other similar first degree murder cases in Tennessee, regardless of the sentence imposed."

Justice Birch dissented, and stated:

> [A]fter careful consideration of the pertinent parts of the entire record, I do hereby certify to His Excellency, the Honorable Don Sundquist, Governor of the State of Tennessee, that there were extenuating circumstances attending this case and that the punishment of death ought to be commuted.

35. On January 27, 2000, Workman filed his formal application with the Parole Board for a commutation of his sentence, forwarding a courtesy copy of his application to the Governor's Office. The Governor's Office informed Workman that because the Parole Board had not heard

the case, review by the Governor's Office would be inappropriate.

36. On January 28, 2000, General Summers convened a "Capital Punishment Meeting" attended by, among others, Justin Wilson (Policy Deputy to the Governor), Parole Board Chairman Traughber, the Commissioner of the Department of Corrections, and members of the Attorney General's Office. At the meeting, General Summers gave opening remarks, and the attendees discussed the status of the Workman case and clemency procedures that would be employed to process Workman's clemency request.

37. While the Attorney General was acting advisor to the Board his Assistants Glenn Pruden, Amy Tarkington, and Joe Whalen met on February 1, 2000 to discuss what recommendations they should make to John Campbell, the Shelby County Assistant District Attorney (ADA) who would represent the State during clemency proceedings. On February 4, 2000 the Parole Board executive director Donna Blackburn informed Workman's counsel and Campbell that Parole Board Member and career Memphis Police Officer Ray Maples had recused himself from participating in the Workman case, in "an effort to promote public confidence in the integrity and impartiality of the clemency process."

38. A second Capital Punishment Meeting was convened on February 11, 2000, and attended by representatives of the Governor's Office, the Parole Board, and the Attorney General's Office. At the meeting, the attendees discussed, among other issues, the Workman case and procedures for executing Workman.

39. General Summers convened a third meeting on February 25, 2000, which was attended by, among others, Jay Ballard (Governor's Legal Counsel), Bettye Stanton (Governor's Administrative Assistant), Sharon Curtis-Flair (Attorney General's Media Advisor), numerous

AAGs, and Teresa Thomas (Parole Board Staff Attorney).

40. On February 25, 2000, recused Board Member Maples contacted ADA Campbell *ex parte* with suggestions for investigation. Specifically, Maples suggested that ADA Campbell investigate what time Clyde Keenan and his "Shoot Team" arrived at the scene and who checked Stoddard's and Parker's guns. ADA Campbell forwarded Maples's suggestions to AAG Pruden in Nashville, to which Pruden responded:

> I was just thinking that this would be good if there is nothing in the file. Then we could get an affidavit from this person. (Keenan)

41. Finally, on March 2, 2000, the State produced an x-ray of Oliver's chest that Workman had subpoenaed some five years before for the hearing in Federal District Court in Memphis on June 2, 1995. Two days later, Dr. Sperry reviewed the Oliver x-ray and declared that the x-rays establishes, to a reasonable degree of medical certainty, that Workman did not shoot Oliver.

42. Following these events Workman, on March 8, 2000, withdrew his clemency request and asked the Sixth Circuit to reopen his initial habeas corpus proceeding and/or to allow him to file a second habeas corpus petition so that the federal courts could consider Porter's sworn statement, Davis's recantations, and Dr. Sperry's opinion based on the recently produced Oliver x-ray.

43. Pursuant to recused Board Member Maples suggestions and AAG Pruden, on March 9, 2000, ADA Campbell obtained a sworn statement from Clyde Keenan at the State Attorney General's Office in Nashville. In the sworn statement dated March 9, 2000:

a. Keenan swore that the night of the Oliver shooting, he was the Commander of the "Shoot Team," a group of officers that performed an investigation any time there was a police use of deadly force;

b. Keenan further swore that he and fellow police officer Rick Wilson were immediately at the scene of the Oliver shooting between a minute and a minute and a half after the time that they heard the officer was down;

c. Keenan further swore that when he arrived:

> The first thing that we'd found was two officers down. Both of them were known to me. One of the officers was a former partner of mine by the name of Ronnie Oliver .... The other police officer, Officer Stodderd (sic), was an officer I was familiar with. He was down also. Stodderd (sic) had been hit in the arm. Oliver had been hit somewhere in the torso; was badly injured. And at that particular point, we went to try to aid him in any way we could awaiting the arrival of the paramedic crews .... Officer Parker was ... standing actually between Lt. Oliver and Officer Stodderd (sic).

d. In addition Keenan swore that he went to Oliver's aid, and then checked weapons after Oliver was placed in an ambulance:

> [W]e needed to ... make sure that any weapons that were there on the scene were not any danger to anybody. So we actually check officers' weapons at that particular point.... So the first thing that I did, the first weapon that I actually checked was Officer Parker's weapon, his service revolver.... There was no indication at all that that weapon had been fired.

e. After Keenan made the statement referred to in paragraph d, above, ADA Campbell then asked: "What about Officer Stodderd (sic)? Was his weapon checked also?"

f. Responding to ADA Campbell's question, Keenan swore that,

> His weapon was checked, and his was a little bit different situation. It was in his holster, and his weapon really ended up being checked at the hospital. So once he got to the hospital, both his weapon and the weapon for Lt. Oliver were secured. Lt. Oliver's had been fired. Stoddard's had not been fired."

Keenan's sworn statement is in direct conflict to the contemporaneous records of the

Memphis Police Department the time of the robber, some nineteen years ago.

44. Following the procurement of Keenan's affidavit by the Assistant D.A. Campbell, and AAG Pruden, General Summers, on March 28, 2000 pronounced publicly that Workman fired the bullet that killed Oliver, and compared Workman's claims to the contrary to the "grassy knoll" theory of a participant other than Lee Oswald in the assassination of the late President John F. Kennedy.

45. On March 31, 2000, a Sixth Circuit panel denied Workman's requests that the Court either reopen the previous habeas proceedings or authorize a second proceeding. Hours after the panel's decision, the Governor's Office informed Workman that on April 3, 2000, he and the State would each have ninety minutes to make a presentation to the Governor's aide, Justin Wilson, on whether the Governor should commute Workman's death sentence. On April 3, 2000, Justin Wilson presided at that presentation. At that occasion, Mr. Wilson stated that the Parole Board had announced it did not have time to give Workman a hearing.

46. At the proceeding on April 3, 2000, General Summers appeared "on behalf of the Governor." AAG Glenn R. Pruden announced that he was "not sitting with [Mr.] John [Campbell]" of the Shelby County DA's office, but "with the General [Summers]," in an apparent attempt to disguise the role he had been playing for months to orchestrate presentation of the State's case to defeat Workman's attempt to prove his innocence. Shortly following this hearing, Summers said he "would lay out all the facts for the Governor" and "give him my impartial advice" on Workman's request for clemency.

47. Such "impartial advice" was to come same six days after Summers had compared Workman's claim of actual innocence to the "grassy knoll" theory of Kennedy's assassination.

The next day, April 4, 2000, the Sixth Circuit granted rehearing en banc. As a result, the Governor refrained from deciding whether to commute Workman's death sentence. On September 5, 2000, the en banc Sixth Circuit panel announced it was equally divided on whether to reopen the original proceeding. As a result, the three-judge March 30, 2000, decision denying relief was reinstated.

48. On October 24, 2000, Workman filed a second request with the Parole Board asking that it recommend to the Governor that he commute Workman's death sentence. On December 11, 2000, Summers told Pruden he would attend the clemency hearing "in the capacity that I was last time." On the same day, December 11, 2000, General Summers wrote AAG Pruden that he assumed ADA Campbell would be presenting the testimony of Dr. Smith at the clemency hearing At the time Summers wrote Pruden, the Parole Board had not yet granted Workman a hearing on his clemency application.

49. About the same time AAG Pruden, after reviewing a letter written by Clyde Keenan to the newspaper restating the content of his sworn statement, urged Keenan to send his letter to other newspapers. On another occasion, General Summers suggested to AAG Pruden that he attempt to have a news outlet run a story about a 1986 attempted escape by Workman. The attempt succeeded, with a suburban Nashville newspaper running the story.

50. On the following day, December 12, 2000, ADA Campbell informed AAG Pruden that January 23, 2001, was a bad date for the clemency hearing because Campbell and Dr. Smith had a trial scheduled. That day, Michael Moore, Solicitor General, informed Jay Ballard (Governor's Legal Counsel) of the conflict ADA Campbell and Dr. Smith had on January 23, 2001. Ballard responded that he would focus on trying to get the hearing set on January 25. On

December 14, 2000, Parole Board Chairman Traughber told Parole Board Members that he considered January 25, 2001, an appropriate date for a hearing on the Workman case. No one contacted Workman's attorneys to ascertain whether they or their witnesses would also be available on January 25, 2001. The Chairman Traughber notified John Pierotti, the former District Attorney General for Shelby County, Workman's counsel, on December 19, 2000 that the Board would hold a hearing on Workman's clemency application on January 25, 2001.

51. Over the weeks that followed, AAG Pruden and ADA Campbell prepared material for presentation at the January 25 hearing. On January 3, 2001, General Summers recommended that ADA Campbell present Clyde Keenan's testimony at the January 25, 2001, hearing and thanked Campbell "for all you do." The next day, January 4, 2001, General Summers told Campbell he was looking forward to Campbell's presentation. Summers's wrote, "It will be good." On January 9, 2001, Summers and others attended a fourth Capital Punishment meeting attended by, among others, Jay Ballard (Governor's Legal Counsel), James Floyd (Governor's Deputy Legal Counsel), SG Michael Moore, AAG Pruden, AAG Whalen, Teresa Thomas (Parole Board Staff Attorney), and Donna Blackburn (Parole Board Executive Director). At the meeting, the attendees discussed the upcoming clemency hearing, Dr. Smith's testimony at that hearing, and logistics for the hearing and subsequent execution.

52. In the weeks that followed the meeting held on or around January 9, 2001, Summers, AAG Pruden, and ADA Campbell continued preparing material for presentation at the January 25, 2001 hearing.

53. On January 12, 2001, Board Counsel Teresa Thomas and Ed Scudder met with ADA Campbell and attorneys who would represent Plaintiff at the January 25, 2001 hearing.

Ms. Thomas assured Workman's counsel at the meeting and in later telephone calls that the Board Chairman would tolerate "no surprises" at the hearing. Workman's attorneys requested that the Board lift its capital case handling format rules that denies cross-examination and impose a two-hour time restraint. On January 21, 2001, the Chairman denied the request.

54. The Board's rules for capital clemency hearings require that all "documentation" to be used at a hearing be submitted to the Board and the other counsel at least 10 days before the hearing. Ten days before the hearing, ADA Campbell wrote the Board and Workman's counsel that other than documents respective to a 1986 escape attempt by Workman, the State would rely on what previously had been filed with the Board. Those filings did not include documentary material later presented to the Board by Dr, Smith at the hearing. Despite the Board Rule, the Board, over Workman's objection, permitted the undisclosed "surprise" testimony of a State's witness, Dr. O.C. Smith at the hearing.

55. On January 25, 2001, the Parole Board held the hearing on Workman's clemency application. At the beginning of the hearing, Chairman Traughber stated regarding Board member [Ray] "Maples ... he's not being involved in this case at all." Workman presented Vivian Porter as his first witness. Ms. Porter swore that the night of the Oliver shooting, Harold Davis was with her, and they were in a car removed from the scene of the shooting. At the conclusion of Porter's testimony, Parole Board Member Hassell questioned Porter. Because Porter referred to street names as she knew them, not as they are formally designated on street signs in Memphis, Parole Board member Hassell accused her of being coached into her testimony by Workman's counsel. After Hassell completed his questioning of Porter, other Parole Board members questioned her. When finished, the Parole Board's openly hostile

questioning of Ms. Porter would cover forty-five transcript pages. She and other Workman witnesses were hostilely questioned whether they opposed the death penalty, although the Chairman had stated at the outset of the hearing that general views on the death penalty were outside the scope of the hearing.

56. After Vivian Porter's testimony, Workman presented the opinions of Dr. Kris Sperry, M.D. and Dr. Cyril Wecht, M.D. that because the mortal wound to Lieutenant Oliver was inconsistent with wounds caused by Workman's ammunition, they believed, to a reasonable degree of medical certainty, that Workman did not shoot Oliver. Parole Board members sought to ridicule and minimize this testimony. For example, Dr. Wecht, a medical examiner in Pittsburgh who is one of the most nationally eminent forensic experts in the field, and who has been asked to consult in many high-profile cases including the Kennedy assassination in Dallas, was asked about "more than one Oswald," in an echo of General Summers' earlier public ridicule of Workman's innocence claim. Dr. Wecht further was repeatedly queried by multiple board members about how often he testified for criminal defendants rather than for the prosecution.(His answer, which was not accepted at face value by at least one Board member, was 85 percent for the State, 15 percent for the defense.) After presenting the testimony of Drs. Sperry and Wecht, Workman presented a juror from Workman's original trial, Wardie Parks. Parks testified that had he heard at trial the testimony of Vivian Porter and the opinions of Drs. Sperry and Wecht, he would not have convicted Workman of first-degree murder and sentenced him to death. During Parks's testimony, Chairman Traughber chastised Parks for having failed at trial to personally cross-examine Harold Davis and, through his own questioning, establish that Oliver's wounds were

inconsistent with those caused by Workman's ammunition.

57. The State, at the hearing, and in violation of the Boards rules, presented the testimony of Dr. Smith that the mortal wound to Oliver contains aluminum residue. Dr. Smith testified that because Oliver's mortal wound contains aluminum residue, he was 100% certain that Workman shot Oliver. Dr. Smith's testimony that scientific testing establishes that Oliver's mortal wound contains aluminum residue was contrary to the actual testimony. There was subsequently demonstrated by an investigation and examination of Dr. Smith's statements and other evidence obtained from a hearsay declarants statements Smith presented at the hearing. No cross examination of Dr. Smith was allowed Workman or his attorneys.

58. The State further presented Keenan's testimony that an immediate check of police weapons at the scene, and as further immediately directed by him, established that no police officer, other than Oliver, fired his weapon. Keenan's testimony is absolutely contrary to facts established subsequent to the hearing, with time to investigate, by contemporaneous Memphis police records.

59. At the conclusion of the hearing, the Parole Board voted 6-0 to recommend that the Governor deny Workman's request that his death sentence be commuted. In explaining their reasons, several Board members indicated by their remarks that the testimony of Smith and Keenan, to the effect that the only possibility was that Workman shot Lt. Oliver was crucial, relying on the false and unexamined testimony of Smith (that it was "100 per cent" that the bullet came from Workman's gun); and of Keenan (that it was certain that no officer other than Lt. Oliver had fired a weapon) One member said that he "resent[ed]" Workman's attempt to explain his innocence because it tended to blame the two officers who were shot and to suggest that the

officers were "stupid" or "ignoran[t]."

60. After the hearing held on January 25, 2001, News Channel 5 reporters Scott Couch and Phil Williams commented that it appeared that the Board had made up its mind before the hearing. On January 26, 2001, Summers appeared on a televised newscast. The television announcer asked Summers whether it was the Parole Board's function to retry the case. Summers responded that the Parole Board:

> chose to have a lengthy hearing, because, I think, there were some answers that they wanted and also I thought it would help the public understand, and they thought it would help the public understand.

61. When Workman raised these issues in pleadings filed in the Sixth Circuit Court of Appeals, General Summers issued a press release branding all "allegations" made against him, his "staff," and the Shelby County District Attorney General's office as "patently false." Despite these misleading global "denials," Summers has not denied most of the specific assertions made in Workman's pleadings regarding the testimony and evidence, and regarding the multiple representation of the prosecution, the Board and the Governor, and the falsity of the evidence offered through Smith and Keenan.

62. Keenan claimed to a newspaper reporter that Workman's documentary evidence of his untruthfulness was incorrect, but the State did not include that specific "denial" in pleadings filed with the Sixth Circuit. Smith told newspapers Workman's lawyers were wrong, but also did not deny any specific allegation by Workman, including sworn affidavits from independent witnesses employed by the University of Memphis that contradicted factual assertions made by Smith in his testimony at the hearing.

63. Plaintiff has just learned that at approximately 1:30 p.m. on March 27, 2001, the

Governor, Don Sundquist denied Plaintiff a commutation of his death sentence.

CLAIMS FOR RELIEF

COUNT ONE - Deprivation of Civil Rights, 42 U.S.C. § 1983

(Biased Procedures, Biased Advisors, and Biased Board Members)

64. Paragraphs 1-63 , inclusive, are incorporated and restated as if set out fully herein.

65. By the conduct alleged herein, all of the Defendants, acting under color of state law, caused Philip Ray Workman to be deprived of his rights secured by the Constitution and laws of the United States, to wit, his rights secured by the very rudiments and the panoply of the Due Process Clause of the Fourteenth Amendment of the United States Constitution to (1) a neutral, unbiased and impartial decisionmaker in the Tennessee clemency process; (2) to meaningful notice; and (3) to a meaningful opportunity to be heard, in conjunction with his rights to be free from Cruel and Unusual Punishments secured by the Eighth Amendment to the United States Constitution, to Plaintiff's injury..

COUNT TWO - Deprivation of Civil Rights, 42 U.S.C. § 1983

(False and Misleading Testimony at the Clemency Hearing)

66. Paragraphs 1-65 , inclusive, are incorporated and realleged as if set out fully herein.

67. By the conduct alleged herein, all of the Defendants, acting under color of state law, caused Philip Ray Workman to be deprived of his rights secured by the Constitution and laws of the United States, to wit, his rights secured by the very rudiments and the panoply of the Due Process Clause of the Fourteenth Amendment, and the Eighth Amendment's prohibition against Cruel and Unusual Punishments, by presenting, and relying on, false and misleading, new and allegedly inculpatory evidence and testimony at the clemency hearing while at the same time

denying Philip Workman the opportunity to confront and cross examine this testimony and evidence, and further in violation of rights under the Sixth Amendment of the United States Constitution, to have the right to confront allegedly new and allegedly inculpatory evidence offered to secure his death with meaningful notice and a meaningful opportunity to be heard, including an opportunity to confront and to cross examine the witnesses and evidence against him, to Plaintiff's injury.

COUNT THREE - Deprivation of Civil Rights, 42 U.S.C. § 1983

(Violation of Right to a Full and Fair Hearing in Which to Present Evidence of Innocence)

68. Paragraphs 1-67, inclusive, are incorporated and realleged as if set out fully herein.

69. By the conduct alleged herein, Defendants, acting under color of state law, caused Phillip Ray Workman, as an actually innocent person in possession of later-acquired evidence of his innocence, to be deprived of his rights secured by the Constitution and laws of the United States, to wit, his rights secured by the very rudiments and of the panoply of the Due Process Clause of the Fourteenth Amendment and by the Cruel and Unusual Punishments Clause of the Eighth Amendment to the United States Constitution, as recognized in Herrera v. Collins, 506 U.S. 390 (1993), to a full and fair hearing before his execution at which he might present the evidence of his innocence to a neutral, unbiased and impartial decisionmaker with the basic guarantees of due process, including notice, an opportunity to be heard, and an opportunity to present fully all available evidence in support of his innocence and to confront, question and cross examine evidence and witnesses offered to rebut the later-acquired evidence of innocence in violation of the Sixth Amendment, all to Plaintiff's injury.

COUNT FOUR - Conspiracy to Interfere with Civil Rights, 42 U.S.C. § 1985(3)

70. Paragraphs 1-69, inclusive, are incorporated and realleged as if set out fully herein.

71. By their conduct, as alleged herein, all Defendants conspired for the purposes of depriving, directly and indirectly, Phillip Ray Workman and other persons convicted of capital crimes of the equal protection of the laws, and of equal privileges and immunities under the laws, for the purpose of preventing and hindering the constitutional authorities of the State of Tennessee from giving and securing to him and other persons convicted of capital crimes the equal protection of the laws, to Plaintiff's injury.

COUNT FIVE –Tennessee Constitutional Claims

72. Paragraphs 1-71, inclusive, are incorporated and realleged as if set out fully herein.

73. By their conduct, Defendants also have deprived Plaintiff of his rights to due process, equal protection, confrontation, and compulsory process and to be free of cruel and unusual punishments under Article I, §§ 8, 9, and 16 of the Tennessee Constitution, which in one or more instances may be more protective of such rights and independent of rights under parallel provisions of the United States Constitution, all to Plaintiff's injury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that this Court:

1. Permit Plaintiff to be allowed to proceed in forma pauperis.

2. Enter a temporary restraining order maintaining the status quo, and precluding and staying the Defendants from executing Plaintiff pending the final determination of the merits of this action and any resultant appeals therefrom;

3. Enter preliminary and permanent injunctions precluding the State of Tennessee from executing Plaintiff until Plaintiff is provided a full and fair clemency proceeding on his claim of actual innocence before an unbiased Parole Board with independent legal advisors, and with full

and adequate protection of all Constitutional rights pled herein;

4. Issue a declaratory judgment that Plaintiffs' various Constitutional rights have been violated.

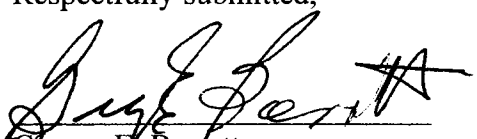
5. Convene a jury of twelve to hear all issues available under the Seventh Amendment

6. Award costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

7. Order such other relief as this Court deems just.

March 27, 2001.

Respectfully submitted,



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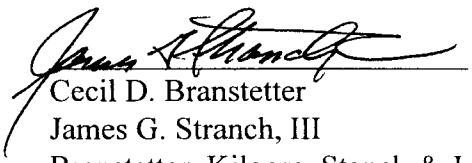

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Counsel for Plaintiff Philip Ray Workman

Certificate of Service

I hereby certify that a copy of the foregoing Complaint was served by hand on Paul Summers or his designee, Attorney General, State of Tennessee, 500 Charlotte Avenue, Nashville, TN 37243, this 27th day of March, 2001.

Edmund L. Carey, Jr.